

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

MC(EI.Pet.) No. 66 of 2022

Ref:- (i) El. Pet. No. 34 of 2022

Kimneo Haokip Hangshing, aged about 34 years, wife of David Hangshing, resident of Saikul Bazar, P.O. & P.S. Saikul, District Kangpokpi, Manipur, Pin-795118.

...Applicant/Respondent no. 1

-Versus-

1. Kenn Raikhan, aged about 46 years, S/o Surrender Raikhan, resident of Mapao Khullen Village, P.O. & P.S. Sekmai, Sub-Division Saikul, District Kangpokpi, Manipur, PIN-795118.

... Respondent/ Election Petitioner

2. Seikholal Haokip, aged about 46 years, S/o (Late) Nengkholum Haokip, resident of Ankumbhung Village, P.O. & P.S. Saikul, Saikul Sub-Division, Kangpokpi District, Manipur, PIN-795118.
3. Yamthong Haokip, aged about 59 years, S/o (Late) Holkhothang Haokip, resident of Ekou Mulam, P.O. & P.S. Saikul, District Kangpokpi, Manipur, PIN-795118.
4. Lhingkim Haokip, aged about 50 years, resident of Koirengei, P.S. Heingang P.O. Mantripukri, Imphal East District Manipur, PIN-795002.
5. Ch. Ajang Khongsai, aged about 59 years, S/o Lhunkhothang Khongsai, resident of Lhungjang Village,

P.O. & P.S. Saikul, Kangpokpi District, Manipur, PIN-795118.

6. Chungkhokai Dounghel, aged about 81 years, S/o (Late) Thangpao Dounghel, resident of C. Aisan Village, B.P.O. Moikon, P.O. & P.S. Saikul, District Kangpokpi, Manipur, PIN-795118.
7. Jamchinlen Lunkim, aged about 62 years, S/o Tongkhojang Lunkim, resident of L. Molnom Village, Saikul Sub-Division, P.O. Yairipok, P.S. Yairipok, Manipur-795148.

.... Proforma respondents.

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

For the Applicant :: Mr. A. Mohendro, Advocate

For the Respondents :: Mr. Ajoy Pebam, Advocate

Date of Hearing and
reserving Judgment & Order ::

Date of Judgment & Order :: **05.07.2023**

JUDGMENT AND ORDER (CAV)

This miscellaneous case has been filed by the petitioner under Order 7, Rule 11(a) CPC read with Section 86(1) of the Representation of People Act, 1951 to reject the election petition.

2. The election petition has been filed to declare that the election of the petitioner from 46-Saikul Assembly

Constituency of 12th Manipur Legislative Assembly, 2022 as null and void under Section 100(1)(d)(i)&(v) as well as under Section 100(1)(b) of the Representation of People Act and to declare that the first respondent herein is the duly elected member in the 12th Manipur Legislative Assembly, 2022 from 46-Saikul Assembly Constituency.

3. Resisting the election petition, the petitioner has filed the written statement raising various grounds.

4. Pending election petition, the petitioner has filed the present miscellaneous case to dismiss the election petition on the ground of non-disclosure of cause action and non-conformity with the provisions of the Representation of People Act. The petitioner also alleged that the election petition is ill-conceived one and the same has been filed with unclean hands and, therefore, the same is liable to be dismissed at the threshold.

5. Resisting the miscellaneous case, the first respondent/election petitioner filed affidavit-in-opposition, inter alia, stating that the issue of sufficiency of the pleadings and evidences is to be determined only at the final hearing of the election petition and no single pleading of the election petitioner has been denied by the petitioner till date.

6. The learned counsel for the petitioner submitted that the first respondent failed to mention material facts which would constitute the cause of action for filing the election petition and, in fact, the first respondent has failed to mention the material facts which if proved would amount to corrupt practice under Section 123 of the Representation of People Act alleged to be committed by the returned candidate. In other words, the allegations do not constitute ingredients of any corrupt practice within the meaning of Section 123 of the Representation of People Act and also do not amount to concealing of material facts.

7. The learned counsel for the petitioner would submit that the petitioner has not undertaken any development work in the piece of land and had only undertaken construction after completion of the election process which is evident from the photographs produced thereby showing bamboos being erected in order to support the new construction.

8. The learned counsel further submitted that as per the income tax return statement made available to the petitioner by the Income tax Department for the financial year 2021-2022, the total income of the petitioner is Rs.0/- and since the petitioner

is a member of Scheduled Tribe community, she is exempted from income tax.

9. The learned counsel further submitted that the petitioner adopted the surname 'Hangshing' from her husband's name i.e. David Hangshing after the marriage and necessary affidavit in this regard has also been sworn. As such, the allegation does not constitute the ingredients of any corrupt practice within the meaning of Section 123 of the Representation of People Act.

10. The learned counsel next submitted that the petitioner has already applied for deletion of her name from the electoral roll of 51-Saitu (ST) Assembly Constituency long back before election. Her name was still included in the electoral roll of 51-Saitu (ST) Assembly Constituency, which is purely dereliction of duty on the part of the concerned authority, for which the petitioner cannot be blamed.

11. The learned counsel then submitted that neither the petitioner nor her husband has indulged in any form of intimidation of voters as alleged by the first respondent. The entire allegations in the election petition have been based upon the unverified documents and had the first respondent/election

petitioner taken deep measures for ascertaining the actual facts, there would be no ground for the election petition.

12. The learned counsel urged that the first respondent/election petitioner has not complied with the provisions of Section 83(1)(a)&(b) of the Representation of People Act and, as such, the election petition deserves to be dismissed by application of Order 7, Rule 11 CPC for non-disclosure of cause of action, apart from approaching the Court with unclean hands.

13. In support of the submissions, the learned counsel for the petitioner placed reliance upon the following decisions:

- (i) *Ram Sukh v. Dinesh Aggarwal*, (2009) 10 SCC 541;
- (ii) *Mangani Lal Mandal v. Bishnu Deo Bhandari*, (2012) 3 SCC 314;
- (iii) *Jaipal Singh v. Sumitra Mahajan and another*, (2004) 4 SCC 522;
- (iv) *Ananga Uday Singh Deo v. Ranga Nath Mishra and others*, (2002) 1 SCC 499;
- (v) *Ishwardas Rohani v. Alok Mishra and others*, (2012) 7 SCC 309;
- (vi) *Punjab and Haryana High Court order dated 26.9.2019 in Civil Miscellaneous No.8 of 2018*;

- (vii) *Allahabad High Court order dated 12.9.2022 in Election Petition No.10 of 2017;*
- (viii) *Allahabad High Court order dated 29.7.1981 in Election Petition No.11 of 1980;*
- (ix) *Madras High Court order dated 17.3.2022 in O.A.No.764 of 2021 in Election Petition No.8 of 2021.*

14. Refuting the submissions made by the learned counsel for the petitioner, the learned counsel for the first respondent/election petitioner argued that the election petition has been filed in the context of gross misrepresentation and concealment of facts, documents, assets and holdings by the petitioner in filing her Form 26 affidavit for the election in question. The actions and omissions of the petitioner as detailed in the election petition are sufficient to constitute a case for setting aside the election of the petitioner in terms of Section 100 of the Representation of People Act and being violative of Section 33 and 33A of the Act read with Rule 4A of the Conduct of Election Rules, 1961 as well as the instructions/notifications issued by the Election Commission of India.

15. The learned counsel for the first respondent further submitted that the first respondent has taken various grounds in

the election petition and all the allegations are triable points and without taking evidence, the election petition is not liable to be dismissed and, as such, this Court may give an opportunity to both parties for adducing evidence and the election petition should be heard on merits.

16. Adding further, the learned counsel for the first respondent submitted that the main allegation made in the election petition is dealing with improper acceptance of the nomination of the petitioner and also non-compliance of the statutory provisions. The allegation qua the corrupt practice under Section 123 of the Representation of People Act is related with the concealment of material information in Form 26 affidavit amounting to undue influence as defined in Section 123(2) of the Act.

17. The learned counsel for the first respondent urged that the petitioner has failed to disclose her assets and her correct name. Further, the non-disclosure of movable and immovable assets would constitute a corrupt practice falling under the heading undue influence.

18. The learned counsel submits that each and every averment made in the election petition constitute the material

facts and material particulars and these are the cause of action for granting the reliefs to the election petitioner. All the pleadings or averments should be read as a whole so as to examine whether such pleadings/averments furnish the cause of action of the election petition. In the present case, the cause of action has been correctly spelt out in the election petition. Thus, a prayer has been made to dismiss the miscellaneous case.

19. To fortify his submissions, the learned counsel for the first respondent/election petitioner placed reliance upon the following decisions:

- (i) *D.Ramachandran v. R.V. Janakiraman and others*, (1999) 3 SCC 267.
- (ii) *Ashraf Kokkur v. Abdul Khader*, (2015) 1 SCC 129.
- (iii) *Madras High Court order dated 16.10.2020 in Original Application Nos.140 and 141 of 2020.*

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

21. The first respondent/election petitioner filed the election petition on the following grounds:

- (i) False Form 26 affidavit has been filed by the petitioner whereby concealing the facts of the ongoing construction of building inside the agricultural land mentioned in her affidavit Form 26.*
- (ii) The petitioner was serving as Committee Officer, Assembly Secretariat, Manipur Legislative Assembly and was retired on 31.12.2021 from her office. However, in paragraph 4 of the affidavit Form 26 – the total income for the financial year 2021-2022, the petitioner provided her total income as Rs.0/-.*
- (iii) The name of the petitioner given in the affidavit Form 26 is quite different from the electoral roll of 46-Saikul (ST) Assembly Constituency.*
- (iv) Para No.8 at Serial No.341 under EPIC No.CRP0588178 as provided by the petitioner in Form 26 affidavit, the said roll number is listed in the name of the person named as Kimneo Haokip and on the other hand, the same person Kumneo Haokip is also listed in another electoral roll of 51-Saitu (ST) Assembly Constituency of part 11 at Sl.No.643 under EPIC No.KSW0104935. As the petitioner claimed herself as the person*

listed at Sl. No.341 in the electoral roll of part No.8 of 46-Saikul (ST) Assembly Constituency, it is offense under the provisions of the law enacted in the State of Manipur and the Union of India for having enrolled two voter IDs on different EPIC Nos.

- (v) *The husband of the petitioner is a leader of an underground organization had used arms and intimidated the innocent voters. This constitutes to be a corrupt practice and undue influence for obtaining more votes in the election.*

22. The petitioner is the candidate sponsored by the Kuki's People Alliance and the first respondent is an independent candidate.

23. The petitioner has filed the present miscellaneous case by raising the following plea:

- (i) *The election petitioner failed to mention material facts which would constitute the cause of action for filing the election petition.*
- (ii) *The allegations set out in the election petition do not constitute the ingredients of any corrupt practice within the meaning*

of Section 123 of the Representation of People Act.

- (iii) The allegations set out in the election petition do not in any manner materially affect the outcome of the election results.*
- (iv) The petitioner had already applied for cancellation/deletion of her name from the electoral roll of 51-Saitu (ST) Assembly Constituency before the election in question and the fact remains that her name was still including in the electoral roll of 51-Saitu (ST) Assembly Constituency which is the total dereliction of duty by the concerned authority and not the petitioner.*

24. Highlighting the above plea, the learned counsel for the petitioner contended that the election petition at the hands of the first respondent was bereft of material facts and particulars and was also defective for want of requisite affidavit in support of allegations of corrupt practice. Since the election petition did not disclose any cause of action, the same deserves to be dismissed at the threshold.

25. The learned counsel for the petitioner urged that the election petition is liable to be dismissed in limine at the initial

stage, as it does not disclose any cause of action. He would submit that the cause of action in questioning the validity of the election must relate to the grounds specified in Section 100 of the Representation of People Act. In fact, the allegations contained in the election petition do not set out grounds of challenge as contemplated by Section 100 and since the allegations do not conform to the requirement of Section 83 of the Act, the election petition is liable to be rejected under Order 7, Rule 11 CPC, as the pleadings are vague and general.

26. Section 83 of the Representation of the People Act, 1951 reads thus:

“83. Contents of Petition: (1) An election petition –

(a) shall contain a concise statement of 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 the 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 of annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. Without specific pleading consent, cause of action in an election petition, based on allegations of corrupt practice is incomplete and the petition liable to be dismissed.”

27. By relying upon the decisions in the cases of (i) *Ram Sukh*, (2) *Mangani Lal Mandal* and (3) *Jaipal Singh*, supra, the learned counsel for the petitioner argued that if the allegation contained in the election petition, even assuming to be true and correct, do not make out any case of corrupt practice or any ground under Section 100 of the Representation of People Act, the pleading would be unnecessary, frivolous and vexatious. It is always open to strike out the same. If after striking out defective pleadings the Courts find that no cause of action remains to be tried it would be duly bound to reject the petition under Order 7, Rule 11 CPC. If a preliminary objection is raised before the commencement of the trial, the Court is duty bound to

consider the same, it need not postpone the consideration for subsequent stage of the trial.

28. In *Ram Sukh*, supra, the Apex Court held:

“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?”

29. In *Mangani Lal Mandal*, supra, the Apex Court held:

“12. Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellant's first wife and the dependent children born from that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election petition there is no pleading at all that the suppression of the information by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and non-disclosure of their assets and liabilities has materially affected the result of the election. There is no issue framed in this regard nor is there any evidence let in by the election petitioner. The High Court has also not formed any opinion on this aspect.”

30. In *Jaipal Singh*, supra, the Apex Court held:

“7. Section 83 deals with contents of petition. It states that an election petition shall contain a concise statement of material facts, on which the petitioner relies and shall state full particulars of any corrupt practices which the petitioner alleges and which shall be signed by him and verified in the manner laid down in the Code of Civil Procedure. In the case of Sopan Sukhdeo Sable v. Asstt. Charity Commr. [(2004) 3 SCC 137 : (2004) 2 Scale 82] it has been held that Order 6 Rule 2(1) CPC deals with basic rule of pleadings and declares that the pleading has to state material facts and not the evidence; that there is a distinction between “material facts” and “particulars” and the words “material facts” show that the facts necessary to formulate a complete cause of action must be stated. Omission of single material fact leads to an incomplete cause of action and consequently, the plaint becomes bad. The distinction between “material facts” and “particulars” was brought by Scott, L.J. in Bruce v. Odhams Press Ltd. [(1936) 1 KB 697 : (1936) 1 All ER 287 (CA)] in the following passage: (All ER p. 294)

“The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word ‘material’ means necessary for the

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

The function of 'particulars' under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim — gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial."

31. On the other hand, the learned counsel for the first respondent/election petitioner submitted that each and every averment made in the election petition constitute the material facts and material particulars and these are the cause of action

for granting the reliefs sought by the election petitioner. All averments should be read as a whole so as to examine whether such averments constitute the cause of action of the election petition.

32. The learned counsel for the first respondent then submitted that all the averments of the election petition are presumed to be true and the burden of establishing the truth of all averments is on the election petitioner and that the allegations of the petitioner raised in the present miscellaneous case are to be decided only after the hearing of the election petition. In support, the learned counsel placed reliance upon the decisions of the Apex Court in the cases of *D.Ramachandran* and *Ashraf Kokkur*, supra.

33. It is also the argument of the learned counsel for the first respondent/election petitioner that while exercising the power of rejection of the election petition, the conditions enumerated under Order 7, Rule 11 CPC have to be adhered to.

34. In *D.Ramachandran*, supra, 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.

....

15. As regards OA No. 186 of 1997, the approach of the learned Judge is totally erroneous as he has not kept in mind the distinction between “material facts” and “full particulars”. Nor has he correctly appreciated the decisions of this Court referred to by him. We do not want to express any opinion at this stage on the additional documents produced by the appellant. The trial court may decide the application in the light of the relevant judgments

of this Court, in particular, those laying down the difference between “material facts” and “full particulars”. Hence the order in OA No. 186 of 1997 is set aside and the application is remanded for fresh disposal in accordance with law.

35. In *Ashraf Kokkur*, *supra*, the Apex Court held:

"21. The pleadings, if taken as a whole, would clearly show that they constitute the material facts so as to pose a triable issue as to whether the first respondent is disqualified to contest election to the Kerala State Legislative Assembly while holding an office of profit under the State Government as Chairperson of the Kerala State Wakf Board. The question is not whether the Chairperson of the Kerala State Wakf Board is an office of profit or not. That is the issue to be tried. The question is whether the petitioner has raised such a question in the election petition. The disqualification under the Constitution of India being, holding an office of profit under the State Government. The petitioner has furnished all the material particulars in that regard. Therefore, the petition discloses a cause of action.

22. After all, the inquiry under Order 7 Rule 11(a) CPC is only as to whether the facts as

pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression “material facts” plainly means facts pertaining to the subject-matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial [See Philipps v. Philipps [(1878) LR 4 QBD 127 (CA)] (QBD p. 133); Mohan Rawale v. Damodar Tatyaba [(1994) 2 SCC 392] (SCC p. 399, para 16)].

36. In order to deal with the present miscellaneous case, there is a duty cast on this Court to determine whether the election petition discloses a cause of action by scrutinizing the averments made in the election petition.

37. The law governing an application under Order 7 Rule 11 CPC, reads thus:

“11. Rejection of plaint.—The plaint shall be rejected in the following cases—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

38. “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

39. In *A.B.C. Laminart Private Limited and another v. A.P. Agencies, Salem*, (1989) 2 SCC 163, the meaning of cause of action was explained by the Apex Court as under:

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be

set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

40. "Cause of action" is a term of art and has been described by the Hon'ble Supreme Court as also by this Court as a concise statement of material facts as also full particulars (where corrupt practice at an election is alleged) on which the election petitioner relies for making out corrupt practice as a ground for setting aside an election. A cause of action challenging an election on the ground of corrupt practice requires as full a statement as possible of the names of the parties alleged to have committed the corrupt practice and the details, date and place of the commission of such corrupt practice.

41. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the

Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in “cause of action”.

42. The learned counsel for the first respondent/election petitioner argued that the cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

43. For the purpose of determining whether the election petition discloses cause of action, the Court must take into consideration the election petition as a whole. It is only if even after the election petition is read as a whole, no cause of action is found discernible that the Court can exercise its powers under Order VII, Rule 11 CPC.

44. Coming to the instant case, on an overall consideration of the allegations in the election petition, it is clear that the allegation of corrupt practices – concealment of facts of

the ongoing construction of building inside the agricultural land; false total income stated in the relevant column in Form 26 affidavit for the financial year 2021-2022 and possession of two voter cards – have been set out in the election petition. On a close reading of the election petition, it is also clear that all the ingredients to maintain election petition and the grounds referred in Section 100(1)(b) of the Representation of People Act have been stated in the election petition.

45. As stated supra, it is the case of the first respondent that the petitioner has failed to disclose the asset and investment of about Rs.2 crore for land development made in the land and construction inside the agricultural land mentioned in her Form 26 affidavit. She had also concealed her total income for the financial year 2021-2022 even though she was serving as Committee Officer at the Secretariat of Manipur Legislative Assembly till 31.12.2021. The nomination paper of the petitioner has been improperly accepted since the name of the person namely Kimneo Haokip alleged to be herself listed in the electoral roll of 46-Saikul (ST) Assembly Constituency was also listed in another electoral toll of 51-Saitu (ST) Assembly Constituency at Serial No.643.

46. According to the first respondent/election petitioner, the petitioner has intentionally omitted vital information which may have shown the wealth and properties she may have accumulated in Form 26 affidavit which are required to be disclosed as per the mandate of the Election Commission of India. If the aforesaid aspects are proved, it would amount to corrupt practice under Section 123 of the Representation of People Act allegedly committed by the petitioner. On the face of it, the aforesaid contention urged by the learned counsel for the first respondent cannot be brushed aside.

47. The learned counsel for the first respondent argued that it cannot be said that the charge of corrupt practice lacks material facts and particulars. Even if this Court thinks that there is deficiency of material particulars, instead of dismissing the election petition, it would be just and proper to direct the election petitioner to produce more particulars in support of his allegation.

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

“24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to

a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

49. In *T.Arivandandam v. T.V.Satyapal*, (1977) 4 SCC 467, the Hon’ble Supreme Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words:

“5. The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing....”

50. In *ITC Ltd. v. Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70, the Hon'ble Supreme Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, the Hon'ble Supreme Court in *Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, (2017) 13 SCC 174 held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious and an abuse of the process of the Court.

51. The election petition will have to be read as a whole and cannot be dissected sentence-wise or paragraph-wise to rule that the same does not disclose a cause of action. As stated supra, cause of action embodies a bundle of facts which may be necessary for the election petitioner to prove in order to get a relief from the Court.

52. Order 7, Rule 11 CPC enjoins the Court to reject the plaint where it does not disclose a cause of action. The present miscellaneous case filed by the petitioner 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 counsel for the first respondent took us through the entire election petition and submitted that the averments therein disclose a cause of action.

53. In *Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust*, (2012) 8 SCC 706, the Apex Court held that a cause of action must include some act done by the defendant since in the absence of such act, no cause of action can possibly accrue.

54. By applying the ratio laid down by the Apex Court in the decisions referred to supra, all the averments set out in the election petition were considered as a bundle of facts and while doing so, the specific averments with regard to the alleged corrupt practice committed by the returned candidate (petitioner) which constitute a ground for declaring an election to be void under Section 100 of the Representation of People Act have been spelt out in the election petition, more particularly in paragraphs 15 and 18.

55. On a reading of the petition, we do not find it possible to agree with the submission made by the petitioner.

The election petition, as such, discloses 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 made by the petitioner that some of the allegations are bereft of material facts and, as such, do not disclose a cause of action. As stated supra, 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. There cannot be a partial rejection of the plaint or petition. All the allegations contained in the election petition, when this Court take as a bundle of facts, would give the first respondent/election petitioner a right to the relief and, thus, would constitute a valid cause of action for maintaining the election petition.

56. With regard to the ground raised by the petitioner that the election petitioner failed to mention material facts which would constitute the cause of action for filing the election petition, it would be appropriate to refer the decision of the Apex Court in the case of *Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy and others*, (2018) 14 SCC 1. In the said decision, the Apex Court held thus:

“40. In Harkirat Singh [Harkirat Singh v. Amrinder Singh, (2005) 13 SCC 511] , this Court once again reiterated thus : (SCC p. 526-28, paras 46-48)

“46. From the above provisions, it is clear that an election petition must contain a concise statement of “material facts” on which the petitioner relies. It should also contain “full particulars” of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.

47. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

48. The expression “material facts” has neither been defined in the Act nor in the Code. According to the dictionary meaning, “material” means “fundamental”, “vital”, “basic”, “cardinal”, “central”, “crucial”, “decisive”, “essential”, “pivotal”, “indispensable”, “elementary” or “primary”. Burton's Legal Thesaurus (3rd Edn.), p. 349.] The phrase “material facts”, therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, “material facts” are facts upon which the plaintiff's cause of action or the defendant's defence depends. 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. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.”

(emphasis supplied)

Again in paras 51 and 52, this Court observed thus : (SCC pp. 527-28)

“51. A distinction between “material facts” and “particulars”, however, must not be overlooked. “Material facts” are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or

defence. “Particulars”, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. “Particulars” thus ensure conduct of fair trial and would not take the opposite party by surprise.

52. All “material facts” must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.”

(emphasis supplied)

*And again in para 72, the Court noted thus :
(SCC p. 535)*

“72. The Court, however, drew the distinction between “material facts” and “particulars”. According to the Court, “material facts” are facts, if established would give the petitioner the relief prayed for. The test is whether the Court could have given a direct verdict in favour of the election petitioner in case

the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition.”

(emphasis supplied)

41. In *Ashraf Kokkur* [*Ashraf Kokkur v. K.V. Abdul Khader*, (2015) 1 SCC 129], this Court adverted to the exposition in *M. Kamalam v. V.A. Syed Mohammed* [*M. Kamalam v. V.A. Syed Mohammed*, (1978) 2 SCC 659], *G.M. Siddeshwar v. Prasanna Kumar* [*G.M. Siddeshwar v. Prasanna Kumar*, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715] and in Para 21 noted that the pleadings must be taken as a whole to ascertain whether the same constitute the material facts involving triable issues. In para 22, the Court observed as follows : (SCC p. 139)

“22. After all, the inquiry under Order 7 Rule 11(a) CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression “material facts” plainly means facts pertaining to the subject-matter and which are relied on by

the election petitioner. If the party does not prove those facts, he fails at the trial.”

(emphasis supplied)

57. In *Udhav Singh v. Madhav Rao Scindia*, (1977) 1 SCC 511, the Hon'ble Supreme Court held:

“42. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are “material facts”. In the context of a charge of corrupt practice, “material facts” would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an 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 levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the 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).”

58. The Apex Court in the case of *Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315 has held:

“11. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case.”

59. According to the first respondent/election petitioner, the petitioner admitted at para 9(a) of her Form 26 affidavit that her profession or occupation is “Self-Ex-Committee Officer, Assembly Secretariat, Manipur”, which means that she has income. As such, her income could not be Rs.0/- and even if she belongs to a member of the Scheduled Tribe community, she may fill up as “Not Applicable” but she opted to fill the income then she should have to fill up her actual income which is also admitted in para 9(a) of the affidavit in Form 26. Learned counsel submitted that this issue about her income for the year 2021-2022 can be decided after hearing and also after taking evidence. This Court finds some force in the said submissions made by the learned counsel for the first respondent/election petitioner.

60. Since this Court finds that the basic facts and allegations set out in the election petition, particularly paragraphs

16 and 18 would constitute a valid cause of action to maintain the relief sought for in the election petition and applying the decisions of the Apex Court, such basic facts pleaded by the election petitioner in support of the case set up by him could be termed as material facts.

61. In *V.S.Achuthanandan v. P.J.Francis and another*, (2001) 3 SCC 81, the Apex Court held that the election petition was not liable to be dismissed in limine, merely because full particulars of corrupt practice alleged are not set out. As held in *V.S.Achuthanandan*, supra, material facts would be such primary facts which must be proved at the trial by the party to establish existence of such cause of action.

62. In *Mayar (H.K.) Ltd. V. Vessel M.V. Fortune Express*, (2006) 3 SCC 100, the Apex court held:

"12. 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 7 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, the 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 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

63. When the averments in the election petition were considered as a bundle of facts, the allegations made therein would constitute a valid cause of action which could be termed as material facts, which allegations are neither in violation of any statutory provisions but are in conformity with the grounds for which the election petitioner may seek for declaring the election as void under the provisions of the Representation of People Act.

64. In a catena of decisions, the Apex Court held that since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7, Rule 11 CPC to the exercise of power of rejection of the plaint have to be strictly adhered to.

65. As stated supra, the pleadings, if taken as a whole, would clearly show that they constitute the material facts so as to post a triable issue and the first respondent has furnished all the material particulars in that regard. Therefore, the election petition discloses a cause of action. As held in *Ashraf Kokkur*, supra, after all, the inquiry under Order 7, Rule 11(a) CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the election petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the Representation of People Act is to provide a precise and concise statement of material facts, which in the instant case have been clearly spelt out. The expression “material facts” plainly means facts pertaining to the subject matter and which are relied on by the election petitioner. If the election petitioner does not prove those facts, he fails at the trial.

66. Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the Court to ascertain that principle and implement it. [*Raj Narain v. Indira Nehru Gandhi*, (1972) 3 SCC 850].

67. Guided by the settled principles of law referred to above, this Court is of the view that the election petition filed by the first respondent herein having disclosed a cause of action, the same should not be thrown out at the threshold as pleaded by the petitioner.

68. For all the reasons stated above, MC (Elec. Pet) No.66 of 2022 in Election Petition No.34 of 2022 is dismissed. There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil