

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

MC(EI.Pet.)No.113 of 2022

Ref: EI.Pet.No.30 of 2022

Shri Leishiyo Keishing, aged about 47 years, S/o. Shamphang Keishing, a resident of Nambashi Khullen Village, PO Yairipok & PS Kasom Khullen, District- Kamjong, Manipur- 795149.

...Applicant

– Versus –

1. Shri Awung Shimray Hopingson, aged about 62 years, S/O (Late) Awung Shimray Satalung, a resident of Marou, Tehsil-Phungyar, PO & PS Phungyar, District- Kamjong, Manipur-795145.

.... Principal Respondents.

2. Shri Victor Keishing, aged about 59 years, S/o Rishang Keishing, a resident of Bungpa Khunou Village PO & PS Kamjong, District- Ukhrul Manipur-795145.
3. Shri Ninghor Jajo, aged about 60 years, S/o(L) Kelahong, a resident of Lairam Khullen, PO Yairipok & PS Kasom Khullen, District-Kamlong, Manipur-795149.
4. Shri Wungnaoshang Kasar @ Ashang Kasar, aged bout 46 years Old, S/o Ngashathing Kasar, a resident of Chadong Village PO & PS Litan, Kamjong District, Manipur-795149.

....Proforma Respondents

BEFORE

HON'BLE JUSTICE MR. M.V. MURALIDARAN

For the applicant : Mr. HS Paonam, Sr. Adv.
For the Respondents : Mr. P. Tomcha, Adv.
Date of reserved. : 05.10.2023
Date of Judgment & Order : 30.10.2023.

JUDGMENT & ORDER
(CAV)

[1] This petition has been filed by the petitioner under Order 7, Rule 11 and Order 6, Rule 16 read with Section 151 of the Code of Civil Procedure, 1908 and Section 86 of the Representation of People Act, 1951 to reject the election petition for non-disclosure of cause of action vis-à-vis for violation of Sections 81 and 83 of the Representation of People Act, 1951 (for short, "*the RP Act*").

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

[3] The election petitioner has filed the election petition to quash the election of the first respondent as returned candidate from 43-Phungyar (ST) Assembly Constituency to the 12th Manipur Legislative Assembly Election, 2022 as null and void. Pending election petition, the first respondent has filed the present petition to reject the election petition on

the ground that the election petitioner has failed to disclose the material facts on which he relies and also the election petition does not disclose a trial issue or cause of action.

[4] On the other hand, the election petitioner contended that there is enough material facts and material particulars pleaded in the election petition. The election in respect of 43-Phungyar (ST) Assembly Constituency in the manner and circumstances as narrated in the election petition can be declared as null and void in terms of the RP Act. The cause of action for maintaining the election petition has been clearly averred in the election petition.

[5] Mr. P. Tomcha, the learned counsel for the first respondent submitted that the election petitioner has failed to substantiate his claim with cogent materials. Further, the election petitioner alleged that the nomination of the first respondent was abruptly and improperly accepted by the returning officer and no proper scrutiny took place as envisaged under Section 36(2) of the RP Act. The learned counsel would submit that regarding the said allegation, the election petitioner neither on 14.2.2022 nor thereafter made any complaint either to the returning officer or to any other concerned officer in writing or orally. The election petitioner, only after being fairly defeated in the election, has filed the election petition unable to face his defeat.

[6] The learned counsel for the first respondent further submitted that on a reading of the election petition, it is clear that the same is

manifestly vexatious and without any merit and does not disclose a cause of action, but has tried to mislead the Court by creating an illusion of a cause of action.

[7] The learned counsel further submitted that the election petitioner not only failed to show the legitimate damage which he has endured, but also failed to plead that due to undue influence over the voters because of the alleged improper affidavit, the first respondent won the election. Further, the election petition does not affirm the facts which are required for facilitating the case of the election petitioner, namely the election petitioner has failed to plead or provide any specific or details of the corrupt practices, except mere mentioning of Sections 100(1)(b), 100(1)(d)(i), (ii) and (iv) of the RP Act. As such, the election petition deserves to be dismissed.

[8] The learned counsel next submitted that mere mentioning of violation of instructions/notifications issued by the Election Commission of India without any statement of material fact on which he relies will not come to his rescue, as it is very clear that the election petition is manifestly vexatious and without any merit and does not disclose the cause of action, but has tried to mislead the Court by creating a mirage of a cause of action.

