

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

MC(EI.Pet.) No. 9 of 2022

Ref:- 1) El.Pet. No. 7 of 2022

2) El.Recr.Pet. No. 5 of 2022

3) El.Recr.Pet. No. 22 of 2022

Shri Karam Shyam, aged about 59 years old, S/o (L)
Karam Biramani Singh, a permanent residence of Lilong
Chajing Marenkhong, P.O. Lilong Bazar & P.S.
Singjamei, Imphal West District – 795130.

.... Applicant/Respondent No. 1

-Versus-

1. Shri Okram Joy Singh, aged about 80 years old, S/o
Okram Ibomcha Singh, a permanent residence of
Kakwa Huidrom Leikai, P.O. Canchipur & P.S.
Singjamei, Imphal West District, Manipur – 795003.

...Respondent/Petitioner

2. Shri Hijam Somarendro Singh, aged about 57 years
old, S/o Hijam Tomba Singh, a resident of Kakwa
Leiphrahpam Leikai, P.O. & P.S. Singjamei, Imphal
West District, Manipur – 795003.
3. Shri Karam Nabakishor Singh, aged about 59 years,
S/O Karam Ibochou Singh, a permanent resident of
Langthabal Kunja Awang Leikai, P.O. Canchipur, P.S.
Singjamei, Imphal West District, Manipur- 795003.

...Proforma Respondent

MC(EI.Pet.) No. 122 of 2022*Ref:-1) El.Recr.Pet. No. 5 of 2022**2) El.Pet. No. 7 of 2022*

Shri Hijam Somarendro Singh, aged about 57 years old, S/o Hijam Tomba Singh of Kakwa Leiphrakpam Leikai, P.O. & P.S. Singjamei, District- Imphal West, Manipur – 795003.

.... Applicant/Respondent No.2***-Versus-***

1. Karam Shyam, aged about 59 years old, S/o (L) Karam Biramani Singh of Lilong Chajing Marenkhong, P.O. Lilong Bazar & P.S. Singjamei, Imphal West, Manipur– 795130.
2. Okram Joy Singh, aged about 80 years old, S/o late O. Ibomcha Singh of Kakwa Huidrom Leikai, P.O. Canchipur, P.S. Singjamei, District Imphal West, Manipur – 795003.
3. Karam Nabakishor Singh, aged about 59 years, S/O Karam Ibochou Singh, a permanent resident of Langthabal Kunja Awang Leikai, P.O. and P.S. Singjamei, Imphal West District, Manipur- 795003.

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

For the Applicant in MC(EI.Pet.) No. 9 of 2022	::	Mr. A. Mohendro, Adv.
For the Applicant in MC(EI.Pet.) No. 122 of 2022	::	Mr. Hijam Somorendro, party in person
For the Respondents	::	Mr. HS Paonam, Sr. Adv.

Date of Hearing and
reserving Judgment & Order :: 29.08.2023

Date of Judgment & Order :: **12.10.2023**

JUDGMENT AND ORDER
(CAV)

MC (El.Petn.) No.9 of 2022 has been filed by the applicant Karam Syam under Order 7, Rule 11(a) of the Code of Civil Procedure, 1908 read with Section 86(1) of the Representation of People Act, 1951 to reject Election Petition No.7 of 2022.

2. MC (Ele.Petn.) No.122 of 2022 has been filed by the applicant Hijam Somarendro Singh under Order 7, Rule 11(a) CPC to dismiss the Election Recrimination Petition No.5 of 2022 filed by the applicant in MC (El.Petn.) No.9 of 2022 and to reject Election Petition No.7 of 2022, consequently, to declare the applicant Hijam Somarendro Singh as elected member of the 12th Manipur Legislative Assembly for 20-Langthabal Assembly Constituency.

3. Election Petition No.7 of 2022 has been filed by the election petitioner Okram Joy Singh under Section 33, 33A, 36, 80A, 81, 84, 100(1)(b), 100(1)(d)(i), (ii), (iv), 101, 123A, 125A, 135A of the Representation of People Act, 1951, challenging the

election of Karam Shyam from 20-Longthbal Assembly Constituency.

4. Pending Election Petition, Karam Shyam has filed Election Recrimination Petition No.5 of 2022 under Section 97, 77, 100(a), 100(d), 100(d)(i) and 100(d)(iv) of the Representation of People Act along with Rule 4A of the Conduct of Election Rules, 1961. Hijam Somarendro Singh has filed Election Recrimination Petition No.22 of 2022 under Section 97 of the Representation of People Act challenging the election of Okram Joy Singh; Karam Shyam and Karam Nabakishor Singh as the member of the 12th Manipur Legislative Assembly 2022 from 20-Longthbal Assembly Constituency.

5. Since MC (El.Petn.) Nos.9 and 122 of 2022 are filed to reject the election petition under Order 7, Rule 11(a) CPC, both the petitions were heard together and disposed of by this common order.

6. The applicants in MC (El.Petn.) Nos.9 and 122 of 2022 are respondents 1 and 2 in the election petition.

7. For the sake of convenience, the parties are referred to as per their array in the election petition.

8. The first respondent (Karam Shyam) has filed MC (El.Petn.) No.9 of 2022 alleging that the allegation made against him in the election petition does not constitute the basic fact, which would constitute the ingredients of any corrupt practice under Section 123 of the Representation of People Act, 1951 (for short, "*the RP Act*"). The election petitioner has agitated the nomination of the first respondent before the returning officer on the ground of educational qualification and the said ground was rejected by the returning officer holding that the same does not amount to a defect of substantive nature. Thereafter, another complaint was filed before the Election Commission of India and the same was also disposed of on the same line, as was rejected by the returning officer. The election petitioner failed to make out any material effect of the alleged impropriety on election result.

9. According to the first respondent, the first respondent had categorically mentioned the details in his Form-26 Part-A, Para 7-B(iv) under the head of details of immovable assets at residential buildings column regarding the area of measurement in square feet by way of filling up as (i) .132 acre (5749.92 sq. ft); 0.033 acre (1437.48 sq. ft.) followed by column regarding as to whether inherited property (yes or No) by filling up as 'No' and column regarding the date of purchase in case of self-acquired property by filling up as (i) 24/02/2012; (ii)

11/10/2019. The election petitioner is trying to confuse this Court by interpreting the non-agricultural land and residential building as same when the prescribed form of affidavit under Form-26 has made different category for both the non-agricultural land and residential building and in the record of rights maintained by the Revenue Department, there is no category of non-agricultural land and it is either the agricultural or residential building or commercial building. Therefore, the said allegation made in the election petition is vague, inconsistent and creating an illusion to mislead. The election petition being ill-conceived and for want of cause of action and that too approached this Court with unclean hands, the election petition is liable to be dismissed at the threshold.

10. Resisting MC (El.Petn.) No.7 of 2022, the election petitioner filed reply stating that the allegations of the election petitioner, as narrated in the election petition, are subject matter of trial, which would prove that the first respondent have indulged in corrupt practices. There are materials and reasons for initiation of trial against the returned candidate in view of the plea raised in the election petition. It is stated that the first respondent has admitted that he has constructed two residential buildings separately on two different non-agricultural lands and he further admits that he has disclosed the existence of the two residential

buildings separately in two different non-agricultural land. However, the first respondent admitted that he does not disclose the existence of two non-agricultural land owned by him at the relevant column of Form-26 affidavit. The non-disclosure of the non-agricultural land in Form-26 affidavit filed along with the nomination paper is a clear fact of swearing false affidavit which shall be subject matter in the trial of the election petition. It is stated that the first respondent admitted that he has studied B.Tech which is different from B.E. Assumption of self-declaration that Technology and Engineering are used vice-versa holds no water. The first respondent himself admitted that he has disclosed wrong educational qualification in Form-26 affidavit. It is stated that the decision of the returning officer or any authority of the Election Commission of India has nothing to do with the trial of the election petition. Thus, prayed for dismissal of MC (El.Petn.) No.9 of 2022.

