

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

MC(EI.Pet.) No. 97 of 2022

Ref:- El. Pet. No. 32 of 2022

Leishangthem Susindro Meitei (Yaima), aged about 38 years, S/o Leishangthem Itocha Meitei, resident of Khurai Sajor Leikai, Tehsil: Sawombung, District: Imphal East, Manipur- 795010.

***....Applicant
(Respondent No. 1 in Election Petition)***

-Versus-

1. Shri Laitonjam Jayananda Singh, aged about 31 years, S/o Laitonjam Inao Singh, resident of Khurai Konsam Leikai near Chinjroibi, P.O. Lamlong, P.S. Porompat, Imphal East District, Manipur- 795010 (National People's Party (NPP) Candidate)

... Respondent

(Petitioner in Election Petition)

2. R.K. Amusana Singh, aged about 57 years, S/o (L) Rajkumar Balhopsana Singh, resident of Khurai Sajor Leikai, Ukhrul Road, P.O. Lamlong, P.S. Porompat, Imphal East District, Manipur – 795010, Candidate of Communist Party of India.
3. Khuraijam Ratankumar Singh, aged about 67 years, S/o (L) Khuraijam Nimaicharan Singh, resident of Kangla Sangomshang, P.O. Lamlong, P.S. Lamlai, Imphal East District, Manipur – 795010, Candidate of Nationalist Congress Party (NCP).

4. Khagokpam Khamba Singh, aged about 64 years, S/o (L) Khagokpam Udhop Singh, resident of Khurai Awang Kongpal Laishram Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur – 795005, Candidate of Republican Party of India (Athawale).
5. Toijam Lokendro Singh, aged about 33 years, S/o Toijam Achouba Singh, resident of Kongpal Ningthobung Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur, Manipur – 795005, Candidate of Janata Dal (United).
6. Heisnam Subhas Singh, aged about 56 years, S/o (L) Heisnam Mani Singh, resident of Kongpal Kongkham Leikai, P.O. & P.S. Porompat, Imphal East, Manipur – 795005, Candidate of Lok Janshakti Party (Ram Vilas).

***... Proforma- Respondent
(Respondents No. 2 to 6 in Election Petition)***

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

For the Applicant	::	Mr. N. Ibotombi, Sr. Advocate Mr. A. Golly, Advocate Mr. H. Suraj, Advocate
For the Respondents	::	Mr. HS Paonam, Sr. Advocate Mr. A. Arunkumar, Advocate Mr. M. Tapan Sharma, Advocate Mr. Ajoy Pebam, Advocate
Date of Hearing and reserving Judgment & Order	::	20.04.2023
Date of Judgment & Order	::	01.06.2023

JUDGMENT AND ORDER
(CAV)

This miscellaneous case has been filed by the applicant, who is the first respondent in the election petition, under Order 7, Rule 11 and Section 151 of the Code of Civil Procedure, 1908 read with Sections 81, 83, 86 and 87 of the Representation of People Act, 1951 for rejection of election petition, as the pleadings and documents attached to the election petition do not make out a cause of action or raise any triable issue and the trial would prejudice, embarrass and cause injustice to the applicant if further proceedings of the election petition is allowed sans any foundation and cause of action.

2. The first respondent herein has filed the election petition to set aside the election of the applicant to the 12th Manipur Legislative Assembly Constituency from 3-Khurai Legislative Assembly Constituency after declaring the election of the applicant from the said constituency as void on the ground of improper acceptance of nomination and filing of false affidavit under Form 26; non-compliance of the provisions of the Constitution or the Representation of People Act, 1951 or of any Rules and to declare the election petitioner as the returned candidate from 3-Khurai

Assembly Constituency for the 12th Manipur Legislative Assembly Election, 2022.

3. Resisting the election petition, the applicant/respondent no.1 and respondent nos.2 and 4 have filed written statements. The election petitioner has also filed replications to the written statements filed by the respondent nos.1, 2 and 4.

4. Pending election petition, the applicant has filed Misc. (Elec. Petn.) No.97 of 2022 to dismiss the election petition stating that the sum and substance of the allegations against the applicant qua non-disclosure of moveable assets, non-disclosure of full postal address, disparity in disclosing highest educational qualification, swearing of false affidavit dated 5.2.2022 are not well founded and the election petitioner at his own peril miserably failed to enclose or attach the contentious Form 26 dated 5.2.2022 of the applicant and moreover, no nomination paper dated 5.2.2022 of the applicant has also been filed or enclosed by him along with the election petition. According to the applicant, there is no cause of action sans the contentious affidavit dated 5.2.2022. The second ground taken in the miscellaneous case is the allegation of corrupt practice allegedly committed by the applicant. The applicant stated that but for the general allegation of corrupt practice, the election petitioner

has not pleaded any relevant and pertinent material fact/ground and particulars in the election petition. Moreover, the affidavit of the election petitioner under Form 25 is not only defective, but also vague and cryptic without any material facts and particulars.

5. According to the applicant, the election petition has been filed in gross violation of the mandate of Chapter VII-A of the High Court of Manipur Rules, 2019, more particularly at pages 9, 10, 15, 16, 18, 59, 61, 62, 64, 65 and 67 of the election petition. Stating that the election petition does not make out any cause of action or raise any triable issues and, thus, he prayed for dismissal of the election petition.

6. Resisting the miscellaneous case, the first respondent/election petitioner filed affidavit-in-opposition stating that the mentioning of 5.2.2022 as the date of affidavit filed by the applicant in the election petition is a typographical error and it should be read as 7.2.2022, as reflected in the affidavit annexed to the election petition. Since the first respondent annexed the affidavit dated 7.2.2022 filed by the applicant under Form 26 and prayed for quashing of the election of the applicant, this Court may consider the validity of the election of the applicant on the basis of the affidavit annexed to the election petition. It is stated that in the election petition, the first respondent has categorically stated that in

the affidavit in Form 26 filed along with the nomination paper before the returning officer, the applicant has not disclosed Hyundai i20 Sportz car having registration No.DL10CA6639 and also the applicant has changed his highest educational qualification from the one mentioned in the affidavit filed in connection with the 11th Manipur Legislative Assembly Election, 2017. Moreover, the applicant has ignored the contention of the election petitioner about the corrupt practice committed by him in the form of distribution of Realme tab/tablets to the children of the voters. On this count of corrupt practice, the election of the applicant is liable to be declared as null and void. It is stated that since the Registry of the High Court has accepted the election petition, the same shall be treated to be in conformity with the mandatory provisions of the Manipur High Court Rules. Furthermore, the election petition cannot be rejected on flimsy ground that it is not accordant with the provisions of the High Court Rules, which is only directory. It is stated that swearing of false affidavit in Form 26 and indulging in corrupt practice of distribution of tablets during the election campaign, which has materially affected the result of the election, are all causes of action and bundle of facts which are required to be proved in the trial for declaring the election of the applicant as null and void. Thus, he prayed for dismissal of the miscellaneous case.

7. The applicant filed rejoinder stating that it is on record that the applicant had submitted three different affidavits in Form 26 dated 5.2.2022, 5.2.2022 and 7.2.2022 along with his nomination paper which were duly accepted by the returning officer concerned. The deliberate act of the election petitioner in not challenging or questioning the two affidavits in Form 26 dated 5.2.2022 and 5.2.2022 is not only fatal, but also goes to the root and foundation of the entire election petition. The excuse of typographical error of mentioning the affidavit dated 5.2.2022 instead of 7.2.2022 in the entire election petition is nothing but an afterthought or the theory invented by the election petitioner just after filing of the written statement dated 23.8.2022. It is stated that the applicant was the absolute owner of the four-wheeler vehicle bearing registration No.DL10CA6639 and said four-wheeler was legally sold by him to one Henry Lalremsanga for a consideration of Rs.1.55 lakh on execution of a registered agreement and signing of relevant Forms. Therefore, the applicant cannot be the legal and lawful owner of the said four-wheeler and, therefore, there is no question of non-disclosure of said four wheeler in the affidavit in Form 26 of the applicant. It is stated that the High Court of Manipur Rules, 2019 is mandatory in nature and not a mere formality as harped on by the election petitioner. The acceptance of the defective election petition

by the Registry cannot be cleansed in the absence of a judicial order.

8. Mr. N. Ibotombi, the learned senior counsel assisted by Mr. A. Golly, learned counsel appearing for the applicant submitted that the main ground taken by the first respondent/election petitioner to set aside the election of the application is non-disclosure of moveable assets, non-disclosure of full postal address, disparity in disclosing highest educational qualification, swearing of false affidavit dated 5.2.2022. He would submit that the first respondent/election petitioner has failed to enclose the contentious affidavit in Form 26 dated 5.2.2022 of the applicant along with the election petition and on the sole ground of non-filing of the affidavit dated 5.2.2022, the election petition is liable to be rejected, as there is no cause of action for filing the election petition.

