

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPLICATION (L) NO. 14 OF 2015
IN
ELECTION PETITION NO. 18 OF 2014**

Dilip Dnyandeo Kamble .. Applicant

IN THE MATTER BETWEEN

Ganesh Dadu Shendge .. Petitioner.
Vs
Dilip Dnyandeo Kamble & Ors. .. Respondents.

WITH

ELECTION PETITION NO.18 OF 2014

Ganesh Dadu Shendge .. Petitioner.
Vs

Dilip Dnyandeo Kamble & Ors. .. Respondents.

Mr. B.D.Joshi a/w Ms.Anjali Helekar a/w Aniket Ransubhe i/b Ajay Basutkar Advocates for Applicant/orig. Respondent.

Mr. Drupad S. Patil, Advocate for Opponent/Petitioner.

CORAM : R.G.KETKAR,J.
RESERVED ON: 03/02/2016.
PRONOUNCED ON: 30/03/2016.

ORDER:

1. Heard Mr. B.D.Joshi, learned counsel for the applicant and Mr. Drupad Patil, learned counsel for the opponent at length.

2. This Application is filed by the respondent in Election Petition, hereinafter referred to as 'returned candidate', against

opponent, hereinafter referred to as 'election petitioner', inter alia, praying for dismissing Election Petition under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (for short, C.P.C.) read with Section 83 of the Representation of the People Act, 1951 (for short, 'Act'). The relevant and material facts giving rise to filing of the Application, briefly stated, are as under.

3. The election petitioner and the returned candidate, among others, contested the Assembly Election 2014 from the Pune Cantonment Assembly Constituency-214 (for short, 'said Constituency'). The election petitioner contested the said election as an independent candidate. The returned candidate contested the said election as a candidate of Bharatiya Janata Party ('B.J.P.'). The returned candidate was declared as elected on 19.10.2014. The election petitioner has called in question the election of the returned candidate by filing Election Petition under section 80 of the Act. The gravamen of the charge against the returned candidate in the Election Petition is commission of corrupt practices in the said election by incurring and/or authorizing expenditure in contravention of Section 77 of the Act.

4. The returned candidate has filed the application, inter-alia, contending that the election petitioner has failed to disclose cause of action and the Election Petition is, therefore, required to be dismissed under Order VII, Rule 11 (a) of C.P.C. The election petitioner has failed to give material facts which would constitute

a complete cause of action as required under section 83(1)(a) of the Act to warrant trial of the Election Petition. The Election Petition is nothing but a roving or fishing enquiry into the election expenses of the returned candidate. It is further contended that neither the verification in the petition nor the affidavit gives any indication of the sources of information of the election petitioner as to the facts set out in the petition. The non-disclosure of the source of information about corrupt practices in the affidavit is fatal to the Election Petition. The affidavit filed is not in consonance with the proviso to Section 83(1) of the Act read with Rule 94-A of the Conduct of Election Rules, 1961 (for short, 'Rules'). The election petitioner has not asserted the material facts and material particulars, thereby, causing prejudice to the returned candidate.

5. On behalf of the election petitioner, though time was taken for filing reply, no reply is filed.

6. Mr. Joshi appearing for the returned candidate submitted that Section 77 of the Act requires every candidate at an election has to 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 on which he has been nominated and the date of declaration of the result thereof, both dates inclusive. He has also referred to Explanation 1 and 2 to sub-section (1) and sub-

sections (2) and (3) of Section 77. He further submitted that Section 123 deals with corrupt practices. Sub-section (6) thereof lays down that the incurring or authorizing of expenditure in contravention of section 77 shall be deemed to be corrupt practices for the purpose of the Act. He submitted that it is not in dispute and is evident from the record that maximum limit of election expenses prescribed under section 77 of the Act read with Rule 90 of the Rules for the election in question is Rs. 28 Lacs.

7. Mr. Joshi submitted that the election petitioner has called in question the election of the returned candidate on the ground that the returned candidate and his election agents have committed corrupt practice by incurring or authorising of expenditure in contravention of Section 77 of the Act. He has taken me through paragraphs 10 to 17, 19 to 21 of the Election Petition to contend that the Election Petition is liable to be rejected at the threshold under Order VII, Rule 11(a) read with Section 83 of the Act. He has also invited my attention to Section 83(1)(c) and proviso thereto to contend that an Election Petition shall be signed by the petitioner and verified in the manner laid down in the C.P.C. for the verification of pleadings. Proviso thereto lays down that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt

practice and the particulars thereof. Rule 94-A lays down that the affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25. He submitted that in the present case, the election petitioner has committed breach of this provision and as such this Court has to dismiss the Election Petition as it does not comply with the provisions of Section 83 as also Section 86 of the Act and as such is liable to be dismissed.

8. In support of his submissions, he relied upon following decisions:-

(1) Jitu Patnaik Vs. Sanatan Mohakud,¹ to contend that bare allegations in the petition cannot be treated as material facts. Whether averments in Election Petition constitute material facts or not would depend upon the facts of each case. Right to contest election or to challenge election is neither common law nor a fundamental right but is a statutory right governed by statutory provisions.

(2) Azhar Hussain Vs. Rajiv Gandhi², to contend that Election Petition can be dismissed for noncompliance of provisions of Section 83, i.e. for failure to incorporate in petition material facts and particulars relating to alleged corrupt practice. As per Section 87 of the Act, the Election Petition

¹ (2012) 4 Supreme Court Cases 194,

² AIR 1986 S.C. 1253

has to be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the C.P.C. to the trial of suits. The Court trying the Election Petition can act in exercise of powers including Order VI Rule 17 or Order VII, Rule 11(a). It is settled law that the omission of a single material fact would lead to an incomplete cause of action and that an Election Petition without the material facts relating to a corrupt practice is not an Election Petition at all.

(3) Dhartipakar Madan Lal Agarwal Vs. Shri Rajiv Gandhi³, to contend that on a combined reading of Sections 81,83,86, and 87 of the Act, paragraphs of an election petition which do not disclose any cause of action, are liable to be struck off under Order VI, Rule 15 of C.P.C as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the Court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings.

3. AIR 1987 Supreme Court 1577

(4) Samar Singh V. Kedar Nath⁴, to contend that Order VII, Rule 11 does not place any restriction or limitation on the exercise of Court's power; it does not either expressly or by necessary implication provide that power under Order VII, Rule 11 CPC should be exercised at a particular stage only.

(5) L.R. Shivaramagowda Vs. T.M. Chandrashekar (dead) by LRs⁵, to contend that failure to maintain true and correct accounts by itself does not amount to corrupt practice of incurring or authorising excess expenditure justifying setting aside the election. Language of Section 123(6) is clear that the corrupt practice defined therein can relate only to sub-section (3) of Section 77 (excess expenditure). Excessive expenditure charge must be expressly pleaded. Actual averment only to the effect that a true and correct account of expenditure incurred by the candidate not furnished in statement of account and that thus corrupt practice under section 123(6) committed does not amount to pleading that excessive expenditure over and above prescribed limit had been incurred.

(6) Kamalnath Vs. Sudesh Verma⁶, to contend that the petitioner must aver the fact that excess expenditure had been incurred by the candidate himself or by his election

4. AIR 1987 Supreme Court 1926

5. (1999) 1 Supreme Court Cases 666

6. (2002) 2 Supreme Court Cases 410,

agent or by a person authorised by him. Expenditure voluntarily incurred by friends, relations or sympathizers not includible unless the candidate had undertaken the liability to reimburse the same. Election petitioner has to establish corrupt practice under section 123(6) of the Act must plead requisite facts showing authorisation or undertaking of reimbursement by the candidate or his election agent.

(7) Jeet Mohinder Singh Vs Harminder Singh Jassi⁷, to contend that allegations of corrupt practice should be clear and precise and the charge should be proved to the hilt in a criminal trial by clear, cogent and credible evidence. Mere preponderance of probabilities are not enough for setting aside election.

(8) V.Narayanaswamy Vs. C.P.Thirunavukkarasu⁸, to contend that in case of defect in material facts, petition has to be rejected at the outset. Allegations of corrupt practice must be supported by affidavit disclosing source of information and stating that the allegations are true to the petitioner's knowledge and believed by him to be true. Allegations should be clear, precise and specific and should not be open to more than one inference. It must be specifically stated that the corrupt practice was committed with the

7. (1999) 9 Supreme Court cases 386

8 (2000) 2 SCC 294

consent of the candidate and particular electoral rights have been affected thereby. The affidavit must conform not only to the form prescribed in substance but also contain particulars as prescribed by the Rules. Otherwise, the petition is liable to be rejected at the threshold.

(9) Bashir Musa Patel Vs. Satyawan Ganpat Jawkar⁹, to contend that High Court has no power to permit the election petitioner to fill in the gap which would gravely prejudice the opposite party at the trial.

(10) Udhav Singh Vs. Mahdavi Rao Scindia¹⁰, to contend that failure to plead even a single material fact leads to incomplete cause of action and incomplete allegations of such a charge, are liable to be struck out under Order VI, rule 16 C.P.C. If the petition is solely based on those allegations which suffer from lack of material facts, petition is liable to be summarily rejected for want of cause of action.

9. Mr. Joshi submitted that perusal of paragraphs 10 to 17, 19 to 21 would clearly show that the election petitioner has not pleaded the material facts warranting rejection of the election petition at the threshold.

10. On the other hand, Mr Patil has invited my attention to paragraphs 20 and 21 of the Election Petition. In paragraph 20,

9. (1997) 1 SCC 751

10 AIR 1976 SC 744

the election petitioner has asserted that the returned candidate has accounted for total election expenses of Rs.12,07,513/- whereas total fund receipts accounted for are only Rs.7,57,213/-. The returned candidate has not submitted correct election accounts as mandated by Section 77 of the Act.

11. In paragraph 21, it is asserted that the returned candidate deliberately suppressed substantial expenses incurred and/or authorised by him and/or election agents towards election during the period from the date of nomination till the date of declaration of election results. The actual election expenses incurred and/or authorised by the returned candidate and/or his election agent is more than Rs. 28,00,000/- which is a maximum limit of election expenses prescribed under Section 77 of the Act read with Rule 90 of the Rules. The returned candidate has violated statutory mandate prescribed under section 77 of the Act and thus committed corrupt practice in the election.

12. Mr. Patil relied upon paragraph 45 of Udhav Singh¹⁰ to contend that “material facts” constituting a complete charge of corrupt practice are stated in the Petition. The contentions advanced by the returned candidate are lacking of material particulars and not “material facts”. The occasion for furnishing such particulars would arise only if the returned candidate would ask for them. He further submitted that the contention advanced on behalf of the returned candidate as regards noncompliance of

Section 83(1)(c) read with proviso as also Rule 94-A and Form no.25 is wholly misconceived. He submitted that both verification and affidavit meet the requirements of law. He, therefore, submitted that no case is made out by the returned candidate for rejecting the petition under Order VII, Rule 11 read with Section 83 of the Act and the Election Petition is required to be proceeded further in accordance with law.

13. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Before I consider the rival submissions advanced by the learned counsel appearing for the parties, it is necessary to consider the various principles laid down by the Apex Court in election matters.

14. In the case of Azhar Hussain Vs. Rajiv Gandhi², the Apex Court has observed in paragraph 4 thus:

"4. In a democratic polity 'election' is the mechanism devised to mirror the true wishes and the will of the people in the matter of choosing their political managers and their representatives who are supposed to echo their views and represent their interest in the legislature. The results of the Election are subject to judicial scrutiny and control only with an eye on two ends. First, to ascertain that the 'true' will of the people is reflected in the results and second, to secure that only the persons who are eligible and qualified under the Constitution obtain the representation. In order that the "true will" is ascertained the Courts will step in to protect and safeguard the purity of Elections, for, if corrupt practices have influenced the result, or the electorate has been a victim of fraud or deception or compulsion on any essential matter, the will of the people as recorded in their votes is not the 'free' and 'true' will exercised intelligently by deliberate choice. It is not the will of the people in the true

sense at all. And the Courts would, therefore, it stands to reason, be justified in setting aside the election in accordance with law if the corrupt practices are established. So also when the essential qualifications for eligibility demanded by the constitutional requirements are not fulfilled, the fact that the successful candidate is the true choice of the people is a consideration which is totally irrelevant notwithstanding the fact that it would be virtually impossible to re-enact the elections and reassertion the wishes of the people at the fresh elections the time-scenario having changed. And also notwithstanding the fact that elections involve considerable expenditure of public revenue (not to speak of private funds) and result in loss of public time, and accordingly there would be good reason for not setting at naught the election which reflects the true will of the people lightly. In matters of election the will of the people must prevail and Courts would be understandably extremely slow to set at naught the will of the people truly and freely exercised. If Courts were to do otherwise, the Courts would be pitting their will against the will of the people, or countermanding the choice of the people without any object, aim or purpose. But where corrupt practices are established the result of the election does not echo the true voice of the people. The Courts would not then be deterred by the aforesaid considerations which in the corruption-scenario lose relevance. Such would be the approach of the Court in an election matter where corrupt practice is established. ...”

15. In the case of above decision, the Apex Court held that material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. The decision in *Manubhai Nandlal Amarsey Vs. Popatlal Manilal Joshi*, AIR 1969 SC 734 was also considered.

16. In the case of Jeet Mohinder Singh⁷, the Apex Court laid down well-settled legal principles in the field of election jurisprudence:

“(i) The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the Court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves enormous load on the public funds and administration.

(ii) Charge of corrupt practice is quasi-criminal in character. If substantiated it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to hilt, the standard of proof being the same as in a criminal trial.

(iii) Section 83 of the Act requires every election petition to contain a concise statement of the material facts on which the appellant relies. If the election petition alleges commission of corrupt practice at the election, the election petition shall set forth full particulars of any corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Every election petition must be signed and verified by the appellant in the manner laid down for the verification of pleadings in the CPC. An election petition alleging corrupt

practice is required to be accompanied by an affidavit in Form 25 read with Rule 94A of the Conduct of Election Rules, 1961. Form 25 contemplates the various particulars as to the corrupt practices mentioned in the election petition being verified by the appellant separately under two headings: (i) which of such statements including particulars are true to appellant's own knowledge, and (ii) which of the statements including the particulars are true to information of the appellant. It has been held in *Gajanan Krishnaji Bapat Vs. Dattaji Raghobaji Meghe*, (1995) 5 SCC 347 that the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice so as to bind him to the charge leveled by him and to prevent any fishing or roving enquiry, also to prevent the returned candidate from being taken by surprise."

17. In the case of *V. Narayanaswamy*⁸, the Apex Court held that in case of defect in material facts, petition has to be rejected at the outset. Allegations of corrupt practice must be supported by affidavit disclosing source of information and stating that the allegations are true to petitioner's knowledge and believed by him to be true. Allegations should be clear, precise and specific and should not be open to more than one inference. It must be specifically stated that the corrupt practice was committed with the consent of the candidate and particular electoral rights have been affected thereto.

18. In the case of *Jitu Patnaik*¹, the Apex Court has succinctly stated the distinction between material facts and material particulars. Paragraphs 45 to 47 read thus:

"45. A bare perusal of the above provisions would show that the first part of Order VI Rule 2, Code of Civil Procedure is similar to Clause 1(a) of Section 83 of the 1951 Act. It is imperative for an election petition to contain a concise

statement of the material facts on which the election Petitioner relies. What are material facts? All basic and primary facts which must be proved at the trial by a party to establish the existence of cause of action or defense are material facts. The bare allegations are never treated as material facts. The material facts are such facts which afford a basis for the allegations made in the election petition. The meaning of 'material facts' has been explained by this Court on more than one occasion. Without multiplying the authorities, reference to one of the later decisions of this Court in *Virender Nath Gautam v. Satpal Singh* (2007) 3 SCC 617 shall suffice.

In *Virender Nath Gautam* (2007) 3 SCC 617, this Court referred to the leading case of *Philipps v. Philipps* (1878) 4 QBD 127 and the subsequent decision in *Bruce v. Odhams Press Limited* (1936) 1 K.B. 697 that referred to *Philipps* (1878) 4 Q.B.D. 127 and observed in paragraphs 34 and 35 of the Report as follows:

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

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

47. Whether the averments in the election petition constitute material facts or not would depend upon facts of

each case. As stated by this Court in Virender Nath Gautam Vs. Sampal Singh, 2007 (3) SCC 617, no rule of universal application can be applied in finding out whether the statements of fact made in the election petition amount to material facts or not. It is, therefore, necessary to consider the pleadings with regard to suppression of 319 votes in paragraph 7(D) of the election petition.”

19. In the present case, the election petitioner has called in question the election of the returned candidate on the ground of commission of corrupt practices by incurring and/or authorising expenditure in contravention of Section 77 of the Act. On the touchstone of the principles laid down by the Apex Court, let us examine the case of corrupt practices pleaded by the election petitioner. Perusal of the Election Petition shows that from paragraphs 10 to 21, the election petitioner has pleaded the case of corrupt practices allegedly committed by the returned candidate.

20. Paragraph 10 reads thus:

“10. The petitioner states and submits that the respondent no.1 and his election agent have committed corrupt practice in the Maharashtra Assembly Elections-2014 in so far election in Pune Cantonment Assembly Constituency-214 is concerned by incurring and/or authorizing expenditure in contravention of section 77 of the RP Act. The petitioner states and submits that the respondent no.1 and his election agent have failed to give correct account of the expenditure incurred and authroized by him and/or his election agent in connection with the election in Pune Cantonment Assembly Constituency-214. The petitioner states and submits that respondent no.1 and his election agent have not kept correct account of election expenses as mandated by Section 77 r/w Rule 86 of the Conduct of Election Rules, 1961. The petitioner states and submits that the respondent no.1 has deliberately suppressed large amounts

of expenditure incurred and/or authorised by him and/or his election agent in connection with the election in Pune Cantonment Assembly Constituency-214. The petitioner states and submits that the respondent no.1 has failed to account for sources of income and finances from which he and election agent incurred and/or authorized election expenses.”

21. Mr. Joshi submitted that the election petitioner has merely made allegations of corrupt practices but has not pleaded material facts and material particulars to show that the alleged corrupt practices were actually done or authroised by the returned candidate.

22. Perusal of the above paragraph shows that the election petitioner has made following allegations:

- (a) Respondent no.1 (returned candidate) and his election agent have committed corrupt practice by incurring and/or authorising expenditure in contravention of Section 77 of the Act.
- (b) Respondent no.1 (returned candidate) and his election agent have failed to give correct account of the expenditure incurred and authorised by him and/or his election agent .
- (c) Respondent no.1 and his election agent have not kept correct account of election expenses as mandated by Section 77 read with 86 of the Rules.
- (d) Respondent no.1 has deliberately suppressed large amounts of expenditure incurred and/or authroized by him and/or his election agent.

(e) Respondent no.1 has failed to account for sources of income and finances from which he and election agent incurred and/or authorised election expenses.

23. Perusal of paragraph 10 shows that neither any details of incurring expenses or authorizing it have been stated therein. In order to constitute a corrupt practice as contemplated by Sections 77 and 123(6), it is necessary to plead requisite facts showing authorization by the returned candidate or that the returned candidate has exceeded election expenditure. A mere vague and general statement that the candidate or his authorized agent has spent money in election in excess of the permissible ceiling would not be sufficient to constitute corrupt practice. From the averments made in paragraph 10, it cannot be deduced that the expenditure even if incurred by the returned candidate was so incurred between the date of nomination and the date of declaration of result of the election. In the absence of the election petitioner having made a positive allegation of the alleged expenses having been incurred between the date of nomination of the returned candidate and the date of declaration of the result, the applicability of sub-section (3) of Section 77 would not be attractive.

24. Paragraph 11 of the petition reads thus:

“The Petitioner states and submits that the respondent no.1 organized many rallies and meetings in the Pune Cantonment Assembly Constituency for his election

campaign. The respondent no.1 engaged Central Minister and BJP star campaigners, namely Mr. Venkayya Naidu, Mr Piyush Goel and smt Najma Heptulla to campaign for him in the elections. The said star campaigners attended the rallies and meetings to campaign for the respondent no.1. Hereto annexed and marked as Exhibit-B are the copies of photographs of Mr Piyush Goel attending one such meeting during campaigning for respondent no.1. The petitioner states and submits that respondent no.1 has deliberately suppressed expenses incurred by him in respect of meetings and rallies conducted by the said star campaigners. The petitioner states and submits that according to election commission's guidelines, the candidates have to bear the expenses incurred for engaging star campaigners and the same is not borne by the party. The petitioner states and submits that the respondent no.1 has incurred and/or authorized substantial expenditure for engaging the said star campaigners. However, the respondent no.1 has suppressed the said expenditure and the same has remained unaccounted for. In view of the aforesaid facts and circumstances, the respondent no.1 has committed corrupt practice in elections."

25. Mr. Joshi submitted that S/Shri Venkayya Naidu, Piyush Goel and Ms Najma Heptulla are senior party leaders and have campaigned for several candidates belonging to the BJP. The rallies or meetings attended by Mr Piyush Goel and Smt Najma Heptulla were neither at the instance of the returned candidate or at the instance of his election agent. Neither the returned candidate nor his election agent have incurred expenses or authorized any expenses for holding the meetings attended by the said BJP leaders. The allegations made in paragraph 11 are based on conjunctures and assumption and the election petitioner has not averred that any such expenses have in fact incurred from out of the own funds of the returned candidate or

on the promise of reimbursement or otherwise. The election petitioner has nowhere alleged that what are the expenses incurred by the returned candidate and the same if any incurred were incurred and/or authorized by the returned candidate. In other words, the election petitioner wants the Court to draw inference that the returned candidate has incurred expenses beyond permissible limits.

26. Perusal of the averments in paragraph 11 shows that the election petitioner has alleged:

(a) Respondent no.1 organised many rallies and meetings in the Pune Cantonment Assembly Constituency for his election campaign.

(b) Respondent no.1 engaged Central Minister and BJP star campaigners, namely:

(i) Mr Venkayya Naidu,

(ii) Mr. Piyush Goel

(iii) Smt Najma Heptulla

to campaign for him in the election.

(c) The said star campaigners attended the rallies and meetings to campaign for respondent no.1. Copies of photographs of Mr Piyush Goel attending one such meeting during campaigning for respondent no.1 is annexed as Exhibit B.

(d) Respondent no.1 has deliberately suppressed expenses incurred by him in respect of meetings and rallies conducted by

the star campaigners.

(e) According to the Election Commission's guidelines, the candidates have to bear the expenses incurred for engaging star campaigners and the same is not borne by the party. Respondent no.1 has incurred and/or authorised substantial expenditure for engaging the said star campaigners.

(e) Respondent no.1 suppressed the said expenditure and the same has remained unaccounted for. Thus, respondent no.1 has committed corrupt practice in elections.

27. After considering the assertions made in paragraph 11, in my opinion, such inference is not permissible as in each and every corrupt practice must be clearly and specifically pleaded and it should be complete in itself. No corrupt practice can be inferred from reading one sentence from here and the other sentence here. A corrupt practice as contemplated by Section 123 (6) contemplates incurring and authorising expenditure beyond the prescribed limit. The allegations contained in paragraph 11 do not contain any averment that the respondent incurred and/or authorised expenditure beyond the prescribed limit. Neither any details of incurring expenditure or authorizing it have been stated. The election petitioner intended that the returned candidate had spent on many over rallies and meetings and by engaging Central Minister and BJP star campaigners. In the absence of requisite allegations in the said paragraph, the

basic ingredient to make out ground for challenging the election is totally lacking as held by the Apex Court in the case of Dhartipakar Madan Lal Agarwal³.

28. Paragraph 12 of the petition reads thus:

“12. The petitioner states and submits that during the period from the date of nomination till the date of declaration of election results, respondent no.1 had sent out bulk SMS to the electors as part of campaigning for the purpose of conveying well-wishes and organizing pad yatras, melas, corner meetings and other meetings. The petitioner states and submits that the respondent no.1 incurred and/or authorized substantial expenditure for sending out the bulk SMS. The respondent no.1 has not accounted for the expenditure incurred for sending out bulk SMS. In view of the aforesaid facts and circumstances, the respondent no.1 has committed corrupt practice in election.”

29. Mr. Joshi submitted that the election petitioner has alleged sending of bulk SMS to the electors as part of campaigning for the purpose of conveying well wishers and organizing pad yatras, melas, corner meetings and other meetings for which the returned candidate incurred and/or authorized substantial expenditure. Respondent no.1 has not accounted for the expenditure for sending out bulk SMS. The election petitioner has not given mobile numbers from which the bulk SMS were sent. He has also not given any details of any SMS whether bulk or otherwise. The election petitioner has also not asserted as to from whom, which company the bulk SMS were sent and what were the expenses incurred for the same. He has also failed to

give as to whom they were sent and what was the contents of the same.

30. Perusal of paragraph 12 extracted herein above shows that it is alleged that:

(a) During the period from the date of nomination till the date of declaration of election results, respondent no.1 had sent out bulk SMS to the electors as part of campaigning for the purpose of conveying well-wishes and organizing pad yatras, melas, corner meetings and other meetings.

(b) Respondent no.1 incurred and/or authorized substantial expenditure for sending out the bulk SMS.

(c) Respondent no.1 has not accounted for the expenditure incurred for sending out bulk SMS.

(d) Respondent no.1 has thus committed corrupt practice in elections.

31. On a scrutiny of the averments made, it is evident that it is not pleaded as to who has sent the bulk SMS. The election petitioner has not given at least few mobile numbers from which bulk SMS were sent. He has also not asserted as to from whom, which company the bulk SMS were sent and what were the expenses incurred for the same. He has also failed to give atleast few mobile numbers to whom they were sent and what were the contents of the SMS. Pleading is ominously silent on these aspects. It has not even been pleaded that any particular person

with the consent of the returned candidate or his election agent sent the bulk SMS. The infirmity with which the averments made in the election petition suffered is that the dates between which the bulk SMS were alleged to have been sent and to whom were sent, are not mentioned in the election petition. From the averments made in the petition, it cannot be deduced that the expenditure on account of bulk SMS even if incurred by the returned candidate was so incurred between the date of nomination of the returned candidate and the date of declaration of the result of the election. In the absence of the election petitioner having made a positive allegation of the alleged expenses having been incurred between the date of nomination of the returned candidate and the date of declaration of the result, in my opinion, the applicability of sub-section (3) of Section 77 would not be attractive.

32. Paragraph 13 of the petition reads thus:

“13. The petitioner states and submits that there are 282 polling stations in Pune Cantonment constituency. To attend to every polling station, the respondent no.1 had engaged polling agents on the day of polling. The respondent no.1 incurred and/or authorized substantial expenditure for remunerating the said polling agents and providing refreshments and other supplies to them. However, the respondent no.1 has not accounted for the aforesaid expenditure. In view of the aforesaid facts and circumstances, the respondent no.1 has committed corrupt practice in elections.”

33. Mr. Joshi submitted that the allegations made in

paragraph 13 are vague and the returned candidate is unable to deal with the same for want of material facts and material particulars.

34. Perusal of paragraph 13 shows that the election petitioner has alleged that :

(i) there are 282 polling stations in Pune Cantonment Constituency.

(ii) to attend to every polling station, respondent no.1 had engaged polling agents on the day of polling.

(iii) Respondent no.1 has incurred and/or authorised substantial expenditure for remunerating the said polling agents and providing refreshments and other supplies to them.

(iv) Respondent no.1 has not accounted for the aforesaid expenditure and has thus committed corrupt practice in elections.

35. Paragraph 14 of the petition reads thus:

“14. The petitioner states and submits that the respondent no.1 had also engaged people to work as his representatives during vote counting. The respondent no.1 incurred and/or authorized substantial expenditure for remunerating the said polling agents and providing refreshments and other supplies to them. However, the respondent no.1 has not accounted for the aforesaid expenditure. In view of the aforesaid facts and circumstances, the respondent no.1 has committed corrupt practice in elections.”

36. Mr. Joshi submitted that the election petitioner has failed to give material facts and material particulars as to number of people engaged, whether they were authorized by the

returned candidate or his election agent. He submitted that as regards refreshment and other supplies, the expenses for the same are already mentioned in the accounts submitted with the election officer. The allegations contained in this paragraph are devoid of any material facts and material particulars.

37. Perusal of paragraph 14 shows that the petitioner has alleged that:

- (a) Respondent no.1 had engaged people to work as his representatives during vote counting.
- (b) Respondent no.1 incurred and/or authorised substantial expenditure for remunerating the said polling agents and providing refreshments and other supplies to them.
- (c) Respondent no.1 however has not accounted for the aforesaid expenditure and has thus committed corrupt practice in elections.

38. Paragraph 15 of the petition reads thus:

“15. The petitioner states and submits that during the period from the date of nomination till the date of declaration of election results, the respondent no.1 had engaged people for distribution of his campaign pamphlets, voters slips and other campaign material. The petitioner states and submits that the respondent no.1 incurred and/or authorized substantial expenditure for printing and distribution of the aforesaid material. The petitioner states and submits that the respondent no.1 incurred and/or authorized substantial expenditure for remunerating the people who were hired to distribute the pamphlets, voters slips and other material. However, the respondent no.1 has not properly accounted for the aforesaid expenditure. In view

of the aforesaid facts and circumstances, the respondent no.1 has committed corrupt practice in elections.”

39. Mr Joshi submitted that the contents of paragraph 15 are vague, baseless and are lacking in material facts and material particulars. The election petitioner has not provided copy of any campaigning pamphlets, voters slips and other campaign material in respect of which it is alleged that the returned candidate has incurred and/or authroised substantial expenditure for printing and distribution.

40. Perusal of paragraph 15 shows that the election petitioner has alleged that :

(a) During the period from the date of nomination till the date of declaration of election results, respondent no.1 had engaged people for distribution of his campaign pamphlets, voters slips and other campaign material.

(b) Respondent no.1 has incurred and/or authoized substantial expenditure for printing and distribution of the aforesaid material.

(c) Respondent no.1 incurred and/or authorized substantial expenditure for remunerating the people who were hired to distribute the pamphlets, voters slips and other material.

(d) Respondent no.1 however has not properly accounted for the aforesaid expenditure and has thus committed corrupt practice in the elections.

41. Paragraph 16 of the petition reads thus:

“16. The petitioner states and submits that the respondent no.1 had put up desks across the constituency on the polling day for assistance of the voters and for handling over voters' slips. The respondent no.1 had engaged many people to man the said desks. The petitioner states and submits that the respondent no.1 incurred and/or authorized substantial expenditure for remunerating the said people. However, the respondent no.1 has not accounted for the aforesaid expenditure. In view of the aforesaid facts and circumstances, the respondent no.1 has committed corrupt practice in elections.”

42. Mr. Joshi reiterated that the election petitioner failed to plead material facts and material particulars and has made baseless allegations.

43. Perusal of paragraph 16 shows that the election petitioner has alleged that :

- (a) Respondent no.1 had put up desks across the constituency on the polling day for assistance of the voters and for handing over voters' slips;
- (b) Respondent no.1 had engaged many people to man the said desks;
- (c) respondent no.1 incurred and/or authorized substantial expenditure for remunerating the said people.
- (d) Respondent no.1 has, however, not accounted for the aforesaid expenditure and has thus committed corrupt practice in elections.

44. Paragraph 17 of the petition reads thus:

“17. The petitioner states and submits that the respondent

no.1 organized a massive campaign rally in the constituency on the last date of campaigning. The petitioner states and submits that the respondent no.1 incurred and/or authorized substantial expenditure for organizing and conducting the said rally. However, the respondent no.1 has not accounted for the aforesaid expenditure. In view of the aforesaid facts and circumstances, the respondent no.1 has committed corrupt practice in elections. The petitioner states that respondent no.1 has accounted for traveling expenditure on account of hiring charges of vehicles like Jeep, Tempo, Cars, SUV, Three Wheller's and Auto Rickshaws for only five days. Under section 77 of the RP Act, 1951, the respondent no.1 was under the obligation to account for expenses incurred by him on traveling charges from the date of filing of nomination till the date of declaration of results. The respondent no.1 has admittedly not disclosed campaigning expenditure incurred by him for the aforesaid period. In view of the aforesaid facts and circumstances, the respondent no.1 has committed corrupt practice in elections."

45. Mr. Joshi submitted that the election petitioner has not organized a massive campaign rally in the constituency on the last date of campaigning. The returned candidate has accounted for travelling expenses on account of hiring charges of vehicles. The returned candidate has shown expenses for all the days when the respective vehicles were used.

46. Perusal of paragraph 17 shows that the election petitioner has alleged that:

- (a) Respondent no.1 organized a massive campaign rally in the constituency on the last date of campaigning.
- (b) Respondent no.1 incurred and/or authorized substantial expenditure for organizing and conducting the said rally.
- (c) Respondent no.1 has, however, not accounted for the aforesaid expenditure and has thus committed corrupt practice

in the elections. Respondent no.1 has accounted for traveling expenditure on account of hiring charges of vehicles like Jeep, Tempo, Cars, SUV, Three Wheelers and Auto Rickshaws for only five days.

(d) Under section 77 of the Act, respondent no.1 was under the obligation to account for expenses incurred by him on traveling charges from the date of filing of nomination till the date of declaration of results. Respondent no.1 has admittedly not disclosed campaigning expenditure incurred by him for the aforesaid period and has thus committed corrupt practice in elections.

47. Paragraph 18 of the petition reads thus:

“18. The petitioner states and submits that the accounts concerning election expenses submitted by the respondent no.1 under Section 77 r/w Section 78 of the RP Act r/w Rule 86 of the Conduct of Election Rules, 1961 are incorrect. Hereto annexed and marked as Exhibit-C is the copy of Extract of Election Accounts submitted by the respondent no.1”

Perusal of paragraph 18 shows that it is alleged that the accounts concerning election expenses submitted by respondent no.1 under sections 77, 78 read with Rule 86 of the Rules are incorrect.

48. Mr. Joshi submitted that the election petitioner has not given details of any clarity and has made bald and baseless allegations in a frivolous and casual manner and it is difficult for the returned candidate to deal with the same.

49. Paragraph 19 of the petition reads thus:

“19. The petitioner states and submits that bare perusal of the said accounts shows that the respondent no.1 has suppressed substantial election expenses which are required to be disclosed as under Section 77 of the RP Act. In view of the aforesaid facts and circumstances, the respondent no.1 has committed corrupt practices in elections.”

Perusal of this paragraph shows that it is alleged that bare perusal of the said accounts shows that respondent no.1 has suppressed substantial election expenses which are required to be disclosed under section 77 of the Act and thus has committed corrupt practice in elections.

50. Mr. Joshi reiterated his submission that the contents of paragraph 19 are vague and that the election petitioner has not pleaded the material facts and material particulars.

51. Paragraph 20 of the petition reads thus:

“20. The petitioner states and submits that respondent no.1 has accounted for total election expenses of Rs. 12,07,513/- whereas total fund receipts accounted for are only Rs. 7,57,213/-. therefore, it is clear that the respondent no.1 has not submitted correct election accounts as mandated by Section 77 of the RP Act. In view of the aforesaid facts and circumstances, the respondent no.1 has committed corrupt practice in election.”

It is alleged that Respondent no.1 has accounted for total election expenses of Rs.12,07,513/- whereas total fund receipts accounted for are only Rs.7,57,213/-. It is therefore clear that respondent no.1 has not submitted correct election accounts as mandated by Section 77 of the Act and has thus committed corrupt practice in election.

52. Mr Joshi submitted that the returned candidate has submitted true and correct accounts of the election expenses.

53. Paragraph 21 of the petition reads thus:

“21. The petitioner states and submits that the respondent no.1 has deliberately suppressed substantial expenses incurred and/or authorized by him and/or election agents towards election during the period from the date of nomination till the date of declaration of election results. The petitioner states and submits that actual election expenses incurred and/or authorized by the respondent no.1 and/or his election agent is more than Rs.28,00,000/- which is a maximum limit of election expenses prescribed under Section 77 of the RP Act r/w Rule 90 of the Conduct of Election Rules, 1961. In view of the aforesaid facts and circumstances, the respondent no.1 has violated statutory mandate prescribed under Section 77 of the RP Act and committed corrupt practice in elections.”

Perusal of this paragraph shows that it is alleged that :

(a) Respondent no.1 has deliberately suppressed substantial expenses incurred and/or authorized by him and/or election agents towards election during the period from the date of nomination till the date of declaration of election results.

(b) Actual election expenses incurred and/or authorized by respondent no.1 and/or his election agent is more than Rs.28,00,000/- which is a maximum limit of election expenses prescribed under Section 77 read with Rule 90 of the Rules and thus respondent no.1 has violated statutory mandate prescribed under Section 77 of the Act and has thus committed corrupt practice in elections.

54. Perusal of the Election Petition as a whole shows that the

election petitioner has not pleaded the material facts and material particulars.

55. In the case of (1) Mohan Singh V Bhanwar Lal¹¹, it is held thus:

“It is therefore vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other than the giving of vote. It was said by counsel for the respondent that because the statute did not render the giving of vote a corrupt practice the words "any assistance" were full statement of material fact. The submission is fallacious for the simple reason that the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared, could the court have given a verdict in favour of the election petitioner? The answer is in the negative because the allegations in the petition did not disclose any cause of action.”

(2) In the case of Nehal Singh Vs. Rao Birendra Singh¹², , the Apex Court has observed in paragraph 8 thus :

“... The pleading was so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses. The pleading in fact, was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this point.”

11 AIR 1964 SC 1366

12 (1970) 3 SCC 239

56. Applying the tests laid down in the above decisions, if the assertions made in the Election Petition are concerned, in my opinion, the election petitioner has extracted the words from Section 77 of the Act. The election petitioner has not given full and complete statement of material facts to cloth the petitioner with a complete cause of action and to give an equal and full opportunity to the returned candidate to meet the case and to defend the charges. Merely alleging that the returned candidate has incurred and/or authorized expenditure in contravention of Section 77 of the Act is like extracting words from the statute. That he and his election agent have failed to give correct account of the expenditure incurred and authorized by him and/or his election agent and that the election petitioner and his agent have not kept correct account of the election expenses and that the election petitioner has deliberately suppressed large amount of expenditure etc., shows that the pleading is so vague that it is left a wide scope to the election petitioner to adduce evidence in respect thereof or for which he could procure witnesses.

57. It is settled law that omission of a single material fact would lead to an incomplete cause of action and that Election Petition without the material facts relating to a corrupt practice is not an Election petition at all. Charge of corrupt practice is quasi-criminal in character. If substantiated it leads not only to

the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to hilt, the standard of proof being the same as in a criminal trial.

58. Section 83 of the Act requires every Election Petition to contain a concise statement of the material facts on which the petitioner relies. If the election petition alleges commission of corrupt practice at the election, the election petition shall set forth full particulars of any corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice.

59. No corrupt practice can be inferred from reading one

sentence here and the other reading sentence here. The Election Petition cannot be entertained to have a fishing and roving enquiry. It is obligatory on the election petitioner to give requisite facts, details and particulars of the corrupt practice with exactitude, and in the absence of such particulars the Election petition must fail at the threshold.

60. It is also necessary to consider (1) Verification made at the foot of the election petitioner, (2) at the foot of concise statement of facts and (3) affidavit made under Rule 94-A of the Rules. Verification at the foot of the election petitioner reads thus:

“I, Mr Ganesh Dadu Shendge, R/o 855, Bhawani Peth, Opp. Bharat Cinema Pune, Pune City-41002, the petitioner above named, do hereby state and solemnly declare that what is stated in the foregoing paragraphs no.1 to 8 and 10 to 21 of the above petition is true to my knowledge and information, which I believe to be correct; what is stated in paragraphs no. 9 and 22 to 33 is based on legal advice received by me which I believe to be correct.

Solemnly declared at Mumbai,
dated this day of 2nd December, 2014
Petitioner.”

Sd/-

Verification at the foot of concise statement of facts reads thus :

“I, Mr Ganesh Dadu Shendge, age 42 years, residing at R/o 855, Bhawani Peth, Opp. Bharat Cinema Pune, Pune City-41002, the petitioner herein do hereby solemnly declare that what is stated in the foregoing paragraphs of Concise Statement of Facts of the Election Petition is true to my knowledge and information, which I believe to be correct.

Solemnly declared at Mumbai,
dated this day of 2nd December, 2014

Sd/-

Petitioner.”

Affidavit made under Rule 94-A of the Rules reads thus:

“a. That the statements made in para Nos 10 to 21 of the accompanying Election Petition about the commission of corrupt practice of incurring and authorizing of expenditure in contravention of Section 77 of Representation of People Act, 1951, and the particulars of such corrupt practice mentioned in paragraphs 1 to 32 of the same petition and contents of annextures annexed thereto are true to my knowledge.

b. That the statements made in para Nos 10 to 21 of the accompanying Election Petition about the commission of corrupt practice of incurring and authorizing of expenditure in contravention of Section 77 of Representation of People Act, 1951, and the particulars of such corrupt practice mentioned in paragraphs 1 to 32 of the same petition and contents of annextures annexed thereto are true to my knowledge.”

61. Perusal of the Verification clauses and the affidavit clearly shows that the basis of the knowledge and source of information is not disclosed at all. In the case of L.R.Shivaramagowda⁵, the Apex Court has dealt with importance of sources of information in the affidavit filed along with the election petition. It was observed in paragraph 12A thus :

“12A. In Virendra Kumar Saklecha v. Jagjiwan and Ors.: [1972] 1 Scc 826, this Court stressed the importance of disclosure of sources of information in the affidavit filed along with the election petition. The relevant passage reads thus :-

“10. The respondent filed an affidavit along with the election petition. The affidavit did not disclose the source of information in respect of the speeches alleged to have been made by the appellant. Section

[83](#) of the Act requires an affidavit in the prescribed form in support of allegations of corrupt practice. Rule 94-A of the Conduct of Election Rules, 1961, requires an affidavit to be in Form No. 25. Form No. 25 requires the deponent to State which statements are true to knowledge and which statements are true to information. Under Section [87](#) of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of civil Procedure to the trial of suits. Under Section [102](#) of the Code, the High Court may make rules regulating their own procedure and the procedure of the Civil Courts subject to their supervision and may by such rules vary, alter or add to any of the rules in the First Schedule to the Code."

"13. The importance of setting out the source of information in affidavits came up for consideration before this Court from time to time. One of the earliest decisions is *State of Bombay v. Parshottam Jog Naik* air 1952 SC 317, where this Court endorsed the decision of the Calcutta High Court in *Padmabati Dasi v. Rasik Lai Dhar* ILR (1909) 37 Cal 259, and held that the sources of information should be clearly disclosed. Again in *Barium Chemicals Ltd. and Anr. v. Company Law Board and Ors.* AIR 1967 SC 295, this Court deprecated 'slip shod verifications' in an affidavit and reiterated the ruling of this Court in *Bombay case (Supra)* that verification should invariably be modelled on the lines of Order 19, Rule 3 of the Code 'Whether the Code applies in terms or not'. Again, in *A.K.K. Nambiar v. Union of India* (1969) 3 SCC 864, this Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations".

"14. Counsel on behalf of the appellant contended that non-disclosure of the sources of information in the affidavit was a fatal defect and the petition should not have been entertained. It is not necessary to express any opinion on that contention in view of the fact that the matter was heard for several months in the High Court and thereafter the appeal was heard by this Court. The grounds or sources of information are to be set out in an affidavit in an election petition. Counsel on behalf of the respondent

submitted that the decisions of this Court were not on election petitions. The rulings of this Court are consistent. The grounds or sources of information are to be set out in the affidavit whether the Code applies or not. Section [83](#) of the Act states that an election petition shall be verified in the manner laid down in the Code. The verification is as to information received. The affidavit is to be modelled on the provisions contained in Order 19 of the Code. Therefore, the grounds or sources of information are required to be stated."

"15. The non-disclosure of grounds or sources of information in a election petition which is to be filed within forty-five days from the date of election of the returned candidate, will have to be scrutinised from two points of view. The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the petitioner will not be able to make any departure from the sources or grounds, if there is any embellishment of the case it will be discovered."

62. In the case of V.Narayanaswamy⁸, the Apex Court has posed the question in paragraph 9 as to what is the effect of lack of material facts, material particulars, proper verification to the Election Petition and the defective affidavit required to be filed in the form prescribed. In paragraphs 14 and 15, it was observed thus:

"14. In F.A. Sapa v. Singore [1991] 3 SCC 375 the question before the High Court was whether the election petition was in conformity with the requirements of Sections 81 and 83 of the Representation of the People Act, 1951 and the Rules framed thereunder. Preliminary objection raised by the appellant, the successful candidate, about the

maintainability of the petition, was negated by the High Court. Against that order he came to this Court. One of the questions before this Court was if the election petition was liable to be dismissed under Section 83 of the Act primarily on the ground that the affidavit filed by the original petitioner was not strictly in conformity with Form 25, inasmuch as the verification as regards the averments based on knowledge and the averments based on information had not been made separately as required by the said Form prescribed by Rule 95-A of the Rules. This Court considered various provisions of the Act, particularly Part VI entitled "Disputes Regarding Elections" and said that it constituted a self-contained code. It was submitted by the appellant in that case that there was failure to comply with even the basic requirements of an affidavit and as a matter of fact it was a case of no compliance. This Court held that where several paragraphs of the election petition remain unverified under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the Court could not take cognizance thereof. It was further submitted in that case that proof of allegation of corrupt practice would visit the returned candidate with certain serious consequences and must, therefore, be viewed seriously. It was further held by this Court that inquiry being quasi-criminal in nature, the Court must always insist on strict compliance with the provisions of law in that behalf and failure to do so must prove fatal. This Court said:

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

This Court observed that where the petitioner has alleged corrupt practice that is not enough, proviso to Section 83 demands that the petition shall be accompanied by an affidavit in the prescribed form supporting the allegation of such corrupt practice and particulars thereof. The Court said:

“Therefore, an election petition in which corrupt practice is alleged stands on a different footing from an election petition which does not carry such an allegation. The legislature has taken special care to ensure that ordinary verification will not suffice, it must be supported by an affidavit in the prescribed form. Form 25 has been prescribed for such an affidavit under Rule 94-A of the Rules. That rule says that the affidavit referred to in the proviso to Section 83(1) shall be in Form 25. The form of the affidavit requires the deponent to state which of the paragraphs of the election petition in which allegations of corrupt practice are made are based on his own knowledge and which are based on his information. Section 86(1) then mandates that the High Court "shall" dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the R. P. Act. The language of this sub-section is quite imperative and commands the High Court, in no uncertain terms, to dismiss an election petition which does not comply with the requirements of Section 81 or Section 82. This mandate is, however, qualified by Section 86(5) referred to earlier.”

The Court then observed that the procedural precautions intended to ensure that the person making the allegation of corrupt practice realizes the seriousness thereof as such a charge would be akin to a criminal charge since it visits the party indulging in such practice with a twofold penalty and that is why this Court described it as quasi-criminal in nature. It is, therefore, equally essential that the particulars of the charge or allegation are clearly and precisely stated in the election petition to afford a fair opportunity to the person against whom it is leveled to effectively counter the same (see K.M. Mani v. P.J. Anthony [1979] 2 SCC 221 . This Court then said:

“ Section 83(1)(a) stipulates that every election petition shall contain a concise statement of the 'material facts' on which the petitioner relies. That means the entire bundle of facts which would constitute a complete cause of action must be concisely stated in an election petition. Section 83(1)(b) next requires an election petitioner to set forth full 'particulars' of any corrupt practice alleged against a returned candidate. These 'particulars' are obviously different from the 'material facts' on which the petition is founded and are intended to afford to the returned candidate an adequate opportunity to effectively meet with such an allegation. The underlying idea in requiring the

election petitioner to set out in a concise manner all the 'material facts' as well as the 'full particulars' where commission of corrupt practice is complained of, is to delineate the scope, ambit and limits of the inquiry at the trial of the election petition."

Then the Court held as under:

"28. From the text of the relevant provisions of the R. P. Act, Rule 94-A and Form 25 as well as Order 6 Rule 15 and Order 19 Rule 3 of the Code and the resume 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."

15. In *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe* AIR 1995 SC 2284 , this Court again said:

1. "Section 83 of the Act provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must set forth full particulars of the corrupt practice that he alleges including as full a statement as possible of the name of the parties alleged to have committed such corrupt practices and the date and place of the commission of each of such corrupt practice. This section has been held to be mandatory and requires first a concise statement of material facts and then the full particulars of the alleged corrupt practice, so as to present a full picture of the cause of action".

2. "A petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the election petitioner is also obliged to disclose his source of Information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge leveled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise, (see : Samant N. Balkrishna v. George Fernandez [1969] 3 SCC 238.)"

After considering exhaustively the law on the subject, in paragraph 23 it was observed thus:

"23. It will be thus seen that an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the Court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the Court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 31, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the Court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., Clause (a) of Sub-section (1) of Section 83. Then under Clause (b) of Sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on Information received and believed by him to be true. It is not the form of the affidavit but its substance that matters.

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 was affected. It cannot be left to time, chance or conjecture for the Court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain uniformed under the verification clause as well as the affidavit, the unsworn allegations could have no legal existence and the Court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the Court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the CPC. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of the Order 6, Rule 16 and Order 7, Rule 11 of the CPC. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings, it is no part of duty of the Court suo motu even to direct furnishing of better particulars when objection is raised by other side. Where the petition does not disclose any cause of action it has to be rejected. Court, however cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. Petition has to be considered as a whole. There cannot be a partial rejection of the petition."

63. In the case of Jeet Mohinder Singh⁷, the Apex Court observed thus:

“Every election petition must be signed and verified by the appellant in the manner laid down for the verification of pleadings in the CPC. An election petition alleging corrupt practice is required to be accompanied by an affidavit in Form 25 read with Rule 94A of the Conduct of Election Rules, 1961. Form 25 contemplates the various particulars as to the corrupt practices mentioned in the election petition being verified by the appellant separately under two headings: (i) which of such statements including particulars are true to appellant's own knowledge, and (ii) which of the statements including the particulars are true to information of the appellant. It has been held in *Gajanan Krishnaji Bapat Vs. Dattaji Raghobaji Meghe*, (1995) 5 SCC 347 that the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice so as to bind him to the charge leveled by him and to prevent any fishing or roving enquiry, also be prevent the returned candidate from being taken by surprise.”

64. During the course of hearing, the election petitioner persisted his stand and termed the objections raised by the returned candidate as irrelevant. He had an opportunity to amend the verification and to file the affidavit in the form prescribed but for reasons best known to him, he failed to do so. The existence of material facts, material particulars, correct verification and the affidavit are relevant and important when the petition is based on the allegation of corrupt practice and in the absence of those, the has jurisdiction to dismiss the petition. Applying the tests laid down in the aforesaid decisions and after considering (1) Verification made at the foot of the election petitioner, (2) Verification at the foot of concise statement of facts and (3) affidavit made under Rule 94-A of the Rules, I am satisfied that both the Verification and the Affidavit do not meet

the requirements of law. The Verification and the Affidavit being integral part of the Election Petition, failure to comply Section 83 and Rule 94-A is fatal and as such election petition is liable to be dismissed.

65. Perusal of the Election Petition shows that the election petitioner has not pleaded the material facts and the material particulars. The submission of Mr. Patil that the “material facts” constituting a complete charge of corrupt practice are stated in the petition is devoid of substance. The reliance placed upon paragraph 45 of Udhav Singh¹⁰ also does not advance the case of the election petitioner. In view thereof, Application succeeds and is allowed in terms of prayer clause (a). Election Petition No.18 of 2014 is dismissed. There shall be no order as to costs.

(R.G.Ketkar, J.)