

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

El.Pet..No. 6 of 2014 ()

PETITIONER(S) :

AJIT JOY,
S/O. WG.CDR.K.M. JOY (RETD),
AGED 45 YEARS,
NO.2D, VINTAGE VIEW, PANDITS COLONY,
KOWDIAR P.O., PIN CODE - 695 003,
THIRUVANANTHAPURAM, KOWDIAR VILLAGE,
THIRUVANANTHAPURAM TALUK,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.K.C.ELDHO

RESPONDENT(S) :

DR.SHASHI THAROOR,
S/O. SHRI CHANDRAN THAROOR, AGE 58 YEARS,
T.C. 15/14443(2), CONDOR MARIGOLD,
VAZHUTHACAUD THIRUVANANTHAPURAM-695 014.

R1 BY ADV. SRI.T.MADHU
R1 BY ADV. SRI.B.S.SURAJ KRISHNA
R1 BY ADV. SRI.JOHN PAX IGNATIUS
R1 BY ADV. SRI.V.S.VIBIN
R1 BY ADV. SRI.S.SREEKUMAR (SR.)

THIS ELECTION PETITION HAVING BEEN FINALLY HEARD
ON 25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

E.P. NO. 6 OF 2014

APPENDIX

ANNEXURE A : PRINT OUT OF THE LIST OF CANDIDATES TAKEN FROM THE OFFICIAL WEBSITE OF THE RETURNING OFFICER, THIRUVANANTHAPURAM CONSTITUENCY-
[Http://www.Kerala.nic.in/tvm/CandidatesListFull.pdf](http://www.Kerala.nic.in/tvm/CandidatesListFull.pdf)

ANNEXURE A1 : TRUE ENGLISH TRANSLATION OF ANNEXURE A

ANNEXURE B : TRUE COPY OF THE REGISTER FOR MAINTENANCE OF DAY TO DAY ACCOUNTS OF ELECTION EXPENDITURE SUBMITTED BY THE RESPONDENT BEFORE THE RETURNING OFFICER.

ANNEXURE C : TRUE COPY OF THE FINAL STATEMENT OF ACCOUNTS FILED BY THE RESPONDENT UNDER SEC. 78 OF THE ACT.

ANNEXURE D : TRUE COPY OF THE MEMORANDUM OF WRIT PETITION WP(C) NO. 10410 OF 2014 FILED BY PETITIONER.

ANNEXURE E : TRUE COPY OF THE REPRESENTATION DATED 20.5.2014 SUBMITTED BY THE PETITIONER.

ANNEXURE F : GREETING CARD DROPPED AT THE RESIDENCE OF SRI. PRASAD SOMARAJAN ON 5.4.2014.

ANNEXURE F1 : TRUE ENGLISH TRANSLATION OF ANNEXURE F.

ANNEXURE G : NOTICE DROPPED AT THE RESIDENCE OF SRI. PRASAD SOMARAJAN ON 7.4.2014.

ANNEXURE G1 : TRUE ENGLISH TRANSLATION OF ANNEXURE G.

ANNEXURE H : COMPACT DISC CONTAINING THE VIDEO RECORDINGS OF 10.4.2014.

ANNEXURE I : COMPACT DISC CONTAINING THE VIDEO RECORDINGS OF 10.4.2014.

ANNEXURE J : COMPACT DISC CONTAINING THE PHOTOGRAPHS OF CAMPAIGN POSTERS TAKEN ON 8.4.2014 AND 9.4.2014.

ANNEXURE K : COMPACT DISC CONTAINING THE PHOTOGRAPHS OF CAMPAIGN POSTERS TAKEN ON 8.4.2014 AND 9.4.2014.

ANNEXURE L : TRUE COPY OF THE DAILY REPORT OF VEHICLE PASS ISSUED TO THE RESPONDENT BY THE RETURNING OFFICER.

ANNEXURE M : TRUE COPY OF THE ABSTRACT STATEMENT OF ELECTION EXPENSES SUBMITTED BY THE PETITIONER TO THE ELECTION COMMISSION.

ANNEXURE N : TRUE COPY OF THE CHALLAN RECEIPT NO. 189
DATED 26.6.2014.

//True copy//

P.S. To Judge

P. BHAVADASAN, J.

E.P. No. 6 of 2014

Dated this the 25th day of May, 2015.

JUDGMENT

The petitioner calls in question the election of the respondent from Thiruvananthapuram Parliamentary Constituency No.20 in the election held on 10.4.2014, results of which was declared on 16.5.2014. The respondent having secured the maximum number of votes has been declared duly elected and the petitioner was placed in the fourth position. The petitioner was sponsored by the Aam Aadmi Party, while the respondent was the candidate of the Indian National Congress. The challenge to the election of the respondent is on the basis of Section 123 (6), 77(1), 77(2) and 77(3) of the Representation of People Act read with Rules 86(1) and 90 of the Conduct of Election Rules, 1961.

2. The allegation is that Section 77(1) of the Representation of the People Act, 1951 (hereinafter referred

to as 'the Act') stipulates that a candidate shall maintain a separate and correct account of all expenditure incurred or authorised by him or by his election agent from the date of nomination till the declaration of results. Section 77(2) of the Act stipulates that such account shall contain the particulars prescribed under the Act and Section 77(3) of the Act stipulates that the expenditure so incurred or authorised shall not exceed the amount prescribed from time to time.

3. It is not in dispute that for the parliamentary election held on 10.4.2014, the limit of expenditure as stipulated under Section 77(3) of the Act was Rs.70 Lakhs. The petitioner points out that Annexure B is the extract of the day to day accounts of election expenditure submitted by the respondent and obtained by the petitioner under the provisions of Compendium of Instructions on Election Expenditure Monitoring. As per Annexure B, at the third inspection the expenses incurred as on 7.4.2014 going by

the entries in Shadow Observation Register comes to Rs.77,85,721/-. The final statement of account filed by the respondent under Section 78 of the Act, copy of which is produced as Annexure C, shows that the total expenditure incurred by the respondent for the election is Rs.50,42,650/-. The petitioner would say that it is quite obvious that the statement filed by the respondent is totally false and manipulated. In fact he has spent crores of rupees for the election held on 10.4.2014.

4. The petitioner had preferred a complaint to the Election Commission and to the Returning Officer in this regard and prayed for controlling the money power being utilized by the respondent. In spite of best efforts made by the petitioner, there was no concrete move on the part of either of the authorities concerned to curtail the spending of money by the respondent to win the election.

5. Disturbed by the lethargic attitude of the authorities, the petitioner filed W.P.(C) No. 10410 of 2014,

copy of which is produced as Annexure D. The election agent of the petitioner preferred Annexure E representation to the Chief Election Commissioner also. The petitioner understands that the Expenditure Monitoring Cell collected materials which are available with the Returning Officer as 'Folder of Evidence and Shadow Observation Register' with regard to each of the candidates contested in the election.

6. The specific complaint is that Annexure E does not reflect the true state of affairs. It understates the actual expenditure incurred under various heads by the candidate as authorised by him or his election agent. The said annexure does not disclose the expenditure incurred for printing, publishing or distributing Annexure F greeting cards. Similar is the case with Annexure G notice also. Same is the case with notice titled "UDF അഭ്യർത്ഥന" printed from M/s. Solar Offset Printers Pvt. Ltd. which was printed with the consent and knowledge of the respondent. The expenditure incurred for the said purpose is also

understated. A four page newspaper titled “തിരുവനന്തപുരത്തിന്റെ സ്വന്തം തരൂർ” was got printed from M/s. Safire Industries and the amount incurred for that purpose has been understated. So is the case with expenses incurred for wall writing etc. Considerable amount was spent for publicity campaign for which crores of rupees were incurred by the respondent which have been deliberately understated in the statement filed by him before the authority concerned. Annexure J and K are some of the posters printed and published by the respondent. It is significant to notice, according to the petitioner, that media coverage expenses of print and electronic media authorised by the candidate remains unreported. It can be easily seen that the expenses incurred for Annexures H, I, J, K itself would run to more than One Crore rupees.

7. In addition to the above expenses is the non-disclosure of expenses for radio, TV, newspaper, SMS and other similar media exposure incurred and authorised

by the candidate, the details of which are available with the District Level Media Certification and Monitoring Committee. Those documents would reveal the true state of affairs.

8. Next comes the expenditure involved with regard to the use of vehicles. 120 vehicles have been used incurring a sum of Rs. 1200/- for each vehicle per day. It is obvious that the expenses shown are hopelessly and ridiculously low. According to the petitioner, expenses per vehicle would come to Rs.5,000/- per day. A copy of the details of the report to the vehicle pass issued is produced as Annexure L. Fuel charges, Generator and similar expenses are not mentioned. The respondent had taken out 'rath', the expense for which was also not incorporated in the statement filed by him. As could be seen from the statement filed by the petitioner for nine vehicles used by him, the expenses incurred was Rs.8,07,612/-. If the same mode is to be adopted in the case of vehicles used by the respondent, the amount for vehicles itself would come over

to Rs.80,00,000/-. The vehicles included in the table shown in the petition are added, the expenses would come to Rs.33,44,000/-. Payments made to volunteers have also been omitted to be mentioned.

9. Therefore, there is clear violation of Section 77 (1), (2) and (3) of the Act read with Rule 90 of the Conduct of Election Rules. The respondent is guilty of concealing and suppressing expenditure incurred or authorised by him and therefore the election is liable to be set aside.

10. Inspiration is also drawn by the petitioner from the decision reported in **Kanwar Lal Gupta v. Amar Nath Chawla** (AIR 1975 SC 308) and it is alleged that even if the expenses have been incurred by the party who has sponsored the respondent, or any one on his behalf, for the election campaign, those expenses will have to be treated as expenses incurred or authorised by the candidate.

11. In the written statement filed by the respondent opposing the petition, it is contended that the

petition itself is not maintainable for non-disclosure of relevant facts and details. Preliminary objection was raised regarding the maintainability of the petition. It is contended that the petition is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure. Being allegation of corrupt practice, the entire details like place, date, persons involved etc., will have to be given by the petitioner. Reliance is placed on several decisions of the Apex Court in this regard. It is contended that there is gross violation of Section 83(1)(a) of the Act. The respondent is handicapped for want of relevant material facts and particulars and he is unable to project his case. The allegations are vague and general and petition is of an experimental nature. The affidavit filed in support of the petition is not in conformity with the relevant rules and it does not contain the necessary details. The allegations in paragraphs 3, 7, 10 and 13 are without any essential details. The pleadings made by the petitioner are insufficient to satisfy the requirements of an

allegation in respect of corrupt practice said to have been committed by the respondent. Paragraphs 7, 10, 13, 5 and 11 do not disclose the place, date, time and name of the people who are alleged to have been involved in the corrupt practice. For want of these material facts and particulars, the petition is liable to be rejected as it does not disclose any cause of action.

12. Except the allegations in paragraphs 4 and 5, all allegations in other paragraphs are disputed. It is asserted that the total expense incurred by the respondent has been correctly stated and that comes to only Rs.50,42,650/-. The allegation that the details furnished by the respondent are understatements and false have been denied. The respondent has not incurred amount in excess than the sanctioned limit and disclosed before the authorities concerned. The allegation regarding the pumping in of money is baseless. There was no attempt from the side of the respondent to influence the voters

either directly or indirectly using money power and the respondent claims that he won the election as a result of his clean political image.

13. Comparison with the expenses incurred by the petitioner is unwise and imprudent. The petitioner is a novice in election and could get only 14153 votes. The respondent denies publication of pamphlets as alleged by the petitioner. According to him, it is incorrect to say that it was done with the consent and knowledge of the respondent. Authenticity of Annexures F, G and H are disputed. The respondent claims that he has nothing to do with the same. Schedule 3 to abstract statement filed by the respondent indicates the actual expenses incurred by him. The respondent has shown the actual figures under each of the heads and also the consolidated amount. Neither the respondent nor his election agent had consented or has knowledge of any material printed or published as alleged in the petition. Allegation against use of vehicles

and the expenses so incurred are imaginary and are baseless. The calculation made by the petitioner is hypothetical. The reasoning that since the petitioner has incurred Rs.8,07,612/- for use of nine vehicles, the respondent must have spent much more than what is disclosed does not stand to reason or logic. The allegation that various expenses have been understated and the respondent has given false figures is baseless and without foundation. The respondent has kept correct accounts of the expenses incurred and authorised by him and allegation to the contrary are stoutly denied. It is pointed out that the petition is only to be dismissed for want of cause of action.

14. By order dated 14.10.2014, the following issues were raised:

"1) Has the petitioner established that the respondent has exceeded the limits of expenditure of election than the permissible limits of 70 lakhs?

2) Is not the statement of account of income and expenditure submitted by the respondent to the

Election Commission true and correct?

3) Has the respondent suppressed or shown a reduced expenditure than what is actually incurred for the use of the vehicles for the election?

4) Is the respondent guilty of corrupt practice as contemplated under Section 123(6) of the Representation of People Act, 1951?

5) Is the election of respondent liable to be set aside under Section 100(1)(b) of the Representation of People Act, 1951?

6) Reliefs and costs."

15. When summons was sought to be issued to the witnesses, the respondent raised the question of maintainability as preliminary issue and wanted the same to be tried as a preliminary issue. Therefore, by order dated 13.1.2015 the following issue is also raised:

"(i) Is the Election Petition maintainable?"

16. The gist of the allegation is that the respondent has incurred expenses much more than legally permissible and so his election is vitiated under Sections 123(6) and 77(3) of the Act read with Rules 89 and 90 of

the Conduct of Election Rules. The specific allegation is with respect to the publication of notices, pamphlets and use of vehicles for election campaign. The non-disclosure of the expenses with regard to the campaign made through audio and visual media, wall writings, posters, flex boards were all pressed into service by the petitioner. The crux of the allegation is that even the expenses which have been incurred by the respondents are understated and they are far less than the actual amount incurred by him.

17. The contention of the petitioner is that the statements made in Annexure C submitted by the respondent is totally false and untrue.

18. The respondent has very stoutly denied the allegations of the petitioner and contended that Annexure C represents the true statement of the expenditure incurred by him.

19. The challenge to the election of the respondent is confined to the violation of Sections 77(1),

(2) and (3) of the Act falling within the ambit of Section 123(6) of the Act.

20. Before embarking on an enquiry into the sufficiency of facts and materials in respect of allegations raised in the petition, it will be useful to understand the statutory provisions. That would be necessary to appreciate the rival contentions raised also. Sections 77, 123(6) of the Act and Rules 89 and 90 of the Conduct of Election Rules read as follows:

"77. Account of election expenses and maximum thereof.- (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between 1 [the date on which he has been nominated] and the date of declaration of the result thereof, both dates inclusive.

Explanation 1.-For the removal of doubts, it is hereby declared that-

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection

with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section.

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.-For the purposes of clause (a) of Explanation 1, the expression "leaders of a political party", in respect of any election, means,-

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.”

“123. Corrupt practices.- The following shall be deemed to be corrupt practices for the purposes of this Act:- (so far as it related to the present case reads as follows:)

.....

.....

(6) The incurring or authorizing of expenditure in contravention of section 77.”

Rules 89 and 90 of the Conduct of Election Rules read as follows:

“89. Report by the district election officer as to the lodging of the account of election expenses and the decision of the Election Commission thereon.- (1)

As soon as may be after the expiration of the time specified in section 78 for the lodging of the accounts of election

expenses at any election, the district election officer shall report to the Election Commission-

- (a) the name of each contesting candidate;
- (b) whether such candidate has lodged his account of election expenses and if so, the date on which such account has been lodged; and
- © whether in his opinion such account has been lodged within the time and in the manner required by the Act and these rules.

(2) Where the district election officer is of the opinion that the account of election expenses of any candidate has not been lodged in the manner required by the Act and these rules, he shall with every such report forward to the Election Commission the account of election expenses of that candidate and the vouchers lodged along with it.

(3) Immediately after the submission of the report referred to in sub-rule (1) the district election officer shall publish a copy thereof affixing the same to his notice board.

(4) As soon as may be after the receipt of the report referred to in sub-rule (1) the Election Commission shall consider the same and decide whether any contesting candidate has failed to lodge the account of election expenses within the time and in the manner required by the Act and these rules.

(5) Where the Election Commission decides that a contesting candidate has failed to lodge his account of

election expenses within the time and in the manner required by the Act and these rules it shall by notice in writing call upon the candidate to show cause why he should not be disqualified under section 10A for the failure.

(6) Any contesting candidate who has been called upon to show cause under sub-rule (5) may within twenty days of the receipt of such notice submit in respect of the matter a representation in writing to the Election Commission, and shall at the same time sent to district election officer a copy of his representation together with a complete account of his election expenses if he had not already furnished such an account.

(7) The district election officer shall, within five days of the receipt thereof, forward to the Election Commission the copy of the representation and the account (if any) with such comments as he wishes to make thereof.

(8) If, after considering the representation submitted by the candidate and the comments made by the district election officer and after such inquiry as it thinks fit, the Election Commission is satisfied that the candidate has no good reason or justification for the failure to lodge his account, it shall declare him to be disqualified under section 10A for a period of three years from the date of the order, and cause the order to be published in the Official Gazette.

90. Maximum election expenses.- The total of the expenditure of which account is to be kept under section 77 and which is incurred or authorized in connection with

an election in a State or Union Territory mentioned in column 1 of the Table below shall not exceed-

(a) in any one parliamentary constituency of that State or Union territory, the amount specified in the corresponding column 1 of the said Table; and

(b) in any one assembly constituency, if any, of the State or Union territory, the amount specified in the corresponding column 3 of the said Table-

....."

21. A plain reading of the provisions will clearly shows that as far as a candidate is concerned, it is violation of Section 77(3) of the Act that falls within the ambit of Section 123(6) which vitiates the election. To be more precise, when a candidate incurs or authorises expenses than the permissible limit, it amounts to a corrupt practice falling within the ambit of Section 123 of the Act and automatically the election stands vitiated. It is not in dispute that in this case that the sanctioned limit for parliamentary election for the year 2014 was Rs.70,00,000/- per candidate.

22. A specific contention is raised regarding the lack of pleadings as envisaged under Section 83 of the Act. Violation of Section 83 of the Act is raised by the respondent to defeat the challenge. It is specifically contended on behalf of the respondent that the essential facts and particulars as envisaged under Section 83 of the Act are not available in the case on hand and that is sufficient to show that there is no cause of action. In fact the challenge is two fold, (a) insufficiency of pleadings regarding date, place and persons involved and (b) the petition does not assert that the objectionable expenses were incurred by the respondent or authorised by the respondent. In the absence of the above two aspects in the petition, it suffers from want of cause of action and is liable to be dismissed at the threshold. For the principle that for want of particulars in the petition, no cause of action is disclosed, counsel for the respondent relied on the decisions reported in **Om Prabha Jain v. Charan Dass** ((1975) 4 SCC 849) and **Ashraf**

Kokkur v. K.V. Abdul Khader (2015 SC (Civil) 345).

23. Referring to the necessity, importance and significance of pleadings especially when a corrupt practice is alleged, the learned Senior Counsel for the respondent canvassed for the position that the present pleadings lack precision. It is trite that in case of corrupt practice, time, date, place and persons involved must be specifically mentioned in the petition. Mere mentioning of certain facts is not sufficient. Emphasis was laid on the fact that trial in an election is of quasi criminal nature and therefore, the respondent should be alerted about the complete facts and particulars. A combined reading of Sections 77(3) and 123 (6) of the Act would disclose that the essential ingredients to attract the provisions are the incurring of expenses by the candidate or as authorised by him or his election agent. All throughout the petition, the allegation is that posters, notices, pamphlets, wall posters were printed and published with the **consent and knowledge** of the respondent. So is

the case with regard to the case of visual and audio media and use of flex boards. There is no allegation that even assuming that such campaigns were made for the respondent, expenses were incurred by the respondent or authorised by the respondent or his election agent. Referring to the importance of pleadings, learned Senior Counsel relied on the decisions reported in **Dhartipakar v. Rajiv Gandhi** (AIR 1987 SC 1577), **F.A. Sapa v. Singora** (AIR 1991 SC 1557) and **Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani** (AIR 1955 SC 610). With specific reference to Section 123(6) and 77 (3) of the Act, learned counsel relied on the decisions reported in **L.R. Shivaramagowda v. T.M. Chandrashekar** ((1999) 1 SCC 666), **Hari Shanker Jain v. Sonia Gandhi** ((2001) 8 SCC 233), **P. Nalla Thampy v. Union of India** (AIR 1985 SC 1133), **Ram Dayal v. Brijraj** (AIR 1970 SC 110), **Nandesh Reddy v. Kavitha Mahesh** (2011) 7 SCC 721, **Kamalnath v. Sudesh Verma** (2002 KHC 1800), **Ajay Maken v.**

Adesh Kumar Gupta (2013) 3 SCC 489, **G. Vasantha Pai v. A. Srinivasan** (XXII E.L.R. 221), **Kamalnath v. Sudesh Verma** ((2002) 2 SCC 410) and **Ram Sukh v. Dinesh Aggarwal** ((2009) 10 SCC 541).

24. Reiterating on the defective pleadings, it was pointed out that it is not sufficient to show that the expenses are incurred with the consent and knowledge of the candidate. The specific pleading should be with regard to the incurring of the expenses or authorisation of the expenses by the candidate or his election agent. For the purpose of understanding the meaning of the word authorisation, learned Senior Counsel relied on the decisions reported in **Dhartipakar Madan Lal Agarwal v Rajiv Gandhi** ((1987) Suppl. SCC 93), **Rananjaya Singh v. Baijnath Singh** (AIR 1954 SC 749), **Ram Dayal v. Brijraj Singh** (AIR 1970 SC 110).

25. Referring to the provision at length, it was contended that the words 'incurred' and 'authorised' used in

several places of the petition are not with regard to the context in which it appears in Section 77(3) of Section 123 (6) of the Act. There is no specific averment that the expenses alleged were incurred or as authorised by the candidate. It could well mean that the political party who has sponsored the candidate might have incurred the expenses. Even assuming it to be so, that does not vitiate the election of the respondent. In the absence of details like, place, date, time and persons involved in the petition, it is liable to be rejected.

26. Learned counsel appearing for the petitioner relied on Section 86 of the Act and contended that Section 86 contains the circumstances under which a petition can be dismissed at the threshold. The case on hand does not fall within that provision. Even assuming that there is violation of Section 83 of the Act, that does not attract Section 86 of the Act. For the above purpose, learned counsel relied on the decision reported in **G.M. Siddeshwar v. Prasanna**

Kumar (AIR 2013 SC 1549).

27. Relying on the decision reported in **Kanwar Lal v. Amarnath** (AIR 1975 SC 308), it was contended that there is no straight jacket formula to determine the expenses incurred or authorised by the candidate. Each case must be determined on the facts of that case. It is contended that a candidate cannot be heard to say that the limit of expenditure has not been exceeded by shifting the burden of expenditure on to his political party or others when the candidate has taken advantage of the various situations arising out of the money spent by the party sponsoring him. It is contended that even assuming that the candidate himself has spend only less than the sanctioned limit, that is not sufficient. If the political party sponsoring the candidate spends amounts for the prospects of its candidate, the amount spend by such political party must be added to the expenses as incurred or authorised by the candidate. Once it is shown that the amount so incurred

far exceeds the sanctioned limit, then the burden shifts to the candidate to show otherwise. It is a matter for proof and therefore rejection at the threshold is not warranted. For the above purpose, learned counsel relied on the decisions reported in **P. Nalla Thampy v. Union of India** (AIR 1985 SC 1133) and **Common Cause Registered Society v. Union of India** (AIR 1996 SC 3081).

28. Relying on the decisions, it was contended that what the law insists is only substantial compliance. Strict adherence to the pleadings is not warranted. What is intended and what is sought to be achieved is a just and fair election and any act which subverts that purpose should be deprecated. The court should keep in mind, according to the learned counsel, the mischief that is intended to be dealt with and should give a meaningful and productive meaning to the provisions and should not adopt an interpretation which breeds the evil that is intended to be wiped out. According to the learned counsel for the petitioner, reading

the petition as a whole, it can be seen that all necessary allegations with necessary particulars and facts have been given. Rest is a matter for evidence. It is not necessary to mention evidence which is intended to be adduced in the petition. For the above purpose, learned counsel relied on the decisions reported in **Sardar Harcharan Singh Brar v. Sukh Darshan Singh** (AIR 2005 SC 22) and **Nandiesha Reddy v. Kavitha Mahesh** (2011(3) K.L.T. SN. 53).

29. Referring to the petition, learned counsel for the petitioner contended that necessary facts and particulars have been given in the petition. In pages 31, 40 and 47 the annexures produced along with the petition, the necessary details are shown. The petitioner has also made the necessary allegations. The proof for those allegations is a matter for evidence. If at all it is found that there is dearth of pleadings or want of materials, that would be made good by allowing the petitioner to amend the petition. Referring to other entries, it is contended that all necessary details

have been given.

30. As far as the allegation regarding the hiring of the vehicles is concerned, the petitioner after best efforts has given the details collected by him and rest of the matters are within the specific knowledge of the respondent which is to be proved by him. Learned counsel relied on the decision reported in **Balwan Singh v. Lakshmi Narain** (AIR 1960 SC 770) for the above purpose.

31. Replying the above arguments raised by the learned counsel for the petitioner, learned Senior Counsel for the respondent contended that the principles laid down in **Kanwar Lal v. Amarnath** (AIR 1975 SC 308) on which heavy reliance is placed on by the petitioner to invalidate the election of the respondent is no longer good law in view of the decision reported in **Smt. Indira Nehru Gandhi v. Raj Narain** (AIR 1975 SC 2299). The said decision has specifically overruled the decision reported in **Kanwar Lal's case** (AIR 1975 SC 308).

32. Pleadings are utmost important in an election petition. It is of much more significance and importance in respect of allegations of corrupt practice. It has been held that trial of an election petition is always in the nature of a criminal trial. Therefore, all facts and particulars should be available in the pleadings.

33. It is true that Section 86 of the Act only deals with certain grounds for rejection of the petition at the threshold. In the decision reported in **G.M. Siddeshwar v. Prasanna Kumar** (AIR 2013 SC 1549), it was held as follows:

"42. Undoubtedly, Section 86 of the Act makes no reference to Section 83 thereof and so, prima facie, an election petition cannot be summarily dismissed under Section 86 of the Act for non-compliance of the provisions of Section 83 thereof. This was briefly adverted to in *Hardwari Lal v. Kanwal Singh*, (AIR 1972 SC 515) but that was in the context of dismissal of the election petition under the provisions of the CPC. The contention urged in *Hardwari Lal* was to the effect that since Section 83 of the Act does not find a mention in Section 86 thereof, an

election petition could not be summarily dismissed for non-compliance of Section 83. A three-Judge Bench of this Court held that since an election petition is required to be tried as nearly as possible in accordance with the procedure applicable under the CPC to the trial of suits, an election petition could nevertheless be dismissed if it did not disclose a cause of action."

34. It cannot be disputed that once the necessary facts are pleaded, then it is a matter for proof and it is not proper to reject the petition at the threshold on technical grounds.

35. It is beyond dispute that in the case of allegation of corrupt practice, pleadings will have to be precise and definite. All material facts and particulars will have to be disclosed in the petition. Details like, place, time, date and persons involved must find a place in the petition itself.

36. The real contention of the respondent is not that the petition is liable to be rejected at preliminary stage on grounds stated in Section 86 of the Act. On the other

hand, the contention is that it does not disclose the cause of action.

37. The importance of pleadings in an election petition was considered at length in the decision reported in **Dhartipakar v. Rajiv Gandhi** (AIR 1987 SC 1577) wherein it was held as follows:

“ Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner. (para 14)”

38. In the decision reported in **Nandiesha Reddy v. Kavitha Mahesh** ((2011) 7 SCC 721), it was held as follows:

“36. Section 83(1)(a) inter alia provides that an election petition shall contain a concise statement of the

material facts. Further, Section 87 of the Act provides that subject to the provisions of the Act and the Rules framed thereunder every election petition shall be tried in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. Order VI of the Code of Civil Procedure is devoted to the pleadings generally and Rule 2(i) thereof, inter alia, provides that every pleading shall contain statement in a concise form all the material facts on which the party pleading relies for claim. In an election petition, which does not contain material facts, no relief can be granted.

37. The phrase "material facts" as used in Section 83(1)(a) of the Act or Order VI, Rule 2 of the Code of Civil Procedure has not been defined in the Act or the Code of Civil Procedure. In our opinion all specific and primary facts which are required to be proved by a party for the relief claimed are material facts. It is settled legal position that all material facts must be pleaded by the party on which the relief is founded. Its object and purpose is to enable the contesting party to know the case which it has to meet. An election petition can be summarily dismissed if it does not furnish the material facts to give rise to a cause of action. However, what are the material facts always depend upon the facts of each case and no rule of universal application is possible to be laid down in this regard."

39. In the decision reported in **F.A. Sapa v. Singora** (AIR 1991 SC 1556), it was held as follows:

"27. From the text of the relevant provisions of the R. P. Act, Rule 94A and Form 25 as well as Order 6, Rule 15 and Order 19, Rule 3 of the Code and the re 'sume' of the case law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured, (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true, (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same, and(iv) the defect in the affidavit in the prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, under Section 81(3) as indicated earlier. Similarly the Court would have to decide in each individual case whether the schedule or annexure referred to in Section 83(2) constitutes an integral part of the election petition or not; different considerations will follow in the case of the former as compared to those in the case of the latter.

28. A charge of corrupt practice has a two-

dimensional effect; its impact on the returned candidate has to be viewed from the point of view of the candidate's future political and public life and from the point of view of the electorate to ensure the purity of the election process. There can, therefore, be no doubt that such an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of Section 83 before the parties go to trial. This is quite clear from the observations of this Court in the case of K. M. Mani v. P. J. Anthony (1979) 1 SCR 701 : (AIR 1979 SC 234). While defective verification or a defective affidavit may not be fatal, the High Court should ensure its compliance before the parties go to trial so that the party required to meet the charge is not taken by surprise at the actual trial. It must also be realised that delay in complying with the requirements of Section 83 read with the provisions of the Code or the omission to disclose the grounds or sources of information, though not fatal would weaken the probative value of the evidence ultimately lead at the actual trial. Therefore, an election petitioner can afford to overlook the requirements of Section 83 on pain of weakening the evidence that he may ultimately tender at the actual trial of the election petition. That is because as held in Mani's case the charge of corrupt practice has to be proved beyond reasonable doubt and not merely by preponderance of probabilities. Allegation of corrupt practice being quasi-criminal in nature, the failure to supply full particulars at the earliest

point of time and to disclose the source of information promptly may have an adverse bearing on the probative value to be attached to the evidence tendered in proof thereof at the trial. Therefore, even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the court in a given case to doubt the veracity of the evidence ultimately tendered. If, however, the affidavit or the schedule or annexure form an integral part of the election petition itself, strict compliance would be insisted upon."

40. In the decision reported in **Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani** (AIR 1955 SC 610), it was held as follows:

"There can be no reasonable doubt that the requirement of full particulars regarding corrupt practices, enjoined by s. 83 (2) is one that has got to be complied with, with sufficient fullness and clarification so as to enable the opposite party fairly to meet them and that they must be such as not to turn the enquiry before the Tribunal into a rambling and roving inquisition.

The primary responsibility for furnishing full particulars of the alleged corrupt practices and to file a petition in full compliance with S. 83 (2) of the Act is on

the petitioner. Where undoubtedly the Tribunal has taken all too narrow a view of their function in dealing with the various alleged defects in the petition and in treating them as sufficient for dismissal, the petitioner is not absolved from his duty to comply, of his own accord, with the requirements of S. 83 (2) of the Act and to remove the defect when opportunity is available.

He cannot take shelter behind the fact that neither the Tribunal nor the respondent has, in terms, called upon him to furnish better particulars. While the tribunal has undoubtedly the power to permit amendment of the schedule of corrupt practices by permitting the furnishing of better particulars as regards the items therein specified, there is no duty cast upon the Tribunal to direct suo motu the furnishing of better particulars."

41. One may at once notice that on the facts of the case Section 77(3) read with Section 126(3) of the Act alone can be attracted. Sections 77(1) and (2) of the Act can have no application. As far as Section 77(3) is concerned it pertains to the candidate. If the candidate incurs or authorises expense more than the sanctioned limit, it ipso facto constitutes a corrupt practice vitiating the election of the candidate concerned and is liable to be set

aside. Here one may refer to the requirement of pleadings and materials to be supplied in this regard.

42. In the decision reported in **L.R. Shivaramagowda v. T.M. Chandrashekar** ((1999) 1 SCC 666), it was held as follows:

"18. Corrupt practices' have been set out in Section 123 of the Act. According to the first respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section, the incurring or authorising of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Election Rules, 1961 sets out the particulars to be contained in the account of election expenses. Sub-sections (1) and (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Election Rules prescribes the maximum limit for any Assembly Constituency. In order to declare an election to be void,

the grounds were set out in Section 100 of the Act. Sub-section (1)(b) of Section 100 relates to any corrupt practice 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. In order to bring a matter within the scope of sub-section (1)(b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section (3) of Section 77 i.e. the incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Section 77 (1) and (2) would also fall within the scope of Section 123 (6). Consequently, it cannot come fall under Section 100 (1)(b). The attempt here by the first respondent is to bring it within Section 100(1) (d) (iv). The essential requirement under that sub-section is that the result of the election in so far as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Section 77(1) and (2) will in no case affect, and much less materially, the result of the election."

43. In the decision reported in **Hari Shanker Jain v. Sonia Gandhi** ((2001) 8 SCC 233), it was held as follows:

"22. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well-settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the 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. Balakrishna, etc. v. George Fernandez*, (1969) 3 SCR 603; *Jitender Bahadur Singh v. Krishna Behari*, (1969) 2 SCC 433. Merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts. Material facts would

include positive statement of facts as also positive averment of a negative fact, if necessary. In *V. S. Achuthanandan v. P. J. Francis*, (1999) 3 SCC 737, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

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

44. In the decision reported in **P. Nalla Thampy v. Union of India** (AIR 1985 SC 1133), it was held as follows:

"18. It is essential that the limited range of Explanation 1 ought not to be enlarged. The ceiling placed

on election expenses is a basic commandment of the Act, not a pious edict. Its object is to keep a check on the expenditure incurred by candidates on their own elections, directly or through their election agents. They cannot be permitted to resort to subterfuges in order to evade the restraint imposed by Ss.77(1) and 77(3) of the Act. Homage to the principle of free and fair elections has to be real, not formal."

45. In the decision reported in **Ram Dayal v. Brijraj Singh** (AIR 1970 SC 110), it was held as follows:

"18. In the absence of any connection between the canvassing activities carried on by the Maharaja and the Rajmata with the candidature of Brijraj Singh, it is impossible to hold that any expenditure was incurred for Brijraj Singh which was liable to be included in the election expenses of the first respondent. Under Section 123 (6) of the Representation of the People Act, 1951, the incurring or authorizing of expenditure in contravention of S. 77 is a corrupt practice and Section 77 provides, insofar as it is material :

"(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result

thereof, both dates inclusive.

(2) * * * * *

(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

Unless it is established that the expenditure was incurred in connection with the election by the candidate or by his election agent or was authorised by him it is not liable to be included under Section 77 of the Representation of the People Act. We agree with the High Court that under Section 77 (1) only the expenditure incurred or authorised by the candidate himself or by his election agent is required to be included in the account or return of election expenses and thus expenses incurred by any other agent or person without anything more need not be included in the account or return, as such incurring of expenditure would be purely voluntary. Assuming that expenditure was incurred by the Maharaja and the Rajmata for the purpose of canvassing votes against Raja Pancham Singh, in the absence of any evidence to show that the Maharaja and the Rajmata of Gwalior acted as election agents of Brijraj Singh or the expenditure was authorised by Brijraj Singh it was not liable to be by Brijraj Singh it was not liable to be included in the account of the election expenses."

46. In the decision reported in **Kamalnath v. Sudesh Verma** (2002 KHC 1800), it was held as follows:

"4. In view of the rival contentions two questions arise for consideration:-

(1) After striking out of the paragraphs from the Election Petition in pursuance of order of the High Court, whether on the residue of the averments can it be said that material facts leading to the allegation of corrupt practice have been pleaded or the allegations are such that it would involve a chance or conjecture for the Court to draw inference by adopting an involved process of reasoning to arrive at a conclusion that the Petition contains an averment of expenditure beyond the prescribed limit, and as such, a triable issue still exists.

(2) Whether non-mention of source of information in the affidavit constitutes an infraction of the provisions of S. 83 of the Act, and as such is fatal to the maintainability of an Election Petition.

Coming to the first question, Chapter VIII of the Act deals with election expenses. Under S. 77 of the Act every candidate at an election either by himself or by his election agent, is required to keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof. Sub-section (3) of S. 77 provides that the total of the said expenditure shall not exceed such amount as may be prescribed. The expression "prescribed" has been defined in S. 2(h) to mean

prescribed by the rules made under the Act. Under S. 123 (6) of the Act incurring excessive expenditure than the maximum amount prescribed, would tantamount to corrupt practice. But the said expenditure has to be incurred either by the candidate or by his election agent or by a person authorised by him and further such expenditure must be between the date of publication of the notification calling the election and the date of declaration of the result thereof. Rule 90 of the Conduct of Election Rules provides the maximum amount that can be spent by a candidate or his authorised agent under S. 77 and for a Parliamentary Constituency, the amount is specified in Column (2) of the table in the State of Madhya Pradesh. It may be stated that mere non-disclosure of the expenditure will not be a corrupt practice but it is incurring of expenditure in excess of the prescribed amount would be held to be a corrupt practice. On a combined reading of S. 77 and S. 123(6) of the Act, it is explicitly clear that the excess expenditure must be incurred by the candidate or by any person authorised by the candidate or his election agent. In other words, an expenditure incurred by a third person, who is not authorised by a candidate or who is not an election agent of the candidate, will not be a corrupt practice within the ambit of S. 123(6) of the Act. It would, therefore, be necessary to establish a corrupt practice, as contemplated under S. 123(6) of the Act to plead requisite facts showing authorisation or undertaking of reimbursement by the candidate or his election agent. In the case of Dharti Pakar

Madan Lal Agarwal v. Rajiv Gandhi, 1987 (Supp) SCC 93, this Court examined the allegations made in the election petition and came to hold that mere allegation that several jeeps were plying in the constituency and that food was given to the party workers, would not tantamount to an allegation of corrupt practice and, therefore, the election petition was held to be not maintainable. Explanation (1) to S. 77 in the context of expenditure incurred or authorised by the candidate bears considerable significance inasmuch as voluntary expenditure incurred by friends, relations or sympathisers of the candidate is not required to be included in the candidate's return of expenses unless expenses were incurred in the circumstances from which it could be positively inferred that the successful candidate had undertaken that he would reimburse the person, who incurred the expenses. When maintainability of an election petition is considered from the stand-point as to whether material facts have been pleaded or not in a petition alleging corrupt practice on the ground that expenses incurred by the candidate is more than the prescribed limit, it would be necessary to aver the fact that the candidate has incurred the expenditure or has authorised any other person to incur the expenditure or that his election agent has incurred the expenditure and further the candidate has undertaken the liability to reimburse. These would constitute the material facts of an election petition, which is filed, alleging corrupt practice within the ambit of S. 123 (6) read with S. 77 of the Act and Rule 90 of the Conduct

of Election Rules. We would, therefore, examine the residue of averments made in the election petition to find out whether such material facts had in fact been averred in the election petition, so that a triable issue can be said to subsist, which could be adjudicated upon, after evidence being lead. Vague assertion that an helicopter was used for a specified number of flying hours and the standard charges for flying hour was Rs. 53,000/-, would not necessarily constitute the material fact that the candidate has spent by way of hiring of the helicopter, an amount exceeding the ceiling provided under R. 90 of the Conduct of Election Rules. In *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*, 1987 (Supp) SCC 93, the Court examined the allegation that at least 100 jeeps for 30 days and his workers with his consent used 40 jeeps and spent money on propaganda badges, leaflets, making arrangements for holding meetings throughout Amethi constituency and money was spent in providing food to 100 workers of Rajiv Gandhi, which was not accounted for in the election expenses return and came to hold that the allegations contained therein do not make out any case of corrupt practice. It was held in the aforesaid case that it is necessary to plead requisite facts showing authorisation, or undertaking of reimbursement by the candidate or his election agent and a mere vague and general statement that the candidate and his workers with his consent spent money in election in excess of the permissible ceiling would not be sufficient to constitute corrupt practice. In *V.*

Narayanaswamy v. C. P. Thirunavukkarasu, 2000 (2) SCC 294, a three-Judge Bench of this Court examined the distinction between material facts and material particulars and ultimately came to hold on fact that the election petition had lacuna in material facts. The allegation in that case was also corrupt practice but relating to bribery and undue influence. But the Court observed that in a petition on the allegation of corrupt practice, the cause of action cannot be equated with the cause of action, as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices inasmuch as an election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter and if proved, not only does the candidate suffer ignominy, but he also suffers disqualification from standing for election for a period that may extend to six years. After taking note of all the earlier decisions, the Court held that to plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person has affected and it cannot be left to time, chance or conjecture for the Court to draw inference by adopting an involved process of reasoning. Applying the aforesaid test to the residue of pleadings that are available in the election petition, after striking of several paragraphs pursuant to the orders of the High Court, it is difficult for us to hold that the material facts in relation to the alleged corrupt

practice within the ambit of S. 123(6) read with S. 77 of the Act, have at all been pleaded, so that the matter would be left to lead evidence during trial. On the other hand, vague assertion with regard to the use of helicopter and what are the standard charges of an helicopter per flight hour have been mentioned on it. It has not been specifically pleaded that either the appellant had incurred the expenditure amounting to a particular sum or has authorised his agent to incur the same or that he has authorised any other person to make the expenditure which the appellant has undertaken to reimburse. The High Court in paragraph (11) has culled out the residue of averments in the petition which were considered to be sufficient pleadings of the corrupt practice within the ambit of S. 123(6) read with S. 77 of the Act. But on examining the averment which remains in the election petition after several paragraphs having been struck off, we do not find any averment on record, indicating that the appellant either did incur the expenditure of hiring an helicopter for a specified number of hours or that he has authorised his election agent for hiring such helicopter or that he has authorised any other person for hiring such helicopter to whom he has undertaken to reimburse the amount. Mr. Ramajois, appearing for the respondents vehemently argued that paragraph (6) of the election petition unequivocally satisfies the material facts in relation to the allegation of corrupt practice under S. 123(6) of the Act, but paragraph (6) merely states that the facts narrated

below specifically would show that the expenses beyond the maximum limit as prescribed under S. 77 were actually incurred by the returned candidate or he has authorised the same. But on scrutinising the facts narrated below did not indicate the factual averment that the returned candidate had in fact incurred expenditure beyond the prescribed limit and all that had been stated is that an helicopter had been used for a number of hours and the normal rate of hiring a helicopter being in the minimum Rs. 2,12,000/- per day and the helicopter having been used for 14 days, the returned candidate must have been required to pay more than the prescribed limit towards the expenses of the helicopter. This in our considered opinion, cannot be held to be an assertion of material fact and on the other hand, it would be in the realm of conjecture, requiring the Court to draw inference by adopting an involved process of reasoning and that would not satisfy the requirement of the pleadings of material facts. We are unable to agree with the submissions of Mr. Ramjois, appearing for the respondents that in fact the election petition does indicate the cause of action and the applicant would be required to establish them only during trial inasmuch as an election petition which purports to unsettle the wish of the electorates has to be strictly construed and more so when an allegation of corrupt practice is the basis of the petition, the said allegation being quasi-criminal in nature. Having examined the averments which remain after striking off several paragraphs pursuant to the order

of the High Court, we have no hesitation to come to the conclusion that material facts in relation to an allegation of corrupt practice within the ambit of S. 123(6) read with S. 77 of the Representation of the People Act are lacking and, therefore, the election petition must be held to be not maintainable. In our view, the High Court committed error in coming to the conclusion that a triable issue does subsist on the residue of the allegations. Our answer to the first question, therefore, is that there has been an infirmity in the election petition, as the material facts in the context of allegation of corrupt practice within the ambit of S. 123(6) read with S. 77 of the Representation of the People Act are lacking and such an election petition is liable to be dismissed."

47. In the decision reported in **Ajay Maken v. Adesh Kumar Gupta** ((2013) 3 SCC 489), it was held as follows:

"22. Article 329 of the Constitution prohibits the calling in question any election to either the House of Parliament or the Legislature of a State except by an election petition in such manner as may be provided for by or under any law by the appropriate legislature. The Representation of the People Act, 1951 is such a law made by Parliament. It deals with the method and manner of conduct of the elections including the resolution of disputes

regarding the elections. This Court has repeatedly held that an election petition is not a common proceeding, but a creature of the statute.

27. The following propositions emerge from the above analysis. An election to Parliament or the State Legislature can be called in question only in accordance with the provisions of the Act. Such a question can be raised only before the High Court. The High Court, in an election dispute, can declare the election of the returned candidate to be void. It may also give a further declaration in an appropriate case and subject to compliance with the procedural requirements that either the election petitioner or any other candidate at the questioned election, has been duly elected. The first of the above mentioned declarations can be made only on one or some of the various grounds enumerated under Section 100 of the Act.

29. Section 100 prescribes that if the High Court is of the opinion that any corrupt practice has been committed by *a returned candidate or his election agent or by any other person with the consent of either the returned candidate or his election agent*, "the High Court shall declare the election of the returned candidate to be void."

"100. *Grounds for declaring election to be void.-(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-*

(a)

(b) *that any corrupt practice has been committed by*

a returned candidate or his election agent or by any other persons with the consent of a returned candidate or his election agent,"

The said section also stipulates that if it is established before the High Court that a corrupt practice has been committed in the interest of the returned candidate *by an agent other than his election agent*, then, the High Court is also required to form an opinion that "the result of the election, insofar as it concerns the returned candidate, has been materially affected". Before declaring the election of the returned candidate void"

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

(i)

(ii) by any corrupt practice committed in the interests of the returned candidate 4 [by an agent other than his election agent," (emphasis supplied)

The sub-clause "by an agent other than his election agent" occurring in Section 100(1)(d)(ii), must be understood in the light of Section 99(2), which reads as follows:

"99.(2)In this section and in section 100,m the expression 'agent' has the same meaning as in Section 123."

And Section 123(8) Explanation, which reads as follows:

"Explanation.-(1) In this section, the expression "agent" includes an election agent, a polling agent and any

person who is held to have acted as an agent in connection with the election with the consent of the candidate."

The Act enables the appointment, by every contesting candidate, of an election agent, polling agents and counting agents (Sections 40, 46 and 47 respectively.

31. Section 83(1)(b) requires that an election petition shall set forth "as full a statement as possible of the names of the parties alleged to have committed such corrupt practice". In my opinion the employment of the expression "parties" in the abovementioned clause is to compendiously cover the returned candidate, his election agent or any other person committing a corrupt practice with the consent of either the returned candidate or his election agent or any other agent committing a corrupt practice falling within the scope of Section 100(1)(d)(ii)."

48. In the decision reported in **Nandiesha reddy v. Kavitha Mahesh** (2011(3) K.L.T. SN 53) it was held as follows:

"If an Election Petitioner wants to put forth a plea that a nomination was improperly rejected to declare an election to be void it is necessary to set out the averments for making out the said ground. The reason given by the Returning Officer for refusal to accept the nomination and the facts necessary to show that the refusal was improper is required to be set out in the election petition. In the

absence of the necessary averments it cannot be said that the election petition contains the material facts to make out a cause of action. The phrase 'material fact' as used in S.83(1)(a) of the Act or Order VI R.2 of the Code of Civil Procedure has not been defined in the Act or the Code of Civil Procedure. In our opinion all specific and primary facts which are required to be proved by a party for the relief claimed are material facts. It is settled legal position that all material facts must be pleaded by the party on which the relief is founded. Its object and purpose is to enable the contesting party to know the case which it has to meet. An election petition can be summarily dismissed if it does not furnish the material facts to give rise to a cause of action. However, what are the material facts always depend upon the facts of each case and no rule of universal application is possible to be laid down in this regard."

49. The principles laid down in the above decisions leave one in no doubt about the significance and importance of the pleadings in a case of the present nature. Whether the pleadings in the case on hand satisfy the requirements will be examined little later.

50. An attempt was made by the petitioner's counsel to get over the plea of rejection of the petition at

the threshold referring to Section 86 of the Act which reads as follows:

"86. Trial of election petitions.- (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.-An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.-For the purposes of this sub-section and of

section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial."

It was contended that the defects pointed out in the case on hand do not fall within the ambit of Section 86 of the Act.

51. In the decision reported in **G.M. Siddeshwar v. Prasanna Kumar** (AIR 2013 SC 1549), it was held as follows:

“42. Undoubtedly, Section 86 of the Act makes no reference to Section 83 thereof and so, prima facie, an election petition cannot be summarily dismissed under Section 86 of the Act for non-compliance of the provisions of Section 83 thereof. This was briefly adverted to in *Hardwari Lal v. Kanwal Singh*, (1972) 1 SCC 214 : (AIR 1972 SC 515) but that was in the context of dismissal of the election petition under the provisions of the CPC. The contention urged in *Hardwari Lal* was to the effect that since Section 83 of the Act does not find a mention in Section 86 thereof, an election petition could not be summarily dismissed for non-compliance of Section 83. A three-Judge Bench of this Court held that since an election petition is required to be tried as nearly as possible in accordance with the procedure applicable under the CPC to the trial of suits, an election petition could nevertheless be dismissed if it did not disclose a cause of action.”

52. However, as already stated, the prayer for rejection at the threshold is not based on violation of Section 86 of the Act, but on the basis of judicial precedents that if the petition does not disclose a cause of action, it is

liable to be rejected under Order VII Rule 11 of C.P.C. Therefore, the decision relied on by learned counsel for the petitioner in support of his contention that the petition cannot be rejected under Section 86 of the Act at the threshold cannot be of any help to him.

53. To be precise, the contention of the respondent is that for want of cause of action, the petition is liable to be rejected. It is contended that nowhere in the petition, it is stated that the expenses alleged to have been incurred by the respondent from the date of notification till the declaration of results was actually incurred or as authorised by him. To be more precise, there is no pleading to the effect that other than the expenses shown in Annexure C, the alleged expenses in the petition has either been incurred by the respondent or has been incurred by the persons authorised by him. The word actually incurred or authorised by him are the significant words involved in the case on hand. That is so can be seen from the decisions

already referred to. The argument is that emphasis is on the fact that the amount incurred in excess of the permissible limit and as shown in Annexure C have been made with the consent and knowledge of the candidate. Even though in some portions of the petition, the word incurred or authorised are mentioned, that will have to be read in the context in which they appear.

54. According to the respondent, on a reading of the petition as a whole, it is difficult to gather that expenses alleged by the petitioner have been incurred or authorised by the respondent.

55. Here, it will be useful to refer to the decision in which the meaning of the word 'authorisation' was considered. In the decision reported in **Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi** (1987 (Supp) SCC 93) it was held as follows:

“19. Allegations contained in paras 50, 51 and 53 (1) (f) of the election petition purport to state that Rajiv

Gandhi and his workers with his consent spent money on the election in excess of the ceiling limit and major portion of which was not shown by him in his election expenses return. It was alleged that in all Rs. 3,15,500/- had been spent by Rajiv Gandhi in his election but he did not include the same in his return. Details of the expenditure is mentioned in the sub-paras (A) to (G) of para DO. In these paras the appellant alleged that Rajiv Gandhi used at least 100 jeeps for thirty days and his workers with his consent used 40 jeeps and spent money on propaganda badges, leaflets, making arrangements for holding meetings for Smt. Indira Gandhi throughout the Amethi constituency and money was spent in providing food to 100 workers of Rajiv Gandhi, in all the returned candidate and his workers with his consent spent a sum of Rs. 3,15,500/- but the same as not accounted for in the election return. The allegations contained in these paras relate to the corrupt practice under S. 123(6) of the Act read with S. 77. Section 123(6) provides that incurring or authorising of expenditure in contravention of S. 77 is a corrupt practice. Section 77 lays down that every candidate at the election shall keep a correct and separate account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of nomination and the date of declaration of result. The account shall contain such particulars as prescribed by Rules. Sub-section (3) lays down that expenditure shall not exceed such amount as may be prescribed. Rule 90,

Conduct of Election Rules, 1961, prescribed that the expenses shall not exceed a sum of Rs. 1 lakh for Lok Sabha election in the State of Uttar Pradesh. Section 77 and the Rules therefore prescribed a ceiling limit for election expenses and if any candidate incurs or authorises expenses in excess of the ceiling limit, he would be guilty of corrupt practice under S. 123(6) of the Act. The allegations contained in various sub-paras of para 50 merely allege that a number of vehicles were plying with Congress (1) flags and food was served in connection with the election meetings, distribution of badges and leaflets. There is, however, no allegation that Rajiv Gandhi incurred or authorised incurring of expenditure for the aforesaid purposes. Any voluntary expense incurred by a political party, well-wishers, sympathisers or association of persons does not fall within the mischief of S. 123(6) of the Act, instead only that expenditure which is incurred by the candidate himself or authorised by him is material for the purpose of S. 77. In *Rananjaya Singh v. Baijnath Singh* (AIR 1954 SC 749), this Court pointed out that expenses must be incurred or authorised by the candidate or his election agent. In that case the Manager, the Assistant Manager, 20 Ziladars and their peons were alleged to have worked for the election of the returned candidate. This Court held that the employment of extra persons and the incurring or authorising of extra expenditure was not by the candidate or his election agent. It was further pointed out that persons who volunteer to work cannot be said to

be employed or paid by the candidate or his election agent. In *Smt. Indira Gandhi v. Raj Narain* (AIR 1975 SC 2299), Ray, C. J. observed "Authorisation" means acceptance of the responsibility. Authorisation must precede the expenditure. Authorisation means reimbursement by the candidate or election agent of the person who has been authorised by the candidate or by the election agent of the candidate to spend or incur. In order to constitute authorisation the effect must be that the authority must carry with it the right of reimbursement."

56. In the decision reported in **Smt. Indira Nehru Gandhi v. Raj Narain** (AIR 1975 SC 710), it was held as follows:

"The test of authorisation would naturally be the creation of a liability to reimburse whoever spends the money and not necessarily the provision of money beforehand by the candidate on whose behalf it is spent. Nevertheless, the authorisation has to be set up and proved.

Voluntary expenditure by friends, relations, or sympathisers and expenditure incurred by a candidate's party, without any request or authorisation by the candidate, has never been deemed to be expenditure by the candidate himself. The law requires proof of circumstances from which at least implied authorisation

can be inferred. It is not enough that some advantage accrued or expenditure was incurred within the knowledge of the candidate.”

57. In the decision reported in **G. Vasantha Pai v. A. Srinivasan** (XXII E.L.R. 221), it was held as follows:

“Where persons interested in a candidate spend money to help the candidate in his election but the candidate himself has not authorised and does not eventually met such expenditure, the candidate is not bound to include such expenditure in his return of election expenses; and he would not be guilty of the corrupt practice under section 123(7) of the Representation of the People Act if he omits to include such expenses in his return.”

58. The pleadings in the case on hand would show that expenses have been incurred for notices, pamphlets, wall writings, vehicles, visual and audio media coverage etc. The specific allegation is that these expenses have not been accounted for.

59. It is no doubt true that in paragraph 8 of the petition, it has been stated that several of the expenses as

authorised by the candidate have been suppressed. In paragraph 9, it is seen stated "*the respondent has grossly understated the expenses incurred for printing and circulating the said notices in Annexure C*". In paragraph 10, it is seen stated "*large part of the expenditure incurred through print and electronic media authorised by the candidate have remained unreported.*" In paragraph 13, it is stated "*expenses incurred on account of the Star Campaigners have been suppressed*".

60. According to the learned counsel for the petitioner, the above pleadings are sufficient to meet the requirements. At any rate, there is substantial compliance.

61. It is contended that if there is any deficiency or dearth of pleadings, the court can direct the petitioner to furnish further details. For the above proposition, learned counsel relied on the decision reported in **Sardar Harcharan Singh Brar v. Sukh Darshan Singh** (AIR 2005 SC 23) wherein it was held as follows:

"13. Having gone through the contents of the election petition, we are satisfied that the High Court has not been right in directing the petition to be dismissed at the threshold by forming an opinion that the averments made in the election petition were deficient in material facts. It is not necessary to burden this judgment with reproduction of the several averments made in the election petition. The High Court has already done it. The test laid down in the several authorities referred to hereinabove and in particular in the case of Raj Narain (supra) is fully satisfied. The grounds of corrupt practice and the facts necessary to formulate a complete cause of action have been stated. Even the particulars have been given. However, if the Court feels that the particulars as given in the petition are deficient in any manner the petitioner can be directed to supply the particulars and make the deficiency good. In any case, deficiency in particulars could not have been a ground for dismissing the petition at the threshold. It is only the non-supply of particulars though ordered by the Court which could have led to either striking-off the pleadings or refusal to try the related instances of alleged corrupt practice. We cannot countenance the view taken by the High Court."

62. It is difficult to accept the above contention advanced by the petitioner. The decision in **Sardar**

Harcharan Singh Brar's case (supra) will have to be understood in the facts of that case. There, the pleadings already made formed a complete cause of action. In that context, it was held that deficiency of particulars cannot be a ground to dismiss the petition at the threshold.

63. In the case on hand, in most of the allegations it is stated that printing, publishing and campaigns were done with the consent and knowledge of the candidate. Of course, the paragraph where the allegation of having incurred or authorised expenses have been referred to.

64. But in this case, it is not specifically stated that the candidate himself has incurred the expenses. Regarding authorisation, it is not stated in the petition as to the person who was authorised to undertake campaign activities of the respondent or authorised by election agent of the respondent. Merely stating of words expenses incurred' and 'authorised' is not sufficient. More emphasis is

seen to have been laid on the allegation that printing, publicity campaign through audio and visual media and other methods have been carried out with the consent and knowledge of the candidate. The concept of consent and knowledge is not mentioned in Sections 77(3) and 123(6) of the Act.

65. Both sides placed considerable reliance on history of Section 77 of the Act. Section 77 as it originally stood reads as follows:

"77. Maximum election expenses, etc.- (1) The maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with elections shall be such as may be prescribed."

In 1956 Section was amended and thereafter it reads as follows:

"77 (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date of publication of the notification

calling the election and the date of declaration of the result thereof, both dates inclusive.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.”

66. In the decision reported in **Kanwar Lal v. Amarnath** (AIR 1975 SC 308), it was held that the expense incurred by a political party who sponsored the candidate and that candidate being benefited from such campaign undertaken by political parties spending amounts, those expenses will be deemed to have been part of the expenses incurred by the candidate.

67. In the decision reported in **Kanwar Lal v. Amarnath** (AIR 1975 SC 308), it was held as follows:

“8. We first take up issue 10. The charge against the first respondent under this issue was that he incurred or authorised expenditure in excess of the prescribed limit of Rs. 10,000 in contravention of Section 77 and thereby committed the corrupt practice defined in Section 123 (6) of the Act. Section 123 sets out various corrupt practices which have the effect of invalidating an election and one of

them is the incurring or authorising of expenditure in contravention of Section 77: vide sub-section (6). Sub-section (1) of S. 77 provides that

"every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive",

while sub-section (3) says that

"the total of the said expenditure shall not exceed such amount as may be prescribed".

It was common ground between the parties that the expenditure prescribed for a Parliamentary constituency in the Union Territory of Delhi was Rs. 10,000. The first respondent and his election agent were, therefore, prohibited by Section 77 from incurring or authorising expenditure in connection with his election exceeding Rs. 10,000 and if the first respondent or his election agent incurred or authorised such expenditure in excess of Rs. 10,000, it would be a corrupt practice voiding his election under Section 123 (6). The question which, therefore, arises for consideration is whether the first respondent or his election agent incurred or authorised expenditure in connection with his election exceeding Rs. 10,000.

9. Now, before we proceed to discuss the evidence bearing on this question we must clear the ground by

pointing out that not only is the incurring of excessive expenditure a corrupt practice, but also the authorising of such expenditure, and authorising may be implied as well as express. Where the authorising is express, there is no difficulty in bringing home the charge of corrupt practice against the candidate. But a somewhat difficult question on facts may arise where the charge is sought to be proved against the candidate on the basis that he impliedly authorised excessive expenditure. Whether a particular expenditure was impliedly authorised by the candidate must depend on the facts and circumstances of each case as appearing from the evidence adduced before the Court. This question would arise in a challenging form where expenditure in connection with the election is incurred, not by the candidate, but by the political party which has sponsored him or his friends and supporters. Can the limit on the expenditure be evaded by the candidate by not spending any moneys of his own but leaving it to the political party or his friends and supporters to spend an amount far in excess of the limit? The object of the provision limiting the expenditure is twofold. In the first place, it should be open to any individual or any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength. It can hardly be disputed that the way

elections are held in our country, money is bound to play an important part in the successful prosecution of an election campaign. Money supplies

"assets for advertising and other forms of political solicitation that increases the candidate's exposure to the public".

Not only can money buy advertising and canvassing facilities such as hoardings, posters, handbills, brochures etc. and all the other paraphernalia of an election campaign, but it can also provide the means for quick and speedy communications and movements and sophisticated campaign techniques and is also "a substitute for energy" in that paid workers can be employed where volunteers are found to be insufficient. The availability of large funds does ordinarily tend to increase the number of votes a candidate will receive. If, therefore, one political party or individual has larger resources available to it than another individual or political party, the former would certainly, under the present system of conducting elections, have an advantage over the latter in the electoral process. The former would have a significantly greater opportunity for the propagation of its programme while the latter may not be able to make even an effective presentation of its views. The availability of disproportionately larger resources is also likely to lend itself to misuse or abuse for securing to the political party or individual possessed of such resources, undue advantage over other political parties or individuals. Douglas points out in his book called

Ethics in Government at page 72,

"If one party ever attains overwhelming superiority in money, newspaper support, and (government) patronage, it will be almost impossible, barring an economic collapse, for it ever to be defeated".

This produces anti-democratic effects in that a political party or individual backed by the affluent and wealthy would be able to secure a greater representation than a political party or individual who is without any links with affluence or wealth. This would result in serious discrimination between one political party or individual and another on the basis of money power and that in its turn would mean that "some voters are denied an 'equal' voice and some candidates are denied an 'equal chance'." It is elementary that each and every citizen has an inalienable right to full and effective participation in the political process of the legislatures and this requires that each citizen should have equally effective voice in the election of the members of the legislatures. That is the basic requirement of the Constitution. This equal effective voice - equal opportunity of participation in the electoral process - would be denied if affluence and wealth are to tilt the scales in favour of one political party or individual as against another. The democratic process can function efficiently and effectively for the benefit of the common good and reach out the benefits of self-government to the common man only if it brings about a participatory democracy in which every man, however lowly or humble

he may be, should be able to participate on a footing of equality with others. Individuals with grievances men and women with ideas and vision are the sources of any society's power to improve itself. Government by consent means that such individuals must eventually be able to find groups that will work with them and must be able to make their voices heard in these groups and no group should be insulated from competition and criticism. It is only by the maintenance of such conditions that democracy can thrive and prosper and this can be ensured only by limiting the expenditure which may be incurred in connection with elections, so that, as far as possible no one single political party or individual can have unfair advantage over the other by reason of its larger resources and the resources available for being utilised in the electoral process are within reasonable bounds and not unduly disparate and the electoral contest becomes evenly matched. Then alone the small man will come into his own and will be able to secure proper representation in our legislative bodies.

10.The other objective of limiting expenditure is to eliminate, as far as possible, the influence of big money in the electoral process. If there were no limit on expenditure, political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and affluent who constitute but a fraction of the electorate. The pernicious influence of big money would then play a decisive role in controlling the

democratic process in the country. This would inevitably lead to the worst form of political corruption and that in its wake is bound to produce other vices at all levels. This danger has been pointed out in telling words in the following passage from the notes in Harvard Law Review, Vol. 66, p. 1260:

"A less debatable objective of regulating campaign funds is the elimination of dangerous financial pressures on elected officials. Even if contributions are not motivated by an expected return in political favors, the legislator cannot overlook the effects of his decisions on the sources of campaign funds."

It is difficult to generalise about the degree of influence which the large contributors may wield in shaping the policies and decisions of the political party which they finance. It is widely acknowledged, however, that, at the very least, they would have easy access to the leaders and representatives of the political party. But it would be naive to suggest that the influence ends with mere access. It may safely be assumed that hardly any politicians "do not consciously sell their votes", the result may be nearly the same, if one accepts Herbert Alexander's analysis of the subtle factors that influences a political party's actions :

"Many politicians who do what they honestly think is right, never realize that they are mere spokesmen for their financial supporters. A legislator can avoid a conflict of interest by investing in government bonds, but he cannot change the conditioning that leads him to

believe that what is good for his former company or present backers is good for the country."

It is likely that some elected representatives would tend to share the views of the wealthy supporters of their political party, either because of shared background and associations, increased access or subtle influences which condition their thinking. In such event the result would be that though ostensibly the political parties which receive such contributions may profess an ideology acceptable to the common man, they would in effect and substance be representative of a certain economic class and their policies and decisions would be shaped by the interests of that economic class. It was over a hundred years ago that John Stuart Mill observed that persons of a particular class who have exclusive governmental power, even if they try to act objectively, will tend to overlook the interests of other classes, or view those interests differently. And to this natural tendency may be added the fact that office bearers and elected representatives may quite possibly be inclined, though unconsciously and imperceptibly, to espouse policies and decisions that will attract campaign contributions from affluent individuals and groups. It was said of the electoral process in the United States of America:

"Members of the Rockefeller and Du Pont families invest in the election of a Republican President because they sense that if that party takes over the White House, their interests will gain more sympathetic attention..... "

The central objective of contributions is access to the power of the elected official "For a gift of a few hundred dollars an individual may gain, in return, the intercession of a Congressman that will get him a government contract or a tariff provision that will ultimately net him or his business tens of thousands of dollars."

It is obvious that pre-election donations would be likely to operate as post-election promises resulting ultimately in the casualty of the interest of the common man, not so much ostensibly in the legislative process as in the implementation of laws and administrative or policy decisions. The small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process. It is for this reason that our Legislators, in their wisdom, enacted a ceiling on the expenditure which may legitimately be incurred in connection with an election. This background must inform the court in the interpretation of this vital and significant provision in the election law of our country.

11. Now, if a candidate were to be subject to the limitation of the ceiling, but the political party sponsoring him or his friends and supporters were to be free to spend as much as they like in connection with his election, the object of imposing the ceiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness of the democratic

process would be wholly emasculated. The mischief sought to be remedied and the evil sought to be suppressed would enter the political arena with redoubled force and vitiate the political life of the country. The great democratic ideal of social, economic and political' justice and equality of status and opportunity enshrined in the Preamble of our Constitution would remain merely a distant dream eluding our grasp. The legislators could never have intended that what the individual candidate cannot do, the political party sponsoring him or his friends and supporters should be free to do. That is why the legislators wisely interdicted not only the incurring but also the authorising of excessive expenditure by a candidate. When the political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure, but his political party has done so. A party candidate does not stand apart from his political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it directly to

promote the poll prospects of the candidate. The same proposition must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. This is the only reasonable interpretation of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying our election process and ridding it of the pernicious and baneful influence of big money. This is in fact what the law in England has achieved. There, every person, on pain of criminal penalty, is required to obtain authority from the candidate before incurring any political expenditure on his behalf. The candidate is given complete discretion in authorising expenditure upto his limit. If expenditure made with the knowledge and approval of the candidate exceeds the limit or if the candidate makes a false report of the expenditure after the election, he is subject not only to criminal penalties, but also to having his election voided. It may be contended that this would considerably inhibit the electoral campaign of political parties. But we do not think so. In the first place, a political party is free to incur any expenditure it likes on its general party propaganda though, of course, in this area also some limitative ceiling is eminently desirable coupled with filing of return of expenses and an independent machinery to investigate and take action. It is only where expenditure is incurred which can be identified with the election of a given candidate that it would be liable to be added to the

expenditure of that candidate as being impliedly authorised by him Secondly, if there is continuous community involvement in political administration punctuated by activated phases of well discussed choice of candidates by popular participation in the process of nomination, much of unnecessary expenditure which is incurred today could be avoided. Considerable distances may not have to be travelled by candidates and supporter nor hidden skeletons in political cupboards tactically uncovered, propagandist marijuane skilfully administered, temptations of office strategically held out nor violent demonstrations disruptively attempted. The dawn-to-dawn multiple speeches and monster rallies, the flood of posters and leaflets and the organising of transport and other arrangements for large numbers would become otiose. Large campaign funds would not be able to 'influence the decision of the electors if the selection and election of candidates become people's decision by discussion and not a Hobson's choice offered by political parties. Limiting election expenses must be part of the political process."

That resulted in amendment of Section 77 and an Explanations were added and thereafter it read as follows:

"77 (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the

election incurred or authorized by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.

Explanation 1.- Notwithstanding any judgment, order or decision of any court to the contrary, any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorized by the candidate or by his election agent for the purposes of this sub.section;

Provided that nothing contained in this Explanation shall affect-

(a) any judgment, order or decision of the Supreme Court whereby the election of a candidate to the House of the People or to the Legislative Assembly of a State has been declared void or set aside before the commencement of the Representation of the People (Amendment) Ordinance, 1974;

(b) any judgment, order or decision of a High Court whereby the election of any such candidate has been declared void or set aside before the commencement of the said Ordinance if no appeal has been preferred to the Supreme Court against such judgment, order or decision of the High Court before such commencement and the period

of limitation for filing such appeal has expired before such commencement.

Explanation 2- For the purposes of Explanation 1, "political party" shall have the same meaning as in the Election Symbols (Reservation and Allotment) Order, 1968, as for the time being in force.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

Subsequently again Section 77 was amended and after the subsequent amendment it reads as follows:

"77 (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.

Explanation 1.- Notwithstanding any judgment, order or decision of any court to the contrary, any expenditure incurred or authorised in connection with the election of a

candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorized by the candidate or by his election agent for the purposes of this sub.section;

Provided that nothing contained in this Explanation shall affect-

(a) any judgment, order or decision of the Supreme Court whereby the election of a candidate to the House of the People or to the Legislative Assembly of a State has been declared void or set aside before the commencement of the Representation of the People (Amendment) Ordinance, 1974;

(b) any judgment, order or decision of a High Court whereby the election of any such candidate has been declared void or set aside before the commencement of the said Ordinance if no appeal has been preferred to the Supreme Court against such judgment, order or decision of the High Court before such commencement and the period of limitation for filing such appeal has expired before such commencement.

Explanation 2- For the purposes of Explanation 1, "political party" shall have the same meaning as in the Election Symbols (Reservation and Allotment) Order, 1968, as for the time being in force'."

Later the provision was again amended in 2003 and after the amendment it reads as follows as it now stands:

77. Account of election expenses and maximum thereof.- (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

Explanation 1.-For the removal of doubts, it is hereby declared that-

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section.

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection

with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.-For the purposes of clause (a) of Explanation 1, the expression "leaders of a political party", in respect of any election, means,-

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number, whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place."

(2) The account shall contain such particulars, as may be

prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.”

68. Relying on Section 77 of the Act as it now stands, learned counsel for the petitioner contended that the principle laid down in **Kanwar Lal 's case (supra)** revives and the expenses for the campaign incurred cannot be confined to what is incurred or authorised by the candidate. The evil that is sought to be avoided by the decision reported in **Kanwar Lal 's case (supra)** now got fresh life in the light of the exclusion of the Explanation brought about to Section 77 by amending Act of 1974.

69. Elaborating on the above aspect, the learned counsel pointed out that expenses incurred by political parties were excluded from the purview of expenses incurred or authorised by candidate due to the explanation added by Amending Act 58 of 1974. Once that explanation stands deleted, the principle laid down in the decision in **Kanwar Lal 's case (supra)** revives and the provision as it

now stands is insufficient to exclude such expenses. Relying on the third explanation added to Section 77 of the Act, learned counsel went on to contend that the mischief sought to be avoided as per the decision in **Kanwar Lal 's case (supra)** has not been avoided. The provision as it now stands does not exclude other expenses incurred by the political party who had sponsored the candidate or any other person provided the candidate had benefited out of it. If the candidate voluntarily accepted and approved the campaign method adopted by the political party who sponsored him or any other person and benefited by the candidate, then necessarily those expenses will be deemed to have been incurred by the candidate. In the decision reported in **Common Cause A Registered Society v. Union of India** (AIR 1996 SC 3081), it was held as follows:

“19. Adverting to Section 77 of the Income-tax Act, Mr. Kapil Sibal, learned counsel for the Election Commission has contended that the expenditure incurred by a political party in terms of Explanation I to Section 77

of the R. P. Act shall be presume to be authorised by the candidate himself but the said presumption would be rebuttable. The onus lies on the candidate to prove that the expenditure was in fact incurred / authorised by the party and it was not incurred by the candidate himself. We see considerable force in the contention of the learned counsel. There can be no dispute that the expenditure incurred by a candidate himself would squarely fall under Section 77 (1) of the R. P. Act. There can also be no dispute with the proposition that the expenditure actually incurred and spend by a political party in connection with the election of a candidate cannot be treated to be the expenditure under Section 77 (1) of the Act. The question, however, for determination is what rule of evidence is to be followed to attract the provisions of Explanation I to Section 77 of the R. P. Act? The said Explanation is in the nature of an exception to sub-section I of Section 77. A candidate in the election who wants to take the benefit of Explanation I to Section 77 of the R. P. Act - in any proceeding before the Court - must prove that the said expenditure was in fact incurred by the political party and not by him. Any expenditure in connection with the election of a candidate which according to him has been incurred by his political party shall be presumed to have been authorised by the candidate or his election agent. But the presumption is rebuttable. The candidate shall have to show that the said expenditure was in fact incurred by a political party and not by him. The candidate shall have to

rebut the presumption by the evidentiary - standard as applicable to rebuttable presumptions under the law of evidence. An entry in the books of account of a political party maintained in accordance with Section 13-A of the Income-tax Act showing that the party has incurred expenditure in connection with the election of a candidate may by itself be sufficient to rebut the presumption. On the other hand, the ipse dixit of the candidate or writing at the bottom of the pamphlet, poster, cutout, hoarding, wall painting, advertisement and newspaper etc. that the same were issued by the political party may not by itself be sufficient to rebut the presumption. We, therefore, hold that the expenditure including that for which the candidate is seeking protection under Explanation I to Section 77 of R. P. Act) in connection with the election of a candidate - to the knowledge of the candidate or his election agent- shall be presumed to have been authorised by the candidate or his election agent. It shall, however, be open to the candidate to rebut the presumption in accordance with law and to show that part of the expenditure or whole of it was in fact incurred by the political party to which he belongs or any other association or body of persons or by an individual (other than the candidate or his election agent).A constitution bench of this Court in Dr. P. Nalla Thampy Terh v. Union of India, (AIR 1985 SC 1133), speaking through Chandrachud, C. J. interpreted Explanation I to Section 77 as under (at pp. 1141-42 of AIR) :-

"While we are on this question, we would like to point out that if an expenditure which purports to have been incurred, for example, by a political party, has in fact been incurred by the candidate or his election agent, Explanation 1 will not be attracted. It is only if the expenditure is in fact incurred or authorised by a political party or any other association or body persons, or by an individual (other than the candidate or his election agent) that the Explanation will come into play. The candidate cannot place his own funds in the power or possession of a political party, or a trade union or some other person and plead for the protection of Explanation I. The reason is that, in such a case, the incurring of the expenditure by those others, is a mere facade. In truth and substance, the expenditure is incurred by the candidate himself because, the money is his. What matters for the purpose of Explanation 1 is not whose hand it is that spends the money. The essence of the matter is, whose money it is. It is only if the money expended by a political party, for example, is not laid at its disposal by the candidate or his election agent that Explanation 1 would apply. In other words, it must be shown, in order that Explanation 1 may apply, that the source of the expenditure incurred was not the candidate or his election agent. What is important is to realise that Explanation 1 does not create a fiction. It deals with the realities of political situations. It does not provide that the expenditure in fact incurred or authorised by a candidate or his election agent, shall not be deemed to be incurred or

authorised by them, if the amount is defrayed by a political party. This would be tantamount to creating a fiction. The object of the Explanation is to ensure that the expenditure incurred, for example, by a political party on its own, that is, without using the funds provided by the candidate or his election agent shall not be deemed to be expenditure incurred or authorised by the candidate or his election agent. If the expenditure is incurred from out of the funds provided by the candidate or his election agent Section 77 (1) and not Explanation 1 would apply."

70. In the decision reported in **P. Nalla Thampy v. Union of India** (AIR 1985 SC 1133), it was held as follows:

"17. While we are on this question, we would like to point out that if an expenditure which purports to have been incurred, for example, by a political party, has in fact been incurred by the candidate or his election agent, Explanation 1 will not be attracted. It is only if the expenditure is in fact incurred or authorised by a political party or any other association or body of persons, or by an individual (other than the candidate or his election agent) that the Explanation will come into play. The candidate cannot place his own funds in the power or possession of a political party, or a trade union or some other person and plead for the protection of Explanation 1. The reason is

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intent is to create a fiction, is apt to cause confusion and misunderstanding. The reason why the expression "shall not be deemed to be" is used in Explanation 1 is that the Parliament wanted to get over the effect of the judgment of this court in Kanwar Lal Gupta (AIR 1975 SC 308). Similarly, the reason why the expression "shall not ever be deemed to have been" is used in the Explanation is that the intention of the Parliament was to get over the effect of that judgment retrospectively, except to the extent mentioned in clauses (a) and (b) of the Proviso to the Explanation."

71. It is very vehemently contended on behalf of the petitioner that averments in paragraphs 8,9, 10 and 11 are more relevant and are applicable to the facts of the case.

72. Replying to the above contention, learned counsel for the respondent contended that in the decision in **Smt. Indira Nehru Gandhi v. Raj Narain** (AIR 1975 SC 2299), the principle laid down in **Kanwar Lal's case** (supra) has been specifically overruled. It has been specifically held that the law laid down in **Kanwar Lal's**

case (supra) was not good law. Learned counsel went on to contend that the decisions in **Common Cause A Registered Society v. Union of India** (AIR 1996 SC 3081) and **P. Nalla Thampy v. Union of India** (AIR 1985 SC 1133) dealt with altogether different issues. The principle decision reported in **Smt. Indira Nehru Gandhi v. Raj Narain** (AIR 1975 SC 2299) overruling the decision in **Kanwar Lal's case** (supra) has not departed from in the above decisions and the principle laid down in the said decision still holds good.

73. After having gone through the above decisions, there seems to be considerable force in the submission of the learned Senior Counsel for the respondent. Though the argument of the learned counsel for the petitioner may look attractive at the first blush, on a careful analysis, it can be found to be without substance.

74. The decision in **Kanwar Lal's case** (supra) was considered in detail in the decision in **Smt. Indira**

Nehru Gandhi's case (supra). After holding that the decision in **Kanwar Lal's case** (supra) became redundant in view of the 1974 Amendment adding Explanation to Section 77 of the Act, the decision in **Smt. Indira Nehru Gandhi's case** (supra) did not stop there. The decision went on to test the sustainability of the principle laid down in **Kanwar Lal's case** (supra). Expressing dissent on the decision in **Kanwar Lal's case** (supra), it was held as follows:

“119. On behalf of the respondent it was said relying on the decision of this Court in Kanwar Lal Gupta's case, AIR 1975 SC 308 (supra) that if the candidate takes advantage of expenditure incurred by the political party in connection with the election of the candidate or participates in the programme of activity or fails to disavow the expenditure the candidate cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure but his political party has done so. Expenditure incurred by apolitical party in connection with the election of the candidates of the party is not a part of the election expenses of the candidate. Similarly, participation in the programme of activity organised by a political party will not

fall within the election expenses of the candidate of the party. A candidate is not required to disavow or denounce the expenditure incurred or authorised by the political party because the expenditure is neither incurred nor authorised by the candidate. One can disavow what would be ascribed to be incurred or authorised by one. In the case of expenses of a political party there is no question of disavowing expenditure incurred or authorised by the political party.

120. The decision in Kanwar Lal Gupta's case, AIR 1975 SC 308 (supra) was based on an observation extracted from the decision of this Court in Megh Raj Patodia v. R. K. Birla, (AIR 1971 SC 1295). In Megh Raj Patodia's case (supra) the allegations were that the respondent had been put up by one of the wealthiest business houses in the country which owned or controlled a large number of companies and during the election campaign vast material and human resources of these companies were drawn upon by the respondent. This Court dismissed the appeal on the ground that the appellant had failed to establish that expenditure in excess of the prescribed limit was incurred by the respondent. In Megh Raj Patodia's case (supra) there is an observation that expenses incurred by a political party to advance the prospects of the candidates put up by it without more do not fall within Section 77 of the 1951 Act. The words "something more" were construed by counsel for the respondent to mean that if a candidate takes advantage of

expenditure incurred or authorised by a political party such expenses could be attributed to a candidate. The Amendment Act, 1974 has added Explanation 1 to Section 77 of the 1951 Act which shows that expenditure incurred or authorised in connection with the election of a candidate by the political party shall not be deemed to be expenditure incurred or authorised by the candidate or his election agent.

121. Allegations that election expenses are incurred or authorised by a candidate or his agent will have to be proved. Authorisation means acceptance of the responsibility. Authorisation must precede the expenditure. Authorisation means reimbursement by the candidate or election agent of the person who has been authorised by the candidate or by the election agent of the candidate to spend or incur. In order to constitute authorisation the effect must be that the authority must carry with it the right of re-imbusement.”

75. As rightly pointed out by the learned Senior Counsel for the respondent, neither the decision reported in **Common Cause A Registered Society v. Union of India** (AIR 1996 SC 3081) nor the decision in **P. Nalla Thampy v. Union of India** (AIR 1985 SC 1133) strike a different note from **Smt. Indira Nehru Gandhi's case** (supra) and the

principle laid down in **Smt. Indira Nehru Gandhi's case** (supra) still holds good.

76. Now coming to the pleadings in the case on hand, except for saying that the expenses have been incurred with the consent and knowledge of the respondent, nothing further has been stated. Of course, in certain places it has been averred that the expenses have been incurred or authorised by the candidate. Authorisation has a particular connotation in the context. That would be clear from the decision reported in **Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi** (AIR 1987 Suppl. SCC 93), the relevant paragraph has already been extracted.

77. In the decision reported in **Rajanjaya Singh v. Baijnath Singh** (AIR 1954 SC 749), it was held as follows:

"It is true that Section 77 uses the words "who may be employed for payment" without indicating by whom employed or paid but it must be borne in mind that the gist of a corrupt practice as defined in Section 123(7) is that

the employment of extra persons and the incurring or authorising of excess expenditure must be 'by' the candidate or his agent. The provisions of Rr. 117 and 118 are to be read in the light of this definition of a corrupt practice. Indeed, these rules follow the language of Section 123(7) in that they prohibit the employment of persons other than or in addition to those specified in Scheduled VI and the incurring or authorising of expenditure in excess of the amount specified in Scheduled V and in both cases 'by' a candidate or his agent. Section 77 must, therefore, be read in a manner consonant with Section 123(7) and R. 117 and 118."

78. If the above test is to be applied in the case on hand, certainly it fell far short of the required standard. The details of the person authorised are not given. Details of places and time of printing and publishing, distribution etc are not given. There is no pleading that the respondent has undertaken to reimburse the expenses incurred by the political party or any other person for the various campaigning methods adopted by the party. It will not be out of place to also mention that petition is totally silent about the source of information of the petitioner for making

various allegations. Thus the essential particulars are conspicuously absent in the pleadings.

79. It is significant to notice that violation of Section 77(1) and (2) of the Act does not amount to corrupt practice. In the decision reported in **L.R. Shivaramagowda v. T.M. Chandrashekar** ((1999) 1 SCC 666) it has been held that failure on the part of the candidate to furnish accounts does not amount to corrupt practice.

80. The provisions relied on to set aside the election will have to be given strict interpretation and the grounds are only those available under the law. However agitated one may be about the conduct of candidate or one is merely convinced that there is deviation from the ideal standard, or that the conduct of the candidate is highly reprehensible, that do not form a cause of action for the reason that such actions are not covered by the relevant statutory provision. The Act is a complete Code in itself and courts cannot dig out grounds not covered by the Act to set

aside an election.

81. As regards the contention that if at all there is any deficiency in the pleadings, that can be cured by permitting the petitioner to furnish better details cannot be available in the case on hand as this petition suffers from want of facts and not particulars alone. Essential facts will have to be pleaded in the petition itself and that cannot be added or deleted by way of amendment. The facility of amendment only relates to a case when more particulars are needed for substantiating the details and the facts already pleaded. The principle of permitting amendment is not available in the case of supplying material facts. Therefore, the decision relied on by the learned counsel for the petitioner with regard to the facility of availing of amendment provision to cure the defects cannot be countenanced.

82. The result is that on a careful reading of the petition, it can be found that the requirements of Section 77

(3) and 123(6) are not satisfied in the pleadings or the allegations in the petition and they fall far too short of the required standard. At the risk of repetition, the words incurred or authorised were mentioned by the petitioner for the purpose of strengthening the case of the petitioner based on the principle laid down in **Kanwar Lal's case** (supra). It has already been found that **Kanwar Lal's case** (supra) can provide no help to the petitioner in view of the fact that the principle laid down therein has been overruled by the decision in **Smt. Indira Nehru Gandhi v. Raj Narain** (AIR 1975 SC 2299).

83. The details regarding time, place and the persons who are involved in distributing the pamphlets are not mentioned. The meaning of the word 'authorised' appearing in the provision already referred to has already been noticed. There is no specific averment that even assuming that expenses have been incurred by the political party, or somebody else on behalf of the candidate, it was

as authorised by him. The necessary facts and particulars in this regard are absent in the petition.

The result is that there seems to be considerable force in the submission of the learned Senior Counsel for the respondent that the petition is bad for want of disclosure of necessary facts. The above contention is accepted and the petition is rejected at the threshold under Order VII Rule 11 of C.P.C.

P. BHAVADASAN,
JUDGE

sb.