9. The learned senior counsel for the applicant further submitted that the next ground taken by the first respondent/election petitioner is the corrupt practice committed by the applicant. He would submit that but for the general allegation of corrupt practice, the first respondent/ election petitioner has not pleaded any relevant and material particulars in the election petition. According to the learned senior counsel, the election

petition is not only defective, but also vague and cryptic without any material facts and particulars.

10. The learned senior counsel urged that an election petition which does not disclose any cause of action can be dismissed summarily either at the threshold of the proceeding or at any subsequent stage of the proceeding. If after framing of issues or issuance of summons, the basic defect in the election petition, namely absence of cause of action, persists, it is always open to the contesting respondent to raise the objection to maintainability of the election petition and the Court would be acting within his jurisdiction in exercise of its power under Order VII, Rule 11 CPC in rejecting the same even after settlement of issues or issuance of summons. Thus, it would be in the interest of the parties to the election petition and to the constituency as well as in public interest to dispose of preliminary objection and to reject the election petition if it does not disclose any cause of action or triable issues or no pleading of material facts and particulars of the alleged corrupt practice or gross violation of the mandates of Chapter VII-A of the Manipur High Court Rules, 2019. Arguing so, the learned senior counsel prayed for rejection of the election petition, as the election petition does not make out any cause of action or raise any triable issues.

11. In support of his submissions, the learned senior counsel for the applicant relied upon the following decisions:

- (i) *Church of North India v. Lavajibhai Ratanjibhai and others*, (2005) 10 SCC 760.
- (ii) *Neena Vikram Verma v. Balmukund Singh Gautam and others*, (2013) 5 SCC 673.
- (iii) *Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others*, (2020) 7 SCC 366.
- (iv) *Azhar Hussain v. Rajiv Gandhi*, 1986 (Supp.) SCC 315.
- (v) *Mohan Rowale v. Damodar Tatyaba and others*, (1994) 2 SCC 392.
- (vi) *Anil Vasudev Salgaonkar v. Nareh Kushali Shigaonkar*, (2009) 9 SCC 310.
- (vii) *Dr. Shipra v. Shantilal Khoiwal*, (1996) 5 SCC 181.
- (viii) *Hardwarilal v. Kanwal Singh*, (1972) 1 SCC 214.
- (ix) *Ravinder Singh v. Janmeja Singh*, (2000) 8 SCC 191.

12. Per contra, Mr. HS Paonam, the learned senior counsel assisted by Mr. A. Arunkumar, learned counsel appearing for the first respondent/election petitioner submitted that due to

typographical error, the affidavit date has been mentioned as 05.02.2022 instead of 07.02.2022. Since the first respondent/election petitioner has filed the affidavit in Form 26 dated 7.2.2022 along with the election petition, the argument of the learned senior counsel for the applicant that the non-filing of the affidavit dated 5.2.2022 is not materially affected the election petition. He would submit that rejection of election petition on typographical error is incorrect. In fact, in his election petition, the first respondent has clearly stated that in the affidavit under Form 26 filed along with the nomination, the applicant has not disclosed Hyundai i20 Sportz car bearing registration No.DL10CA6639 and also the applicant has changed his highest educational qualification from the one mentioned in the 11th Manipur Legislative Assembly Election, 2017.

13. The learned senior counsel for the first respondent/election petitioner further submitted that the applicant has distributed Realme tablets to the children of the voters in the election of 12th Manipur Legislative Assembly Election, 2022 and, as such, the applicant has involved in corrupt practice during the election campaign. Therefore, on the ground of indulging in corrupt practice, the election of the applicant is liable to be declared as null and void.

14. The learned senior counsel added that the annexure to the nomination paper is not necessary in the election petition. The whole allegation of the applicant is nothing but to digress the attention of this Court from non-disclosure of material facts in the affidavit filed by him. That apart, some misleading statements have been averred in the miscellaneous case.

15. The learned senior counsel for the first respondent/election petitioner further submitted that since the Registry of this Court accepted the election petition, the same shall be treated to be in conformity with the mandatory provisions of Manipur High Court Rules. Furthermore, the election petition cannot be rejected on flimsy ground of non-adherence of provisions of the Manipur High Court Rules. Swearing of false affidavit in Form 26 and indulging in corrupt practice of distribution of tablets during the election campaign, which has materially affected the result of the election are all causes of action and bundle of facts which are required to be proved in the trial.

16. The learned senior counsel for the election petitioner urged that the election petition is not liable to be dismissed in limine so long as the claim discloses some cause of action or raises some questions fit to be decided by the Court. In the present case, the election petitioner has raised specific allegation of false affidavit by

the applicant which requires to be decided by the High Court. Arguing so, the learned senior counsel prayed for dismissal of the present miscellaneous case.

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

- (i) *Gorelal Shakya v. Maharaj Singh Yadav*, 1995 Supp (3) SCC 407.
- (ii) *Ram Prasad Sarma v. Manikumar Subba and others*, (2003) 1 SCC 289.
- (iii) *P.V.Guru Raj Reddy and another v. P.Neeradha Reddy and others*, (2015) 8 SCC 331.
- (iv) *Srihari Numandas Totala v. Hemant Vithal Kamat and others*, (2021) 9 SCC 99.
- (v) *Dr.Ramachandran v. R.V.Janakuraman and others*, (1999) 3 SCC 267.
- (vi) *Sardar Harcharan Singh Brar v. Sukh Darhan Singh*, (2004) 11 SCC 196.
- (vii) *Chandrakan tUttam Chodankar v. Dayanand Rayu Mandrakar*, (2005) 2 SCC 188.
- (viii) *Umesh Challiyil v. K.P.Rajendran*, (2008) 11 SCC 740.

18. The learned counsel appearing for the second respondent submitted that the improper acceptance of the nomination paper of the applicant by the returning officer materially affected the result of the election. Since the defects in the nomination paper are substantial in nature, the acceptance of the nomination of the applicant for the election from 3-Khurai Assembly Constituency is improper and is liable to be rejected.

19. The learned counsel appearing for the fourth respondent submitted that material facts are primary and basic facts which must be pleaded by the election petitioner, while the details in support thereof which are meant to amplify, refine and embellish the material facts give a distinct touch to the basic contours of a picture already drawn so as to make it more clear and informative. In the case on hand, the material facts constituting the foundation of the case set up by the election petitioner have been stated in the election petition. Therefore, the question of dismissing the election petition on the ground of no cause of action arose is untenable. Moreover, the election petitioner has made out a case for trial, which can be canvassed by adducing evidence.

20. By placing on record, the decisions of the Hon'ble Supreme Court in the cases of *Shri Udhav Singh v. Madhav Rao Scindia*, (1977) 1 SCC 511 and *Madiraju Venkata Ramana Raju v.*

Peddireddigari Ramachandra Reddy, (2018) 14 SCC 1, the learned counsel argued that a pleading has to be read as a whole to ascertain its true import and cannot be dissected sentence-wise or paragraph-wise to rule that the same does not disclose a cause of action.

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

22. The first respondent/election petitioner has filed the election petition to set aside the election of the applicant to the 12th Manipur Legislative Assembly Constituency from 3-Khurai Legislative Assembly Constituency after declaring the election of the applicant as void on the following grounds: (i) improper acceptance of nomination; (ii) filing false affidavit under Form 26; and, (iii) non-compliance of the provisions of the Constitution of India or the Representation of People Act, 1951.

23. The applicant herein belongs to the Bharatiya Janata Party (BJP) and the first respondent/election petitioner belongs to the National People's Party (NPP).

24. There is no dispute that the nominations filed by the candidates along with affidavits under Form 26 are displayed in the notice board of the returning officer and a set of the nomination

papers along with affidavit under Form 26 are uploaded on the website of the Election Commission of India so that the information furnished by the candidates are reached to the people and any non-disclosure in violation or non-compliance of the Act/Rules thereof will be liable for rejection of the nomination paper.

25. It is the specific plea of the first respondent/election petitioner that the applicant has deliberately not disclosed the material facts in Form 26, which is a blatant violation of the Act/Rules and amounts to undue influence by the candidate to the voters.

26. According to the first respondent/election petitioner, earlier when the applicant has filed affidavit along with the nomination paper for election to the 11th Manipur Legislative Assembly, 2017, he has mentioned his highest educational qualification in Column 10 of the affidavit as “*passed Diploma in Electrician from ITI, Imphal*”, whereas in the election in question, the applicant mentioned his highest educational qualification as “*passed Higher Secondary Examination in the year 2001 from Ng. Mani College under Council of Higher Secondary Education, Manipur*”. Thus, it is the contention of the first respondent/election petitioner that the applicant has sworn a false affidavit. However, the applicant contended that realizing the error or mistake in the

highest educational qualification mentioned in the affidavit dated 14.2.2017, the applicant in his three affidavits dated 5.2.2022, 5.2.2022 and 7.2.2022 corrected the same by stating his highest education qualification as “*passed Higher Secondary Examination*”. The correction of such inadvertent misadvice or error does not amount to swearing a false affidavit in Form 26 in the recently held 12th Manipur Legislative Assembly Election, 2022.

