

HIGH COURT OF CHHATTISGARH AT BILASPUR

E.P. No. 09 of 2014

Smt. Vani Rao, W/o. E. Ramendra Rao, Aged About 53 Years, R/o Near Satyam Talkies, P.S. Civil Lines, Head Post Office- Bilaspur, Distt. Bilaspur C.G.

---- Petitioner

Versus

1. Shri Amar Agarwal S/o Late Lakhiram Agrawal, Aged About 52 Years R/o Civil Lines, Bilaspur C.G.
2. The Returning Officer/collector Bilaspur, Distt. Bilaspur C.G.

---- Respondents

For the Petitioner : Mr. B.P. Sharma and M.L. Saket, Advocates
For Respondent No.1 : Dr. N.K. Shukla, Sr. Advocate with Shri A. S. Kachhawaha, Shailendra Shukla and Ms. Pushpa Dwivedi, Advocates.

SB: Hon'ble Shri Goutam Bhaduri, J

CAV ORDER

16/09/2015

1. This order shall govern the disposal of application under Order 7 Rule 11 of C.P.C., filed on 21.03.2014 wherein the Respondent No.1 has challenged the tenability of the election petition. Another application was moved under Order 7 Rule 11 on 09.03.2014 which is not pressed by the respondent.
2. The written statement in this election petition has been filed on 08.5.2014. Prior to that an application under Order 7 Rule 11 of CPC was preferred to challenge the maintainability of the petition. The Instant I.A.No.1/2014 is under Order 7 Rule 11 of CPC filed by Respondent No.1, the returned candidate, who contested the election for the Chhattisgarh State Legislative Assembly held in

the year 2013 from constituency No.30 Bilaspur as a candidate of Bharatiya Janta Party.

3. Dr. N.K. Shukla, learned senior counsel appearing on behalf of respondent No.1 submits that primary ground of challenge in this election petition is that the voters list which was earlier utilized was erroneous, therefore, it resulted to cause defeat of the petitioner. It is contended that such ground cannot be made a subject matter to set aside the election of Respondent No.1 under the Representation of People Act, 1951 (For short "R.P. Act 1951"). It is stated that since the pleadings do not constitute a cause of action triable under the Act 1951 as such the petition is not tenable. It is further submitted that since the entire cause of action is based on defective voters list, the same cannot be subject of cause of action in the election petition as the Court cannot probe into the matters governed by Representation of People's Act 1950 and consequently, the election cannot be declared void. Further submissions of counsel for respondent No.1 are as follows:

(i) that the grounds to set aside the election is enumerated in Section 100 of the R.P. Act, 1951 and the provision of sub-section (1)(d)(iv) mandates that in order to declare a election void, the non-compliance is to be within the provisions of Constitution or of this Act or any Rules made under the Act. It is, therefore, submitted that the grounds of defective voters list is the

subject which is covered under the Act of 1950 cannot be made a ground to challenge the election under the Act of 1951.

(ii) The counsel further made a reference to the Representation of People Act, 1950 (hereinafter referred to as “the Act of 1950”) and contended that the preamble of the Act is for preparation of electoral rolls, manner of filing seats in council to be filled by the representatives which is covered under Part-III of the Act of 1950.

(iii) He further referred to Section 21 of the Act of 1950 which is for preparation and revision of electoral rolls. Section 22 is for correction of entries in electoral rolls. Section 23 is for inclusion of names in electoral rolls and Section 24 is for appeals. Therefore, he submits that the entire procedure for inclusion and exclusion of names are covered by the Act of 1950, which is a Code in itself, so the election petition would not lie on the ground of erroneous electoral list and such remedy is not available to the petitioner.

(iv) He further referred to Section 30 of the Act of 1950 and would submit that the jurisdiction of Civil Court is barred under the Act of 1950 about preparation of electoral roll, and therefore, the finality has been given to such preparation of electoral rolls, which can not be a subject matter of election petition.

(v) The learned counsel read out the averments of the election petition and would submit that the allegations about the deletion of

name of voters have been made but it is not founded on any material facts.

4. Learned counsel made a reference to Para 4 of the election petition and stated that the entire preamble of the election petition is contained in this para. Referring to pleading, it is stated that pleading to the effect that how the will of people of the region was over shadowed by employing the people of other region and imaginary facts are produced that since the real voters were eclipsed by the other voters who are outsiders, the monarchy was created. It is stated that such pleadings are vague and without any foundation and pleadings of material facts.
5. It is further submitted that at Para 5, the petitioner has stated that thousands of voters who were outsiders were added in the voters list and therefore, the election be declared void which cannot be questioned in election petition. It is contended that Representation of People's Act, 1950 lays down the scheme with reference to the electoral roll.
6. Respondent No.1 has further contended that the entire gist of the election petition is stated at para 4. It is predominantly stated that the people who were entitled were not allowed to cast their votes as the people/voters of other constituencies have caste their votes, therefore, the entire challenge was on the defective voters list.

7. In this context, he referred to a case law reported in **AIR 1963 SC 458** and would submit that the Civil Court shall have no jurisdiction to question the legality of any action taken by or under the authority of Electoral Registration Officer it can be rectified only in the manner prescribed by law by preferring an appeal under Rule 27 of the Rules or by resorting to any other appropriate remedy. Therefore, it is contended that since the object of legislature was to give finality to the subject, the defective electoral rolls can not be questioned in this election petition.
8. He also made a reference to **AIR 1970 SC 340** and stated that the validity of such votes once cast can not be questioned by way of election petition and would submit that meaning thereby the election can not be challenged on the ground of wrong electoral rolls.
9. It is further contended that Representation of People Act, 1950 provides for preparation of voters list. Accordingly, Section 21 of the Act, 1950 deals with preparation and revision of electoral rolls and section 22 deals with correction of entries in electoral rolls. He further submitted that in Section 22 of the Act, 1950, 3 grounds are mentioned as (a)(b)(c) wherein the words 'person concerned' have been used. So according to the Act, the individual entries are to be examined and not in bulk or group and before doing so the individual has to be heard. He further made a reference to Section 23 of the Act, 1950 and submitted that the inclusion of names in the electoral roll is made under Section 23,

which is an individual right and after the electoral roll is prepared, the same cannot be subject of challenge after the date of nomination. It is submitted that in this case, the date of nomination is 01.11.2013. Thereafter, the electoral rolls reached to the finality. So if any individual is aggrieved then the appeal lie u/s 24 of the Act and the jurisdiction of Civil Court is barred u/s 30 of the Act, 1950. So the finality has been given to the electoral roll. It is further contended on behalf of the respondent No.1 that vague averments have been made about the corrupt practice without any material particulars thereof and with respect to the expenses of the election, vague statements have been made without any material particulars so as to know the respondents as to what case he has to meet out. Therefore, in such ambiguity, no cause of action arises for consideration, therefore, the petition is liable to be dismissed.

10. Per contra, Shri B.P. Sharma, learned counsel appearing on behalf of the petitioner submitted that -

(i) the respondent No.1 has completely misinterpreted the pleadings. He would submit that it is not a case of defective voters' list. He submits that by the pleading the cause of action would be clear from para 5 of the petition wherein it is stated that the respondent being Member of Legislative Assembly for the last 3 consecutive terms employed illegal and unethical attitude to manage the affairs with the help of concerned officers and thousands of persons who are not the voters have been allowed

to vote. He submits that the case is, therefore, covered under Section 123(7) of the Representation of People's Act, 1951 which takes within its sweep of obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent for furtherance of the prospects of the candidate's election. It is contended that the corrupt practice can be in furtherance of prospects of that candidate if it has been abetted by any Gazetted Officers. He, therefore, submits that here the officers of the State Government have supported the respondent No.1 to procure and abet the voters in furtherance of voting and thereby the respondent has succeeded in election with the help of concerned officers.

- (ii) It is further contended that at the time of election the petitioner was a mayor of the Bilaspur City, therefore, she had the privilege to gauge the mind of people and in pre-poll survey, it came to the notice of petitioner that false voters list has been prepared. Referring to a place of voting i.e., booth No.101, he submitted that according to the ratio of voting as against the population, it reached more than 100% which is abnormal, therefore, it will lead to make an inference that the Government officers were working for a particular political party i.e., BJP which is in power. He submits that at para 5 of the petition, this fact has been pleaded that false and frivolous names of voters were added with the help of government officers and paras 6 & 7 would disclose that as many as 6000 voters were from outside i.e., the

adjacent legislative assembly constituency of Beltara. It is further submitted that on the particular day, as would be evident and as pleaded at para 8, thousands of people came from outside to vote for respondent No.1 and therefore, it would amount to corrupt practice.

(iii) He further referred to pleading that the voting ratio which is shown along-with the documents filed would show that there has been abrupt increase in the voting which is abnormal and would lead to show that corrupt practice has been adopted as in more than permissible limits the voters have cast their votes. By referring to a case law reported in **AIR 1975 SC 2299 (Indira Nehru Gandhi Vs. Raj Narain)** he submitted that section 101 (b) of the Act 1951 speaks of commission of corrupt practice by a returned candidate and it can amount to commission of corrupt practice by a candidate before he became a returned candidate. Therefore, since respondent No.1, returned candidate, had taken the help of government officers to include the names of voters who were not belonged to particular area i.e., Bilaspur constituency, however, have caste their votes thereby respondent No.1 procured and abetted the government officers for furtherance of his prospects which would amount to corrupt practice. The petitioner, therefore, submits that the application under Order 7 Rule 11 is liable to be dismissed at the threshold having no merit.

11. I have heard learned counsel for the parties and perused the pleadings of the petition.

12. One of the basic objections raised by respondent No.1 is that the nature of complaint made in the election petition cannot be gone into by way of election petition as the Act of 1951 does not permit such ground to challenge the election petition on the ground of defective voters list. In this context, it would be relevant to note certain dates of Election Schedule which are reproduced hereinbelow for the sake of convenience.

Date of notification of election	25th Oct. 2013
Date of filing nomination	1st Nov. 2013
Date of scrutiny of nominations	2nd Nov. 2013
Date of withdrawal/taking back the name	4th Nov. 2013
Date of election	19th Nov.2013
Date of result declaration	8th Dec. 2013

13. The petitioner secured 56,656 votes whereas respondent No.1 the returned candidate had secured 72,255 votes. When Para 4 of the petition is read, it starts with the words *“the question in the present petition which the petitioner is raising that if in a given case any person overpowered the will of the people by managing the affairs or the will of the people of the region is overshadowed by employing voters of other region”* It further states that the will of true voters of the area has not been depicted and those persons who have been allowed to vote are not the voters of the region and further have been allowed to vote *en-block* in favour of Respondent No.1. The pleading, therefore,

suggests that the names of outside voters were included in the voters list and those voters have cast their votes.

14. Section 100 of the R.P. Act, 1951 deals with grounds for declaring election to be void. The relevant part of section 100 which would be applicable in the instant case is reproduced herein below :

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) xx xx xx

(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) xx xx xx

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

(i) xxx xxx xxx

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

(iii) xxx xxx xxx

(iv) by any non-compliance with the provisions of Constitution or of this Act or of any rules or order made under this Act

the High Court shall declare the election of the returned candidate to be void.

15. At para 4, it has been stated that the names of outside persons have been added in the electoral roll. It is not in dispute that the Parliament amended the provisions of 1951 Act in 1956 and before that, the provisions of Section 100(2)(c) of Representation of People Act, 1951 were as follows:-

“100 (2)....., if the Tribunal is of opinion -

(a) xx xx xx

(b) xx xx xx

(c) that the result of the election has been materially affected....., by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election....., the Tribunal shall declare the election of the returned candidate to be void.”

It is therefore important to note that the Parliament while amending the provision had omitted the words 'or of any other Act or rules relating to the election. Thereby obviously, the courts jurisdiction was limited by the Amendment made in 1956 in section 100(1)(d) (iv) of Act 1951. Therefore, it will lead to make an inference that the jurisdiction was taken away or abridged except for (i) any breach of constitution or (ii) non-observation of provisions of the Act of 1951 or Rules made under the Act of 1951.

16. So on careful reading of the Act of 1951 and upon considering the relevant statutory provisions and the authorities aforesaid, it points out that violation or non-observance purely of the Act of 1950 or

any rules made thereunder is outside the purview of Section 100(1)(d)(iv) of the Representation of the People Act, 1951 and, as such, an Election Court which derives its jurisdiction from the 1951 Act is not entitled to look into that violation or non-observance.

17. The petitioner contended that the names of outside voters were added in the electoral roll. If section 36 sub-section (7) of the Act, 1951 is perused, it provides that at the time of scrutiny, entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of People Act, 1950. Therefore, the question as to whether the names of voters were lawfully included in the electoral roll as defined in section 2(e) of the Act, 1951 cannot be given an interpretation that the words the eligible and lawful elector on the given date. So if the names of elector was included in the voters list, the finality of such list is attached u/s 30 of the Act of 1950 as no civil court shall have the jurisdiction to question the same. Likewise, the High Court shall not have any jurisdiction to question the legality of inclusion of persons name in electoral roll except where it can be shown that there is violation of an express provision of constitution. In the instant case, no pleading exists about any violation of provision of constitution.

18. The argument of defect in the voters list was considered by Their Lordships way back in the year 1976 in a case of ***Ramji Prasad Singh Vs. Ram Bilas Jha AIR 1976 SC 2573*** wherein the Court interpreting the provisions held that when the names have been included in the electoral roll the entries are conclusive of the right of those members to vote at the election and the Court has no power or jurisdiction to go behind the entries and inquire into their validity. The Supreme Court while interpreting section 62 sub-section (1) of the Representation of People Act 1951 at para 19 stated that this section provides that “No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.” The Apex Court further held that sub-section may be split up in two parts so as to make its meaning and intendment clear. It provides in the first place that a person who is not entered in an electoral roll of constituency shall not be entitled to vote in that constituency. Secondly, it provides that, except as expressly provided by the Act, every person who is for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.
19. The Supreme Court in a case law reported in **AIR 1963 SC page 458** while interpreting inclusion of names of voters of the election roll held that it cannot be questioned in civil court but it can be rectified only in the manner prescribed in law i.e. preferring an

appeal. At this juncture, if we refer to Part-III of Representation of People Act 1950, it deals with electoral rolls for assembly constituencies. Section 14 is about the definition. Section 15 says provides for electoral roll for every constituency. Section 16 deals with disqualifications for registration in an electoral roll. Section 17 says that no person would be registered in more than one constituency. Section 18 says that no person will be registered more than once in any constituency. Section 19 says about the condition of registration. Section 20 is meaning of “ordinarily resident” whereas Section 21 is about preparation of revision of electoral rolls. Section 21 in this connection would be relevant which lays down preparation and revision of electoral roll. Like wise, section 22 of the Act, 1950 provides for correction of entries in electoral roll. Section 23 is about the inclusion of names in the electoral rolls. Section 24 provides for appeal. Section 30 of Part -V speaks about the bar of civil courts jurisdiction.

20. Therefore, necessary inference will be that the electoral roll having been prepared before the prescribed date, it will have finality. Hence, the finality of the electoral roll cannot be challenged in a proceeding challenging the validity of election. The right to vote being purely a statutory right, the validity of vote is to be examined on the basis of provisions of the Act. Therefore, the entries in the electoral roll are final and cannot be challenged. The supreme Court in **Kabul Singh Vs. Kundan Singh, AIR 1970 SC 340** interpreted the provisions and at para 9 held thus :

“9. It is not the case of the appellant that Tarsem Singh had incurred any of the disqualifications mentioned therein. No other provision of law in the Act or in any other law was brought to our notice disqualifying him from exercising his vote. The right to vote being purely a statutory right, the validity of any vote has to be examined on the basis of the provisions of the Act. We cannot travel outside those provisions to find out whether a particular vote was a valid vote or not. In view of Section 30 of the 1950 Act, Civil Courts have no jurisdiction to entertain or adjudicate upon any any question whether any person is or is not entitled to register himself in the electoral roll in a constituency or to question the illegality of the action taken by or under the authority of the electoral registration officer or any decision given by any authority appointed under that Act for the revision of any such roll. Part III of the 1950 Act deals with the preparation of rolls in the a constituency. The provisions contained therein prescribed the qualifications for being registered as a voter (section 19), disqualifications which disentitle a person from being registered as a voter (section 16), revision of the rolls (section 21), correction of entries in the electoral rolls (section 22), inclusion of the names in electoral rolls (Section 23), appeals against orders passed by the concerned authorities under Sections 22 & 23 (section 24). Sections 14 to 24 of the 1950 Act are integrated provisions. They form a complete code by themselves in the matter of preparation and maintenance of electoral rolls. It is clear from those provisions that the entries found in the electoral roll are final and they are not open to challenge either before a Civil Court or before a Tribunal which considers the validity of any election. In *B.M. Ramaswamy v. B.M. Krishnamurthy*, 1963-3 SCR 479- (AIR 1963 SC 458), this Court came to the conclusion that the finality of the electoral roll cannot be challenged in a proceeding challenging the validity of the election.”

21. Further, the application of Sections 21 & 23 of the Representation of People Act 1950 and Rules 20 & 23 of Registration of Electoral Rules (1960), which govern preparation of revision of electoral roll and inclusion of names in the electoral roll was considered by the Supreme Court in ***AIR 1985 SC 1233 Lakshmi Charan Sen Vs. A.K.M. Hassan Uzaman***. The Apex Court in such judgment interpreted the effect of Act and Rules and came to a finding that right to be included in the electoral roll or challenge to the inclusion of any name in the roll is a right conferred upon an individual. Further it held that even if the names are wrongly included or not included, the election will not be vitiated and the election petition to be considered on the basis of electoral roll in force on the last date of making nomination. The Supreme Court at Paras 15 & 20 held thus :

“15. Holding the elections to legislatures and holding them according to law are both matters of paramount importance. On the one hand is the individual's statutory right of franchise, on the other is the constitutional obligation imposed by Article 168 that “For every State there shall be a Legislature....” We find it somewhat odd that, in the instant case, individuals whose rights are alleged to have been violated have not come to the Court at all. Not one out of the eight lakhs. Persons who have come to the Court are members of a political party who claim to represent them. While we are on this question, it must be emphasized that Election Laws do not recognize political parties except in rule 11(c) of the Registration of Electors Rules, 1960, the Election Symbols (Reservation and Allotment) Order, 1968, and

Explanation 1 to Se.77(1) of the Act of 1951. The right to be included in the electoral rolls or to challenge the inclusion of any name in the roll is a right conferred upon an individual and not upon any political party. The petitioners are espousing the cause of unnamed and undisclosed persons through a writ petition, which does not even claim to possess a representative capacity. The upshot of petition filed by them is that some 3 crores of voters were being deprived of an opportunity to exercise their franchise in order that an investigation should be made as to whether the names of some 5 lakhs and odd persons should be included or excluded from the electoral roll.

20. As a result of this discussion, it must follow that the fact that certain claims and objections are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations.”

22. By application of the aforesaid legal principle, even if the submission of petitioner as made at para 4 is admitted to the effect that the wrong/outsider voters were allowed to be incorporated in the voters list, the same cannot be made a ground as it cannot be inferred that the acceptance of voters included in the voters list who were outsiders has vitiated the election. The averments of Para 4 can be looked into from other angle also. The petitioner has categorically pleaded that few of the voters were included in the voters list who were not residents of particular area and are residents of outside area and they have

voted for respondent No.1. The said averments are completely on the basis of presumption. Even if it is admitted for the sake of convenience that few of outside voters have voted, in secret ballot system the right to vote being purely an individual statutory right which is confidential in nature it cannot be inferred that all the outside voters whose names were included in the voters list have particularly voted for only respondent No.1 and thereby have not voted in favour of the petitioner. It can also be inferred that the outside voters have cast votes in favour of the petitioner, therefore, the election petition on such ground cannot be gone into only on the basis of presumption thereby in absence of any material particulars.

- 23.** Now if paras 5 & 6 of the petition are perused, the petitioner has averred that respondent No.1 has been elected continuously for the last 3 terms and during this period in order to create a monarchy has employed all such illegal activities and managed the affairs with the help of concerned officers by adding the names of thousands of outside voters who are not the voters of the assembly constituency of Bilaspur. It is further pleaded that the Congress Committee of Bilaspur city has made complaint to the District Election Officer much prior to the election. Admittedly, no complaint is made by the individual. Section 23(3) of the Representation of People Act, 1950 takes away the power of the Electoral Registration Officer or the Chief Electoral Officer to correct the entries in the electoral rolls or to include new names in

the electoral rolls of a constituency after the last date for making the nomination for election in that constituency and before the completion of that election. Section 23(3) of the Act 1950 does not deal with any mode or procedure in the matter of registering the voters. Rather it interdicts the concerned officers from interfering with the electoral roll under the prescribed circumstances. It puts stop to the power conferred on them. The object of section 23(1) & (2) of the Act 1950 is to see that to the extent possible, all persons qualified to be registered as voters in any particular constituency should be duly registered and to remove from the rolls all those who are not qualified to be registered. Sub-section (3) of Section 23 is an exception to the rules and it gives mandate to the electoral registration officers not to amend, transpose or delete any entry in the electoral roll of a constituency after the last date for making nominations for election in that constituency and before the completion of that election.

24. According to the pleading, the Congress party has raised objection but if the registration of electoral rolls u/ss 19, 20 is examined, it would reflect that it is a right conferred on an individual and not on a political party. This rule was also further interpreted and affirmed in a case law reported in **AIR 1985 SC 1233 Lakshmi Charan Sen Vs. A.K.M. Hassan Uzaman** wherein the Supreme Court held that the right to include in the electoral roll or to challenge the inclusion of any name in the roll is a right conferred upon an individual and not upon any political party.

Therefore, the pleadings made in paras 5 & 6 of the petition being vague and not in conformity with the Act and Rules of Representation of People Act 1950 consequently cannot be looked into to challenge the election under the Act of 1951.

25. Further Para 7 has again repeated the averments of earlier paras 4 & 5 wherein it was pleaded that the outside voters had voted for respondent No.1 and that can be inferred increase in voting percentage. The pleadings are not to the effect that the names of voters were included after the date of nomination, but it says that wrongly the names were included. It is vague about such date and time of inclusion of names which only makes faded/ chance averments in the pleading. Para 8 further purports that the Congress party requested for physical verification to correct the names, made complaint and asked the government officers to correct the voters list but nothing was transpired. Like-wise at para 9 it is stated the complaint was made to one Devendra Kesarwani, Chief Electoral Officer, for correction of voters list but the same was not adhered to and the said inaction was committed with an intention to benefit Respondent No.1. At Para 10 of the petition it is averred that according to the guidelines of Election Commission of India, if the voting takes place more than the percentage of the Electoral Population Ratio (EP Ratio) i.e.. 61% fixed for the whole country, it would amount to unfair practice. It is contended that out of the total population, the percentage of voters has been increased to 79.2% which is more

than 61% fixed by the Election Commission, therefore, it would lead to show abrupt increase in electoral population in a particular area, which made No.1 returned candidate and the persons who were not voters of the Bilaspur constituency have voted *en-block* in favour of respondent No.1 and the Government officials despite lodging of complaint have not taken any step.

- 26.** Like wise, at para 12, it is pleaded that abrupt increase in voting pattern took place but the petitioner was in know of the general mood of the people for whom they wanted to vote and since the general people wanted to vote out respondent No.1, with the help of Government Officers respondent No.1 has taken such steps for deleting the names of voters of the region who may not vote for him and thereby he had got the votes in his favour and became returned candidate.
- 27.** Section 83(1) of the Act 1951 reads as under:

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.

- 28.** Reading of paras 5 to 12 of the petition would reveal that the petitioner has made averments but failed to state the material facts. At para 5, it is stated that with the help of government officers the names of voters were added. But the questions as to who were the Government officers, when the names of outside voters were added, whose names were added are completely silent and unexplained.

(ii) Likewise at para 6, serious defect of the voters list was again pleaded and it is stated that thousands of voters have been added who are not people of Bilaspur constituency, but the questions as to who are persons and where they have voted are completely vague and remains unanswered. It is also stated that the names of same voters were found in two constituencies i.e., Bilaspur and Beltara legislative assemblies but again the averments are completely vague so far as it relates to questions as to who were the persons, whose names were present in both the places and only reference of some complaint has been made about the objection of voters list, therefore, evidently the allegations are again falling back to the fact of defective voting list.

(iii) Likewise, at para 7, it is stated that on inspection it has been found that as many as 6000 voters were not of Bilaspur constituency and they were outsiders but no material particulars have been furnished as to who were outsiders. Not a single example has been stated in para 7 of the petition.

(iv) Again at para 8, the repeated averments have been made about the defective voters list and it is stated that despite complaint, nothing had transpired.

(v) Similarly, in para 9 reference was made about the complaint made to one Devendra Kesarwani for correction of voters list but it is stated that nothing transpired. Likewise in paras 10 & 11, electoral population ratio has been pleaded and it is stated that abrupt increase in the voters was made at the behest of respondent No.1 and the people though wanted to vote out respondent no.1, their will was over shadowed but how it took place, in what manner is completely silent. In order to appreciate these pleadings a positive presumption of commission of corrupt practice has to be held in favour of the petitioner without being substantiated by clear pleading.

29. The averments made in these paras are too vague. In order to go in for a trial in an election petition, if the averments in these paragraphs are taken into their face value, hypothetical presumption has to be drawn that certain voters who wanted to vote for the petitioner could not vote, but the persons who were

not the residents of a particular area have voted in favour of respondent No.1, returned candidate, meaning thereby the complete disclosure of franchise exercised by the people is available with the petitioner. It will be too vague to infer that some people have cast votes for respondent No.1 and have not cast votes for the petitioner thereby defeating the entire spirit of the secrecy of the ballot system so as to make a roving enquiry.

30. Reading of paras 13 & 14 would show more or less repetitions of the same averments that though actually voters wanted to vote out respondent No.1 but they were not allowed to vote with the help of government officers and their names were deleted. Further collective reading of paras would show the averment that 8000 voters were not allowed to vote as their names were deleted is too vague without any particulars. Consequently, it again points out the defective voters list. It also narrates the incident of deletion of names of one Ashish Dubey and Vinayak Rao Wasi of a particular areas and it is stated that they are residents of Purana Sarkanda and Kuddudand respectively and their names were deleted. Further it is stated that various persons of the concerned areas were not allowed to vote by the Presiding Officer. In detail the repetitions have been made in this para stating the same fact time and again that certain voters though were residents of a particular areas, were not allowed to vote with the help of government machinery. It is further averred in this para that the persons who were not allowed to vote in fact wanted to vote out

respondent No.1. Para 14 contains the averments as to improper reception and refusal of votes. In this para, it is stated that there was improper reception of votes of the persons who are not the actual voters of the particular assembly constituency and at the same time, there was improper rejection of votes of those persons who are actual voters of the area. Necessarily, if the over all pleadings of the petition are considered together it leads to point out about the defective voters list or in the alternative, names of persons who are residents of particular area, have not been included. All the averments are too vague in nature and only general and bald allegations have been made that certain voters have not been allowed to vote.

31. In this context, if the provisions of substantive part of Section 83(1) is perused, it mandates that the election petition should contain concise statement of the material facts on which the petitioner relies upon. Under section 83(1)(b) it is stipulated that the election petition should set forth full particulars of any corrupt practice which are alleged by the petitioner. In these paras, general averments have been made. Neither para 14 contains that respondent No.1 was supported by all the government officers and few voters were not allowed to vote. Except the averment that the names of only two persons who were said to be belonging to particular areas were deleted, nothing has been stated that who were the persons not allowed to vote by the Government Officers. In absence of any pleadings of any material

fact the Court trying the election petition cannot venture to direct any roving enquiry to collect the evidence and substitute it with befitting pleading.

32. This Court in case of ***Naresh Kumar Patel Vs. Nand Kumar Patel reported in 2006 (2) CGLJ 470*** in respect of material particulars have observed 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.”

33. Reverting to paras 15 & 16 of the petition, it has been pleaded that respondent No.1 allured the voters. Further it speaks about the complaint made to one Avinash Sharan, who was the Commissioner, Municipal Corporation that respondent No.1 was made Chief Guest in some programme. It further speaks that respondent No.1 at the relevant time being Cabinet Minister of Urban Administration has exercised undue influence and one Sudhir Gupta and Devendra Kesarwani who were also the Government Officers worked for respondent No.1 thereby undue influence was exercised. Para 16 also contains the repetition of the same facts about the assistance from the Government Officers and therefore, the allegations of corrupt practice are alleged. Thereby reading the averments would show that no pleading of material facts exist to show that the voters choice was arrested. Freedom in exercise of judgment which engulfs a voter's right, a free choice, in selecting the candidate whom he believes to be best fitted to represent the constituency should be shown to have been eclipsed by the pleadings. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognized that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without pleading of material facts that the duty has been discharged.

34. Consequently, the argument, which is advanced by the learned counsel for the respondent that election petition is not tenable as no grounds are available u/s100 (1) (d) (iv) of the Act of 1951, has a substantial force. It would be a different case that if the petitioner has failed to prove the other necessary ingredients as required under the Act of 1951. The petitioner has alleged at paras 8 to 24 about the inclusion and exclusion of the names of the persons in the voters list. The pleadings though have been made about inclusion and deletion of names in voter list but the same pleadings also would be subject to Section 83 of the Act of 1951 as to whether the pleadings have disclosed material facts. In this regard reference to section 83 (1)(a) of the Act 1951 is made which reads as under :

“Section 83.- Contents of petition. - (1) An election petition (a) shall contain a concise statement of the material facts on which the petitioner relies.”

35. 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.”

36. 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***. Paras 32 & 33 are relevant here and quoted below:

“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 & 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.”

37. Reading of paras 15 & 16 also shows that the fact “undue influence” has also been pleaded, but the petitioner has failed to furnish concise material particulars as to in what manner the undue influence was exercised. When Section 83 of the Act, 1951 is read, it shows that substantive part of Section 83 consists of three important elements namely the election petition should contain concise statement of material facts which the election petitioner relied upon. The emphasis is on the material facts which should be stated in the concise form. Hon'ble Supreme Court in the case of **Charan Lal Sahu Vs. Giani Jai Singh and another, reported in (1984) 1 SCC 390** while considering the “undue influence” as enumerated in Section 18 (1), emphasizing the need of precise, specific and unambiguous pleading of corrupt practice particularly with reference to undue influence stated as under :-

“35. The gravamen of this section is that there must be interference or attempted interference with the “free exercise” of any electoral right/ “Electoral right” is defined by Section 171-A(b) to mean the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from

voting at an election. In so far as is relevant for our purpose, the election petition must show that Shri Beg interfered with the free exercise of the voters' right to vote at the Presidential election. The petition does not allege or show that Shri Beg interfered in any manner with the free exercise of the right of the voters to vote according to their choice or conscience.....”

In the later part, their Lordship further held :-

“Therefore, in order that the offence of undue influence can be said to have been made out within the meaning of Section 171-C of the Penal Code, something more than the mere act of canvassing for a candidate must be shown to have been done by the offender. That something more may, for example, be in the nature of a threat of an injury to a candidate or a voter as stated in sub-section (2) (a) of Section 171-C of the Penal Code or, it may consist of inducing a belief of Divine displeasure in the mind of a candidate or a voter as stated in sub-section (2) (b). The act alleged as constituting undue influence must be in the nature of a pressure or tyranny on the mind of the candidate or the voter. It is not possible to enumerate exhaustively the diverse categories of acts which fall within the definition of undue influence. It is enough for our purpose to say, that of one thing there can be no doubt: The mere act of canvassing for a candidate cannot amount to undue influence within the meaning of Section 171-C of the Penal Code.”

- 38.** Now if further reference is made to paras 17, 18 & 19 of the petition, this is all about the expenses. It is stated that expenses incurred by respondent No.1 has exceeded the limit

prescribed by the Election Commission i.e., Rs. 16 lakhs and thereby there is contravention of Section 77 of the Act of 1951. At para 19 though the petitioner has stated that expenditure has been incurred more than the limit but at the same time, it is pleaded that the petitioner could not get the particulars despite all efforts as to what expenditure was made. It is further stated that despite the RTI, the application made under RTI, the petitioner could not get the particulars. Therefore, since it is the specific averments of the petitioner that particulars of expenses could not be gathered, consequently, the inference cannot be drawn only on the bald pleading without any material particulars on what head the expenses were made. Reading of the averments would show that the allegations have been made and particulars of corrupt practice in the manner in which it was made is not clear.

- 39.** Likewise at para 20, reference to a meeting addressed by the BJP leader Shri Venkayya Naidu in support of respondent No.1 has been made. It is stated that a Helicopter was arranged by respondent No.1. The averments have been made that list of the star campaign of the first phase election was submitted by the BJP and for the second phase, no such list was supplied. Therefore, the expenses of star campaign should have been added to the account of Respondent No.1. As against this, the list of star campaign which was made by BJP filed by Respondent No.1 shows that for Phase II, the list

of star campaign was submitted by BJP which is filed as Annexure Document-E which includes the name of Mr. Venkayya Naidu for the second Phase of election at Sl.No.7. Admittedly, this election was for the second phase. In the result, the averments made in para 20 also do not disclose any material facts as to how the expenditure was incurred over and above the prescribed limit.

40. Section 77 of the Act of 1951 mandates that election expenses and maximum thereof shall be given in account. But the explanation to section 77 reads that expenditure incurred by the “leaders of a political party” on account of travel by air or other mode of transport for propagating the programme of the political party shall not be deemed to be the expenditure in connection with the election incurred by the candidate of that particular political party for the purpose of this section. Therefore, despite vague allegations without any particulars as to how much expenses were incurred over and above the limit, the averments made by the petitioner further cannot be taken into consideration to hold that the expenditure was made over and above the prescribed limit.
41. Para 20 further had stated that the particulars in nomination form were not correctly filled by Respondent No.1 and the nomination should have been rejected. It is stated that respondent No.1 and his son are residing together in the same house but income of son of respondent No.1 has not

been declared. Again, if we revert back to the material particulars, the averments so made are vague and only casual pleadings have been made. If the petitioner was serious enough to raise such objection at para 20, there should have been the particulars as to what was the expenditure incurred. It should have pleaded in detail as to what was the expenditure incurred over and above the prescribed limit where it was done and what was the date of such expenditure. On simply making bald statement by the petitioner that the expenditure has been made over and above the limit, this election Tribunal cannot venture to order for inquiry into the matter. Furthermore, the allegations about the concealment of staying/living of son with respondent No.1 is made and particulars of property in respect of his son which is alleged to have been concealed has not been disclosed as to what is the property which the respondent has concealed. Therefore, reading of para 20 would not lead to infer that material particulars have been deliberately avoided.

42. Further, in **(2009) 9 SCC 310, - Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar**, Hon'ble the Supreme Court has reiterated the view observed in case of *Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi*, which reads as under :-

“44. When we revert to the Indian cases, we find that our courts have accepted the principle laid down by the English cases. We would like to refer to some of

them. In *Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi* this Court observed as under : (SCC p. 374, para 5).

“5. The first question is whether the trial Judge should have allowed the amendment. Section 83 (1) (b) provides that 'An election petition shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of names of the parties alleged to have committed such corrupt and the date and place of the commission of each such practice'. The section is mandatory.”

43. Further the Hon'ble the Supreme Court in case of **Anil Vasudev Salgaonkar** (*supra*) has reiterated the view observed in case of *Hardwari Lal V. Kanwal Singh*, which reads as under :-

“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.”

44. Recently, the Supreme Court in a case law reported in (2014) 10 SCC 547, **C.P. John Vs. Babu M. Palissery and others** has held thus in Para 18 :

“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.”

45. As has been laid down by Their Lordships in case of *C.P. John (supra)* that when an election petition is taken up for consideration, the Court which deals with such election petition should be in a position to know the exactitude as to what is the corrupt practice alleged 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. The election petitioner can not

simply raise any allegation for corrupt practice and get away with it. Since the successful candidates in an election have 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.

46. It is settled proposition that the person who has contested the election and after losing, while challenging, the election petition has to be seriously examined. The reading of the pleadings as a whole would show that vague allegations have been leveled both with respect to addition/deletion of the names of the voters along with the corrupt practice.
47. On the basis of the aforesaid observations, it is held that the election petition cannot be gone in for trial for want of material particulars and further primary challenge in the election petition is about the defective voters list and on the ground that the voters who were entitled to vote were not allowed to vote and other people who were not residents of the particular area have voted. Meaning thereby the challenge in election petition is primarily based on the defective voters list and in view of the foregoing observations, in the opinion of this Court, the same issue cannot be gone into under the Act of 1951 to adjudicate the validity of election. Further more, as has been observed, the election

petitioner has failed to disclose the material facts which are mandatory as required u/s 83 of the Act of 1951 so as to allow the election petition to go in for trial.

- 48.** As a result, I am of the considered view that this election petition cannot go in for a trial. Consequently, the election petition is dismissed.

Sd/-

**GOUTAM BHADURI
JUDGE**

Rao