11. The second respondent filed reply stating that the nomination of the first respondent was improperly accepted by the returning officer; that the High Court to adduce the facts and evidences of the election case and should not be rejected at the threshold and the returned candidate should necessarily be made to undergo the process of trial to prove the facts and evidences of the election case. The first respondent intentionally

and deliberately omitted to disclose the material facts in Form-26 affidavit and this defect is in the meaning of defect of substantial character, whereas the returning officer of 20-Longthabal Assembly Constituency accepted the nomination paper improperly. The returned candidate deliberately wrote the false qualification as B. Tech to misguide the voters in the name of Engineer and the same adversely affected the election of the returned candidate as void under Section 100(1)(d)(i) of the RP Act. It is stated that the election petition should not be rejected at the threshold and to allow the election petitioner to pursue the election petition and also the returned candidate should necessarily be made to undergo the process of trial to prove the evidences of facts and circumstances of the case. The returned candidate concealed the fact of materials regarding the Government dues in Form-26 affidavit and the nomination of the returned candidate ought to have been rejected by the returning officer. The returned candidate should necessarily be made to undergo the process of trial to prove the evidenced facts and circumstances of the election case.

12. The second respondent in the Election Petition No. 7 of 2022 has filed MC (El.Petn.) No.122 of 2022 alleging that notwithstanding anything contained in the provisions of RP Act and Order 7, Rule 11(a) CPC, the petitioner in Election

Recrimination Petition No.5 of 2022, the returned candidate, having been detected and known well to him the requirement of filing of form 25-affidavits along with the petition, did not file or cured the defect with the filing of form-25 affidavits during this long period of 102 days after the filing of his Election Recrimination Petition No.5 of 2022 and had failed to comply with the order of this Court dated 15.6.2022. The acceptance of the nomination papers of the returned candidate; election petitioner and the third respondent by the returning officer were improper as they have failed to disclose the correct material facts. The returned candidate deliberately and intentionally misled the voters of 20-Longthabal Assembly Constituency with false statement in Para 7(A)(xii) which adversely affected the election. The acceptance of the nomination of election petitioner is improper. Similarly the acceptance of the nomination of the third respondent is also improper, as he has concealed material particulars in his nomination. The concealment of facts and giving false statement in Form-26 affidavit is a defect of substantial character adversely affecting the election and consequently the returning officer had accepted the nomination of the third respondent improperly. Hence, prayed for rejection of Election Petition No.7 of 2022 as well as rejection of the Election Recrimination Petition No.5 of 2022 filed by the first respondent.

13. The election petitioner filed objection stating that a proper and complete affidavit as mandated by the relevant laws was filed by the election petitioner and it is not correct to state that the nomination paper of the election petitioner has been improperly accepted by the returning officer. It is stated that there is enough material facts and material particulars pleaded in the election petition under reference which would materially affected the election of the first respondent and, as such the election petitioner, in manner and circumstances as narrated in the election petition, can be declared as duly elected from 20-Longthabal Assembly Constituency in terms of the provisions of the RP Act.

14. The second respondent filed reply stating that the defects in Form-26 affidavit in respect of the first respondent which are in the meaning of defect of substantial character adversely affecting the election. In fact, the first respondent kept blank spaces in the names Column of dependents 1 to 3 without writing names or no dependents or Nil. The first respondent wrote wrong information of total income during the last five financial years ending 31st March 2021 as against the salary drawn from Manipur Legislative Assembly and GAD, Manipur. The first respondent also wrote wrong information in liabilities. He has wrote wrong approximate market value of residential

buildings and land. The first respondent deliberately and intentionally wrote wrong educational qualification and highest educational qualification writing as passed Bachelor of Textile Engineering in the three consecutive terms that 12th, 11th and 10th Legislative Assembly Elections, whereas he had passed only B.Text, which is a serious defect of substantial character misleading the voters adversely affecting the election.

15. The learned counsel for the first respondent submitted that after analyzing the false and fabricated grounds pleaded by the election petitioner and the same were do not constitute cause of action, the first respondent has filed MC (El.Petn.) No.9 of 2022 under Order 7, Rule 11(a) CPC for rejection of the election petition at the threshold.

16. The learned counsel further urged that the allegation mentioned in the election petition does not constitute any corrupt practice. Elaborating further, the learned counsel submitted that the first respondent had specifically and categorically furnished the details in Form-26, Part-A, Para 5(ii) regarding the pendency of two criminal cases and there is no other criminal case pending besides the two cases known which has been clearly disclosed and, thus, the allegations made are vague, inconsistent and creating an illusion to mislead this Court.

17. According to the learned counsel, the election petitioner in the election petition alleged at Para 16 that one Okram Gogo Singh, an election agent, on the day of scrutiny raised an objection for non-disclosure of residential building by filing complaint dated 9.2.2022 under Section 36(2) of the RP Act. In Para 18(a) of the election petition, the election petitioner stated that in Part 7B(ii) of Form-26, he had simply disclosed as 'NIL', which is false because he himself had disclosed at Part-B, Para 7 B(iv) that he has two residential building separately on two different non-agricultural lands one under Patta No.176/873 covered by C.S. Dag No.894/1015 of Village No.70, Chaging Part-I and another under Patta No.176/423 covered by C.S. Dag No.894/1521 of Village No.70, Chaging Part-I.

18. The learned counsel then submitted that the election petitioner has agitated the nomination of the first respondent before the returning officer on the ground of educational qualification and the same was rejected. There was no improper acceptance of the affidavit filed by the first respondent and on the basis of the complaint filed by the election petitioner, it was rejected on the ground that the same does not amount to defect of substantial nature. The concerned returning officer as well as the Election Commission of India have considered the complaint of the election petitioner and the

affidavit of the first respondent was accepted. As such, the ground that the result of the election insofar as it concerns the returned candidate has been materially affected by improper acceptance of the affidavit is ill-conceived and, therefore, the election petitioner has not come to the Court with clean hands.

19. The learned counsel submitted that while alleging material facts, material particulars ought to have been set out by which the result of the election has been affected and it shall be specifically pleaded how the alleged disclosure or non-disclosure of any particulars would have affected the votes secured by the first respondent and the prejudice caused.

20. The learned counsel for the first respondent argued that the election petitioner has failed to plead the primary or basic facts which are necessary to prove the cause of action also known as material facts for filing the present election petition. All the pleadings made in the election petition are vague, inconsistent and simply creating an illusion to mislead the Court to make believe that there exist a cause of action.

21. The learned counsel next submitted that it is mandatory to enclose in the election petition, affidavit under Form-25, if the allegation is with regard to corrupt practice, which the election petitioner has failed to do so and even after the said

issue is being raised, till date no affidavit in Form-25 has been submitted, which inadvertently means that either the foundation of election petition is not within the corrupt practice as envisaged under Section 123 of the RP Act or the election petitioner has no material evidence to submit affidavit under Form-25.