27. It would be pertinent to quote Column 10 of the affidavit filed along with the nomination paper for the election to the 11th Manipur Legislative Assembly, 2017, wherein it has been stated as under:

*“(10) My educational qualification is as under:
Passed Diploma in Electrician from Industrial
Training Institute, Imphal in the Year 2002.”*

28. Column 10 of the affidavit filed along with the nomination paper for election to the 12th Manipur Legislative Assembly, 2022, it has been stated as under:

*“(10) My educational qualification is as under:-
Passed Higher Secondary Examination in the year
2001 from Ng. Mani College, under Council of
Higher Secondary Education, Manipur.”*

29. According to the applicant, it is the wisdom of the concerned authority to allow or permit to pursue or undergo 2 courses simultaneously and the said issue cannot be the subject matter of the present election. As rightly argued by the learned senior counsel for the applicant, any Class-X passed student can apply and get admitted for the course of Electrician trade or Diploma of Electrician. However, after passing such course, one cannot pursue graduation degree except after passing Class-XII. In other words, Class-XII certificate is higher in educational qualification than that of completing/passing of Electrician trade or Diploma of Electrician.

30. In this context, a perusal of the affidavit in Form-26 filed by the applicant for the election to 10th General Election from 3-Khurai Assembly Constituency, which was annexed with the written statement filed by the fourth respondent, it is seen that the highest educational qualification of the applicant has been stated at the relevant column as under:

“10+2 with Diploma (Electrical)”

31. Therefore, there is no concealment of educational qualification by the applicant while filing affidavit in Form-26 for the election in question. That apart, in the reply to the letter dated

29.6.2022 of one Thounaojam Sanaton Singh for furnishing the information under Section 6 of the RTI Act, 2005, the Principal of Ng. Mani College, Khurai, it has been clearly stated that “*Shri Leishangthem Susindro Meitei, passed the Hr. Sec. Exam. In the year 2001 (Conducted by the COHSEM) in 2nd Divn. Under Exam. Roll No.16637*”, which further strengthens the plea of the applicant that there is no concealment of the educational qualification by the applicant while filing affidavit in Form-26 for 12th Manipur Legislative Assembly Constituency Election.

32. The next ground taken by the first respondent/election petitioner is that the applicant has not disclosed Hyundai Motor i20 Sportz car having registration No.DL10CA6639 and the name of the applicant is still registered as the first owner of the vehicle in the RTO office of Rajouri Garden, New Delhi. This factum is substantiated from the App “CarInfo”. However, the applicant has failed to disclose the said i20 car in his moveable assets at Column No.7A(vi) in the affidavit filed under Form 26 in connection with 12th Manipur Legislative Assembly Election. According to the first respondent/election petitioner, the applicant has intentionally and deliberately not disclosed that he is the owner of the said i20 car.

33. The applicant contended that since he had sold the said i20 Sportz car on 13.12.2017 to one Henry Lalremsanga, the

question of concealment and non-disclosure of moveable assets by the applicant in his affidavit filed under Form 26 in connection with the 12th Manipur Legislative Election does not arise. In support, the applicant has produced the original agreement dated 13.12.2017 along with the written statement.

34. For proper appreciation, Colum 7A(vi) of affidavit and the relevant paragraphs of the agreement dated 13.12.2017 are quoted hereunder:

S. No.	Description	Self	Spouse	HUF	Dependent -1	Dependent -2	Dependent -3
(vi)	Motor Vehicles/Aircraft Yachts/Ships (Details of Make, registration member etc. year of purchase and amount)	1. MG HECTOR Car Bearing Registration No.MN061 B8411 Yeas of Manufacturinig year-2022 @ Rs.20,15,758/-	NIL	NIL	NIL	NIL	NIL

“1. That, the Seller hereby sales the aforesaid i20 Sportz (O) bearing Registration No.DL10CA6639 with delivery of possession whereof on favour of the buyer to HAVE, HOLD and enjoy it as his own even by transfer of title and the Buyer has also simultaneously taken into possession of the said i20 Sportz (O); on the receipt of acknowledgment of consideration amount of Rs.1,55,000/- (Rupees

one lakh fifty-five thousand) by the Seller from the buyer for the sale of the said vehicle.

2. That, the Buyer shall take all responsibility and steps to transfer the title of the said Vehicle in his name in the records of RTO/DTO, Delhi or any other RTO/DTO.”

35. The next ground taken by the election petitioner to challenge the election of the applicant is that the applicant has not provided the full postal address in Form 26 filed in connection with the 12th Manipur Legislative Assembly Election. In fact, in the previous affidavit filed in 2017 election, the applicant has stated his address as below:

“Khurai Sajor Leikai, Tinsid Road, P.O. & P.S. Porompat, Imphal East District. Manipur, Pin Code No.795 005.”

36. The first respondent/election petitioner also challenged the election of the applicant on the ground that in order to woo the voters of 3-Khurai Assembly Constituency, the applicant promised to distribute 10,000 i-pads to the students in a meeting held on 7.2.2022 at his residence at Khurai Sajor Leikai. The said promise was published in the local daily “The Poknapham” on

8.2.2022 and the visual information was also aired in the evening news of the cable network.

37. Mr. HS Paonam, the learned senior counsel for the election petitioner contended that in pursuance of the promise, the applicant in a function held on 23.2.2022 at Khurai Sajor Leikai had distributed Realme tablets to some of the students who are children of the electorates of 3-Khurai Assembly Constituency thereby inducing the parents of such children to vote for the applicant. According to the learned senior counsel, distribution of tablets to the students of his constituency has the effect of undue influence by bribery and the same will attract the provision of Section 100(1)(b) and Section 123 of the Representation of People Act, 1951. Thus, the election of the applicant has been tainted with corrupt practice and is liable to be declared as void.

38. Denying the aforesaid contentions of the first respondent/ election petitioner, Mr. N. Ibotombi, the learned senior counsel appearing for the applicant submitted that there is no material to prove that the applicant has indulged in corrupt practice. Further, there is no material facts of visual information furnished by the election petitioner in the election petition. The learned senior counsel for the applicant argued that the allegation of distribution of tablets to the students was complained by the election petitioner

before the returning officer of 3-Khurai Assembly Constituency and the returning officer after conducting an enquiry came to the conclusion that the distribution of tablets to the students of Khurai Assembly Constituency was by Susindro Foundation, which is not related to the applicant and there is no violation of Model Code of Conduct by the applicant.

39. As stated supra, the sum and substance of the allegations against the applicant are non-disclosure of moveable assets, non-disclosure of full postal address, disparity in disclosing highest educational qualification in the affidavit dated 5.2.2022 and also allegation of corrupt practice. Setting out the aforesaid allegations, the first respondent/election petitioner filed the election petition by the stating the cause of action as under:

“23. That, the cause of action for filing this Election Petition arose on 10/03/2022 when the Final Result Sheet was published and declared that the respondent no.1 as the elected candidate and the same is continuing within the jurisdiction of this Hon’ble High Court.”

40. Since the learned senior counsel appearing for the election petitioner and the learned senior counsel appearing for the returned candidate have touched upon the allegations of non-

disclosure of material facts and the corrupt practice said to have been indulged by the applicant, before going into deal with the issue involved in this miscellaneous case, this Court proceeded to highlight the contentions of the parties and the *prima facie* view of this Court on the aforesaid contentions are as under:

- The argument of the learned senior counsel for the applicant is that nothing has been produced by the first respondent/election petitioner along with the election petition to show that the applicant has deliberately concealed the educational qualification of Diploma in Electrician in Form 26 while filing his nomination paper in connection with the 12th Manipur Legislative Assembly Election. The alleged concealment stated by the first respondent/election petitioner relates to the previous election in the year 2017. Non-disclosure of highest qualification of the applicant for the election held in the year 2017, cannot be gone into at this stage in view of the delay in raising such an issue.
- Prima facie, this Court is of the view that as rightly argued by the learned senior counsel

for the applicant the two different qualifications mentioned in the affidavit in Form 26 during the year 2017 and 2022 does not materially affect the election of the applicant, as it is not the case of the first respondent/election petitioner that the applicant has not pursued his Higher Secondary Examination. Therefore, the applicant has not deliberately concealed the educational qualification of Diploma in Electrician in the affidavit in Form 26 for the 2022 State Assembly Election.

- The first respondent/election petitioner stated that “nomination paper is of dated 05.2.2022”, which is incorrect. The learned senior counsel for the first respondent pleaded that mentioning of 05.02.2022 as date of affidavit stated by the election petitioner is a typographical error and it should be read as 07.02.2022.
- On a perusal of the nomination papers of the applicant, it is seen that the affidavit in Form

26 of the applicant for the election in question is dated 07.02.2022.

- The first respondent/election petitioner mainly relies upon the App “CarInfo” to allege that the applicant has failed to disclose the i20 Sportz car in his moveable assets at Column 7A(vi) in the affidavit in Form 26.
- Merely because the name of the applicant in respect of i20 Sportz (O) bearing registration No.DL10CA6639 is mentioned in the App, it cannot be contended that the applicant has deliberately omitted to disclose the owning of i20 Sportz car in the affidavit in Form 26.
- A perusal of the agreement dated 13.12.2017 produced by the applicant would clearly shows that the aforesaid i20 Sportz car was sold to one Henry Lalremsanga of Mizoram and as rightly contended by the learned senior counsel for the applicant, it is for the buyer to take steps to transfer the title of the said vehicle in his favour. According to the applicant, the subsequent buyer through his solemn affidavit dated 18.8.2022 voluntarily

declares that he is the absolute owner in possession of the aforesaid i20 Sportz car since 13.2.2017. The plea of the first respondent/ election petitioner that the applicant has failed to disclose the i20 Sportz car in his moveable assets at Column 7A(vi) in the affidavit in Form 26 is not well-founded.

- On a perusal of the affidavit in Form 26 filed by the applicant in connection with the 12th Manipur Legislative Assembly Election, in Part “A”, it has been stated as under:

“I, Leishangthem Susindro Meitei son of Leishangthem Itocha Meitei, Aged 38 years, resident of Khurai Sajor Leikai, Tehsil-Sawombung, District-Imphal East – 795010, Manipur

- In the affidavit in Form 26 filed in connection with the 11th Manipur Legislative Assembly Election, in Part “A” beginning, it has been stated as under:

“I Leishangthem Susindro Meitei son of Lishangthem Itocha Meitei, aged 33 years, resident of Khurai Sajor Leikai, Tinsid Road, P.O.

& P.S. Porompat, Imphal East District, Manipur,
Pin No.795005.”

- Mere non-mentioning of P.O. & P.S. of the address in the affidavit filed in respect of the 12th Manipur Legislative Assembly Election is not materially affected the election of the applicant in question for the reason that there is no difference in the full postal address of the applicant.
- With regard to allegation against the applicant that he had distributed tab/tablets to children of the voters, the pleadings of the parties reveal that pursuant to the complaint made by the election petitioner to the returning officer dated 24.2.2022, the returning officer served a letter dated 25.2.2022 to the applicant to submit a reply to the complaint filed by the election petitioner and in pursuance of the letter dated 25.2.2022, on 26.2.2022, the applicant has submitted his reply letter to the returning officer, wherein it has been stated as under:

“The allegation made by Laitonjam Jayananda Singh in connection with Distribution of I pad/Tablet for the students of Khurai Assembly Constituency by Susindro Foundation is not related to me.

Therefore, his complaint void.”

- In his election petition, the first respondent/election petitioner stated that after calling for explanation from the applicant regarding distribution of tab/tablets to children of the voters, no action was taken against the applicant by the returning officer.
- As stated supra, pursuant to the letter addressed by the returning officer regarding distribution of tab/tablets to the students, the applicant has suitably replied that the distribution of tab/tablets to the students was by Susindro Foundation, which is not related to the applicant. When such being the reply and after satisfying with the reply submitted by the applicant, the returning officer had not precipitated the said issue any further. Prima facie, there are no details given by the

election petitioner qua distribution of tab/tablets to the students by the applicant against the Model Code of Conduct in the election petition. This Court is of the prima facie view that the plea of distribution of tab/tablets to children of the voters canvassed by the election petitioner is not supported by any valid proof.

41. Only for the sake of clarity on the arguments raised by the learned counsel appearing for the respective parties, this Court highlighted the aforesaid contentions and expressed its prima facie view.

42. Now, coming to the core point that is involved in the present miscellaneous case, the applicant contended that the election petition is liable to be rejected, as there is no cause of action sans the contentious affidavit dated 5.2.2022/7.2.2022 of the applicant. Further, the election petition is not in proper form as mandated by the provisions of the Representation of People Act, 1951 and the Code of Civil Procedure, 1908 and the election petition is not in conformity with Chapter VIIA of the High Court of Manipur Rules, 2019.

43. Learned Senior Counsel for the applicant, in support of the miscellaneous case filed under Order 7 Rule 11 CPC, has submitted that no cause of action has been made out and no triable issue arose from the pleadings and, as such, the trial of the election petition would only be a vexatious and futile exercise and, thus, prayed that while allowing the present miscellaneous case filed under Order 7 Rule 11 CPC, the election petition filed by the first respondent/election petitioner be rejected.

44. The learned senior counsel for the 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. In support, the learned senior counsel placed reliance upon the decision of the Hon’ble Supreme Court in the case of **ABC Laminart (P) Ltd. V. A.P. Agencies, (1989) 2 SCC 163**, wherein the Hon’ble Supreme Court explained the meaning of “cause of action” 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.”

45. By placing on record the decision of the Hon’ble Supreme Court in the case of ***Kunjan Nair Sivaraman Nair v. Narayan Nair, (2004) 3 SCC 277***, the learned senior counsel for the election petitioner argued that the expression “cause of action” has acquired a judicially settled meaning and in the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the act. In ***Kunjan Nair Sivaraman Nair***, supra, the Hon’ble Supreme Court held thus:

“16. 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”.”

46. “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.

47. This Court at first briefly intends to deal with the law governing an application under Order 7 Rule 11 CPC, which reads as under:

“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.”

48. “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.

49. 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.**”*

[emphasis supplied]

50. 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...**”*

[emphasis supplied]

51. 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.

52. It is true that 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. 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.

53. The Hon'ble Supreme Court in the case of ***Daulat Ram Chauhan v. Anand Sharma, (1984) 2 SCC 64***, held as under:

“18. We must remember that in order to constitute corrupt practice, which entails not only the dismissal of the election petition but also other serious consequences like debarring the candidate concerned from contesting a future election for a period of six years, the allegations must be very strongly and narrowly construed to the very spirit and letter of the law. In other words, in order to constitute corrupt practices, the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings:

(i) Direct and detailed nature of corrupt practice as defined in the Act;

(ii) Details of every important particular must be stated giving the time, place, names of persons, use of words and expression etc.;

(iii) It must clearly appear from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself (b) his authorized election agent or any other person with this express or implied consent.

19. A person may, due to sympathy or on his own, support the candidature of particular candidate but unless a close and direct nexus is provided between the act of the person and the consent given to him by the candidate or his election agent, the same would not amount to a pleading of corrupt practice as contemplated by law. It cannot be left to time, chance or conjecture for the court to draw an inference by adopting in involved process of reasoning. In fine, the allegation must be so clear and specific that the inference of corrupt practice will irresistibly admit of no doubt or qualm.

20. As a logical consequence of the principles enunciated by us, it follows that where the allegation of fraudulent practice is open to two equal possible inferences, the pleading of corrupt practice must fail. For instance, A, or in this case Sodd or Batish, joined or participated or was present in an election rally or crowd and may have shouted slogans on his own without taking the consent of the candidate concerned, this would not be a corrupt practice within the meaning of

Section 123(2) because the element of consent is wholly wanting.”

[emphasis supplied]

54. The Hon'ble Supreme Court in the case of **F.A.Sapa v. Singora, (1991) 3 SCC 375**, held as under:

*“17. Election of a returned candidate can be rendered void on proof of the alleged corrupt practice. In addition thereto he would incur a subsequent disqualification also. This harshness is essential if we want our democratic process to be clean, free and fair. Eradication of corrupt practice from our democratic process is essential if we want it to thrive and remain healthy. Our democratic process will collapse if unhealthy corrupt practices like appeals to voters on basis of caste, creed, community, religion, race, language, etc. are allowed to go unchecked and unpunished. Use of corrupt practices in elections to secure short term gains at the cost of purity of our democratic process must be frowned at by every right thinking citizen. It is for that reason that the law has provided for double jeopardy to deter candidates, their agents and others from indulging in such nefarious practices. But **while there is sufficient justification for the law to be harsh with those who indulge in such practices, there is also the need to ensure that such***

allegations are made with a sense of responsibility and concern and not merely to vex the returned candidate. It is with this in view that the law envisages that the particulars of such allegations shall be set out fully disclosing the name of the party responsible for the same and the date and place of its commission. A simple verification was considered insufficient and, therefore, the need for an affidavit in the prescribed form.

*These procedural precautions are intended to ensure that the person making the allegation of corrupt practice realises the seriousness thereof as such a charge would be akin to a criminal charge since it visits the party indulging in such practice with a twofold penalty. That is why this Court described it as quasi-criminal in nature in Manphul Singh v. Surinder Singh [(1973) 2 SCC 599, 608] and reiterated the same in K.M. Mani v. P.J. Antony [(1979) 2 SCC 221 : (1979) 1 SCR 701] . Hence the insistence that each ingredient of the charge must be satisfactorily proved before a verdict of guilt is recorded by the court. In Mani case [(1979) 2 SCC 221 : (1979) 1 SCR 701] this Court held that ***the allegations must be established beyond reasonable doubt and not merely by a preponderance of probability. It is, therefore, equally essential that the particulars of the charge or allegation are clearly and precisely stated in the election****

petition to afford a fair opportunity to the person against whom it is levelled to effectively counter the same.

.....

29. A charge of corrupt practice has a two-dimensional effect: its impact on the returned candidate has to be viewed from the point of view of the candidate's future political and public life and from the point of view of the electorate to ensure the purity of the election process. There can, therefore, be no doubt that such an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of Section 83 before the parties go to trial. This is quite clear from the observations of this Court in the case of K.M. Mani v. P.J. Anthony [(1979) 2 SCC 221 : (1979) 1 SCR 701] . While defective verification or a defective affidavit may not be fatal, the High Court should ensure its compliance before the parties go to trial so that the party required to meet the charge is not taken by surprise at the actual trial. It must also be realised that delay in complying with the requirements of Section 83 read with the provisions of the Code or the omission to disclose the grounds or sources of information, though not fatal, would weaken the probative value of the evidence ultimately led at the actual trial.

Therefore, an election petitioner can afford to overlook the requirements of Section 83 on pain of weakening the evidence that he may ultimately tender at the actual trial of the election petition. That is because as held in Mani case [(1979) 2 SCC 221 : (1979) 1 SCR 701] the charge of corrupt practice has to be proved beyond reasonable doubt and not merely by preponderance of probabilities. Allegation of corrupt practice being quasi-criminal in nature, the failure to supply full particulars at the earliest point of time and to disclose the source of information promptly may have an adverse bearing on the probative value to be attached to the evidence tendered in proof thereof at the ~trial. Therefore, even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the court in a given case to doubt the veracity of the evidence ultimately tendered. If, however, the affidavit or the schedule or annexure forms an integral part of the election petition itself, strict compliance would be insisted upon.”

[emphasis supplied]

55. 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.”

56. Merely stating in the election petition that the cause of action arose on 10.03.2022 when final result was published is not enough to maintain the election petition by the first respondent/election petitioner. It is the bounden duty of the election petitioner to aver the cause of action properly matching the

allegations levelled against the returned candidate in the appropriate cause of action paragraph. In the case on hand, this Court is of the view that there is total absence of mentioning of proper cause of action for maintaining the election petition by the first respondent/election petitioner.

57. 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. In the case on hand, the cause of action is not in consonance with the allegations leveled.

58. In ***Lavajibhai Ratanjibhai***, supra, the Hon'ble Supreme Court held:

“39. A plea of bar to jurisdiction of a civil court must be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety. The court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed dehors the factual averments made in the plaint. The rules of pleadings postulate that a plaint must contain

material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7 Rule 11 of the Code of Civil Procedure.”

59. In **Neena Vikram Verma**, supra, the Hon’ble Supreme Court held:

“30. We have noted the submissions of both the counsel. As can be seen, the application under Order 7 Rule 11 is required to be decided on the face of the plaint or the petition, whether any cause of action is made out or not. Once it is accepted by a party by consent that a particular petition (in the instant case the recrimination petition) is to be heard by the Court, by giving up the objection under Order 7 Rule 11, the very party cannot be subsequently permitted to seek the striking off the pleadings containing the cause of action under the garb that the pleadings containing the cause of action are unnecessary, vexatious or scandalous. One is expected to take all necessary pleas at the same time. The party concerned is expected to raise such a contention at the time of passing of the court order (consent order in the present case) or seek the liberty to raise it at a later point of time that some of the pleadings are unnecessary or vexatious or scandalous. No court is expected to permit any matter to be raised which

might and ought to have been made ground of defence or attack, once the same is relinquished by the party concerned. The learned Single Judge ought to have noted this basic principle of any litigation. Reliance on the judgment in K.K. Modi [(1998) 3 SCC 573] is quite apt in this behalf.”

60. In **Dahiben**, supra, the Hon’ble Supreme Court held:

“23. ...

23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

....

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one,

and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7. Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

“14. Production of document on which plaintiff sues or relies.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the

court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [SopanSukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V.

Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In *Hardesh Ores (P) Ltd. v. Hede& Co.* [Hardesh Ores (P) Ltd. v. Hede& Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman* [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also *Vijay Pratap Singh v. Dukh Haran Nath Singh*, AIR 1962 SC 941].

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to

sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhj Ranjitsinhj Jadeja v. Vijaykunerba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.

....”

61. The first respondent/election petitioner contended that the averments in the election petition have to be read as a whole to find out whether it discloses a cause of action or whether the

election petition is barred by any law and that at the stage of exercise of power under Order 7 Rule 11 CPC, the stand of the returned candidate in the written statement or in the application for rejection of the election petition is wholly immaterial. The election petition can be rejected only if the averments made therein *ex facie* do not disclose the cause of action or on a reading thereof the election petition appears to be barred by law.

62. In ***P.V.Guru Raj Reddy***, supra, the Hon'ble Supreme Court held thus:

“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.”

63. In **Srihari Numandas Totala**, supra, the Hon’ble Supreme Court held:

“19. At this stage, it would be necessary to refer to the decisions that particularly deal with the question whether res judicata can be the basis or ground for rejection of the plaint. In Kamala v. K.T. 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. Ponnamman Educational Trust [Church of Christ Charitable Trust & Educational Charitable Society v. Ponnamman 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 BhogFood 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)."

64. In **Dr. Ramachandran**, supra, the Hon'ble Supreme Court held:

"8. We do not consider it necessary to refer in detail to any part of the reasoning in the judgment; instead, we proceed to consider the arguments advanced before us on the basis of the pleadings contained in the election petition. It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the

purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.

.....

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

7 Rule 11(a) CPC, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. See Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487]. We are satisfied that the election petition in this case could not have been rejected in limine without a trial.

65. Admittedly, as per the ratio propounded by the Hon'ble Supreme Court, the first respondent/election petitioner is not able to make out a case of corrupt practice in his pleadings and the necessary particulars, statement of facts and essential ingredients are missing and a mere averment of corrupt practice, without there being any material available on record, is not sustainable in the eye of law.

66. In ***Ravinder Singh***, supra, the Hon'ble Supreme Court held:

“7. The election petition is singularly silent about any such averment that the returned candidate, even if, it be assumed for the sake of the arguments, had published and distributed certain documents (Annexures A-1 to A-7), as alleged in the election petition either himself or through any other persons with his consent, that those

statements were false and that the returned candidate either believed them to be false or did not believe them to be true, though in para 9 of the election petition, which has been verified as correct on the basis of legal advice, this requirement emanating from Section 123(4) has been mentioned but without any assertion that the returned candidate in this case published the false statements knowing them to be false and/or not believing them to be true. The submission of Mr. Talwar that at the trial the petitioner could have said so in his evidence, is futile. It is an established proposition that no evidence can be led on a plea not raised in the pleadings and that no amount of evidence can cure defect in the pleadings.

.....

10. Proviso to Section 83(1) of the Act lays down, in mandatory terms, that where an election petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit, in the prescribed form, in support of the allegations of such practice and the particulars thereof. The affidavit, which has been filed in support of the election petition, does not at all deal with the charge of bribery falling under Section 123(1) of the Act. Leaving aside the questions that the affidavit is not even in the prescribed form — Form 25 of the Conduct of Elections Rules, the allegations of corrupt practice made in the election

petition are not supported by the otherwise defective affidavit either. All the names of the informants which have been given in the affidavit relate to the corrupt practice under Section 123(4) and the affidavit in this respect is a verbatim reproduction of the verification clause of the election petition concerning corrupt practice under Section 123(4). No name of any informant has been mentioned in respect of the allegations of corrupt practice under Section 123(1) in the affidavit. In the absence of the requisite affidavit filed in support of the allegation of corrupt practice under Section 123(1) of the Act, as detailed in the election petition, no issue could be raised for trial.

11. Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving inquiry and save

the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial — the defect being of a fatal nature.

.....

13. The learned Single Judge of the High Court dismissed the election petition on deciding Issue 5, which was treated as a preliminary issue and reads thus:

“Whether the election petition lacks in material facts and particulars, necessary to constitute complete cause of action for setting aside of the election of Respondent 1, within the meaning of Section 83, read with Sections 100(1)(d)(iv) and 123 of the Representation of People Act?”

For what we have said above, the order of dismissal of the election petition, without putting it to trial, cannot be faulted with.

14. For our reasons, which are somewhat different from the ones given by the High Court, we find that the decision of the High Court to non-suit the election petitioner by deciding the preliminary issue against him is well merited. There is no merit in this appeal. It, consequently, fails and is hereby dismissed. There shall, however, be no order as to costs.”

67. Right to elect, though it is fundamental to democracy, is neither a fundamental right nor a common law right. It is purely a statutory right. So is the right to be elected. So is the right to dispute an election. *De hors* the statute, there is no right to elect, no right to be elected and no right to dispute an election. They are statutory creations and, therefore, subject to statutory limitation.

68. An election petition is neither an action at common law nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply, but only those rules which the statute makes apply. It is a special jurisdiction and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity always remain strangers to election law. In the trial of election dispute, Court is put in a straight jacket.

69. The entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right upto the final resolution of the dispute, if any, concerning the election, is regulated by the Representation of the People of Act, 1951. The election law being statutory in character must be adhered to strictly. The election petition must conform to the requirements of election law. Unless grounds under

section 100 of the Representation of People Act of 1951 are proved, no election of a successful candidate can be set aside.

70. In **Mohan Rowale**, supra, the Hon'ble Supreme Court held:

“6. This, we are afraid, is not the correct perception of the matter. The view fails to take note of and give effect to the substitution of the definition of the expression “candidate” in Section 79(b). All sub-sections of Section 123 of the Act refer to the acts of a ‘candidate’ or his election agent or any other person with the consent of the candidate or his election agent. The substituted definition completely excludes the acts by a candidate up to the date he is nominated as a candidate. Shri Sanghi, therefore, asks us to take this position to its logical conclusions and strike out these allegations in the election petition.

....

8. We hold that all the averments in paragraphs 1 to 20 of the memorandum of election petition insofar as they refer to a period prior to April 23, 1991 cannot amount to allegations of corrupt practice. But on the question whether they are relevant and admissible for other purposes for the reasons submitted by Shri Nariman we abstain from expressing any opinion. This aspect did not engage the attention of the High Court and was not considered by it. It is for the High Court to

consider them at the appropriate time. We, therefore, declare that the allegations in paras 1 to 20 relating to the period anterior to the commencement of the candidature cannot be relied upon to establish corrupt practice propriovigore.”

71. In **Haridwari Lal v. Kanwal Singh, (1972) 1 SCC 214**,

the Hon'ble Supreme Court held:

“17. The provisions of the aforesaid section indicate these heads of corrupt practices. First, the obtaining by a candidate or his agent or by any other person any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of the Government as mentioned in the section. Second, the procuring by a candidate or his agent or by any other person with the consent of the election petitioner any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election. Third, the abetting by a candidate or his agent or by any other person with the consent of the candidate or his election agent any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election as mentioned. Fourth, the attempting to obtain or procure by a candidate or his agent, or by any other person with the consent of a candidate or his election agent any assistance (other than the giving of vote) for the furtherance

of the prospects of that candidate's election. Fifth, the assistance that is forbidden or prohibited by the statute is any assistance other than the giving of vote. It is clear that the four different heads of corrupt practices are (a) obtaining, (b) procuring, (c) abetting, and (d) attempting to obtain or procure assistance.

.....

19. The requirements in an election petition as to material facts and the consequences of lack of such allegation of material facts came up for consideration in this Court in the recent decision in Samant N. Balkrishna, v. George Fernandez [(1969) 3 SCC 238 : (1969) 3 SCR 603]. In that case reference was made to Sections 81, 83 and 86 of the Act as the procedure provisions of election petition. Section 81 deals with presentation of petitions. Section 83 deals with contents of petitions. Section 86 deals with trial of petitions. Hidayatullah, C.J., speaking for the Court laid down these propositions. First, Section 83 of the Act is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. Second, omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. Third, the function of particulars is to present in full a picture of the cause of action to make the opposite party

understand the case he will have to meet. Fourth, material facts and particulars are distinct matters. Material facts will mention statements of fact and particulars will set out the names of person with the date, time and place. Fifth, material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. Sixth, 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. The fact which constitutes a corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Seventh, an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the obtaining or procuring of assistance unless the exact type and form of assistance and the person from whom it is sought and the manner in which the assistance is to further the prospects of the election are alleged as statements of facts.

.....

21. The necessity of clear and precise allegations to support a plea of corrupt practice was emphasised by this Court in Harish Chandra Bajpai v. Trilok Singh [12 ELR

461] .VenkataramaAyyar, J., speaking for the Court in dealing with the powers of the Court to allow amendment in respect of illegal or corrupt practice said that where the allegation in the election petition in regard to the corrupt practice was that the respondents could in furtherance of their election enlist the support of government servants, the words “could enlist” did not amount to an averment that in fact they enlisted their support. In other words, it was observed that the words “could enlist” did not allege a fact which happened. Therefore, the happening of a fact as well as the fact itself is material. Judged by that test in the present case there is no allegation which will amount to any averment of any assistance as a fact in the absence of the kind of assistance being set out as a fact.

22. The allegations in para 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to what kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring

or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action.

.....

25. For these reasons the judgment of the High Court is set aside. The appeal is allowed. The election petition shall stand dismissed. The parties will pay and bear their costs in this appeal.”

72. Section 100 of the Representation of the People Act, 1951 speaks about grounds for declaring election to be void and the election of returned candidate can only be declared void if (a) on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act; or (b) 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) any nomination has been improperly rejected; or (d) the result of the election, in so far as it concerns a returned candidate, has been materially affected (i) by the improper acceptance or any nomination, or (ii) by any corrupt practice committed in the interests of the returned candidate (by an agent

other than his election agent), or (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or order made under this Act.

73. At this juncture, by placing on record the decision of the Hon'ble Supreme Court in the case of ***Sardar Harcharan Singh Brar v. Sukh Darhan Singh, (2004) 11 SCC 196***, the learned senior counsel for the election petitioner 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 furnish more detail particulars in support of his allegation.

74. As discussed herein above, while dealing with the corrupt practice, the first respondent/election petitioner was unable to make out his case of corrupt practice as pleaded in the election petition and the ingredients of corrupt practice is missing in the election petition for want of details of corrupt practice giving time, place, names of persons, use of words and expression etc. Thus, the ground which is available to the election petitioner under Section 100 of the Representation of People Act of 1951, is not

available as held by the Hon'ble Supreme Court in the case of *F.A.Sapa Singora*, supra, as the Hon'ble Supreme Court in that case has held that while there is sufficient justification for the law to be harsh with those who indulge in such practices, there is also the need to ensure that such allegations are made with a sense of responsibility and concern and not merely to vex the returned candidate. It is with this in view that the law envisages that the particulars of such allegations shall be set out fully disclosing the name of the party responsible for the same and the date and place of its commission. A simple verification was considered insufficient and, therefore, the need for an affidavit in the prescribed form. Merely because the allegation that the applicant distributed tab/tablets during the election campaign does not constitute cause of action. As far as election petition is concerned, particulars must be given in the election petition qua the alleged distribution of tab/tablets to children of the voters. As stated supra, there is total absence of material particulars and bereft of such particulars trial of an election petition cannot be conducted and every minute allegation, without an averment and proof thereof, cannot be tested in trial. In view of the above, the decision in the case of *Sardar Harcharan Singh Brar*, supra, relied upon by the learned senior counsel for the election petition is not helpful to the case of the election petitioner.

75. It is also the argument of the learned senior counsel for the election petitioner that where the defects in copies were curable, the election petition cannot be dismissed at the threshold for non-compliance with Section 81(3) of the Representation of People Act, 1951 on the basis of such defects. In support, the learned senior counsel placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Chandrakant Uttam Chodankar v. Dayanand Raya Mandrakar, (2005) 2 SCC 188**.

76. In **Chandrakant Uttam Chodankar**, supra, the Hon'ble Supreme Court held:

“35. The difference of opinion was settled by the Constitution Bench in Jacob case [(1999) 4 SCC 274] by enunciating the principles as noted hereinabove. We have carefully examined the defects as noted herein earlier and on a careful examination of the defects we cannot be persuaded to the view that the defects in the present case also are material or it was vital in nature or the absence of stamp of attestation could be treated to be a ground for rejection of the election petitions under Section 81(3) of the Act. It may be mentioned herein that the decision of this Court in Anil R. Deshmukh case [(1999) 2 SCC 205] was approved by the Constitution Bench and in which it already distinguished the case of Dr. Shipra [(1996) 5 SCC 181] . It must not be

forgotten that in the Constitution Bench decision of this Court, it was evident that:

“(a) the expression ‘copy’ in Section 81(3) of the Act means a copy which is substantially the same as the original, variation if any from the original should not be vital in nature or should not be such that can possibly mislead a reasonable person in meeting the allegation; (b) if the copy differs in material particulars from the original the same cannot be cured after the period of limitation.” [Ed.:

As quoted from T. Phungzathang v. Hangkhanlian, (2001) 8 SCC 358 at pp. 367-68, para 13.]

The same principle was enunciated following a Constitution Bench's decision of this Court in T. Phungzathang v. Hangkhanlian [(2001) 8 SCC 358]. In this decision also it was held that the defects indicated in these cases for which dismissal of the election petition was sought for did not attract Section 86(1) of the Act for dismissal of the election petitions for non-compliance with Section 81(3) of the Act. For the reasons aforesaid and applying the principles laid down in the aforesaid decisions of this Court, we are of the view that the High Court ought not to have rejected the election petitions for non-compliance with the provisions of Section 81(3) of the Act as the defects shown by Respondent 1 cannot be said to be fatal and the copies which were alleged to have

been served or supplied to Respondent 1 were wholly and substantially the same as the original. That apart, it is an admitted position, as noted herein earlier, true copies of the election petitions were duly served or supplied to Respondent 1. The question that was raised by the learned counsel for Respondent 1 before us was whether subsequent supply of such true copies on Respondent 1 could be treated to be a sufficient compliance with Section 81(3) of the Act. Apart from the conclusions made hereinbefore, we are also of the view that in view of the decision of this Court in Anil R. Deshmukh v. Onkar N. Wagh [(1999) 2 SCC 205] this question needs to be decided in favour of the appellant and against Respondent 1. In para 17 of the aforesaid decision this Court observed as follows: (SCC p. 212)

“We have already referred to the fact that even before arguments were heard on the preliminary objection by the High Court in this case, the true copies of the affidavits had been served on the first respondent and his counsel. In the facts and circumstances of this case, we have no doubt that there was sufficient compliance with the provisions of Section 81(3) read with Section 83(1)(c) of the Act even if it could be said that the copies served in the first instance on the first respondent were not in conformity with the provisions of the Act.”(emphasis supplied)

77. In the instant case, the averments made in the election petition are not supported by an affidavit in the prescribed form as per the requirements of Section 83 of the Representation of People Act of 1951, which provides that 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 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 as prescribed under Rule 94-A of the Conduct of Election Rules, 1961 in the format provided for in Form 25 of the forms appended to the Rules of 1961.

78. In ***Dr.Shipra***, supra, the Hon'ble Supreme Court held:

“12. The contention that the election petition cannot be dismissed under Section 86 at the

threshold on account of the omission on the part of the Registry of the High Court to point out the same as per its procedure, cannot be countenanced. Lapse on the part of the Registry is not an insurance to deny to the returned candidate the plea that the attestation of the affidavit and its certification to be a true copy is an integral part of the pleadings in the election petition. 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 on an objection, being raised by the returned candidate, as to the maintainability of the election petition, the court is required to go into the question and decide the preliminary objection. In case the court does not uphold the same, the need to conduct trial would arise. If the court upholds the preliminary objection, the election petition would result in dismissal at the threshold, as the court is left with no option except to dismiss the same.”

79. Admittedly, the affidavit under Form 25 filed by the petitioner in support of the averments made in the election petition in the prescribed form as prescribed under Rule 94-A of the Conduct of Election Rules, 1961 is vague and bereft of material particulars. Further as per Section 86 (Trial of election petitions) of the Representation of People Act, 1951, in case the election petition does not comply with the provisions of Section 81 or Section 82 or

Section 117, the High Court shall dismiss the same without proceeding with the trial of the election petition.

80. The Hon'ble Supreme Court in the case of **Azhar Hussain v. Rajiv Gandhi, 1986 (Supp) SCC 315** has held that we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression 'material facts and particulars' which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Representation of People Act, 1951. Paragraphs 8, 9, 11, 12, 18, 21, 22, 25 and 28 are relevant and the same are quoted hereunder:

“8. The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions, non-compliance with which entails dismissal of the election petition, it follows that non-compliance with the requirements of Section 83(1), even though mandatory, do not have lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of Section 87 of the Act [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.] . Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) which read thus:

“Order 6, Rule 16: Striking out pleadings.— The court may at any stage of the proceedings order to be struck out or amend any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious; or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or

(c) which is otherwise an abuse of the process of the court.

Order 7, Rule 11: Rejection of plaint.—The plaint shall be rejected in the following cases:

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

9. *The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.*

.....

11. *In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant case [Samant N. Balkrishna v. George Fernandez(1969) 3 SCC 238] has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Udhav Singh case [Udhav Singh v. Madhav Rao Scindia(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified*

in order to succeed on the charge. 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. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

12. *Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and*

exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the

competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matter pertaining to ordinary civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections. So long as the sword of Damocles of the election petition remains hanging an elected member of the legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in

a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to win the vote of the people but also to win the vote of the court in a long drawn out litigation before he can wholeheartedly engage himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as hindrance if he be entrusted with some public office in his elected capacity. He may even have occasion to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern mettle, the constraint introduced by the pendency of an election petition may have some impact on his subconscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the nation, the controversy is set at rest at the earliest, if the facts of the case and the law so warrant. Since the court has the power to act at the threshold the power must be exercised at the

threshold itself in case the court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law. To wind up the dialogue, to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled.

....

18. *The averments contained in para 4 pertaining to Ground I do not satisfy the test prescribed in Manubhai Amorsey v. Popatlal Manilal Joshi and Hardwarilal v. Kanwal Singh [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742]. The most important test which remained unsatisfied is as regards the omission to satisfy in what manner the assistance was obtained and procured by the election candidate for promoting the prospects of his election. All that has been stated is:*

“His services were procured and obtained by the respondent, his agents and other persons with the consent of the respondent with a view to assist the furtherance of the prospects of the respondent's election....”

It is not mentioned as to who procured or obtained the services of Shri Beg, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent. Unless these “essential facts” which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are pleaded as per the law laid down in Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi [Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi(1969) 1 SCC 372 : AIR 1969 SC 734 : (1969) 3 SCR 217] it cannot be said that the petition discloses a cause of action in regard to this charge. In the absence of these material facts and particulars court could not have rendered a verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition. It is not sufficient to show that a government servant had appeared on the public media to praise one of the candidates. It must also be shown that the assistance of the government servant was obtained either by the respondent or his agent or by any other person with the consent of the election candidate or his election agent. The averments made in the petition do not show (i)

who had obtained or procured the assistance of Shri Beg; (ii) how he had obtained or procured the assistance of Shri Beg; and (iii) how it was said that it was with the consent of the respondent or his election agent. Nor is it shown which, if any, facts went to show that it was in furtherance of the prospects of the respondent's election. In the absence of material facts and particulars in regard to these aspects, the petition would not disclose the cause of action. The High Court was therefore, perfectly justified in reaching this conclusion. The petition also does not disclose the exact words used in the speech; or the time and date of making such a speech. Now, unless the relevant or offending passage from the speech is quoted, it cannot be said what exactly Shri Beg had said, and in what context, and whether it was calculated to promote the election prospects of the respondent. Be that as it may, inasmuch as these material facts and particulars to show that the services of Shri Beg were procured by someone with the consent of the respondent or his election agent are not there, the averments pertaining to the charge do not disclose a cause of action. Unless the nexus between the appearance of Shri Beg on the media and the prior consent of the respondent or his election agent in regard to what he was going to say and the purposes for which he was going to say is set out in the material particulars it cannot be said that it disclosed a

cause of action and the test laid down in Manubhai Nandlal case [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] as also Hardwari Lal case [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] is satisfied. The High Court was therefore justified in taking the view that it has taken. We may, in passing, mention a point made by learned counsel for the respondent. It was submitted that the averment must also mention whether the interview was a live one telecast after the date of filing of the nomination. If it was one recorded prior to the said date it may not be of any consequence. This argument also requires consideration but we do not propose to rest our conclusion on this aspect as it is not necessary to do so.

.....

21. *There is a glaring omission to mention the names of the workers said to have been employed by the respondent or his agents who have allegedly painted the slogans. So also no material particulars are given as regards the vehicles on which the said slogans have been said to have been painted. There are no material particulars or facts. We are of the view that inasmuch as the material facts and particulars in regard to this alleged practice were not mentioned the High Court was justified in taking the view that it had taken. The averments contained in regard to this*

charge also do not satisfy the test laid down by the various decisions of this Court adverted hereinabove. A Division Bench of this Court in Nihal Singh v. Rao Birendra Singh [(1970) 3 SCC 239] speaking through Bhargava, J. has observed: (SCC p. 244, para 8)

“The pleading was so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses. The pleading, in fact, was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this point.”

22. *The principle laid down is that the pleading in regard to matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of a meeting of which dates and particulars are not given would tantamount to failure to incorporate the essential particulars and that inasmuch as there was a possibility that witnesses could be procured in the context of a meeting at a place or date convenient for adducing evidence, the High Court should not even have permitted evidence on that point. In other words, no amount of evidence could cure the basic defect in the pleading and the pleading as it stood must be construed as one disclosing no cause of action. In the light of the aforesaid principle laid down by the Supreme Court which has held the field for more than 15 years, the High*

Court was perfectly justified in reaching the conclusion called into question by the appellant.

....

25. *In this case also, no time, date and place of the speeches delivered by the respondent have been mentioned. No exact extracts from the speeches are quoted. Nor have the material facts showing that such statements imputed to the respondent were indeed made been stated. No allegation is made to the effect that it was in order to prejudice the election of any candidate. Or in order to further the prospects of the election of the respondent. The essential ingredients of the alleged corrupt practice have thus not been spelled out. So far as the meeting is concerned, the principle ["... The pleading was so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses. The pleading, in fact, was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this point...."] laid down in Nihal Singh case [(1970) 3 SCC 239] discussed in the context of the charge contained in ground II(i) is attracted. The view taken by the High Court is therefore unexceptionable.*

.....

28. It will be noticed that in the election petition it has been mentioned that a copy of the poster would be subsequently filed, and the cuttings of some newspaper reports would also be filed later on. The election petitioner sought an amendment to delete the averments on both these aspects. The High Court rejected the prayer in regard to poster (Ex. B), but granted the prayer in respect of the cuttings. The High Court has taken the view that the poster was claimed to be an integral part of the election petition and since it was not filed (much less its copy furnished to the respondent) the pleading suffered from infirmity and non-compliance with Section 83(1) read with Section 86(1) of the Act. Non-filing of the poster is fatal to the election petition as in the absence thereof the petition suffers from lack of material facts and therefore the statement of cause of action would be incomplete. Nothing turns on the fact whether or not the words “a copy of the said poster would be filed as Ex. B” are allowed to be retained in the election petition or are deleted as prayed for by the appellant. The fact remains that no copy of the poster was produced. It must also be realized that the election petitioner did not seek to produce the copy of the poster, but only wanted a reference to it deleted so that it cannot be said that the accompaniments were not produced along with the election petition. The fact remains that without the production of the poster, the cause of action

would not be complete and it would be fatal to the election petition inasmuch as the material facts and particulars would be missing. So also it could not enable the respondent to meet the case. Apart from that the most important aspect of the matter is that in the absence of the names of the respondent's workers, or material facts spelling out the knowledge and consent of the respondent or his election agent, the cause of action would be incomplete. So much so that the principle enunciated by this Court in Nihal Singh case [(1970) 3 SCC 239] would be attracted. And the court would not even have permitted the election petitioner to lead evidence on this point. The High Court was therefore fully justified in taking the view that it has taken."

81. It is settled law that if the election petition is based solely on the allegations which suffer from lack of material facts, the election petition is liable to be summarily rejected for want of a cause of action. Only material facts will show the ground of corrupt practice and the complete cause of action. Only such particulars will give the full picture of the cause of action. In the case on hand, the election petition is bereft of material particulars.

82. Pleadings do not merely define the issues between the parties for the final decision of the Court at the trial, they manifest

and exert their importance throughout the whole process of the litigation. They show on their face whether a reasonable cause of action or defence is disclosed. They provide a guide for the proper mode of trial and particularly for the trial of preliminary issues of law or fact. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They act as a measure for comparing the evidence of a party with the case which he has pleaded. They determine the range of the admissible evidence which the parties should be prepared to adduce at the trial.

83. Ordinarily, an application for rejection of election petition in limine, purportedly under Order VII, Rule 11 CPC for non-disclosure of cause of action, ought to be considered at the threshold. For, it has to be considered only on the basis of institutional defects in the election petition, in reference to the grounds specified in clauses (a) to (f) of Rule 11. Indeed, non-disclosure of cause of action is covered by clause (a) therein. Concededly, Order VII of the CPC generally deals with the institution of a plaint. It delineates the requirements regarding the particulars to be contained in the plaint, relief to be specifically stated, for relief to be founded on separate grounds, procedure on admitting plaint, and includes return of plaint.

84. As held by the Hon'ble Supreme Court in the cases of ***Mayar (H.K.) Ltd. V. Vessel M.V. Fortune Express, (2006) 3 SCC 100*** and ***Virender Nath Gautam v. Satpal Singh, (2007) 3 SCC 617***, only the pleadings of the plaintiff/petitioner can be looked into at the threshold.

85. The power bestowed in the court in terms of Rule 11 of Order VII may also be exercised by the Court on a formal application moved by the defendant after being served with the summons to appear before the Court. Be that as it may, the application under Order VII Rule 11 deserves consideration at the threshold.

86. An election petition can be rejected under Order VII Rule 11(a) CPC if it does not disclose a cause of action. Pleadings could also be struck out under Order VI Rule 16, inter alia, if they are scandalous, frivolous or vexatious.

87. As discussed supra, election petition must contain a concise statement of material facts on which the election petitioner relies. It should also contain full particulars of any corrupt practice that the election 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 election petitioner and verified in the manner laid down in the CPC 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. 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.

88. In **Anil Vasudev Salgaonkar**, supra, the Hon'ble Supreme Court held:

“50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.

51. This Court in Samant N. Balkrishna case [(1969) 3 SCC 238] has expressed itself in no uncertain terms that the omission of a single

material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. 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. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

.....

57. It is settled legal position that all “material facts” must be pleaded by the party in support of the case set up by him within the period of limitation. 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 will entail dismissal of the election petition. The election petition must contain a concise statement of “material facts” on which the petitioner relies.

.....

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

[emphasis supplied]

89. In **Shri Udhav Singh**, supra, 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).”***

[emphasis supplied]

90. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the Court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings.

91. The object of the provisions of the Representation of People Act, 1951 and the Code of Civil Procedure, 1908 is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the Courts. If that is so in matters pertaining to ordinary Civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected

representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him.

92. The entire election petition speaks about the affidavit in Form 26 dated 05.02.2022 of the applicant and no nomination paper dated 05.02.2022 of the applicant has been filed or enclosed by the election petitioner in the election petition. On the other hand, the election petitioner enclosed the affidavit in Form 26 of the applicant dated 07.02.2022 and the entire pleadings of the election petition speaks about the affidavit dated 05.02.2022 only. Therefore, as rightly argued by learned senior counsel for the applicant, the election petition of the election petitioner is liable to be rejected, as there is no cause of action sans the contentious affidavit dated 05.02.2022. The lacuna for deliberate mistake of not enclosing the affidavit and nomination form dated 05.02.2022 and another affidavit dated 05.02.2022 may not be allowed or rectified under any circumstances as per the Representation of People Act, 1951. Thus, the argument of the learned senior counsel for the election petitioner that in any case non-filing of material particulars or non-filing of proper verification of violation of Chapter VII-A of the Manipur High Court Rules, 2019 is a technical defect which is curable and dismissal of the election petition under Order VII, Rule 11 CPC at the threshold on the aforesaid ground is not warranted,

cannot be countenanced. As stated supra, it is the bounden duty of the election petitioner to furnish material particulars coupled with proper verification.

93. When this Court considers the case of the first respondent/ election petitioner in the light of the contentions on either side and the decisions supra, it is of the firm view that there is no cause of action for filing the instant election petition. As stated supra, the cause of action stated by the election petitioner in the election petition is publication of result dated 10.03.2022 and no other details have been mentioned in the cause of action paragraph. The date of publication of result of the election alone will not constitute the cause of action for challenging the election of the applicant/returned candidate.

94. This Court has also thoroughly considered the averments made in the application under Order 7 Rule 11 CPC filed on behalf of the applicant/returned candidate Leishangthem Susindro Meitei (Yaima). As discussed herein above, since the first respondent/election petitioner has utterly failed to disclose prima facie triable issue and is not able to make out any cause of action by way of pleadings from the pleadings made in the election petition and in absence of material facts no cause of action is made out which is essentially required as per the mandatory provisions of

Sections 100 and Section 83(1)(b) and other provisions of the Representation of People Act, 1951 as well as the provisions of the Code of Civil Procedure, the application under Order 7 Rule 11 CPC filed by the applicant deserves to be allowed.

95. In the result,

- (a) MC (Ele.Pet.) No.97 of 2022 is allowed.
- (b) Election Petition No.32 of 2022 stands rejected on the ground that it does not make out any cause of action or triable issue.
- (c) There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil