

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****E.P. No. 5 of 2014**

1. Dr. Shukrajit Nayak, S/o. Lalman Nayak, aged about 67 years, R/o Qtr. No. 4, Gajanand Puram Colony, By Pass Road, Police Station- Kotwali Raigarh, Post- Raigarh Head Office, Tah. and Distt. Raigarh (C.G.)

---- Petitioner**Versus**

1. Roshanlal Agrawal, S/o. Budhram Agrawal, aged about 59 Years, R/o 74, Kirodimal Colony, P.S. Kotwali, Raigarh, P.O. Raigarh Head Office, Tah. and Distt. Raigarh (C.G.)
2. Ramesh Routrai, S/o. Makar Dhawaj, R/o. Chandhori, P.O. Chhichor Umariya, P.S. Pusore, Tah. Pusour, Distt. Raigarh (C.G.)
3. Tejram Malakar, S/o. Jay Malakar, R/o Village and Post- Kotasura, P.S. Pusour, Tah. Pusour, Distt. Raigarh (C.G.)
4. Tejram Sidar, S/o. Dayaram, R/o. Village and Post- Raampagula, Tah. Sarangarh, P.S. Sarangarh, Distt. Raigarh (C.G.).
5. Ritesh Vaidh, S/o Durga Prasad Vaidh, R/o Kaidimudha, Ward No. 31, Jutmill Road, P.S. Kotwali, Raigarh, Tah. Raigarh, Post- Jutmill Raigarh, Distt. Raigarh (C.G.)
6. Koushal Kumar Agrawal, S/o. Nand Kishore Agrawal, R/o House No. 101, Kalindi Kunj, Kabir Chowk, Post- Jutmill, P.S. Kotwali Raigarh, Tah. Raigarh, Distt. Raigarh (C.G.)
7. Jaikishore Pradhan, S/o. Kanhiya Lal Pradhan, R/o Chakradhar Nagar, Banglapara, Raigarh, Post- Main Post Office, Tah. Raigarh, P.S. Chakradhar Nagar, Raigarh, Distt. Raigarh (C.G.)
8. Tula Ram Saha, S/o. Jaldhar Saha, R/o. Village and Post- Panchdhar, P.S. Sariya, Tah. Barmkela, Distt. Raigarh (C.G.)
9. Narayandas Inklab Ghandhi, S/o. Hariram, R/o Inklab Bhawan, Subhash Chowk, Raigarh, Post- Main Post Office, Raigarh, Tah. Raigarh, P.S. Kotwali Raigarh, Distt. Raigarh (C.G.)
10. Rambha Patel, W/o. Prahlad Patel, R/o. Choubey Gali, Beside of S.P. Bangla, Darogapara, Tah. Raigarh, Post- Main Post Office, Raigarh, P.S. Kotwali Raigarh, Distt. Raigarh (C.G.)
11. Rajesh Kumar Tripathi, S/o. Kamla Prasad Tripathi, R/o. 159/1500, Kelo Vihar Colony, Raigarh, Tah. Raigarh, P.S. Chakradhar Nagar, Post- Main Post Office, Raigarh, Distt. Raigarh (C.G.)

---- Respondents

For Petitioner	:	Mr. Rajeev Shrivastava with Mr. Anumeh Shrivastava, Advocates
For Respondent No.1	:	Mr. B.P. Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

C A V Order

14/07/2015

1. The order shall govern the disposal of I.A. No.2, an application under Order 7 Rule 11 of the Code of Civil Procedure, filed by the respondent No.1, the returned candidate, wherein the respondent No.1 has challenged the tenability of the election petition and raised the preliminary objection that the election petition do not disclose the cause of action.
2. The petition is preferred inter-alia claiming the following relief :-
 - (1). declare the election of the respondent in the constituency No.16 of Raigarh (C.G.) as void.
 - (2). thus declare the petitioner as the successful elected candidate.
 - (3). and/or any other relief as the Hon'ble Court may deem fit in the interest of justice.
3. As would evident from the prayer made, the challenge is on the ground that the petitioner, who belongs to Indian National Congress for Legislative Assembly Constituency, 16 Raigarh and the respondent, who was the candidate of Bhartiya Janta Party, it is pleaded that the petitioner, lost the election for the reason,

corrupt practice was adopted by the respondent returned candidate. The petitioner received about 70453 number of votes, whereas, the returned candidate received 91045 number of votes, whereby the petitioner lost the election by margin of 20592 votes. It is pleaded by the petitioner that during election campaign it came to the notice that on 14.11.2013, election flying squad has taken action against the respondent candidate for adopting corrupt malpractices and on application being made, some documents were received on 13.12.2013. The set of documents have been placed alongwith the election petition. It is pleaded that on 14.11.2013, a party was being hosted at a hotel, wherein the respondent was hosting 40 odd members, thereafter on being raided the premises, 40 pieces of 36 inches colour Sansui Television sets were seized for which the hotel management failed to adduce any documents. The petition further alleges that subsequently the election officers caught hold of goods vehicle bearing number No.C.G.-10-C-9814 with 40 pieces of Videocon refrigerators and 76 pieces of Sansui Television Sets. Since the valid document could not be produced by the driver, "suspicion seeded" with regard to the activities carried by the respondent, which were brought to the notice of the Returning Officer. It is further alleged that by such documents as annexed, which shows nexus between the article seized and the intention of it being distributed amongst the potential voters which was made with ulterior motive by the respondent. In the grounds of the petition, it

is further alleged that distribution of the expensive gifts, television sets and refrigerators by the respondent has successfully induced and gratified voters into voting in his favour which eventually has caused the lost of majority to the petitioner. Therefore, the election of the respondent in constituency No.16 Raigarh is void.

4. After service of the notice of the election petition, an application under Order 7 Rule 11 of the Code of Civil Procedure raising preliminary objection was preferred by the returned candidate, the respondent No.1.
5. Learned counsel for the respondent would submit that the election petition do not disclose the material facts, the cause of action. It is contended that vague allegations have been made and in the election petition there are as many as 11 respondents have been arrayed and to whom the allegations is directed, the petition is completely silent. The counsel would further submit that in the petition at all the places the word respondents has been used, therefore, necessarily one has to draw a presumption that it is against the respondent, the returned candidate. It is contended that the election petition on such presumption can not be gone into for want of material facts. It is stated that since there are as many as 11 respondents, therefore, there should have been specific averments against the respondent No.1 that he adopted corrupt practices.

6. It is further contended that, it can not be assumed and presumed to go into for trial by respondent that the allegations are against him only. It is further contended that without prejudice even the allegations are presumed to be against the respondent No.1, who is the return candidate then in such eventuality what corrupt practice has been adopted by the respondent No.1 is silent and simply because he was present in the same party which was being organized by the Raigarh Bar Association, presumption of corrupt practice can not be shifted to the respondent No.1 alone. He further submits that nothing has been stated that who were 40 persons present in the meeting for which television sets were procured and were about to be distributed and not distributed. While referring to the documents, the counsel for the respondent contended that the documents Annexure P-5 & Annexure P-8 shows that television sets were carried through one Anil Transport and Mukesh Traders were the consignee. Therefore, it do not disclose the name of the respondent. He further submits that name of one Krishna Paswan, driver has been made but petition is further silent how he is related to the respondent. The respondent counsel placed his reliance in the case law reported in 1976 (3) SCC 275 and would submit that pleading of inducement is completely absent. Further reliance was placed in the case law reported in 2009 (9) SCC 310 and stated that material facts should have been pleaded by the parties in support of the case set up by him, to enable opposite party to know the case he has to

meet out. It is therefore, submitted that in absence of such vague pleading the respondent can not be directed to lend infinite enquiry by presuming the allegations are made against him. It was finally contended that the petition having no force and has failed to disclose the cause of action as the material facts has not been disclosed, therefore, the petition do not require that it should go in for trial and is liable to be dismissed summarily.

7. Per contra learned counsel for the petitioner submits that the petition is in the stage of inception. It is contended that the entire petition is on the basis of the document supplied by the Election Commission. As per Annexure P-7, which discloses the involvement of Roshanlal Agrawal, the respondent No.1. It is submitted unless the matter go in for trial, the corrupt practice can not be substantiated. The preliminary allegations, which are made in the petition are sufficient for this election petition go in for trial. He further submits that averments have been made that in a party being hosted, the respondent was present and the flying squad having raided the hotel recovered 40 pieces of Sansui television. He further submits that the vehicle was also seized, which were carrying refrigerators and Sansui television by the office of the Election Commission, which will lead to indicate that the respondent was involved in corrupt practice by offering bribery. The counsel further placed his reliance in the case law reported in 2015 (1) SCC 129 and submits that the petition can not be dismissed in limine merely because full particulars of corrupt

practice were not set out. It is contended that material facts have been stated in the petition, which disclosed the cause of action which gone only after going into for trial and the petitioner would be able to establish those facts before the Court, consequently, the application under Order 7 Rule 11 deserves dismissal.

8. I have heard the learned counsel for the parties, perused the pleadings.
9. On due consideration, the point emerges out on the basis of the preliminary objection as to whether the petition has disclosed the material facts, which would constitute the cause of action to go in for trial.
10. In order to appreciate the facts, the relevant section of Representation of the People Act, 1951 would be necessary.

17.1. The Representation of the People Act, 1951.

“83. *Contents of petition*—(1) An election petition -

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

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

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil

Procedure, 1908 (5 of 1908) for the verification of pleadings:

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

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

11. Similarly Order VI, Rule 2 of CPC, to the extent it is relevant, reads as under:-

“O.- VI, Rule -2. Pleading to State material facts and not evidence. - (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved.

(2) xxx xxx xxxx

(3) xxx xxx xxx”

12. In respect of the material facts, recently, the Supreme Court in a case law reported in **(2014) 10 SCC 547, C.P. John Vs. Babu M. Paliserry and others** has held in Para 18, 19 & 20 as under:

“18. When we read Section 83, the substantive part of Section 83(1) consists of three important elements, namely, that an election petition should contain a concise statement of material facts which

an election petitioner relies upon. The emphasis is on the material facts which should be stated in a concise form. Under Section 83(1)(b) it is stipulated that the election petition should set forth full particulars of any corrupt practice which is alleged by the petitioner. A reading of the said Section 83(1)(b) is to the effect that such particulars should be complete in every respect and when it relates to an allegation of corrupt practice it should specifically state the names of the parties who alleged to have committed such corrupt practice and also the date and place where such corrupt practice was committed. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice.

19. To put it differently, when the election petition is taken up for consideration, the Court which deals with such an election petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place, etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context,

both Sections 83 (1) (a) and 1 (b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94-A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of the First Class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in Form 25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statement of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.

20. Therefore, a conspectus reading of Section 83(1)(a) read alongwith its proviso of the Act, as well as, Rule 94-A and Form 25 of the Rules makes the legal position clear that in the filing of an election petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate

and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the election petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency.”

13. The material facts in respect of the election petition, was considered by their Lordship in case of ***Jitu Patnaik Vs. Sanatan Mohakud and Ors.*** reported in ***AIR 2012 SC 913*** in para 32 and 33, which is quoted as under :-

“32. A bare perusal of the above provisions would show that the first part of Order VI, Rule 2, CPC is similar to clause 1(a) of Section 83 of the 1951 Act. It is imperative for an election petition to contain a concise statement of the material facts on which

the election petitioner relies. What are material facts? All basic and primary facts which must be proved at the trial by a party to establish the existence of cause of action or defence are material facts. The bare allegations are never treated as material facts. The material facts are such facts which afford a basis for the allegations made in the election petition. The meaning of 'material facts' has been explained by this Court on more than one occasion. Without multiplying the authorities, reference to one of the later decisions of this Court in Virender Nath Gautam Vs. Satpal Singh and others shall suffice.

33. In Virender Nath Gautam, this Court referred to the leading cases of Philipps Vs. Philipps and others subsequent decision in Bruce v. Odhams Press Limited that referred to Philipps and observed in paragraphs 34 and 35 (Pg.629) of the Report as follows :-

“34. A distinction between “material facts” and “particulars”, however, must not be overlooked. “Material facts” are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. “Particulars”, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. “Particulars” thus ensure

conduct of fair trial and would not take the opposite party by surprise.

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

14. While applying the said principles laid down by their Lordships, the election petition on examination, purports that at Para-4 onwards, the petitioner has averred about the corrupt practice. It is stated that on 14.11.2013, the flying squad had taken action against respondent candidate. Now turning to the petition, as would be evident from the petition, there are as many as 11 respondents have been arrayed. Therefore, who was the respondent, out of 11 respondents and what corrupt practice was adopted by him is silent. Para further says about the documents relating to seizure and statement and videography. It also alleges that after seizure of the incriminating articles by the Officer Incharge, it was handed over on supurdnama to manager of the hotel, where party was being organized. The statement has been affixed to the effect as Annexure P-3. It is the statement of one Ravindra Jaina, working

in the hotel namely Shreshta hotel, when the raid was conducted. This person states that 40 numbers of Sansui colour television 36 inches were unloaded in the hotel and also narrates that a vehicle was also standing in the hotel, which was having banner of Kamal (Lotus) of Bhartiya Janta Party. Krishna Paswan, the driver of the vehicle stated that he unloaded 40 pieces of Sansui television in the Shreshta hotel. There is no pleading to the effect that the return candidate or at his instances the goods were off-loaded at the hotel. The pleading at para 4 though do not contain any allegation against respondent No.1, however, document contains one statement of Ratul Gupta, who states that the hotel was booked on 14.11.2013 for meeting of Bar Association by one Babulal Agrawal for 11 to 3 PM. The seizure memo Annexure P-4 shows that 40 numbers of television were seized on 14.11.2013 and was further handed over to the Ratul Gupta, the Manager of the hotel. Annexure P-5, is document of Anil Transport, which shows that certain goods were sent from Videocon company by Mukesh Traders alongwith invoice. Likewise at Para-5, it is averred that the vehicle of the respondent was present at hotel Shreshta, Raigarh and inside the hotel respondent was present hosting 40 odd members. It is further stated that the vehicle with BJP flag and banner was present and on search being made, 40 pieces of 36 inches of colour Sansui television were seized.

15. The reading of Para – 4 & 5 of the petition, which predominantly raises the allegation would go to show that these paras do not

particularly discloses as to how much the respondent No.1, the returned candidate was involved in such affair. Primarily paras do not say that who was the particular respondent out of 11 respondents arrayed. Further the statement of document too do not disclose the name of respondent No.1. These paras i.e. 4 & 5, if are read as a whole to ascertain the true import, the only inference can be made out that respondents were present in a meeting in a hotel wherein other 40 persons were being hosted. Without any addition or subtraction of word, if the pleading are further taken as a whole without reading in isolation, theory of presumption has to be applied in favour of petitioner that the allegations are attributed to only respondent No.1, the return candidate. On plain reading of these paras virtually, the respondent No.1 can not be encompassed in isolation and in order to meet out the allegation direct and unambiguous pleading should have been made by the petitioner against the respondent No.1.

16. Further reading would show reference is made to Annexure P-7 in the petition, which is a document from the office of Naib Tahsildar, Raigarh who was working on behalf of the Election Commission. This document purports that after seizure of the goods, since no documents were produced, "it appeared" on the date said goods were brought by Roshanlal Agrawal by projecting a false party. The reading of Para – 4 & 5 speaks about presence of 40 persons, even a single name is not disclosed in petition. If the

paras are read together, what was the role play by the respondent it is completely silent and do not disclose any fact in concise form and the vague material facts have been narrated. The averments made therefore, creates an uncertainty so as to make aware the respondent what case he has to meet out. It is quite possible that giving a number of persons of 40, without any single disclosure of name, the respondent will not get any lead to answer the facts narrated. In absence of any pleading particularly qua the respondent No.1, it can not be presumed that the allegations are attributed to him alone and make a speculative answer.

17. Further more reading of para 5 of the petition, the reference is made to Annexure P/3, Annexure P/4 and Annexure P/6. It is averred that the respondent candidate was present at hotel Shreshta with his vehicle and the BJP flag attesting it and inside the hotel respondent was present hosting the members. Annexure P/3 is the statement and Annexure P/4 is the seizure memo and Annexure P/6 is the compact disc and in this para too, no allegations have been made that seized 40 pieces television sets were seized from the respondent or their agent or worker. At para -6, it is further stated that vehicle bearing No.C.G.10-C-9814, driven by Krishna Paswan loaded with 40 pieces of Videocon refrigerators and 76 pieces of Sansui television sets were caught hold of, but how these facts are related to the respondent, it is completely silent. Material facts can be stated to be upon which the plaintiff's cause of action depends. It is absolutely essential

that all basic and primary facts which must be proved at the trial by the party to establish the existence of cause of action are to be stated and in the election petition. In the context of corrupt practice, material facts would mean all basic facts constituting the ingredients of particular corrupt practice alleged.

18. Cumulative reading of paras 4, 5 & 6 of the petition if examined, petitioner has failed to show any linkage of corrupt practice, adopted by the respondent as to whether, the goods seized were handle by the respondent or he was in helm of affair in distributing the goods, therefore, the seizure, if any, of the goods even if seized, in absence of pleading by presumption that it was by respondent No.1, the same can not be related to the respondent No.1 as pleading should have contained the same.
19. As has been laid down by the Hon'ble Supreme Court in case of *C.P. Jhon* (supra), Section 83 (1)(a) and (1) (b) and the proviso play a very key role since the election petitioner can not simply raise an allegations of corrupt practice and get away with it. Reading of Section 83 (1) (a) read alongwith the proviso of the Act and the Rules 94-A and Form -25 of the Rules mandates that election petitioner should take extra care and leave no room for doubt while making allegation of corrupt practice indulged in by the successful candidate.
20. The reliance is placed in Annexure P/7, which is the document of Naib Tahsildar, shows that allegations of suspicion were made on

presumption. The said action was presumptive one and the election petitioner also at Para – 7 of the petition has stated that after going through the ambiguous statements recorded by the In-charge it “seeded suspicion”. In other words, the election petitioner therefore, himself has failed to plead categorically what corrupt practice was adopted by respondent supported by legally acceptable material evidence without any iota of doubt as to such allegations.

21. In case of ***Naresh Kumar Patel Vs. Shri Nand Kumar Patel and others***, reported in ***2006 (2) C.G.L.J. 470***, it is held as under :-

“28. In the matters of *Samant N. Balakrishnan Vs. George Fernandez*, it has been held that first, Section 83 of the Act is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. Second, omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. Third, the function of particulars is to present in full a picture of the cause of action to make the opposite party understand the case he will have to meet. Fourth, material facts and particulars are distinct matters. Material facts will mention statements of fact and particulars will set out the names of persons with the date, time and place. Fifth, material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. Sixth, in stating the

material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost. The fact which constitutes a corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Seventh, an election petition without the material facts relating to a corrupt practice is no election petition at all.”

22. Further survey of election petition would go to show that the petitioner has stated that the respondents has distributed the television sets and refrigerators and thereby successfully induced and gratified the voter to vote in his favour and which has caused loss of majority to the petitioner. The petition again is silent on the issue as to who was the respondent who has done such act. It also alleges that free and fair election was not conducted and by adopting corrupt practices and different items were distributed to the voters. Here also particular of the respondent is absent. In the election petition, 11 respondents were arrayed and against whom, the petitioner has made allegation of corrupt practice can not be prima-facie ascertained. So the returned candidate has to presume the allegation is against him only. It is settled proposition that person who has contested the election and after loosing, while challenging has to seriously construct the same.
23. The Hon'ble Supreme Court in case of **Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar**, reported in **(2009) 9 SCC 310**, has reiterated the view observed in case of *Hardwari Lal V. Kanwal Singh*, which reads as under :-

(I). “46. In *Hardwari Lal v. Kanwal Singh*, a three -Judge Bench of this Court observed as under: (SCC p.221, para 22)

“22.....The gravamen of the charge of corrupt practice within the meaning of Section 123 (7) of the Act is obtaining of 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.”

(II). It was held further at para 50 as under :

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

(III) Further at para 57, it is held as under :

“57. It is settled legal position that all “material facts” must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party can not be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain

a concise statement of “material facts” on which the petitioner relies.”

24. Similarly the Hon'ble Supreme Court in case of ***Ashraf Kokkur Vs. K.V. Abdul Khader and others***, reported in **(2015) 1 SCC 129**, at Para – 25 has held as under :-

“25. In *Hari Shanker Jain v. Sonia Gandhi*, a three-Judge Bench of this 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. To quote para 23 (SCC p. 251)

“23..... 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* and *Jitendra Bahadur Singh v. Krishna Behari*.). Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts

would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan v. P.J. Francis* this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead 'material facts' is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.”

25. Therefore, by application of such principles, if the, pleading of the petition are traversed through in the opinion of this Court in order to answer the allegations, the returned candidate has to presume that the allegations have been made against him and leaving aside the other 10 respondents. The pleading further if are traversed through, it do not show that what the petitioner wanted to convey. True that the pleading is an expression of art and science and expression may be pointed precise and despite vague the intention should have been gathered, but in the instant case even reading the entire allegation it appears that it is to be answered on the basis of presumption. Therefore, it can not be the spirit of election petition. It is relevant to state that since the successful candidate in the election has got support of the majority of the voters who cast their votes in his favour, the success gain by the candidate in a public election can not be

allowed to be called in question by any unsuccessful candidate by making any shady allegation and drag the candidate to the Court. The material facts should have been included in the pleadings and thereby the case law relied on by the petitioner do not dilute the facts whereby it can be presumed that respondent has to answer the allegations on the basis of presumption.

26. Even if it is assumed that pleadings are against only this respondent, pleading goes to show that no allegations have been directly attributed against the respondent for distribution of any goods and only allegations of hosting 40 odd members exists. Therefore, the petition in my opinion do not contain any pleading of material fact of corrupt practice against the respondent No.1.
27. In view of forgoing observation, it is held that the election petitioner has failed to disclose the material facts against the returned candidate, which is the mandatory requirements of Section 83 of the Act of 1951. Therefore, in view of the same, the presumption can not be drawn in absence of particular pleading of disclosure, specially when the allegations of corrupt practice have been made. Therefore, in consequence thereof, I am of the view that since the material facts are not pleaded in the election petition and, the instant petition is liable to be dismissed and is accordingly dismissed.

Sd/-
(Goutam Bhaduri)
Judge