[9] Adding further, the learned counsel submitted that the allegation of the election petitioner regarding agricultural land has no relevancy, as the same agricultural land has been declared by the first respondent in Form-26 affidavits dated 9.2.2022 submitted before the

returning officer. As far as the agricultural land is concerned, the information so sought in Form-26 affidavit is well furnished by the first respondent. Therefore, the pleadings in the election petition are unrelated, irrelevant and vexatious, which does not disclose even remote cause of action to launch the election petition. Insofar as the non-agricultural land is concerned, it has no relevancy, inasmuch as neither the first respondent nor his spouse has non-agricultural land under their names and, therefore, no cause of action for the election petition. The averments in the election petition are completely vague and lacks material particulars and in clear violation of Sections 81 and 83 of the RP Act. Therefore, no enquiry or trial is permissible and the election petition deserves to be dismissed under Order 7, Rule 11 CPC. To fortify his submissions, the learned counsel for the first respondent placed reliance upon the following decisions:

- (i) *Shri 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) *V.S.Achuthanandan v. P.J.Francis*, (1999) 3 SCC 737.

- (vi) *Hari Shankar Jain v. Sonia Gandhi*, (2001) 8 SCC 233.
- (vii) *Swami Atmanga v. Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51.
- (viii) *Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar*, (2009) 9 SCC 310.

[10] Per contra, Mr. HS Paonam, the learned senior counsel for the election petitioner submitted that various facts constituting the cause of action for filing the election petition are set out in paragraphs 17(1) to 17(8) of the election petition and that the election petition has disclose existence of the cause of action to go on trial.

[11] The learned counsel further submitted that Rule 4A of the Conduct of Election Rules, 1961 require the candidate or his proposer to deliver to the returning officer an affidavit sworn before a Magistrate of First Class in Form-26. The filing of false affidavit in Form-26 is the cause of action for declaring the election void. Further, the material facts have been set out in the election petition and any non-compliance with the provisions of the Constitution of India and the RP Act or any rules or orders made under the RP Act is a ground for declaring the election to be void as provided under Section 100 of the RP Act. Since the first respondent has filed the written statement, necessary issues will have to be framed and decide the same after adducing evidence.

[12] The learned counsel for the election petitioner contended that by complying with all the requirements, the election petition has been filed and the first respondent is not entitled to any of the reliefs sought for in the present petition. In support, the learned counsel for the election petitioner placed reliance upon the order of this Court dated 5.7.2023 *passed in MC (El. Pet.) No.66 of 2022 in E.P.No.34 of 2022*.

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

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

- (a) The election petitioner has not disclosed the source of information upon which the allegations have been levelled in the election petition. Further, the election petition does not contain a concise statement of material fact on which the election petitioner relies and, therefore, the election petition does not disclose a triable issue or cause of action. Even the material particulars are absent in the election petition.
- (b) The alleged violation of Section 33 and 33A of the RP Act is irrelevant for consideration of the declaring the election of the first respondent void and, hence, the provision as pleaded by the election petitioner would not in any manner attract for consideration as to

whether a cause of action for declaring the election of the first respondent as void.

- (c) The allegation regarding agricultural land has no relevancy as the same agricultural land has been declared by the first respondent in both his identical Form-26 affidavits dated 9.2.2022 submitted before the returning officer of 43-Phungyar (ST) Assembly Constituency in the 12th Manipur Legislative Election, 2022. In regard to the agricultural land, the information sought in Form-26 affidavit is well furnished by the first respondent. Therefore, the pleadings are unrelated, irrelevant, scandalous and vexatious, which does not disclose even remote cause of action and the same violates Section 83 of the RP Act.
- (d) The allegation regarding non-agricultural land has no relevancy, inasmuch as neither the first respondent nor his spouse has non-agricultural land in their names and, therefore, no cause of action for the election petition.
- (e) The election petitioner did not disclose that how the returning officer helped the first respondent by improperly accepting his nomination paper except making vague allegations.
- (f) The election petitioner did not plead, alleges or discloses how the scrutiny was improperly conducted

by the returning officer or for that matter, how the Government officials helped the first respondent during the scrutiny on 14.2.2022 so as to allow improper acceptance of the first respondent's nomination paper.

- (g) The averments made in the election petition are completely vague and in clear violation of Sections 81 and 83 of the RP Act
- (h) No trial or enquiry is permissible on the basis of vague, indefinite and imprecise averments sets out in the election petition.
- (i) The election petition is filed for abuse of the process of law and for wasting the valuable time of this Court.

[15] On the other hand, the election petitioner contended that various facts constituting the cause of action for filing the election petition are set out in paragraphs 17(1) to 17(8) of the election petition and that the election petition has disclose the existence of cause of action to go on trial. The election petitioner has drawn the attention of paragraphs 17(1) to 17(8) of the election petition, which are extracted hereunder for ready reference:

“(1) On page No.2 of both the affidavits in Annexure-A/3 and A/4, the financial year for which the last Income Tax Return has been file din respect of the respondent himself has been given as – 2021-2022. However, the respondent No.1 has concealed/not disclosed the total income shown in the Income Tax Return as – “Not Applicable” in both the affidavits thereby concealing the amount shown in the income tax return. But on

page No.14 of both the affidavits, the Total Income shown in the Income Tax Return of 2021-2022 is Rs.64,270.00 for the respondent No.1. Thus the Respondent No.1 has sworn false affidavit regarding the total income shown in the Income Tax Return of 2021-2022. But there is nothing in the affidavit disclosing the source of his income not exempted under Section 10(26) of the Income Tax Act. Thus both the affidavits are false and there is concealment of material facts about his income and source of income had been concealed.

(2) On page No.2 of both the affidavit sin Annexure-A/3 and A/4 the financial year for which the last Income Tax Return has been filed in respect of the spouse of the respondent No.1 has been given as 2021-2022. However he has concealed/not disclosed the total income shown in the Income Tax Return by indicating – “Not Applicable”. In both the affidavits, in respect of the Respondent No.1 thereby concealing the amount shown in the Income Tax Return. But on page No.14 of both the affidavits, the Total Income shown in the Income Tax Return of 2021-2022 is Rs.0 for the spouse of the respondent No.1. The PAN number shown on page No.2 and on page number 14 are different. This clearly shows that both the affidavits are false and also material facts has been concealed.

(3) On page No.2 of both the affidavits, the PAN No. of the spouse of the Respondent No.1 has been shown as AKIPC8042Q while on page No.14 of the both the affidavits a different Pan No. of the spouse of the Respondent No.1 has been shown as CAJPC3596C without giving any reason for the different PAN numbers of his spouse. Thus material facts has been concealed regarding her income as well as her Income Tax Return for the year 2021-2022.

(4) On page No.7 of both the affidavits it has been indicated that the spouse of the respondent No.1 has purchased Tata Hexa in the year 2019 at the cost of Rs.22,33,000/- and on page No.10 it has been indicated that she has purchased a residential plot on 25.6.2019 at the cost of Rs.55,00,000/- thereby indicating that the spouse has purchased property worth Rs.77,33,000/- in the year 2019.

But at page No.13 of both the affidavit her source of income has been given as House wife without indicating as to how she received income of Rs.77,33,000/- in the year 2019 as a – “House Wife”.

Thus there is serious concealment of the income and source of income of the spouse of the respondent No.1.

(5) On Page No.8 of both the affidavits, while giving the particulars of the Agricultural lands, its location (s) and survey Number (s), in both the affidavits, the respondent No.1 has given the details as – “112 Chandrakhong, Yairipok, Thoubal, Manipur, Survey No.140, 140/224, 141/225 showing three different Survey Numbers (Plot Number) indicating that there are three different agricultural lands as follows:

(i) Survey No. (i.e. Dag No.) 140:

According to the information given on page No.8 of both the affidavits, at Sl No.(i) of the Details of immovable assets in B, no separate area has been given and it has been indicated that the same is inherited property. However in Mut. Case No.198/SDC/YPK/2011, the name of the respondent No.1 was mutated in Dag No.140 by way of Gift. Thus, the Respondent No.1 has sworn false affidavit and has concealed material facts. A copy of the cancelled/uncancelled Jamabandi of Survey No. (Dag No.) 140 of 112-Chandrakhong along with English translation is enclosed herewith as Annexure-Annexure-A/5.

(ii) Survey No.(Dag No.) 140/224:

According to the information given on page No.8 of both the affidavits, at Sl No.(i) of the Details of immovable assets in B, no separate area has been given and it has been indicated that the same is inherited property. The Survey No. (Dag No.) 140/224 indicate that Survey No. (i.e. Dag No.) 224 is an offshoot of Dag No.140. On the other hand according to the revenue record of Survey No.224 is shown to be an offshoot of Dag No.141 which is a state land, as 141/224, even though there is no indication of Dag No.141 having any offshoot Dag. Survey (Dag) No.141/224 is a STATE land and the name of the respondent No.1 is recorded as an encroacher by the order dated 30-4-2021 passed in Mut. Case No.68/SC/YPK/2010. He is never the owner of the same. However, he has indicated the said land as his inherited land by concealing the fact that he is an encroacher of State Land. His name is also recorded as encroacher in Land under Survey No.141 of 112-Chandrakhong but he has concealed the same. Thus the Respondent No.1 has sworn false affidavits and has concealed material facts.

A copy of the certified to be true copy of the cancelled/uncancelled Dag Chitha of the land under survey No.141/224 of 112-Chandrakhong along with English Translation is enclosed herewith as Annexure-A/6.

A copy of the certified to be true copy of the cancelled/uncancelled Dag Chitha of the land under survey No.141 of 112-Chandrakhong along with English Translation is enclosed herewith as Annexure-A/7.

A copy of the certified to be true copy of the mutation order dated 30-04-2010 is enclosed herewith as – Annexure-A/8.

(iii) Survey No. (Dag No.) 141/225:

According to the information given on page No.8 of both the affidavits, at Sl No.(i) of the Details of immovable assets in B, no

separate area has been given and it has been indicated that the same is inherited property. The survey No.(Dag No.) 141/225 indicate that Survey No. (i.e Dasg No.) 225 is an offshoot of Dag No.141. Being Dag No.141 a state Land, Dag No.141/225 should also indicate that it is/was a State land. The name of the Respondent No.1 is mutated in the land under survey (Dag) No.141/225 by the order of Mutation Case No.198/SDC/YPK/2011 by way of Gift. Thus the Respondent No.1 has sworn false affidavit and has concealed material facts. A copy of the certified to be true copy of the cancelled/uncancelled Dag Chitha of the land under Survey No.141/225 along with English Translation is enclosed herein as Annexure-A/9.

A Copy of the certified to the true copy of the mutation order dated 21.7.2011 is enclosed herewith as Annexure-A/10.

(6) On page No.9 of both the affidavits, the respondent No.1 while giving particulars of his Non-Agricultural land he has indicated- 'NIL' while on page No.10 of both the affidavits, he has shown two residential buildings indicating that there are two non-agricultural lands of the respondent No.1. He has also stated that he inherited the said residential buildings even though his father is alive. He has also not disclosed as to how he inherited the said properties.

It is submitted that even though he has indicated having two residential buildings, he has concealed the existence of any residential plot by indicating "NIL" in the column for Non-Agricultural land. Thus he has filed false affidavit and has concealed material facts.

(7) On page No.9 of both the affidavits, the respondent No.1 while giving particulars of Non-Agricultural land of his spouse, he has stated 'NIL' in all respect while on page No.10 of both

the affidavits, he has shown one residential building along with its area, date of purchase. Cost of property at the time of purchase, etc. Thus, it is clear that his spouse has one non-agricultural land. Thus prima facie, both the affidavit are false affidavit and there is concealment of material facts.

(8) On page No.7 of both the affidavits it has been indicated that the spouse of the respondent No.1 has purchased Tata Hexa in the year 2019 at the cost of Rs.22,33,000/- and on page No.10 of both the affidavits it has been indicated that she has purchased a residential plot on 25.5.2019 at the cost of Rs.55,00,000/-, thereby indicating that the spouse has purchased property worth Rs.77,33,000/- in the year 2019. But at page No.13 of both the affidavits her source of income has been given as House wife without indicating as to how the purchased property of Rs.77,33,000/- in the year 2019 as a 'House Wife'. On the other hand, in page No.14, the income of the spouse for the year 2021-2022 is shown as Rs.0 indicating that 'House-Wife' does not generate any income. Thus, there is clear concealment of material facts and also false affidavit."

[16] According to the election petitioner, the election of the first respondent is affected on the following grounds:

- (1) The first respondent's nomination had been improperly accepted.
- (2) Since the nomination of the first respondent has been improperly accepted, the votes secured by him cannot be taken into account.
- (3) The first respondent should not be allowed to contest the election and, as such, his candidature stands *non-est* and void *abi-initio*.

- (4) There should be four candidates contesting the election.
- (5) The election petitioner secured 10863 valid votes.
- (6) The election petitioner is entitled to be declared as the returned candidate in the election.
- (7) In the event the first respondent was not a candidate in the election on rejection of his nomination, the election petitioner should have secured a majority of votes and he can succeed in the election.
- (8) Due to the illegal inclusion of the first respondent as a candidate in the election, the voters were unable to choose their rightful candidate.
- (9) False statements in the affidavits and concealment of material facts.
- (10) Non-rejection of the nomination of the first respondent, the very purpose of very holding a free and fair election has been defeated, rendering the election of the first respondent illegal and void.

17. The election petitioner stated in paragraph 24 of the election petition that the cause of action for filing the present election petition arose on 10.03.2022 when the result of the election was declared by the returning officer of 43-Phungyar (ST) Assembly Constituency and the same is still continuing within the jurisdiction of this Court.

18. The election petitioner is the candidate set up by Bharatia Janata Party (BJP) and the first respondent is the candidate set up by the Naga Peoples Front (NPF).

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

Sl. No.	Poll Event	First Phase	Second Phase
1	Issue of Notification	01.02.2022 (Tuesday)	04.02.2022 (Friday)
2	Last date of making Nominations	08.02.2022 (Tuesday)	11.02.2022 (Friday)
3	Scrutiny of Nominations	09.02.2022 (Wednesday)	14.02.2022 (Monday)
4	Last date for withdrawal of Candidature	11.02.2022 (Friday)	16.02.2022 (Wednesday)
5	Date of Poll	27.02.2022 (Sunday)	03.03.2022 (Thursday)
6	Counting of Votes	10.03.2022 (Thursday)	
7	Date before which the election process shall be completed	12.03.2022 (Saturday)	

[20] Subsequently, the Election Commission of India, changed the poll date for the first phase as 28.02.2022 (Monday) and the second phase as 05.03.2022 (Saturday). The election petitioner and the first respondent filed their nomination papers along with Form-26 affidavits.

[21] When the election petitioner alleges that the nomination of the first respondent was improperly and abruptly accepted by the returning officer, the election petitioner being a candidate in the election or his agent has right to raise an objection either in writing or even verbally before the returning officer. The election petitioner in his election petition at paragraph 14 stated that on 14.2.2022 the election petitioner and his agent raised objection to the nominations of the first respondent. However, the returning officer improperly accepted the nomination of the first respondent thereby allowing him to contest the election. If really, the election petitioner has raised an objection, he should have filed the copy of the objection and the orders passed by the returning officer. No such copy of the objection and the orders of the returning officer have been filed by the election petitioner along with the election petition. As such, *prima facie*, the allegations of the election petitioner are baseless and frivolous. If really, the returning officer improperly accepted the nomination paper of the first respondent, the election petitioner has right at the relevant point of time to brought to the notice of the higher officials, including the Election Commission of India. No such copy of complaint to the higher officials made by the election petitioner has been shown before this Court. As rightly argued by the learned counsel for the first respondent, only after being defeated in the election, the election petitioner is alleging that the returning officer has improperly accepted the nominations of the first respondent. That apart, only in casual manner, the election petitioner averred so in the election petition without any *prima facie* proof.

[22] Section 36(2) of the RP Act provides:

“Section 36. Scrutiny of nomination. –

(1) ...

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

- (a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:- Articles 84, 102, 173 and 191 Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or
- (b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or
- (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.”

[23] Section 81 of the RP Act 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.

[24] 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.

[25] Section 100 of the RP Act provides:

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

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

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

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

(c) that any nomination has been improperly rejected; or

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

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

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

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

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

.....”

[26] In *Shri Udhav Singh*, supra, the Apex 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.

[27] In *Charan Lal Sahu*, supra, the Apex 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."

[28]

In Azhar Hussain, *supra*, the Apex 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.”

[29] In *Dhartipakar Madan Lal Agarwal*, supra, the Apex 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.”

[30] In *V.S.Achuthanandan*, supra, the Apex 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.

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

[32] In *Jaipal Singh v. Sumitra Mahajan and others*, (2004) 4 SCC 522, the Hon'ble Supreme Court held:

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

papers was 14-3-2002, the date of scrutiny was 15-3-2002, last date of withdrawal was 18-3-2002 and the date of polling was 27-3-2002. The appellant sought voluntary retirement from service as he wanted to contest the election to the Rajya Sabha. On 15-3-2002, the Returning Officer rejected the nomination papers of the appellant on the ground that Rule 16 of the 1958 Rules warranted giving three months' previous notice to the appointing authority and since the said period had not elapsed on the date of scrutiny the appellant was holding the office of profit on that day and, therefore, stood disqualified under Article 102(1)(c) of the Constitution. On 18-3-2002, election results were announced, since there was no contest after rejection of the nomination papers submitted by the appellant. Aggrieved, the appellant filed Election Petition No. 27 of 2002 in the High Court on the ground that his nomination papers had been wrongly rejected by the Returning Officer. In the election petition, he stated that on completion of 40 years of service and on attaining the age of 59 1/2 years, he was eligible to seek voluntary retirement under the 1958 Rules; that he had applied for the same through proper channel on 13-3-2002; that he had also made a request to the appointing authority to waive notice period of three months for seeking voluntary retirement; that he had relinquished the charge on 13-3-2002; and consequently, he was not holding office of profit with the Government on that day and, therefore, he was eligible to seek election to the Rajya Sabha. In the election petition, the appellant further pleaded that his request was duly received by the Government of India, Ministry of Personnel, appointing authority and also by the Government of Haryana at Chandigarh. He further averred that he sought voluntary retirement on account of illness of his wife and after resigning

voluntarily from his post, he had filed nomination papers. He further averred that on the date of the scrutiny, he was present when he brought to the notice of the Returning Officer the factum of his voluntary retirement but the Returning Officer disregarded the provisions of the 1958 Rules as also the provisions of the All India Services (Conditions of Service — Residuary Matters) Rules, 1960 (hereinafter referred to as “the 1960 Rules”) as also the Fundamental Rules, 1922. In the election petition, the appellant had alleged that the action of the Returning Officer in rejecting his nomination papers was not justified as the appointing authority has the power under the 1960 Rules to relax the condition and to waive the notice period of three months in the case of an employee who seeks voluntary retirement. He further stated that since his nomination papers were rejected, there was no contest and results were declared on 18-3-2002 when the respondents were declared as members of the Rajya Sabha from the State of Haryana. In the light of the above allegations, the appellant challenged the elections of the respondents on the ground of improper rejection of his nomination papers. The election petition was scrutinized by the Registry of the High Court, which was found to have been filed within the period of limitation, and accordingly it was numbered and notices were issued to the respondents who appeared before the High Court on 31-7-2002 through their counsel. A joint written statement was filed by the respondents controverting the averments made by the appellant. A preliminary objection was raised to the effect that the averments contained in the election petition were vague and lacked material facts and particulars, as such, the said petition was liable to be dismissed. In the written statement, the respondent submitted that the petition

was liable to be dismissed as the appellant had not disclosed a material fact as to on which date he had received communication regarding acceptance of his application for voluntary retirement. On merits also, the respondents denied various averments made by the appellant.

3. *On the above pleadings, a preliminary issue was framed by the High Court — as to whether the petition lacked in material facts and did not disclose cause of action. By the impugned judgment, the High Court held that Section 83(1)(a) of the said Act mandates that an election petition shall contain a concise statement of material facts on which the petitioner relies; that in the present case, the appellant had failed to aver and plead two material facts viz. that his application for voluntary retirement was accepted by the appointing authority before the date of scrutiny and that his request for waiver of the notice period of three months was actually accepted. In the absence of disclosure of the above facts, the High Court dismissed the election petition.*

....

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

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

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

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

.....

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

[33] The learned counsel for the election petitioner submitted that election petition cannot be rejected without trial. The learned counsel for the election petitioner contends that election petition cannot be rejected if it disclose a cause of action. The further submission of the learned counsel for the election petitioner is that petition under Order 7, Rule 11 CPC must be considered within the four corners of the election petition. In support, the learned counsel placed reliance upon the order of this Court dated 5.7.2023 passed in *MC (El. Pet.) No.66 of 2022 in El. Pet. No.34 of 2022*.

[34] There is no dispute that the application under Order 7, Rule 11 CPC must be considered within the four corners of the election petition.

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

“24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

[36] In *Hari Shankar Jain v. Sonia Gandhi*, (2001) 8 SCC 233, the Hon'ble Supreme Court held:

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

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

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

....

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

34. *To sum up, we are of the opinion that a plea that a returned candidate is not a citizen of India and hence not qualified, or is disqualified for being a candidate in the election can be raised in an election petition before the High Court in spite of the returned candidate holding a certificate of citizenship by registration under Section 5(1)(c) of the Citizenship Act. A plea as to constitutional validity of any law can, in appropriate cases, as dealt with hereinabove, also be raised and heard in an election petition where it is necessary to decide the election dispute. The view of the law, stated by the learned designated Election Judge of the High Court of Allahabad cannot be sustained. To say the least, the proposition has been very widely stated in the impugned order of the High Court. However, in spite of*

answering these questions in favour of the appellants yet the election petitions filed by them cannot be directed to be heard and tried on merits as the bald and vague averments made in the election petitions do not satisfy the requirement of pleading material facts within the meaning of Section 82(1)(a) of RPA, 1951 read with the requirements of Order 7 Rule 11 CPC. The decision of the High Court dismissing the two election petitions at the preliminary stage, is sustained though for reasons somewhat different from those assigned by the High Court. The appeals are dismissed but without any order as to the costs.”

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

“61. *The legal position has been crystallized 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.”

[38] In the order in MC (El. Pet.) No.66 of 2022 in El. Pet. No.34 of 2022 relied upon by the learned counsel for the election petitioner, finding that the allegations set out in the election petition would constitute cause of action to maintain the relief, this Court dismissed the miscellaneous case holding that the election petition disclosed cause of action. However, in the instant case, as held supra, the allegations set out in the election petition do not constitute a valid cause of action to maintain the election petition.

[39] The Apex Court in the case of *T.Arivandandam v. T.V.Satyapal*, (1977) 4 SCC 467, 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.”

[40] On overall reading of the election petition, this Court is of the view that the election petition lacks material fact constituting the cause of action required under the RP Act and does not fulfill the mandatory

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

[41] In the case on hand, admittedly, the election petitioner has not pleaded the concise statement of material facts and material particulars against the first respondent. More importantly, the election petitioner has failed to allege or disclose how the scrutiny was improperly conducted by the returning officer or for that matter how the Government officials helped the first respondent during the scrutiny held on 14.2.2022 so as to allow improper acceptance of the first respondent's nomination papers.

[42] As rightly argued by the learned counsel for the first respondent, the averments made in the election petition are completely vague and lacks material facts constituting the cause of action required under the RP Act and, therefore, no trial is warranted on the basis of such vague and imprecise averments.

[43] *Prima facie*, the contention and the allegation of the election petitioner is based on assumption and imagination and the same cannot be the basis of challenging the election of the first respondent. Mere alleging without any material facts which the election petitioner relies his allegation is the abuse of the process of law and wasting the valuable time of this Court.

[44] This Court is of the view that the election petitioner not only failed to show the legitimate damage which he has endured but also failed to plead that due to undue influence over the voters because of the alleged improper affidavit, the first respondent won the election. In this regard, the election petition does not affirm the facts which are required for facilitating the case of the election petitioner. As state *supra*, mere mentioning of violation of the instructions of the ECI without any statement of material fact does not disclose cause of action.

[45] In the light of the aforesaid pronouncement, there is no escape from the conclusion that the election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the CPC. So also it emerges from the aforesaid pronouncement that appropriate orders in exercise of powers under the CPC can be passed if the mandatory requirements enjoined by Section 83 of the RP Act to incorporate the material facts in the election petition are not complied with.

[46] Since the election petitioner has not complied with the provisions of the RP Act, the election petition deserves to be dismissed by invoking the provisions of Order 7, Rule 11 CPC on the ground of non-disclosure of cause of action.

[47] In the result,

(i) M.C. (El.P.) No.113 of 2022 in Election Petition No.30 of 2022 is allowed. Consequently, Election Petition No.30 of 2022 is dismissed.

(ii) No costs.

JUDGE

FR/NFR

John Kom