

JOHN
TELEN KOM

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

**MC(EI.Pet.)No.105 of 2022
EI.Pet.No.33 of 2022**

Shri Haokholet Kipgen, son of (L) Palun Kipgen, aged about 67 years, resident of Hengbung Village, PO & PS Kangpokpi, District-Kangpokpi, Manipur-795129.

...Applicant

– Versus –

1. Shri Ngamthagn Haokip, aged about 69 years, S/o Late Sonpao, a resident of Gamnom Sapormeina, PO Motbung, PS Gamnom Sapormeina, District-Kangpokpi, Manipur-795129.

.....Principial Respondent

2. Shri Lamtinthang Haokip, aged about 39 years, S/o (L) Paojang Haokip, resident of Kholep Village, Saitu Gamphajol, PO Motbung, PS Gamnom Sapormeina, Kangpokpi District, Manipur-795129.
3. Shri K. Lhouvum, S/o (L) Vumkhopao Lhouvum, aged about 60 years, resident of Hengjang Village, Leimakhong, PO Mantripukhri & PS Gamnom Sapormeina, Kangpokpi District, Manipur-795129.
4. Shri. L. Johny Gangmei, S/o (L) Lanthaulung Gangmei, aged about 42 years, resident of Khanlong Kabui Village, Kanchup, Gelzang Sub-Division, Kangpokpi District, PO Langjing, Manipur-795113.

5. Shri Th. Sanglou Maram, S/o K. Thalou, aged about 60 years, resident of Tumuyon Khullen Village, PO & PS Kangpokpi, Kangpokpi District, Manipur-795106.

.... Proforma Respondents.

BEFORE

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

For the Petitioner : Mr. HS Paonam, Sr. Adv.

For the Respondents : Mr. N. Jotendro, Sr. Adv.

Date of reserved. : 13.09.2023

Date of Judgment & Order : 13.10.2023.

JUDGMENT & ORDER
(CAV)

[1] This petition has been filed by the petitioner under Order 7, Rule 11 and Order 6, Rule 16 of the Code of Civil Procedure, 1908 read with Section 86 of the Representation of People Act, 1951 to reject the election petition.

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

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

[4] The election petitioner has filed the election petition to quash the election of the first respondent as returned candidate from 51-(ST) Saitu Legislative Assembly Constituency for 12th Manipur Legislative Assembly Election and to declare the election petitioner as returned candidate from the said Assembly Constituency. Pending election petition, the first respondent has filed the present petition to reject the election petition on the ground that the election petitioner has failed to disclose the material facts and also the actual cause of action against the first respondent in terms of the provisions of the Representation of People Act, 1951 (for short, "*the RP Act*").

[5] Resisting the petition, the election petitioner filed objection stating that the election petitioner has specifically averred the material facts in paragraphs 1 to 17 in the election petition and the allegation of the first respondent that the election petition does not contain material particulars is not tenable. Since the election petition has been duly accepted by the Registry and has been specifically and legibly filed before this Court, the election petition cannot be dismissed. Further, the cause of action for maintaining the election petition has been clearly stated in the election petition.

[6] The learned counsel for the first respondent submitted that on reading of the election petition, it does not disclose a cause of action but has tried to mislead this Court by creating an illusion of a cause of action. He would

submit that the allegations made in the election petition are baseless and vexatious, inasmuch as regarding the said allegations, the election petitioner neither on 9.2.2022 nor thereafter made any complaint either to the returning officer or to any other officer concerned in written or orally.

[7] The learned counsel would submit that the election petitioner not only failed to show the legitimate damage which he has endured, but also failed to plead that due to corrupt practice or undue influence over the voters because of the alleged improper affidavit, the first respondent won the election. Further, the election petitioner does not affirm the facts which are required for facilitating his case i.e. he has failed to plead or provide any specific or details of corrupt practices, except mere mentioning of Section 100(1)(d)(iv) of the RP Act.

[8] The learned counsel further submitted that mere mentioning of filing false affidavits, non-disclosure of material facts and improper acceptance of nomination paper of the first respondent has materially affected the result of the election without any statement of facts on which the election petitioner relies will not come to his rescue and that the election petition is manifestly vexatious and without any merit and does not disclose a cause of action.

[9] Adding further learned counsel for the first respondent submitted that the election petition is not maintainable, as the same is not in proper form as mandated by the provisions of the RP Act and as per the High Court of Manipur Rules, 2019, coupled with the fact that the election petition lacks appropriate pleadings and particulars in regard to corrupt practice in order to

invoke Section 100(1)(d) of the RP Act against the first respondent. The election petitioner has failed to furnish the affidavit supporting the allegation of corrupt practice.

[10] The learned counsel urged that failure to plead material facts and failure to plead the facts constituting the cause of action is very serious and if an election petition read as a whole do not disclose any cause of action, the same is liable to be rejected. Here, it is a case where the whole reading of the election petition does not disclose a cause of action. Therefore, the same is liable to be rejected. In support, the learned counsel placed reliance upon the following decisions:

- (i) *Udhav Singh v. Madhav Rao Scindia*, (1977) 1 SCC 511
- (ii) *Charan Lal Sahu v. Giani Zail Singh*, (1984) 1 SCC 390
- (iii) *Azhar Hussain v. Rajiv Gandhi*, (1986) (Supp) SCC 315
- (iv) *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*, 1987 (Supp) SCC 93
- (v) *Hari Shankar Jain v. Sonia Gandhi*, (2001) 8 SCC 233
- (vi) *Swami Atmananda v. Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51
- (vii) *Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar*, (2009) 9 SCC 310

- (viii) *R.Sakkarapani v. K.Karupasamy (OA No.1052 and 1053 of 2017 in El.P.No.13 of 2016, dated 5.6.2018)*
- (ix) *Leishangthem Susindro Meitei (Yaima) v. L.Jayananda Singh, (MC (El.P) No.97 of 2022 in El.P.No.32 of 2022, dated 7.7.2023)*

[11] Per contra, the learned counsel for the election petitioner submitted that the motive of filing the present petition is nothing but to delay the hearing of the election petition. He would submit that the election petitioner specifically averred from paragraphs 1 to 17 regarding the merit of the case and, as such, the allegation made by the first respondent is totally denied and the issues placed by the election petitioner required to be considered at the time of hearing of the main election petition.

[12] The learned counsel for the election petitioner further submitted that the first respondent has failed to disclose certain mandatory requirements in Form 26 affidavit. The scrutiny of the nomination of the first respondent has not been properly examined by the returning officer and, therefore, the same needs to be examined.

[13] According to the learned counsel for the election petitioner, since there is no specific prayer for corrupt practice, the allegations made by the first respondent are denied and the same are not tenable in the eyes of law. The election petitioner never sought specific prayer for corrupt practice in the election petition. The election petitioner has specifically averred the material

facts in the election petition. In fact, the election petitioner has fully disclosed the mandatory requirement of law and the triable issues in the election petition. The material facts, which constitute the cause of action for filing the election petition have been clearly averred in the election petition. Further, all the provisions of the RP Act have been complied with while filing the election petition. Thus, a prayer has been made to dismiss the present petition. In support, the learned counsel placed reliance upon the following decisions:

- (i) *V.S.Achuthanandan v. P.J.Francis and another*, (1993) 3 SCC 737
- (ii) *Virender Nath Gautam v. Satpal Singh and others*, (2007) 3 SCC 617
- (iii) *Kuldeep Singh Pathania v. Bikram Singh Jaryal*, (2017) 5 SCC 345
- (iv) *Thounaojam Shyamkumar v. Nimaichand Luwang and another*, 2018 Legal Eagle (Manipur) 1
- (v) *Lorho S.Pfoze v. Houlim Shokhopao Mater @ Benjamin and others*, 2021 Legal Eagle (Manipur) 50
- (vi) *Titosstar Well Chync v. Gavin Miguel Myllem and others*, 2023 Legal Eagle 9Megh) 262
- (vii) *Mohammad Azam Khan v. State of UP*, 2020 Legal Eagle (ALD) 730
- (viii) *Sanasam Bira v. Ningthoujam Mangi*, (MC (El.P) 12 of 2018 in El.P.No.12 of 2017.
- (ix) *Thangjam Arunkumar v. Yumkham Erabot Singh and others*, MC (El.P) No.67 of 2020 in El.P.No.24 of 2022.
- (x) *Thangjam Arunkumar v. Yumkham Erabot Singh and others*, 2023 Legal Eagle (SC) 856

- (xi) *Bhim Rao Baswanth Rao Patil v. K.Madan Mohan Rao and others, 2023 Legal Eagle (SC) 718*
- (xii) *Kamala and others v. K.T.Eshwara SA and others, 2008 Legal Eagle (SC) 627*

[14] This Court considered the rival submissions and also perused the materials available on record.

[15] The first respondent seeks to reject the election petition on the following grounds:

- (i) *The election petitioner has not disclosed the source of information upon which the allegations have been levelled in the petition. Further, the election petition does not contain a concise statement of material fact on which the election petitioner relies on.*
- (ii) *The election petitioner has failed to comply with the provisions of Section 83(1)(a), (b) and the requirement of the proviso to Section 83(1) of the RP Act.*
- (iii) *The copy of the election petition served on the first respondent has not been attested by the election petitioner under his own signature to be a true copy.*
- (iv) *Except for mere mentioning, the election petitioner has failed to provide or relied upon the cogent material regarding the bank account.*
- (v) *The pleading in the election petition are unrelated, irrelevant and vexatious and does not disclose even remote cause of action to file the election petition.*
- (vi) *The election petitioner failed to disclose how the returning officer helped the first respondent by improperly accepting his nomination paper.*

- (vii) *No affidavit in the prescribed form in support of the allegation of corrupt practice and particulars thereof has been filed.*
- (viii) *The averments in the election petition are completely vague and lacks of material particulars and in clear violation of Sections 81 and 83 of the RP Act.*

[16] On the other hand, it is the plea of the election petitioner that he has specifically averred in paragraphs 1 to 17 which includes the cause of action. The present petition is nothing but to delay the trial of the election petition. The election petition has been filed within the time. The scrutiny of the nomination of the first respondent has not been properly examined by the returning officer at the time of scrutiny and, therefore, the same needs to be examined as to whether the nomination of the first respondent has been properly accepted or not. Admittedly, the first respondent failed to disclose certain mandatory requirements in Form-26 affidavit.

[17] Resisting the election petition, the first respondent has filed written statement. This Court perused the written statement of the first respondent.

[18] Placing reliance upon the decisions cited supra, the learned counsel for the first respondent argued that failure to plead material facts in the election petition, the election petition is liable to be rejected for want of cause of action and the facts constituting the cause of action have not been specifically pleaded in the election petition. Therefore, the Court invoking power under Order 7, Rule 11 CPC, reject the election petition. In other words the

submission of the learned counsel for the first respondent is that if the material facts are not stated in the election petition, it is liable to be dismissed on that ground as the case would be covered by Section 83(1)(a) (b) of the RP Act read with Order 7, Rule 11(a) of CPC and that the election petition can be summarily dismissed, if it does not disclose the cause of action in exercise of the power under the CPC.

[19] In *Udhav Singh*, supra, the Hon'ble Supreme Court held:

“41. Like the Code of Civil Procedure, this section also envisages a distinction between “material facts” and “material particulars”. Clause (a) of sub-section (1) corresponds to Order 6 Rule 2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between “material facts” and “material particulars” is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16 of the Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

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).

43. “Particulars”, on the other hand, are “the details of the case set up by the party”. “Material particulars” within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). “Particulars” serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.

[20] In *Charan Lal Sahu*, supra, the Hon’ble Supreme Court held:

“30. It is contended by Shri Shujatullah Khan who appears on behalf of the petitioners, that connivance and consent are one and the same thing and that, there is no legal distinction between the two concepts. In support of

this contention, learned counsel relies upon the meaning of the word 'connivance' as given in Webster's Dictionary (Third Edition, Volume 1, p. 481); Random House Dictionary (p. 311); Black's Law Dictionary (p. 274); Words and Phrases (Permanent Edition, Volume 8-A, p. 173); and Corpus Juris Secundum (Volume 15-A, p. 567). The reliance on these dictionaries and texts cannot carry the point at issue any further. The relevant question for consideration for the decision of the issue is whether there is any pleading in the petition to the effect that the offence of undue influence was committed with the consent of the returned candidate. Admittedly, there is no pleading of consent. It is then no answer to say that the petitioners have pleaded connivance and, according to dictionaries, connivance means consent. The plea of consent is one thing: the fact that connivance means consent (assuming that it does) is quite another. It is not open to a petitioner in an election petition to plead in terms of synonyms. In these petitions, pleadings have to be precise, specific and unambiguous so as to put the respondent on notice. The rule of pleadings that facts constituting the cause of action must be specifically pleaded is as fundamental as it is elementary. 'Connivance' may in certain situations amount to consent, which explains why the dictionaries give 'consent' as one of the meanings of the word 'connivance'. But it is not true to say that 'connivance' invariably and necessarily means or amounts to consent, that is to say, irrespective of the context of the given situation. The two cannot, therefore, be equated. Consent implies that parties are ad idem. Connivance does not necessarily imply that parties are of one mind.

They may or may not be, depending upon the facts of the situation. That is why, in the absence of a pleading that the offence of undue influence was committed with the consent of the returned candidate, one of the main ingredients of Section 18(1)(a) remains unsatisfied.”

[21] In *Azhar Hussain*, supra, the Hon’ble Supreme Court held:

“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.

10. There is thus no substance in this point which is already concluded against the appellant in Hardwari Lal v. Kanwal Singh [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] wherein this Court has in terms negatived this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A.N. Ray, J. who spoke for the three-judge Bench: (SCC p. 221, paras 22 and 23)

“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.

Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasized that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed.”

.....

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.”

[22] In *Dhartipakar Madan Lal Agarwal*, supra, the Hon'ble Supreme Court held:

“8. The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 of the Code of Civil Procedure and to reject the election petition under Order VII Rule 11 of the Code at the preliminary stage even though no written statement had been filed by the respondent. Section 80 provides that no election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in Section 100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement 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. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Sections 81 and 82 or Section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the 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 to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, Order VI Rule 16 and Order VI Rule 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action, are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. 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. Order VI Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the

election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the Court need not wait for the filing of the written statement, instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the Court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11.”

[23] In *Swami Atmananda*, supra, 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.”

[24] In *Hari Shankar Jain*, supra, the Hon’ble Supreme Court held:

“23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be

considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression “cause of action” has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238 : (1969) 3 SCR 603], Jitendra Bahadur Singh v. Krishna Behari [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead “material facts” is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject

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

....

33. Without further burdening this judgment by dealing with each and every other averment made in the two election petitions, it would suffice to say that we have carefully read each of the two election petitions and heard each of the two election petitioners (appellants) in very many details especially on the aspect of the election petitions suffering from the vice of not satisfying the mandatory requirement of pleading material facts as required by Section 82(1)(a) of RPA, 1951 and we are satisfied that the two election petitions do not satisfy the requirement statutorily enacted and judicially explained in umpteen number of decisions. The petitions are hopelessly vague and completely bald in the allegations made, most of which could not possibly be within the personal knowledge of the petitioners but still verified as "true" to their knowledge, without indicating the source. Such pleadings cannot amount to disclosing any cause of action and are required to be rejected/dismissed under Order 7 Rule 11 CPC.

34. To sum up, we are of the opinion that a plea that a returned candidate is not a citizen of India and hence not qualified, or is disqualified for being a candidate in the

election can be raised in an election petition before the High Court in spite of the returned candidate holding a certificate of citizenship by registration under Section 5(1)(c) of the Citizenship Act. A plea as to constitutional validity of any law can, in appropriate cases, as dealt with hereinabove, also be raised and heard in an election petition where it is necessary to decide the election dispute. The view of the law, stated by the learned designated Election Judge of the High Court of Allahabad cannot be sustained. To say the least, the proposition has been very widely stated in the impugned order of the High Court. However, in spite of answering these questions in favour of the appellants yet the election petitions filed by them cannot be directed to be heard and tried on merits as the bald and vague averments made in the election petitions do not satisfy the requirement of pleading material facts within the meaning of Section 82(1)(a) of RPA, 1951 read with the requirements of Order 7 Rule 11 CPC. The decision of the High Court dismissing the two election petitions at the preliminary stage, is sustained though for reasons somewhat different from those assigned by the High Court. The appeals are dismissed but without any order as to the costs.”

[25] In *Anil Vasudev Salgaonkar*, supra, the Hon’ble Supreme Court held:

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

fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act.

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

63. Considering the facts and circumstances of this case and principles applicable to the election petition, this appeal deserves to be allowed and we accordingly allow this appeal. Consequently, the election petition stands dismissed. In the facts and circumstances of this case, we direct the parties to bear their own costs.”

[26] It has been submitted on behalf of the election petitioner that the first respondent has filed false affidavit by mentioning his PAN Card bearing No.AYHPK4495L, whereas in the 11th Manipur Legislative Assembly Election, 2017, he has mentioned the PAN Card number as AYOPK9657P. As per the Income Tax Act and the Rules, a person holding multiple PAN cards is not legal. The date of birth of the first respondent differs from the aforesaid two PAN cards.

[27] According to the learned counsel for the election petitioner, the first respondent has failed to tick Column No.5(i) and Column 6(i) of the affidavit filed under Form-26 dated 3.2.2022 where the option of ticking is deliberately omitted, which amounts to incomplete affidavit and the same ought to have

been rejected by the returning officer. That apart, the first respondent has failed to disclose the election account number under which the entire transaction process of election expenditure was carried on at column No.7A Sl. No.(ii) and further he had declared false account which is not in existence. Further, the first respondent has failed to disclose his own Axis Bank Account bearing No.657010100074537 and his wife Account bearing No.911010017343972, which are in operation.

[28] The learned counsel for the election petitioner further submitted that the measurement of the immovable assets has been wrongly mentioned in Column 7.B (i) & (ii). Under Part B, Column 11, 8 (B)(1) the cost of the property has not been properly mentioned. The total income shown by the first respondent and his wife is mismatching with the declared income under Part B and column No.9A(b) of Part A.

[29] It is to be noted that the right to get information in democracy is recognized all throughout and it is natural right flowing from the concept of democracy. Article 19(1) and (2) of the International Covenant of Civil and Political Rights states as under:

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

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print,

in the form of art, or through any other media of his choice.”

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

[31] In *V. S. Achuthanandan*, supra, the Hon'ble Supreme Court held that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

[32] In *Samant N. Balkrishna and another v. V. George Fernandez and others*, (1969) 3 SCC 238, the Hon'ble Supreme Court held that the election petition must set out the material facts on which a charge can be made and mere repetition of the words of the statute does not amount to proper statement of facts. The material facts must be stated in the petition and if they are missing, it is impossible to think that the charge has been made or can be later amplified.

[33] In *D.Ramachandran v. R.V.Janakiraman and others*, (1999) 3 SCC 267, the Hon'ble Supreme Court observed that distinction is to be made between the terms "*full particulars*" and "*material facts*", however Court cannot dissect the pleadings and struck out portion of it. The Hon'ble Supreme Court further held that it was otherwise found that the facts and cause of action disclosed in the petition were sufficient regarding the averments of the case and were sufficient to void the election in case, it is adjudicated upon and therefore, it could not be said that full particulars were not mentioned in the election petition.

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

[35] In *Kisan Shankar Kathore v. Arun Dattatray Sawant and others*, (2014) 14 SCC 162, the Hon'ble Supreme Court relied upon the decision in the case of *Union of India v. Association for Democratic Reforms and another* (2002) 5 SCC 294, wherein it has been held that it was incumbent upon every candidate, who is contesting the election, to give information about his assets

and other affairs, which requirement is not only essential part of fair and free elections, inasmuch as, every voter has a right to know about these details of the candidates, such a requirement is also covered by freedom of speech granted under Article 19(1)(a) of the Constitution of India.

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

[37] In *Kuldeep Singh Pathania*, supra, the Hon'ble Supreme Court has considered the preliminary issues relatable to Order 7, Rule 11 CPC in the sense those issues pertain to the rejection at the institution stage for lack of material facts and for not disclosing a cause of action. The Hon'ble Supreme Court held that merely because it is a trial on preliminary issues at the stage of Order 14, the scope does not change or expand. The stage at which such an enquiry is undertaken by the Court makes no difference since an enquiry under Order 7, Rule 11(a) CPC can be taken up at any stage. After consideration of the materials produced, the Hon'ble Supreme Court came to the conclusion that the election petition has disclosed cause of action and remitted the matter for fresh enquiry.

[38] Whether the allegations of the election petitioner are correct or not has to be proved by the election petitioner and further, as to whether, incorrect particulars have been mentioned in the affidavit in Form-26 by the returned candidate and whether the alleged false affidavit would amount to violation of

the provisions of Section 33 of the RP Act so as to render the election of the first respondent void are to be considered by the Court in the course of trial.

[39] The learned counsel for the election petitioner has referred to a number of decisions related to cause of action. This Court does not wish to add to the number of judicial pronouncements relied upon by the learned counsel. Suffice to say that cause of action means every fact which, if traversed, it would be necessary for the election petitioner to prove in order to support his right to a judgment of the Court.

[40] On a thorough reading of the election petition, it cannot be said that the election petition does not contain a concise statement of material facts. In fact, it does disclose a cause of action. Whether or not the election petitioner is able to prove the allegations sets out in the election petition and similarly disprove the allegations by the first respondent is a matter of evidence which can be considered only at the time of trial.

[41] At this stage, the first respondent is not able to produce any material to substantiate his case that the election petition does not disclose the cause of action. The first respondent simply stated that the election petitioner has failed to disclose the cause of action to maintain the election petition in terms of the provisions of the RP Act and the CPC and nothing more.

[42] When this Court read over the averments sets out in the election petition wholly, it is clear that the election petitioner has stated full and material

particulars following the cause of action for filing the election petition. *Prima facie*, the election petitioner has narrated in the election petition qua the non-disclosure of certain information and/or incomplete information while filing the nomination paper along with Form-26 affidavit by the first respondent.

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

[44] The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.

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

cause of action with such further information so as to make opposite party understand the case he will have to meet.

[46] In *Mayar (H.K.) Ltd. and others v. Owners and Parties, Vessel M.V. Fortune Express and others*, (2006) 6 SCC 100, the Hon'ble Supreme Court held as under:

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

by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants. Similarly, the Court could not have taken the aid of Section 10 of the Code for stay of the suit as there is no previously instituted suit pending in a competent court between the parties raising directly and substantially the same issues as raised in the present suit.”

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

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

[49] An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in Sections 100 and 123 of the RP Act

cannot obviously be recognized and respected as the decision of the majority of the electorate. The Courts are, therefore, duty bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hyper-technical in their approach and without being oblivious of the ground realities.

[50] The result of the election can be questioned on the grounds enumerated in Section 100 of the Representation of People Act. Section 100(1)(b) and 100(1)(d)(i), (ii), (iii) and (iv) of the RP Act, provides:

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

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a).....

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c)

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

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non—compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.”

[51] As stated supra, the election petition must set out the material facts on the basis of which the charge can be made and in the event of the material facts not being stated in the election petition, the same is liable to be dismissed. In the present case, the specific plea of the election petitioner is that he never prayed for specific prayer in respect corrupt practice in the election petition.

[52] Whether in election petition, a particular fact is material or not, and, as such, required to be pleaded is a question which depends on the nature of the charge leveled, the ground relied upon and the special circumstances of the case. All those facts which are essential to clothe the election petition with a complete cause of action are material facts which must be pleaded and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the RP Act.

[53] The object and purpose of pleading material facts is to enable the opposite party to know the case he has to meet and in the absence of such a pleading, a party cannot be allowed to lead evidence. The requirement under Section 83(1)(a) of the RP Act in contradiction to Section 83(1)(b) of the RP Act is that the election petition needs to contain only a concise statement of the material facts and not material particulars. For the purpose of considering a

preliminary objection as to the maintainability of the election petition, the averments in the election petition should be assumed to be true and the Court has to find out whether these averments disclose a cause of action or a triable issue as such. However, the Court cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action.

[54] As stated supra, the election petitioner assails the election of the first respondent under Sections 77, 80, 80-A, 81, 84, 100(1)(d)(i), (iii) & 101 of the RP Act. After going through the averments made in the election petition as a whole, it cannot be said that the election petition does not contain a concise statement of material facts. In fact, *prima facie*, it does disclose a cause of action.

[55] The argument of the learned counsel for the first respondent that the election petition has no cause of action has no merit. The first respondent contended that the pleadings in the election petition are scandalous and vexatious and, therefore, the said pleadings are to be struck off. Order 6, Rule 16 CPC empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. Mere mentioning that the pleadings in the election petition are scandalous and vexatious is not enough to strike out the pleadings. Since the election petition having disclosed a cause of action, it should not have been thrown out at the threshold.

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

[57] It is well settled law that our election law being statutory in character must be strictly complied with since an election petition is not guided by ever changing common law principles of justice and notions of equity. Being statutory in character, it is essential that it must conform to the requirements of our election law. But at the same time the purity of election process must be maintained at all costs and those who violate the statutory norms must suffer for such violation. If the returned candidate is shown to have secured his success at the election by corrupt means he must suffer for his misdeeds.

[58] It is reiterated that the instant election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7, Rule 11 CPC cannot therefore be invoked in the present case. There is no substance 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 of them discloses a cause of action.

[59] At this stage, this Court is not considering the issues - whether the first respondent has filed false affidavit at the time of filing his nomination and has failed to disclose true and correct facts, thereby violated the provisions of Section 100(1)(d)(i), (iii) & (iv) of the RP Act and whether the returning officer has correctly or wrongly accepted the nomination of the first respondent and there was violation of Section 33 of the RP Act or not. These are all the matter of trial. Thus, this Court is of the considered view that there had been substantial compliance with the provisions of Section 83(1)(a) (b) of the RP Act. Moreover, the question as to whether the pleadings made by the election petitioner in the election petition are sufficient or not can only be determined at the time of final hearing of the election petition. Since the election petition discloses cause of action and the same needs to be tried, the present petition is devoid of merits. Therefore, the same is liable to be dismissed.

[60] In the result, MC (El. Pet.) No.105 of 2022 in Election Petition No.33 of 2022 is dismissed. There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

John Kom