22. The learned counsel then submitted that as regards violation of the Model Code of Conduct alleged by the election petitioner, the same are not triable issue and cannot be a subject matter of trial, as there is no violation of the Model Code of Conduct. The allegation that the supporters of the first respondent have casted votes of persons who were expired is presumed to be true for the moment, then as there was no objection from the election agent of the election petitioner and other candidates is self-explanatory and that the said allegation against the first respondent is completely false. There is no record or report of such incident.

23. With regard to the acceptance of the nomination paper of the first respondent, the learned counsel for the first respondent argued that when the returning officer expressly accepted the nomination paper there being no defect of substantial character, without challenging and setting aside the decision of the returning officer and that of the Election

Commission of India, the election petition is devoid of merit. The ground taken by the election petitioner that the result of the election insofar as it concerns the returned candidate has been materially affected by improper acceptance of the affidavit is ill-conceived and, as such, the election petitioner has not come with clean hands.

24. Finally, the learned counsel submitted that there is no cause of action in filing the election petition, as the allegations are wild allegations calling for roving inquiry by this Court and none of the incident narrated can be a cause of action for filing the election petition. In support, the learned counsel for the first respondent placed reliance upon the following decisions:

- (i) *Ram Sukh v. Dinesh Aggarwal*, (2009) 10 SCC 541. (7, 9, 10, 11 to 14, 17, 20)
- (ii) *Mangani Lal Mandal v. Bishu Deo Bhandari*, (2012) 3 SCC 314. (3,4,9,10,11)
- (iii) *Ananga Uday Singh Deo v. Ranga Nath Mishra and others*, (2002) 1 SCC 499. (15,23,26,30,32,33,34 and 54)
- (iv) *Jaipal Singh v. Sumitra Mahajan and another*, (2004) 4 SCC 522. (2,3,9 and 11)
- (v) *Ishwardas Rohani v. Alok Mishra and others*, (2012) 7 SCC 309. (5,8,21,22,29 and 57)

- (vi) *Order of the Allahabad High Court dated 12.09.2022 passed in Election Petition No.10 of 2017. (7,9,10)*
- (vii) *Order of the Allahabad High Court dated 29.7.1981 passed in Election Petition No.11 of 1980. (3 to 5, 12, 13, 14, 16 to 19, 45, 46, 47, 48)*
- (viii) *Order of the Madras High Court dated 17.3.2022 passed in O.A.No.764 of 2021 in Election Petition No.8 of 2021.*

25. The learned counsel for the election petitioner submitted that the election petitioner has specifically pleaded in the election petition by giving reference which would materially affected the election of the first respondent and that the circumstances narrated in the election petition can strengthen the case of the election petitioner. The learned counsel would submit that the first respondent himself admitted in the reply objection filed in MC (El.Petn.) No.9 of 2022 that this Court should not reject the election petition.

26. The learned counsel further submitted that the information sought were well furnished in the relevant Columns in Form-26 affidavit. The allegations in MC (El.Petn.) No.9 of 2022 are mere assumptions and illusive skepticism of the first respondent and merely alleging without any material facts which

the first respondent relies is abuse of the process of law and wasting the valuable time of this Court.

27. The learned counsel urged that the election petition cannot be rejected without trial. If it discloses the cause of action, the election petition cannot be rejected. According to the learned counsel, the application under Order 7, Rule 11 CPC must be considered within four corners of the election petition. Since the election petitioner has shown the cause of action to file the election petition, the learned counsel prayed for dismissal of MC (El.Petn.) Nos.9 of 2022 and 122 of 2022. To fortify his submissions, the learned counsel for the election petitioner placed reliance upon the following decisions:

- (i) *D.Ramachandran v. R.V.Janakiraman*, (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.Khwarikpam Loken Singh*, 2017 SCC OnLine Mani 127.

28. The second respondent contended that whatsoever big, the election petitioner, being a candidate contesting for the seat, has to follow Rule 4-A and Rule 94A of the Conduct of Election Rules, 1961. The election petitioner being former Law

Minister of Manipur, former Minister and MLA for 32 years is drawing pension of being an Ex-MLA. According to the second respondent, Form-25 affidavit sworn before the Oath Commissioner has to be filed along with the election petition or the Election Recrimination Petition. Though the petitions were having affidavits and verifications, the defect of non-availability of sworn Form-25 affidavit has to be cured by filing sworn Form-25 affidavit.

29. The second respondent argued that defective sworn Form-26 affidavit is the activities of misleading the voters rendering corrupt practices, including undue influence and personation adversely affecting the election. Referring to Section 123(2), the second respondent submitted that the election petition and the Election Recrimination Petition are to be accompanied with Form-25 affidavit. Since the election petitioner and the first respondent are reluctant to file Form-25, the election petition and the Election Recrimination Petition No.5 of 2022 are liable to be declared as null and void.

30. According to the second respondent, the third respondent Karam Nabakishor Singh has also filed false/defective Form-26 affidavit along with the nomination papers to the returning officer of 20-Longthabal Assembly

Constituency. The activities of deliberate and intentional filing of the defective Form-26 affidavit with many blank spaces, concealment of material particulars, information and the false statements are the activities of corrupt practices rendering undue influence and personation at the election adversely affecting the election.

31. The second respondent submitted that the Election Recrimination Petition of the first respondent and the main election petition are to be accompanied with Form-25 affidavits. However, the Form-25 affidavits were not filed. This is not a case where the filing of an affidavit in form Form-25 would grant an opportunity for embellishment as is sought to be urged by the first respondent.

32. The second respondent urged that since the Election Recrimination Petition and the election petition are not having reliable cause of action, both the petitions are liable to be dismissed. In support, the second respondent has placed reliance upon the decision of the Hon'ble Apex Court in the case of *A.Manju v. Prajwal Revanna @ Prajwal R and others, Civil Appeal No.1774 of 2020, decided on 13.12.2001*.

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

34. The grievance of the respondents 1 and 2 is that the election petition is liable to be rejected on the ground that it does not disclose the cause of action in terms of the relevant provisions of the Code of Civil Procedure as well as the provisions of the RP Act. Additionally, the second respondent contends that the Election Recrimination Petition No.5 of 2022 filed by the first respondent lacks cause of action and, therefore, the said petition is also liable to be rejected.

35. On the other hand, the election petitioner contended that the cause of action for filing the election petition has been substantially disclosed in the election petition and, in fact, the election petitioner has categorically stated non-disclosure of information or income information while filing the nomination paper along with Form-26 affidavit, which amounts to corrupt practice under Section 123 of the RP Act as held by the Hon'ble Apex Court in a catena of judgments.

36. The first respondent filed M.C.(El. Petn.) No.9 of 2022 under Order 7, Rule 11(a) of CPC praying to reject Election Petition No.7 of 2022. Similarly, the second respondent filed M.C.(El. Petn.) No.122 of 2022 under Order 7, Rule 11(a) CPC praying to reject the election petition on the ground that acceptance of the nomination papers of the first respondent, the

election petitioner and the third respondent by the returning officer is improper. The second respondent also seeking to reject Election Recrimination Petition No.5 of 2022 filed by the first respondent alleging that the first respondent has failed to file nor cured the defect by filing of Form-25 affidavits during the long period of 102 days after filing of the Election Recrimination Petition No.5 of 2022.

37. The election petitioner assails the election of the first respondent from 20-Longthabal Assembly Constituency in the 12th Manipur Legislative Assembly Election, 2022 on the ground of non-disclosure of criminal antecedent; non-disclosure of details of immovable properties belonging to the first respondent; wrong information about the educational qualification. The election petitioner also alleged that one of the associate of the first respondent namely Thiyam Budhibanta Singh with the help of one Laishram Bikramjit Singh, Police Officer, Leader of Imphal West, Commando Gypsy No.4, distributed money in 20/11 Polling Station on 26.2.2022 just two days before the polling day and the said person had also threatened the electorates in Narankonjil and Haoreibi area by representing himself to be a member of the insurgent group. The election petitioner also alleged that the first respondent's son and his workers have beaten one Laishram Giri Singh and interrupted

the election at Polling Station Noi.20/18 on 28.2.2022 and they have also interrupted the polling at Polling Station Nos.20/6 and 20/34. In this regard, a police complaint was also lodged on 3.3.2022. In violation of Model Code of Conduct and executed works of road construction at (i) Langthabal Kunja NH-102 to Mari Longbi; (ii) Langthabai Kunja Mari Longbi to Little Rose Heinoumakhong and (iii) Lilong Hiyang Road and that the first respondent by illegal means impersonated/proxy voting had casted votes of the persons who have expired and persons who have been out of station on the day of voting, which would amount to commission of corrupt practice.

38. According to the election petitioner, the improper acceptance of the nomination by the returning officer despite objection from the side of the election petitioner and the non-compliance of the provisions of applicable laws by the first respondent while filing the nomination, the election of the first respondent from 20-Langthabal Assembly Constituency is to be declared as void.

39. The respondents 1 and 2 have vehemently opposed the election petition. The parties have also exchanged their pleadings. As stated supra, resisting MC (El.Petn.) No.9 of 2022 filed by the first respondent, the second respondent filed his

objections, wherein in paragraph 3(ii), the second respondent stated as under:

“ii. That with respect to Para no.2, deponent humbly urges the Hon’ble High Court to adduce the facts and evidences of the election case and should not be rejected at the threshold and the returned candidate (Karam Shyam) should necessarily be made to undergo the process of trial to prove the facts and evidences of the election case. The law points mentioned in para 2 is not applicable in this Election Petition no.7 of 2022 as there are many law points under which the returned candidate (Karam Shyam) should necessarily be made to undergo the process of trial to prove the evidences of facts and circumstances of the election case.”

40. Contrary to the aforesaid stand taken in the objection to MC (El. Petn.) No.9 of 2022, the second respondent filed MC (El. Petn.) No.122 of 2022 seeking to reject the election petition. Such an approach adopted by the second respondent is not appreciable, as he has taken the plea that returning officer of 20-Longthabal Assembly Constituency had accepted the nomination of the first respondent improperly. The specific plea taken by the second respondent in MC (El.Petn.) No.9 of 2022 is

that the defect is in the meaning of defect of substantial character and the nomination of Karam Shyam (first respondent) ought to have been rejected by the returning officer taking into consideration of with the fake mentioning of his educational qualification. The election of the returned candidate should be declared as null and void under Section 100(1)(d)(i) of the RP Act. Thus, it is crystal clear from the plea of the second respondent that the election petition should not be rejected at the threshold and allow the election petitioner to pursue the election petition and the returned candidate (first respondent) should necessarily be made to undergo the process of trial to prove the evidence of facts and circumstances of the case.

41. Placing reliance upon the decisions cited supra, the learned counsel for the first respondent submitted that an election petition is based on the rights, which are purely the creature of a statute, and if the statute renders any particular requirement mandatory, the Court cannot exercise dispensing powers to waive non-compliance and for the purpose of considering a preliminary objection as to the maintainability of the election petition, the averments in the election petition should be assumed to be true and the Court has to find out whether these averments disclose a cause of action or a triable issue as such; that all material facts in accordance with the provisions of the RP

Act have to be set out in the election petition. If the material facts are not stated in the election petition as per the provisions of the RP Act read with Order 7, Rule 11(a) CPC, the election petition can be summarily dismissed.

42. In *Ram Sukh*, supra, relied upon by the learned counsel for the first respondent, the Hon'ble Supreme Court held:

“7. Relying on the Handbook for Returning Officers issued by the Election Commission of India for the guidance of the Returning Officers in the conduct of elections, learned counsel submitted that the instructions so issued are binding on the Returning Officers and, therefore, having obtained the specimen signatures of the appellant and his election agent, it was obligatory on the part of the Returning Officer to circulate these specimen signatures to all the Presiding Officers in the prescribed pro forma in terms of Para 12 of Chapter VII of the said Handbook. It was contended that this omission on the part of the Returning Officer had materially affected the election result. However, the learned counsel fairly conceded that since the election petitioner did not file the affidavit as required under the proviso to sub-section (1) of Section 83 of the Act, he was not pressing the ground pertaining to

corrupt practice. Therefore, the issue surviving for consideration is only in relation to the alleged violation of Section 100(1)(d)(iv) of the Act.

.....

9. In this backdrop, we may now turn to the procedural provisions in the Act insofar as they are relevant for our purpose:

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

Explanation.—In this sub-section, ‘elector’ means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

83. Contents of petition.—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

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.

Explanation.—An order of the High Court dismissing an election petition under this sub-

section shall be deemed to be an order made under clause (a) of Section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of Section 80-A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of Section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in

the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

87. Procedure before the High Court.—(1) Subject to the provisions of this Act and of 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 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such

witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.”

From the aforequoted provisions, it would appear that Section 81 enables a petitioner to call in question any election on one or more of the grounds specified in sub-section (1) of Section 100 of the Act.

10. Section 83, the pivotal provision for the present case, requires that: (a) the election petition must contain a concise statement of “material facts” on which the petitioner relies and (b) he should also set forth “full particulars” of any corrupt practices which the petitioner alleges. Proviso to clause (c) of sub-section (1) of Section 83 also provides that where the petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. It is plain that the requirement of disclosure of “material facts” and “full particulars” as stipulated in the section is mandatory.

11. Section 86 mandates that where the election petition does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, the High Court should dismiss the election petition. Section 87 which lays down the procedure required to be followed by the High Court while trying an election petition, requires that every election petition shall be tried, as nearly as may be, in accordance with the procedure applicable under the Code to the trial of the suits, subject of course to the provisions of the Act and of any requirement made thereunder.

12. It is evident that the controversy in this appeal lies in a narrow compass. It revolves around the ambit of Section 83 of the Act. The point for consideration is whether the election petition lacked “material facts” required to be stated in the election petition in terms of Section 83(1) of the Act and if so, could it be dismissed summarily without trial? As already noted, it is mandatory that all “material facts” are set out in an election petition and it is also trite that if material facts are not stated in the petition, the same is liable to be dismissed on that ground alone. Therefore, the question is as to whether the election petitioner had set out “material facts” in his petition?

13. The phrase “material facts” has neither been defined in the Act nor in the Code and, therefore, it has been understood by the

courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, “material facts” are facts upon which the plaintiff's cause of action or the defendant's defence depends. (See Mahadeorao Sukaji Shivankar v. Ramaratan Bapu [(2004) 7 SCC 181] .) Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are “material facts”. Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.

14. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238] . Speaking for the three-Judge Bench, M. Hidayatullah, C.J., inter alia, laid down that:

(i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;

(ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;

(iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;

(iv) material facts and particulars are distinct matters—material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and

(v) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.

.....

17. Now, before examining the rival submissions in the light of the aforestated legal position, it would be expedient to deal with another submission of the learned counsel for the appellant that the High Court should not have exercised its power either under Order 6 Rule 16 or Order 7 Rule 11 of the Code to reject the election petition at the threshold. The argument is twofold viz.:

(i) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition, and

(ii) since Section 83 does not find a place in Section 86 of the Act, rejection of the petition at the threshold would amount to reading into sub-section (1) of Section 86 an additional ground. In our opinion, both the contentions are misconceived and untenable.

.....

20. The issue was again dealt with by this Court in Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315] . Referring to earlier pronouncements of this Court in Samant N. Balkrishna [(1969) 3 SCC 238] and Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511] wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in Azhar Hussain case [1986 Supp SCC 315] held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.”

43. In *Mangani Lal Mandal*, supra, the Hon’ble Supreme Court held:

“3. The respondent, Bishnu Deo Bhandari, a voter (hereinafter referred to as “the election petitioner”), challenged the election of the returned candidate by filing the election petition before the Patna High Court. The election petitioner alleged that the returned candidate suppressed the facts in the affidavit that he filed along with his nomination papers that he had two wives and the dependent children by marriage with his first wife. He did not disclose the assets and liabilities of his first wife and the dependent children born from that wedlock. The challenge to the election of the returned candidate was brought under Section 100(1)(d)(iv) of the 1951 Act and it was prayed that the election of the returned candidate be declared to be void.

4. The returned candidate traversed the averments made by the election petitioner and also raised diverse objections, inter alia, that the election petition did not disclose any cause of action nor it contained the concise statement of material facts.

.....

9. Section 100 of the 1951 Act provides for grounds for declaring election to be void. As we are concerned with Section 100(1)(d)(iv), the same is reproduced which reads as under:

“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)-(c)****

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—

*(i)-(iii)****

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

10. A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non-compliance as well as establish that the result of the election has been materially affected. It is only on the basis of

such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void.

11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three

decisions of this Court in: (1) Jabar Singh v. Genda Lal [AIR 1964 SC 1200 : (1964) 6 SCR 54]; (2) L.R. Shivaramagowda v. T.M. Chandrashekar [(1999) 1 SCC 666]; and (3) Uma Ballav Rath v. Maheshwar Mohanty [(1999) 3 SCC 357].”

44. In *Ananga Uday Singh Deo*, supra, the Hon’ble Supreme Court held:

“15. Manmath Nath Das, Respondent 3, in his written statement raised the preliminary objection regarding maintainability of the election petition and stated that the appellant had no cause of action to file the petition. That the election petition was bad for non-joinder of necessary parties. The allegations regarding presence of Janaki Ballave Patnaik and Respondent 1, in the office of the Chief Minister inside the Assembly premises to compel each and every Member of the Orissa Legislative Assembly for casting their votes as per the instruction of the Chief Minister and the allegation of written tokens given by the Chief Minister indicating the preferences to be endorsed in the ballot papers were denied. It was prayed that the appellant be put to strict proof thereof. With regard to transfer of votes in his favour, Respondent 3 stated that the same was done in accordance with the Rules and the

declaration of result consequent upon such transfer of votes was in accordance with law.

.....

23. Under Issues 1 and 4 the only point to be considered is whether the appellant had disclosed material facts and “material particulars” of the corrupt practice indulged in by Respondent 1 in securing the votes and if not so to what effect. Insofar as the other grounds of challenge to the election of Respondent 1 are concerned, the same have not been pressed in this case and left open for some future case. Insofar as the procedure adopted in counting of votes, the same would be discussed under Issue 5.

.....

26. This section provides that the petition shall contain a concise statement of the material facts and set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such practice and the date and place of the commission of such corrupt practice. It has to be verified in the manner laid down in the Code of Civil Procedure and wherever the election petitioner alleges any corrupt practice the petition shall also have to be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and particulars thereof. In the petition the particulars of the corrupt

practice of the allegation made, the names of the parties alleged to have committed such corrupt practice, the date and place of commission of corrupt practice have not been given.

.....

30. This Court in Ram Sharan Yadav v. Thakur Muneshwar Nath Singh [(1984) 4 SCC 649] has taken the view that the charge of a corrupt practice is in the nature of a criminal charge which if proved, entails a very heavy penalty in the form of disqualification. Therefore, a very cautious approach must be made in order to prove the charge of undue influence levelled by the defeated candidate. It is for the party who sets up the plea of “undue influence” to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case.

.....

32. To the same effect is another judgment of this Court in Quamarul Islam v. S.K. Kanta [1994 Supp (3) SCC 5] . After observing that there is an increase of electoral malpractices and the courts owe a duty to the nation to see that such objectionable assaults wounding the purity of elections during the election propaganda are not allowed to go unpunished it was held that:

“The maintenance of purity of elections is indeed essential but the court must be clear in its approach and appreciate that the proof of commission of corrupt practices must be clear, cogent, specific and reliable as the charge of a corrupt practice is almost like a criminal charge and the one who brings forth that charge has the obligation to discharge the onus of proof by leading reliable, trustworthy and satisfactory evidence. Election cannot be set aside on mere probabilities but only if the allegations of the corrupt practice, as alleged in the petition, are satisfactorily proved, which in the instant case is found hopelessly wanting. In this case the pleadings are so vague and the evidence so scanty, unsatisfactory and unreliable, besides being partly inadmissible, that it is not possible to connect the appellant, the returned candidate or his election agent with any of the corrupt practices alleged in the petition. The High Court before invalidating the election and upsetting the verdict of the electorate, in its zeal to maintain purity of elections, ignored not only the defects in the pleadings in the election petition but also failed to analyse the evidence in its proper perspective and even relied upon such evidence as is not admissible in law. It has been informed that the High Court has not framed any rule for trial of the election petitions. If that be so the Chief Justice of the High Court is requested

to look into it and frame rules for proper trial of election petitions.”

33. In a recent decision this Court in V. Narayanaswamy v. C.P.

Thirunavukkarasu [(2000) 2 SCC 294] after analysing the entire case-law on the subject has held that exercise of undue influence is also deemed to be a corrupt practice. Under sub-section (2) of Section 123 “undue influence” means any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right. “Material facts” and “material particulars” certainly connote two different things. Material facts are those facts which constitute the cause of action. In a petition based on the allegation of corrupt practices the cause of action cannot be equated with the cause of action as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter; if proved, not only does the candidate suffer ignominy, he also suffers disqualification from standing for election for a period that may extend to six years.

34. The Court summed up: (SCC pp. 316-17, para 23)

“23. It will be thus seen that an election petition is based on the rights, which are purely the creature of a statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between ‘material facts’ and ‘material particulars’. While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. ‘Material facts’ mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the

petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely

stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and the affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be enquired and tried at all. In such a case the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of the duty of the court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Where the petition does not disclose any cause of action it has to be rejected. The court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of

action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition.”

45. 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.

.....

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.

.....

11. Before concluding, we may state that several judgments were cited by the learned counsel for the appellant on the question as to what constitutes material facts. It is not necessary to discuss the said judgments as the answer depends on the facts of each case. In all the judgments cited on behalf of the appellant, it has been held by this Court that material facts are primary facts disclosing cause of action and such facts have got to be pleaded and failure to do so shall result in rejection of election petition though defect in material particulars can be cured at a later stage by amendment. In the present case, we are concerned with the application of the above law to the facts of this case. Hence, it is not necessary for us to burden this judgment with various authorities cited on behalf of the appellant.”

46. In *Ishwardas Rohani*, supra, the Apex Court held:

“5. As far as the application under Order 6 Rule 16 CPC is concerned, the High Court observed that non-revision of the voters' list is not a ground set out in Section 100 of the 1951 Act for declaring an election to be void. The High Court also observed that violation of the Model Code of Conduct cannot also be treated as a ground for declaring an election to be void.

.....

8. Appearing for the appellant, Ishwardas Rohani, Dr Rajeev Dhavan, learned Senior Advocate, submitted that all the allegations relating to corrupt practice were in respect of periods prior to the date of the Notification of the elections, namely, 29-10-2008, when the election petitioner, Shri Alok Mishra, was not yet a candidate, nor was the appellant herein. Dr Dhavan pointed out that the elections were notified for Jabalpur Cantonment Legislative Assembly Constituency No. 99 on 29-10-2008. On 3-11-2008 the election petitioner, Mr Alok Mishra, filed his nomination papers and the polling was held on 27-11-2008. The results of the election were thereafter announced on 8-12-2008, in which the appellant was declared to have been elected. Dr Dhavan termed the period between 29-10-2008, when the elections were notified, till 8-12-2008, when the results were declared, as the “active” period, when the conduct of the elected member could be faulted.

.....

21. Mr Khanna submitted that in Sardar Harcharan Singh Brar case [(2004) 11 SCC 196 : AIR 2005 SC 22] , this Court had the occasion to consider the observations made in the decision in Raj Narain v. Indira Nehru Gandhi [(1972) 3 SCC 850] , which, inter alia, laid down that while a corrupt practice has to be

strictly proved, it does not follow that a pleading in the election petition should receive a strict consideration. The charge of corrupt practice in an election petition is a very serious charge and has to be proved. It may or may not be proved. The allegations may be ultimately proved or not proved. But the question for the courts is whether a petitioner should be refused an opportunity to prove his allegations merely because the petition was drafted clumsily.

22. Mr Khanna submitted that it was in such context that it was observed in Raj Narain case [(1972) 3 SCC 850] that opportunity to prove should not be refused and the Court should be reluctant to stay an action on technical grounds. In the said case it was further recorded that “material facts” as referred to in Section 83 of the 1951 Act show that the grounds of corrupt practice and the facts necessary to formulate a complete cause of action, must be stated, but the election petition is not liable to be dismissed in limine because full particulars of the corrupt practices alleged were not set out. If an objection was taken and the Tribunal was of the view that full particulars had not been set out, the petitioner had to be given an opportunity to amend or amplify the particulars. It is only in the event of non-compliance with such order to supply the particulars, that the charge, which remained vague, could be struck down.

.....

29. In the instant case, what has been contended by Dr Dhavan is that in the absence of a cause of action or incomplete cause of action for the election petition on account of the verification thereto not being in conformity with the provisions of Order 6 Rule 15 CPC the election petition was liable to be dismissed. Such submission is not acceptable to me in the light of the decisions in Sardar Harcharan Singh Brar case [(2004) 11 SCC 196 : AIR 2005 SC 22] and also in F.A. Sapa case [(1991) 3 SCC 375] , despite the fact that in F.A. Sapa case [(1991) 3 SCC 375] it was indicated that if the affidavit of schedule or annexure forms an integral part of the election petition itself, strict compliance would be insisted upon.

.....

57. The allegations in the election petition on hand are required to be examined in the light of the principle of law laid down by this Court.”

47. It is submitted on behalf of the election petitioner that the first respondent has failed to disclose the criminal antecedent and the immovable properties and he has disclosed the wrong educational qualification in Form-26 affidavit. According to the election petitioner, the first respondent had also distributed money to the voters. Learned counsel for the election

petitioner demonstrates the non-disclosure of criminal antecedent, the details of the immovable properties belonging to the first respondent, which were not disclosed in Form-26 affidavit and also wrong mentioning of the educational qualification of the first respondent.

48. In reply, the learned counsel for the first respondent submitted that the first respondent has specifically furnished the details in his Form-26, Part-A, Para 5(ii) qua the pendency of two criminal cases. Apart from the above two cases, there is no other criminal cases pending against the first respondent. By placing reliance upon the decision of the Hon'ble Apex court in the case of *Resurgence India v. Election Commission of India and another*, (2014) 14 SCC 189, the learned counsel for the first respondent argued that in compliance of the directives issued in the said case, the first respondent filled the relevant column as "*not applicable*".

49. The learned counsel for the first respondent further submitted that the first respondent had specifically mentioned the details in his Form-26 under the head of details of immovable assets at residential buildings column regarding the area by way of filling up the extent of property followed by filling the column whether inherited property as 'no'. In fact, the election petitioner

is trying to confuse this Court by interpreting the non-agricultural land and residential building as the same when the prescribed form of affidavit under Form-26 has specifically made different category for both the non-agricultural land and residential building and in the record of right maintained by the Revenue Department of Manipur, there is no category of non-agricultural land and it is either the agricultural or residential building or commercial building.

50. The learned counsel for the first respondent further submitted that as far as the issue regarding the educational qualification raised by the election petitioner is concerned, B.Tech (Textile Technology) is an undergraduate Textile Engineering course which also need four years to complete. The term Engineering and Technology is used as vice-versa to each other.

51. The allegations and counter-allegations levelled by the parties in the instant case are admittedly to be proved by way of oral and documentary evidence. Further, the second respondent alleged that the returning officer has improperly accepted the nomination paper of the election petitioner as also the nomination paper of the respondents 1 and 3.

52. At this juncture, it is pertinent to note that the right to get information in democracy is recognized all throughout and it is natural right flowing from the concept of democracy. Article 19(1) and (2) of the International Covenant of Civil and Political Rights states as under:

“(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

53. Article 19(1)(a) of the Constitution of India provides for freedom of speech and expression. Voters’ speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter’s right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The voter may think over before making his choice of electing law breakers as law makers.

54. The first respondent contended that the election petitioner failed to plead the basic facts which are necessary to prove the cause of action also known as material facts for filing the election petition. All the pleadings made in the election petition are vague, inconsistent and simply creating an illusion to mislead this Court to make believe that the existence of cause of action.

55. Whether the allegations sets out in the election petition are vague and inconsistent alleged by the first respondent can be decided only after a full-fledged trial.

56. It is well settled law that the election petition must set out the material facts on which a charge can be made and mere repetition of the words of the statute does not amount to proper statement of facts. The material facts must be stated in the petition and if they are missing, it is impossible to think that the charge has been made or can be later amplified.

57. In *D.Ramachandran v. R.V.Janakiraman and others*, (1999) 3 SCC 26, the Apex 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.”

58. In *P.V.Guru Raj Reddy*, supra, the Apex 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.”

59. In *Srihari Numandas Totala*, supra, the Apex 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. Eshwara Sa [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.”

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.”

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. Ponniamman Educational Trust* [Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman 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.”

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.”

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 in Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557], Church of Christ Charitable Trust [Church of Christ Charitable Trust & Educational

Charitable Society v. Ponniamman 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. Ponniamman 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).”

60. In *R.K.Imo Singh*, supra, this Court held as under:

“27. As has been held by the Hon'ble Supreme Court, what particulars could be said to be “material facts” would depend upon the facts of each case and no rule of universal application can be laid down. Therefore, the nature and content of material facts would differ from one case to another and in other words, the material

facts to be stated in respect of an election petition filed on the ground of corrupt practice, would be different from that of the election petition filed on any other grounds. In the present case, the election petition has been filed on the grounds mentioned in Section 100(1)(d)(iii) and 100(1)(d)(iv) of the Act. This petition being filed not on the ground of corrupt practice, it does not require to state anything about the conduct of the returned candidate but it must definitely state as to how any vote has been improperly received, refused or rejected and the provisions of the Constitution, of the Act and the rules made thereunder have been violated. In terms of the law laid down by the Hon'ble Supreme Court, the election petition as a whole is to be read to find out if it contains a concise statement of material facts disclosing a cause of action. According to the respondent/petitioner, the materials facts have been stated in para 31 of the petition, the gist of which are inter-alia that the election was held on 04-03-2017 as per schedule and counting of votes took place on 11-03-2017. Immediately after the result of the election being declared, the respondent/petitioner through his agent namely K. Umakanata Singh discussed the matter in this regard with the Returning

Officer, on 13-03-2017, who intimated verbally that they were not in a position to furnish information as regards the list of electors who franchised their votes by way of postal ballot papers, number of voters on election duty, etc. While discussing with the voters on election duty through his election agent, it has been informed to him that strict compliance of law with regard to permitting the voters on election duty and issuance of Election Duty Certificate, was not complied with. On 05-04-2017 the petitioner made a written request seeking separately the number of postal ballot papers issued to each category of electors entitled to vote by postal ballot and the mode and manner in which the postal ballot papers were sent. Further information was sought to provide the number of persons to whom postal ballot papers were provided by post as well as in person. The information was sought for as to whether the electoral roll number of the voters concerned were entered in the counterfoils of postal ballot papers and were marked in the copy of the electoral roll and whether the counterfoils as well as the marked copy of such electoral roll were sealed in the mode and manner as prescribed in the Rules, 1961. However, these information were not provided to the petitioner by the

Returning Officer and/or the District Election Officer. The votes said to have been received in favour of the applicant/respondent No. 1 by postal ballot, did not comply with the provisions of Rule 24 and Rule 27F of the Rules, 1961. The entire process as regards the issue of requisite forms, postal ballot papers and receipt of the same organised at the Postal Ballot Facilitations Centre was not video-graphed as per guidelines/instructions etc. Since the agent of the respondent/petitioner was not informed regarding his presence at the Postal Ballot Facilitation Centre, the entire exercise was done behind the back of the respondent/petitioner. The counting of the ballots was done in violation of Rule 54A of the Rules, 1961 and the guidelines dated 04-12-2003 of the ECI. The verbal objection of the agent of the respondent/petitioner as regards accepting invalid and illegal postal ballots, was not registered and no cognisance thereof was taken by the Returning Officer. The contention of the learned counsel appearing for the applicant/respondent No. 1 is that the respondent/petitioner, in his petition, has failed to name any election personnel/postal voter/person who has improperly accepted the postal ballots. His

contention appears to be true to that extent but the other ground is that the result of the election has been materially affected by non-compliance with the provisions of the Constitution or of the Act and the rules made thereunder. After going through the averments made in the election petition as a whole, it cannot be said that the petition does not contain a concise statement of material facts. In fact, it does disclosing a cause of action. The contention of the learned counsel appearing for the applicant/respondent No. 1 has no substance and merit. So long as the petition discloses some cause of action or raises some questions fit to be decided by the court, the mere fact that the case is weak and not likely to succeed, is no ground for dismissing it. Therefore, the trial can continue on merits and it is a different matter if the material facts as stated in the petition, are not sufficient to prove the allegations. Whether or not the respondent/petitioner is able to prove the allegations, is a matter of evidence which can be considered only at the stage of trial, as has been held by the Hon'ble Supreme Court. In view of the above, this court is of the view that there had been substantial compliance with the provisions of Section 83(1)(a) of the Act and since the

application is devoid of any merit, the same is liable to be rejected by this court.”

61. From the decisions referred to supra, it is clear that the election petition as a whole is to be read to find out if it contains a concise statement of material facts disclosing a cause of action.

62. In *Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others*, (2012) 7 SCC 788, the Hon'ble Apex Court held that there is no denying the fact that Courts are competent to dismiss petitions not only on the ground that the same do not comply with provisions of Sections 81, 82 and 117 of the RP Act, but also on the ground that the same do not disclose any cause of action. The expression “*cause of action*” has not been defined either in the Code of Civil Procedure or elsewhere and is more easily understood than precisely defined.

63. In *Kisan Shankar Kathore v. Arun Dattatray Sawant and others*, (2014) 14 SCC 162, the Hon'ble Apex Court relied upon the decision in the case of *Union of India v. Association for Democratic Reforms and another* (2002) 5 SCC 294, wherein it has been held that it was incumbent upon every candidate, who is contesting the election, to give information about his assets and other affairs, which requirement is not only essential part of

fair and free elections, inasmuch as, every voter has a right to know about these details of the candidates, such a requirement is also covered by freedom of speech granted under Article 19(1)(a) of the Constitution of India.

64. In *Ashraf Kokkur v. K.V.Abdul Khader*, (2015) 1 SCC 129, the Hon'ble Apex Court held that the election petition having disclosed a cause of action should not have been thrown out at the threshold.

65. As stated supra, whether the allegation of the election petitioner are correct or not has to be proved by the election petitioner and further, as to whether, filing of an affidavit in Form-26 by the returned candidate was false or not and whether the alleged false affidavit would amount to violation of the provisions of Section 33 of the RP Act so as to render the election of the first respondent void are to be considered by the Court in the course of trial.

66. On a thorough reading of the instant election petition, it cannot be said that the same does not contain a concise statement of material facts. In fact, it does disclose a cause of action. Whether or not the election petitioner is able to prove the said allegations and whether or not the first respondent

is able to disprove the said allegations is a matter of evidence which can be considered only at the time of trial.

67. As could be seen from the records, the first respondent admitted that he has constructed two residential buildings separately on two different non-agricultural lands; he has disclosed the existence of two residential buildings separate in two different non-agricultural land. However, the first respondent does not disclose the existence of two non-agricultural land owned by him at the relevant column of Form-26 affidavit. The non-disclosure of the non-agricultural land in Form-26 is a clear fact of swearing false affidavit, which shall be, as rightly argued by the learned counsel for the election petitioner, a subject matter in the trial.

68. Admittedly, the first respondent has failed to produce materials to disregard the arguments of the learned counsel for the election petitioner. The first respondent simply stated that the election petitioner has failed to disclose the cause of action to maintain the election petition and nothing more. It is also the plea of the first respondent that the pleadings in the election petition are vague and inconsistent. However, the first respondent has failed to show how the allegations are vague and inconsistent.

69. When this Court read over the averments sets out in the election petition wholly, it is clear that the election petitioner has stated full and material particulars following the cause of action for filing the election petition. *Prima facie*, the election petitioner has narrated in the election petition qua the non-disclosure of information and/or incomplete information while filing the nomination paper along with Form-26 affidavit by the first respondent.

70. It is trite that so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars.

71. In *Harishankar Jain v. Sonia Gandhi*, (2001) 8 SCC 233, the Hon'ble Apex Court held that the expression "*cause of action*" would mean facts to be proved, if traversed, in order to support his right to the judgment of the Court and that the function of the party is to present a full picture of the cause of action with

such further information so as to make opposite party understand the case he will have to meet. In paragraph 23, the Hon'ble Supreme Court held as under:

“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. (Samant N. Balkrishna v. George Fernandez, Jitendra Bahadur Singh v. Krishna Behari. 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 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. 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."

(Underlying added)

72. Similarly, in *Mayar (H.K.) Ltd. and others v. Owners and Parties, Vessel M.V. Fortune Express and others*, (2006) 6 SCC 100, the Apex Court held as under:

“12. From the aforesaid, it is apparent that the *plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.* In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the

plaintiff-appellants. Similarly, the Court could not have taken the aid of Section 10 of the Code for stay of the suit as there is no previously instituted suit pending in a competent court between the parties raising directly and substantially the same issues as raised in the present suit.”

(Underlining added)

73. In construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science, but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea.

74. When this Court carefully examine the decisions in the cases of *Harishankar Jain and Mayar (H.K.) Ltd*, supra, it is clear that the Courts need to be cautious in dealing with requests for dismissal of the election petition at the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the election petition no cause of action is disclosed. In the case on hand, the election petition establishes the cause of action.

75. An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in Sections 100 and 123 of the RP Act cannot obviously be recognized and respected as the decision of the majority of the electorate. The Courts are, therefore, duty bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hyper-technical in their approach and without being oblivious of the ground realities.

76. The result of the election can be questioned on the grounds enumerated in Section 100 of the RP Act. Section 100(1)(b) and 100(1)(d)(i), (ii) and (iv) 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).....

(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)

(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)

(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.”

77. As stated supra, the election petition must set out the material facts on the basis of which the charge can be made and in the event of the material facts not being stated in the election petition, the same is liable to be dismissed. The expression material facts would mean all the basic facts constituting the ingredients of the particular corrupt practice which the election petitioner is bound to substantiate before he can succeed on that charge.

78. Whether in election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge leveled, the ground relied upon and the special circumstances of the case. 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 failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the RP Act.

79. The object and purpose of pleading material facts is to enable the opposite party to know the case he has to meet and in the absence of such a pleading, a party cannot be allowed to lead evidence. The requirement under Section 83(1)(a) of the RP Act in contradiction to Section 83(1)(b) is that the election petition needs to contain only a concise statement of the material facts and not material particulars. For the purpose of considering a preliminary objection as to the maintainability of the election petition, the averments in the election petition should be assumed to be true and the Court has to find out whether these averments disclose a cause of action or a triable issue as such. However, the Court cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action.

80. As stated supra, the election petitioner assails the election of the first respondent under Sections 33, 33A, 36, 80A, 81, 84, 100(1)(b), 100(1)(d)(i), (ii), (iv), 101, 123A, 125A, 135A of the RP Act. After going through the averments made in the

election petition as a whole, it cannot be said that the election petition does not contain a concise statement of material facts. In fact, it *prima facie* does disclose the cause of action.

81. The argument of the learned counsel for the first respondent that the election petition has no cause of action has no merit. This Court is of the considered view that the election petition having disclosed a cause of action, it should not have been thrown out at the threshold. That apart, when allegation of corrupt practices alleged in the election petition, the Court is bound to examine the allegation of corrupt practices.

82. The cause of action is a bundle of facts which is taken with law gives the election petitioner a right to relief against the returned candidate. Every fact and bundle of facts together constitutes a question of facts which are required to be proved for the relief.

83. It is well settled that our election law being statutory in character must be strictly complied with since an election petition is not guided by ever changing common law principles of justice and notions of equity. Being statutory in character, it is essential that it must conform to the requirements of our election law. But at the same time the purity of election process must be maintained at all costs and those who violate the statutory norms

must suffer for such violation. If the returned candidate is shown to have secured his success at the election by corrupt means he must suffer for his misdeeds.

84. It is reiterated that the instant 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 CPC cannot, therefore, be invoked in the instant case. There is no substance in the contention of the first respondent that the pleadings made in the election petition are vague and do not disclose a cause of action. It is elementary that under Order 7, Rule 11(a) CPC, the Court cannot dissect the pleadings into several parts and consider whether each of them discloses a cause of action. Further, the contention of the first respondent that the election petitioner approached this Court with unclean hands is not supported by any materials.

85. At this stage, this Court is not considering the issues - whether the first respondent filed false affidavit at the time of filing his nomination and has failed to disclose the true and correct facts, thereby violated the provisions of Sections 33, 33A, 36, 80A, 81, 84, 100(1)(b), 100(1)(d)(i), (ii), (iv), 101, 123A, 125A, 135A of the RP Act and whether the returning officer has correctly or wrongly accepted the nomination of the first

respondent and there was violation of Section 33 of the RP Act or not. These are all the matter of trial. As stated supra, the question as to whether the pleadings made by the election petitioner in the election petition are sufficient or not can only be determined at the time of final hearing of the election petition.

86. It is pertinent to note that on one hand, the second respondent stated that the election petition should not be rejected/dismissed at the threshold and allow the election petitioner to pursue the election petition and on the other hand, by filing MC (El. Petn.) No.122 of 2022, the second respondent praying to reject the election petition and the Election Recrimination Petition filed by the first respondent. Such a contrary stand taken by the second respondent cannot be appreciated. That apart, the plea of the second respondent that the failure of filing of an affidavit in Form-25 is fatal and that the Election Recrimination Petition No.5 of 2022 is liable to be rejected cannot also be appreciated.

87. The Hon'ble Apex Court in a catena of judgments held that the defect in verification of an affidavit cannot be sufficient ground for dismissal of the petition summarily and such an affidavit can be permitted to be filed later.

88. It is well settled that the non-compliance with proviso to Section 83(1) of the RP Act was not fatal to the maintainability of an election petition and the defect could be remedied i.e. even in the absence of compliance, the petition would still be called an election petition.

89. In *A.Manju v. Prajwal Revanna @ Prajwal R and others*, Civil Appeal No.1774 of 2020, decided on 13.12.2021, the Hon'ble Apex Court held as under:

“23. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition.

24. Once there is an affidavit, albeit not in Form 25, the appropriate course would be to permit an affidavit to be filed in Form 25. We have to appreciate that the petition is at a threshold stage. It is not as if the appellant has failed to cure the defect even on being pointed out so. This is not a case where the filing of an

affidavit now in Form 25 would grant an opportunity for embellishment as is sought to be urged on behalf of respondent No.1.

25. The appellant states the case clearly and in no uncertain terms with supporting material in the election petition. Whether the violation is made out by respondent no.1 or not would be a matter of trial but certainly not a matter to be shut out at the threshold.”

90. The second respondent also raised various issues qua interpretation of Section 97 of the RP Act. According to the second respondent, unlike other civil cases, the election case is technical in nature related with the mandate of the people with the highest value of time to stop the wrong member representing the respective voters and choose the right member to represent the voters as early as possible say within six months from the date of filing of the election petition. At this stage, it will not be possible for this Court to deal with the said aspect, as the point that arises for consideration in these miscellaneous cases is whether the election petition discloses cause of action or not. In view of the findings arrived at by this Court in the earlier paragraphs, the election petition discloses cause of action. Since the election petition discloses cause of action and the election petition needs to be tried, this Court is of the considered view that

the present miscellaneous cases are devoid of merits and the same are, therefore, liable to be dismissed.

91. In the result, MC (El. Pet.) Nos.9 and 122 of 2022 in Election Petition No.7 of 2022 are dismissed. There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil