

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2018

DELIVERED ON : 05.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Original Application Nos.1052 and 1053 of 2017
and Election Petition No.13 of 2016

O.A.Nos.1052 and 1053 of 2017:

R.Sakkarapani

.. Petitioner

VS

K.Karuppasamy

.. Respondent

Prayer: Original Application No.1052 of 2017 filed under Order XIV Rule 8 of the O.S. Rules, 1956 read with Order VI, Rule 16 of C.P.C.

Prayer: Original Application No.1053 of 2017 filed under Order XIV Rule 8 of the O.S. Rules, 1956 read with Order VII, Rule 11 of C.P.C.

ELP.No.13 of 2016:

K.Karuppasamy

.. Petitioner

VS

R.Sakkarapani

.. Respondent

Prayer: Election Petition filed under Sections 80, 80A, 81, 83, 84, 100(1)(b)(d)(i)(ii), 125A of the Representation of the People Act, 1951; Rules 4, 4A, 8, 10 of the Conduct of Election Rules, 1961; Rule 2, 6 & 8 of the Madras High Court Election Petition Rules, 1967 prayed to declare that the election of the returned candidate, namely the respondent, from No.128, Oddanchatram Legislative Assembly Constituency, Dindugal District, Tamil Nadu held on 16.05.2016 in which result have been declared on 19.05.2016.

For Petitioner : Mr.A.Manoj Kumar &
in ELP.No.13/2016 Mr.Jothikumar
and Respondent
in O.A.Nos.1052 &
1053 of 2017

For Respondent in : Mr.P.Wilson
ELP.No.13 of 2016 Senior Counsel
and Petitioner in for M/s.Wilson
O.A.Nos.1052 Associates
& 1053 of 2017

COMMON ORDER

Original Application Nos.1052 and 1053 of 2017 have been filed by the respondent in Election Petition No.13 of 2006 seeking to strike off paragraphs 8 to 18 in the Election Petition and also to reject the Election Petition.

2. Election Petition No.13 of 2016 has been filed by the petitioner therein seeking to declare that the election of the respondent from No.128, Oddanchatram Legislative Assembly Constituency held on 16.5.2016, in which result was declared on 19.05.2016, as void.

3. Originally the Election Petition was filed against four respondents by arraying Mr.R.Sakkarapani as first respondent and the Chief Election Commissioner, New Delhi; District Election Officer and Collector, Dindigul District and Returning Officer and Assistant Commissioner (Excise), Oddanchatram Legislative Assembly Constituency as respondents 2 to 4 respectively. Later, by an order dated 17.07.2017 passed in O.A.Nos.2, 20 and 21 of 2016, the respondents 2 to 4 were struck off from the array of respondents. Now, there is only one respondent in the Election Petition i.e., the returned candidate.

4. For the sake of convenience, the petitioner in the Election Petition is referred to as "*the petitioner*" and the respondent in the Election Petition is referred to as "*the returned*

candidate".

5. The returned candidate has raised a preliminary objection for striking off the pleadings in the Election Petition and also reject the Election Petition by way of filing O.A.Nos.1052 and 1053 of 2017. Though the petitioner objected that unless a plea is raised by the returned candidate in the counter and/or written statement to the Election Petition, it is not open to the Court to strike out pleadings contained in the Election Petition.

6. At the outset, it is apposite to refer to the decision of the Hon'ble Supreme Court in ***Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi, reported in (1986) 4 SCC 78,*** wherein Hon'ble Supreme Court held as under:

"11. If a preliminary objection is raised before the commencement of the trial, the Court is duty bound to consider the same, it need not postpone the consideration for subsequent stage of the trial."

(emphasis supplied)

7. In the case on hand, it is not in dispute that trial is yet

to commence. In view of the decision in *Bhagwati Prasad*, supra, this Court is inclined to consider first the preliminary objection raised by the returned candidate qua striking off the pleadings and the rejection of the Election Petition.

8. The averments in the Election Petition are that the returned candidate contested on the ticket of the recognised State level political party viz., Dravida Munnetra Kazhagam (DMK), from No.128, Oddanchatram, Dindigul District in the election. In pursuance of the notification issued by the District Election Officer for conduct of elections on 22.04.2016, the Returning Officer issued notification for conducting election for No.128, Ottanchatram Legislative Assembly stipulating the dates as under:

Date of filing of nomination	22.04.2016
Last date of filing nomination	29.04.2016
Date of scrutiny of nominations	30.04.2016
Last date for withdrawal of nominations	02.05.2016
Date of Polling	16.05.2016
Date of counting	19.05.2016
Date of declaration of results	19.05.2016

9. As per the list issued in Form-7A, totally 15 candidates have contested. On 25.04.2016, the returned candidate filed his nomination in Form 2B under Rule 4 along with an affidavit in Form 26 under Rule 4A of the Conduct of Election Rules, 1961. After polling, the returned candidate secured 1,21,715 votes and he was declared as elected on 19.05.2016.

10. The case of the petitioner is that the returned candidate filed an incomplete nomination and as such the Returning Officer has improperly accepted the nomination of the returned candidate. According to the petitioner, the returned candidate distributed money to voters for which the Inspector of Police, Keeranur Police Station has registered a case in Crime No.143 of 2016 on 07.06.2016.

11. The grievance of the petitioner is that in Column 5 (ii)(a) of Part-A of Form-26, every candidate has to furnish the details of cases pending against him/her in which cognizance has been taken by the Court such as the Court, Case Number and the date of order of the cognizance. Likewise in Column 5(ii)(b) of Part-A of Form-26, every candidate has to furnish details of cases where

the Court has taken cognizance, Sections of the Acts and description of the offences for which cognizance was taken by the Court. According to the petitioner, the returned candidate has failed to furnish short description of the offences for which he was charged in Column 5 (ii)(b) of Form-26.

12. It is the case of the petitioner that the returned candidate tried back door methods to win in the election and his party people distributed cash to voters. In the Election Petition, it is averred that Mr.Pisiranthaiyar, Secretary, Viduthalai Siruthaigal Party delivered a speech in a public meeting that DMK workmen distributed money in Oddanchatram Legislative Assembly Constituency and the Keeranur Police has registered a case in Crime No.143 of 2016, wherein the returned candidate was shown as one of the accused.

13. It is stated that the nomination of the returned candidate was incomplete and the affidavit filed by the returned candidate does not contain particulars and some of the columns are left blank. Thus, the Returning Officer has improperly accepted the nomination of the returned candidate. Therefore, the petitioner has

filed the Election Petition seeking to declare that the election of the returned candidate void.

14. Pending Election Petition, the returned candidate filed two applications, being O.A.No.1052 and 1053 of 2017, seeking to strike off paragraphs 8 to 18 in the Election Petition and also to reject the Election Petition.

15. In the affidavit filed in support of the petitions (O.A.Nos.1052 and 1053 of 2017), it has been stated that the returned candidate was sponsored by the DMK party to contest from No.128, Oddanchatram Legislative Assembly Constituency in the party symbol of "Rising Sun". The petitioner is a voter and is well-known associate of the AI ADMK candidate Mr.Kittusamy, who set up the petitioner to file the Election Petition and the Election Petition is motivated and lacks bona fides.

16. According to the returned candidate, the Election Petition does not disclose any cause of action against the returned candidate and the allegations in the Election Petition are vague and bereft of material facts and also do not comply with the

requirements of Sections 83, 86 and 100 of the Representation of the People Act, 1951.

17. It is stated that the Election Petition is not supported by a corrupt practice affidavit mandated by Rule 94A of the Conduct of Elections Rules, 1961 and the Election Petition is not supported by verification affidavit as mandated by Section 81 of the Representation of the People Act, 1951. Therefore, the Election Petition deserves to be rejected in limine and besides, paragraphs 5 to 18 deserve to be struck off. The petitioner cannot expect any long form explanations in Column 5 (ii) (b) of Form-26. According to the returned candidate, the petitioner cannot simply say that cash was distributed to the voters. It is also stated that the allegations in the Election Petition are wholly fictitious and are a figment of imagination of the petitioner. Therefore, the returned candidate prayed that the Election Petition must not be posted for trial, but must be rejected at the threshold itself under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

18. Resisting O.A.Nos.1052 and 1053 of 2017, the petitioner has filed the counter stating that the returned candidate

has filed incomplete nomination form and that the Returning Officer has improperly accepted the incomplete nomination, which is in violation of the decision of the Hon'ble Supreme Court in ***Shaligram Shrivastava v. Naresh Singh Patel, reported in (2003) 2 SCC 176 and Resurgence India v. Election Commission of India and others, reported in (2014) 14 SCC 189.*** It is stated that there was an FIR registered against the returned candidate during No.128, Oddanchatram Legislative Assembly Constituency General Election 2016 on the allegation that he had distributed money to the voters and therefore, there was a corrupt practice. Hence, the petitioner prayed for dismissal of the Original Applications.

19. Heard Mr.P.Wilson, learned Senior Counsel appearing for the returned candidate and Mr.A.Manoj Kumar, learned counsel appearing for the petitioner. Perused the materials available on record.

20. The first and foremost submission of the learned Senior Counsel appearing for the returned candidate is that the Election Petition cannot be posted for trial and it should be rejected at the threshold on the ground that the Election Petition does not disclose

any cause of action and the allegations stated are bereft of material facts.

21. The learned Senior Counsel appearing for the returned candidate further submitted that the petitioner, except making vague allegations, has not put forth any material fact as to why the acceptance of the returned candidate's nomination was improper nor has substantiated the said allegation. He submitted that there is no allegation against the returned candidate that he had distributed money to anybody. The petitioner has not stated what is the name of the voter to whom money was distributed; when it was distributed; where it was distributed and by whom it was distributed. In support of his contention, the learned Senior Counsel cited the following decisions:

(i) Resurgence India v. Election Commission of India and another, reported in (2014) 14 SCC

189.

(ii) C.P. John v. Babu M. Palissery and others, reported in (2014) 10 SCC 547.

(iii) Ram Sukh v. Dinesh Aggarwal, reported in (2009) 10 SCC 541.

(iv) *Hari Shankar Jain v. Sonia Gandhi*, reported in (2001) 8 SCC 233.

(v) *Azhar Hussain v. Rajiv Gandhi*, reported in (1986) Supp SCC 315.

(vi) *Dhartipaker Madan Lal Agarwal v. Rajiv Gandhi*, reported in 1987 Suppl SCC 93.

(vii) *Krishnamoorthy v. Sivakumar and others*, reported in (2015) 3 SCC 467.

(viii) *Union of India v. Association for democratic Reforms and another*, reported in (2002) 5 SCC 294.

22. The learned counsel appearing for the petitioner submitted that in the interest of true democracy, the petitioner has filed the Election Petition. He submitted that the returned candidate did not furnish brief description of offences for which he was charged in Column 5(ii)(b) of Part A of Form-26.

23. The learned counsel further submitted that the Election Petition is supported by an affidavit under Rule 94A of the Conduct of Election Rules, 1961 and also supported by verification affidavit

as per the provisions of Section 81 of the Representation of the People Act, 1951.

24. He also argued that a case in Crime No.143 of 2016 was registered during Oddanchatram Legislative Assembly Constituency General Election 2016, wherein the returned candidate was shown as one of the accused. According to the FIR in Crime No.143 of 2016, money has been distributed to voters by DMK party cadres. Therefore, the election of the returned candidate has to be declared as void. In support of his submission, the learned counsel for the petitioner relied upon the following decisions:

(i) Resurgence India v. Election Commission of India and another, reported in (2014) 14 SCC 189.

(ii) Union of India v. Association for Democratic Reforms and another, reported in (2002) 5 SCC 294.

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25. The broad grounds on which the Election Petition was filed are:

(1) The returned candidate distributed money to

the voters.

*(2)The affidavit filed by the returned candidate in
Form 26 filed along with the nomination papers
is incomplete.*

26. First off, let this Court examine whether the affidavit filed by the returned candidate in Form 26 along with nomination papers is incomplete as alleged by the petitioner.

27. The learned counsel for the petitioner vehemently argued that in Column 5(ii)(b), the returned candidate stated that he was charged under Section 143 and 341 read with 188 IPC in Crime No.187 of 20011 on the file of Oddanchatram Police Station, but did not furnish the long description of the offences for which he was charged.

28. Countering the arguments of the learned counsel for the petitioner, the learned Senior Counsel appearing for the returned candidate would submit that the Returning Officer accepted the nomination papers of the returned candidate only on being subjectively satisfied that filling in of columns satisfies the

requirements of all concerned laws and after pre-vetting of the affidavit and nomination form.

29. In the case on hand, it is nobody's case that the Returning Officer insisted the returned candidate to furnish additional particulars and despite that he had not furnished the same. On the other hand, the Returning Officer only on being satisfied subjectively processed the nomination of the returned candidate. To elaborate on the role of the Returning Officer in this regard, it is apposite to refer to the decision of the Hon'ble Supreme Court in ***Resurgence India v. Election Commission of India and another***, supra, wherein it is held as follows:

"29.2. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

29.3. Filing of affidavit with blank particulars will render the affidavit nugatory.

29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the "right to know" of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced."

(emphasis supplied)

30. The ratio in ***Resurgence India v. Election Commission of India and another***, supra, highlights the right of a voter to know whether any criminal case is pending against the candidate. The judgment does not mandate any long form description of the facts of the case running into several paragraphs. Therefore, the petitioner cannot expect any long form explanations in the columns and in fact the same is not mandated under law. Hence, the description of the case as given by the returned

candidate in the nomination form is not a material defect that vitiates the election of the returned candidate.

31. In ***Krishnamoorthy v. Sivakumar and others***, supra, the Hon'ble Supreme Court held that all the offences for which the charges have been framed have to be disclosed in the nomination paper. Admittedly, on perusal of the nomination papers, I find that the returned candidate has disclosed Sections/offences for which charges have been framed in S.T.C.No.790 of 2011. Therefore, it could easily be understood that there is no mis-description or lack of description. According to the returned candidate, by the judgment dated 29.09.2016, the Judicial Magistrate, Oddanchatram acquitted the returned candidate in S.T.C.No.790 of 2011, after full-fledged trial.

32. In ***Union of India v. Association for Democratic Reforms and another***, supra, the Hon'ble Supreme Court was concerned with weeding out of candidates who have been convicted in serious crimes warranting punishment of two years or above and who have not mentioned/disclosed the same in their nomination papers. In paragraph 48, the Hon'ble Supreme Court held as

follows:

"48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate."

33. In ***People's Union for Civil Liberties v. Union of India***, reported in (2003) 4 SCC 399, the Hon'ble Supreme Court held thus:

"73. While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in Assn. for Democratic Reforms case [**Ed.**: See full text at 2003 Current Central Legislation, Pt. II, at p. 3] the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the "documentary proof". Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission are not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in Assn.

for Democratic Reforms case [Ed.: See full text at 2003 Current Central Legislation, Pt. II, at p. 3] and as provided under the Representation of the People Act and its Third Amendment.”

34. From the reading of the decision in ***Union of India v. Association for Democratic Reforms and another***, supra, it is seen that the Hon'ble Supreme Court had issued directions to the Election Commission to issue orders necessitating the candidates to furnish information pertaining to pending cases, where offences are punishable with imprisonment for two years or more, and details of such cases.

35. After the judgment in ***Union of India v. Association for democratic Reforms and another***, supra, the Parliament amended the Representation of the People Act, 1951 and introduced Section 33A, wherefrom it is clear that only those offences/cases where the offence is punishable with imprisonment of two years or more need be disclosed in the nomination papers.

36. In the present case, it is not as if the returned candidate has not disclosed any cases pending against him. As

stated supra, the returned candidate has clearly stated that S.T.C.790 of 2011 was taken cognizance and had also disclosed that the said case arises out of Crime No.187 of 2011. What was intended or required by the Supreme Court and what was incorporated in the statute has been satisfied by the returned candidate. Therefore, the petitioner was not right in saying that the returned candidate failed to disclose the case details or withheld relevant information.

37. While following the ratio in ***Union of India v. Association for democratic Reforms and another***, supra, in ***Resurgence India***, supra, the Hon'ble Supreme Court held that "*it is sufficient if the candidate fills up the columns in the affidavit sufficiently to the satisfaction of the Returning Officer with the relevant and necessary information*".

38. On an examination of the nomination papers, I am of the view that there is no material defect in the nomination papers of the returned candidate and the alleged defect sought to be pointed out by the petitioner is not a defect at all and in any case, is not a defect that vitiates the election of the returned candidate. The said

view is fortified by the subjective satisfaction of the Returning Officer, who never pointed out any defect in the nomination papers of the returned candidate.

39. It is to be noted that the maximum punishment for offences in S.T.C.No.790 of 2011 is only six months and that too, the returned candidate has been subsequently acquitted of all charges. The said position is not disputed by the petitioner.

40. As rightly argued by the learned Senior Counsel for the returned candidate, the Representation of the People Act is a complete and self-contained code and any right claimed in relation to an election must be only on the basis of the provisions of Representation of the People Act.

41. When Section 33-A of the Representation of the People Act talks about disclosure of cases against the candidate where the punishment is two years or above, and only requires that the case and provisions under which the case has been registered be disclosed, the interpretation sought to be given by the petitioner that a long description of the case needs to be given by the

candidate is beyond the scope of the provisions of the Representation of the People of Act. In my firm view, there is, therefore, no substance in the allegation of the petitioner that the non-furnishing of a long description of the case against the returned candidate vitiates the election.

42. The next argument of the learned counsel for the petitioner is with regard to distribution of money to the voters.

43. Anent distribution of money to the voters alleged by the petitioner, admittedly, the petitioner has not stated/disclosed what is the name of the voter; to whom money was distributed; when it was distributed; where it was distributed and by whom it was distributed.

44. The learned Senior Counsel appearing for the returned candidate vehemently argued that the averments in the Election Petition are wholly vague, bereft of material facts and do not disclose any cause of action.

45. Per contra, the learned counsel appearing for the

petitioner submitted that under Section 83 of the Representation of the People Act, only a concise statement is required. Even otherwise, under Section 86(5), the Election Petition can be amended and, therefore, there is no necessity to dismiss the Election Petition on this score. He argued that all the material facts are pleaded and the evidence in support of such averments need not be pleaded. The facts pleaded in the Election Petition can be proved only by way of conducting the trial. According to the learned counsel, the affidavit filed in support of O.A.Nos.1052 and 1053 of 2017 does not disclose any ground for striking off the pleadings and/or for rejection of the Election Petition.

46. As stated supra, the petitioner has not described in the election petition as to in which street and in which taluk cash was distributed either by the returned candidate or by his party men. Further, the date and time of the distribution were also not given in the petition. Therefore, in the absence of material particulars, the petitioner cannot simply say that money was distributed to the voters.

47. Section 83 of the Representation of the People Act,

1951, deals with contents of a petition. Rule 94-A of the Conduct of Elections Rules, 1961, deals with Form of affidavit to be filed along with Election Petition.

48. Section 83 of the Representation of the People Act, 1951 reads thus:

"83. Contents of petition : (1) An election petition – (a) shall contain a concise statement of the material facts on which the petitioner relies;

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

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

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

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

49. Rule 94-A of the Conduct of Elections Rules reads as under:

"94-A. Form of affidavit to be filed with election petition:- *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."*

50. It is to be noted that the petitioner has merely claimed in the Election Petition that the returned candidate distributed money to voters and referred the FIR in Crime No.143 of 2016 dated 07.05.2016. On a reading of the FIR, I find that there is no allegation against the returned candidate that he had personally distributed money to anybody.

51. Insofar as Election Petitions are concerned, allegations must disclose the full material facts, including the date of commission of offence, in which he is involved in, etc. When the Court deals with an election petition, it should be knowing exactly

as to what is the corrupt practice alleged as against the party. There should not be any room for suspicion as to the nature of such allegation. The details with regard to the parties involved, the date, time and the place, etc. need to be stated and only on such particulars being given, the party against whom such allegations are levelled will be in a position to explain or defend any such allegation without giving scope for any speculation. In the present case, admittedly, nothing has been stated. The petitioner simply stated that the DMK workmen distributed money. There is no proof to show that such distribution was in any way connected to the returned candidate. Therefore, it is to be presumed that the allegations in paragraph 10 of the Election Petition are vague.

52. To buttress the said view of this Court, it is apt to refer to the decisions of the Hon'ble Supreme Court in:

(a) **C.P. John v. Babu M. Palissery and others**, supra, wherein it has been held as under:

"18. When we read Section 83, the substantive part of Section 83(1) consists of three important elements, namely, that an election petition should contain a concise statement of material facts which an election petitioner relies upon. The emphasis is on

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

19. To put it differently, when the election petition is taken up for consideration, the Court which deals with such an election petition, **should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties**.

without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place, etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both Sections 83(1)(a) and (1)(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94-A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of the First Class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in Form 25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statements of facts and material particulars are based on the personal knowledge of the election

petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.

20. Therefore, a conspectus reading of Section 83(1)(a) read along with its proviso of the Act, as well as, Rule 94-A and Form 25 of the Rules makes the legal position clear that in the filing of an election petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the election petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to

be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas, with which the provisions contained in Section 83(1) read along with Section 86 came to be incorporated while deciding this appeal."

(emphasis supplied)

(b) In **Ram Sukh v. Dinesh Aggarwal**, supra, the Hon'ble Supreme Court held thus:

"12. It is evident that the controversy in this appeal lies in a narrow compass. It revolves around the ambit of Section 83 of the Act. The point for consideration is whether the election petition lacked "material facts" required to be stated in the election petition in terms of Section 83(1) of the Act and if so, could it be dismissed summarily without trial? As already noted, it is mandatory that all "material facts" are set out in an election petition and it is also trite that if material facts are not stated in the petition, the same is liable to be dismissed on that ground alone. Therefore, the question is as to

whether the election petitioner had set out "material facts" in his petition?

13. The phrase "material facts" has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. (See Mahadeorao Sukaji Shivankar v. Ramaratan Bapu [(2004) 7 SCC 181].) Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are "material facts". Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.

.....

15. At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice the distinction between the

phrases "material facts" as appearing in clause (a) and "particulars" as appearing in clause (b) of sub-section (1) of Section 83. **As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on the other hand, are details in support of the material facts, pleaded by the parties. 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. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that the opposite party is not taken by surprise.**

16. The distinction between "material facts" and "particulars" and their requirement in an election petition was succinctly brought out by this Court in *Virender Nath Gautam v. Satpal Singh* [(2007) 3 SCC 617] wherein C.K. Thakker, J., stated thus:

"50. There is distinction between *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia* (the facts

by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."

17. Now, before examining the rival submissions in the light of the aforestated legal position, it would be expedient to deal with another submission of the learned counsel for the appellant that the High Court should not have exercised its power either under Order 6 Rule 16 or Order 7 Rule 11 of the Code to reject the election petition at the threshold. The argument is twofold viz.:

(i) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to

adduce evidence in support of his allegation in the petition, and

(ii) since Section 83 does not find a place in Section 86 of the Act, rejection of the petition at the threshold would amount to reading into sub-section (1) of Section 86 an additional ground.

In our opinion, both the contentions are misconceived and untenable.

18. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail.

19. Coming to the second limb of the argument viz. absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer *res integra*. A similar plea was negated by a three-Judge Bench of this Court in *Hardwari Lal v. Kanwal Singh* [(1972) 1 SCC 214], wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said:

"23. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed."

20. The issue was again dealt with by this Court in *Azhar Hussain v. Rajiv Gandhi* [1986 Supp SCC 315] . Referring to earlier pronouncements of this Court in *Samant N. Balkrishna* [(1969) 3 SCC 238] and *Udhav Singh v. Madhav Rao Scindia* [(1977) 1 SCC 511] wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in *Azhar Hussain* case [1986 Supp SCC 315] held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.

21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83(1)(a) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(d)(iv). For the sake of ready reference, the said provision is extracted below:

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

.....

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

.....

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

It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected."

53. In ***Hari Shankar Jain v. Sonia Gandhi***, supra, the

Hon'ble Supreme Court held as follows:

"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies.

By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishnav. George Fernandez [(1969) 3 SCC 238 : (1969) 3 SCR 603] , Jitendra 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.

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

54. Further, in ***Hari Shankar Jain v. Sonia Gandhi***, *supra*, the Hon'ble Supreme Court has also held that pleadings must not be vague and must contain the source of information. In paragraph 33, it has been held as under:

"33. Without further burdening this judgment by dealing with each and every other averment made in

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

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55. The learned Senior Counsel for the returned candidate submitted that in the Election Petition, the petitioner described the source of information from one Mr.Pisiranthiyar, Secretary, Viduthalai Siruthaigal Party, whereas in the Election Petition verification, the petitioner has stated that the contents in the

Election Petition are to his own knowledge.

56. The verification foot of the Election Petition, reads thus:

"I, Mr.K.Karuppasamy, S/o.Kumarasamy, Hindu, aged about 59 years, residing at No.138, Akkaraipatti, Oddanchatram (TP), Oddanchatram Taluk, Dindugal District do hereby declare that the contents stated in Para Nos. from 1 to 10 are true and correct to the best of our knowledge and believed to be true and correct to my knowledge. What is stated in paras 11 to 18 is based on legal advice and hence within the knowledge of the petitioner."

The verification foot that appeared in the Election Petition clearly shows that the source of averment has not been stated properly and is self-contradictory.

57. In **Azhar Hussain v. Rajiv Gandhi**, *supra*, the Hon'ble Supreme Court, as rightly relied on by the learned Senior Counsel appearing on behalf of the returned candidate, held as under:

"7. The argument is that where the legislature

wanted to provide for summary dismissal of the election petition, the legislature has spoken on the matter. The intention was to provide for summary dismissal only in case of failure to comply with the requirement of Sections 81, 82 and 117

8. The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions, non-compliance with which entails dismissal of the election petition, it follows that non-compliance with the requirements of Section 83(1), even though mandatory, do not have lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of Section 87 of the Act

Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) which read thus:

"Order 6, Rule 16: Striking out pleadings.—The court may at any stage of the proceedings order to be struck out or amend any matter in any pleading—
(a) which may be unnecessary, scandalous, frivolous or vexatious; or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or

(c) which is otherwise an abuse of the process of the court.

Order 7, Rule 11: Rejection of plaint.—The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;....”

9. The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.

10. There is thus no substance in this point which is already concluded against the appellant in Hardwari Lal v. Kanwal Singh [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] wherein this Court has in terms negated this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A.N. Ray, J. who spoke for the three-judge Bench: (SCC p. 221, paras 22 and 23)

“The allegations in para 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to what kind or

form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action.

Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasized that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed."

11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant case [Samant N. Balkrishna v. George Fernandez(1969) 3 SCC 238] has expressed itself in no unclear terms 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. So also in Udhav Singh case [Udhav Singh v. Madhav Rao Scindia(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an

election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

12. *Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not*

be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and

untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matter pertaining to ordinary civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections. So long as the sword of Damocles of the election petition remains hanging an elected member of the legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who

voted him into office, and instead of resolving their problems, he would be engaged in campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to win the vote of the people but also to win the vote of the court in a long drawn out litigation before he can wholeheartedly engage himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as hindrance if he be entrusted with some public office in his elected capacity. He may even have occasion to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern mettle, the constraint introduced by the pendency of an election petition may have some impact on his subconscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason

why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the nation, the controversy is set at rest at the earliest, if the facts of the case and the law so warrant. Since the court has the power to act at the threshold the power must be exercised at the threshold itself in case the court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law. To wind up the dialogue, to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled.

13. The learned counsel for the election petitioner has very fairly contended that out of the 17 grounds

embedded in the election petition, grounds other than the seven mentioned by him cannot be pressed into service and that he would restrict his submissions to these seven grounds. It is therefore unnecessary to advert to grounds other than the seven grounds which have been urged in support of this petition. We will accordingly proceed to consider the plea urged to the effect that in regard to the aforesaid alleged corrupt practices, the High Court was not justified in dismissing the election petition.

14. Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression "material facts and particulars", which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act.

"(1) What are material facts and particulars? 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 [Manubhai Nandlal Amorsey

v. Popatlal Manilal Joshi (1969) 1 SCC 372 : AIR 1969 SC 734 : (1969) 3 SCR 217] .

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] :

- (a) mode of assistance;*
- (b) measure of assistance; and*
- (c) all various forms of facts pertaining to the assistance.*

(3) In the context of an allegation as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of government servants in election it is absolutely essential to plead the following:

- (a) kind or form of assistance obtained or procured;*
- (b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for promoting the prospects of his election [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] .*

(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of

assistance, the persons from whom the actual and specific assistance was procured [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] .

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] .

(6) The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] .”

.....

18. The averments contained in para 4 pertaining to Ground I do not satisfy the test prescribed in Manubhai Amorsey v. Papatlal Manilal Joshi and Hardwari Lal v. Kanwal Singh [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] . The most important test which remained unsatisfied is as regards the omission to satisfy in what manner the assistance was obtained and procured by the election candidate for promoting the prospects of his election. All that has been stated is:

"His services were procured and obtained by the respondent, his agents and other persons with the consent of the respondent with a view to assist the furtherance of the prospects of the respondent's election...."

It is not mentioned as to who procured or obtained the services of Shri Beg, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent. Unless these "essential facts" which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are pleaded as per the law laid down in Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi [Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi(1969) 1 SCC 372 : AIR 1969 SC 734 : (1969) 3 SCR 217] it cannot be said that the petition discloses a cause of action in regard to this charge. In the absence of these material facts and particulars court could not have rendered a verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition. It is not sufficient to show that a government servant had appeared on the public media to praise one of the candidates. It must also be shown that the assistance of the government servant was obtained either by the respondent or his agent or by any other person with

the consent of the election candidate or his election agent. The averments made in the petition do not show (i) who had obtained or procured the assistance of Shri Beg; (ii) how he had obtained or procured the assistance of Shri Beg; and (iii) how it was said that it was with the consent of the respondent or his election agent. Nor is it shown which, if any, facts went to show that it was in furtherance of the prospects of the respondent's election. In the absence of material facts and particulars in regard to these aspects, the petition would not disclose the cause of action. The High Court was therefore, perfectly justified in reaching this conclusion. The petition also does not disclose the exact words used in the speech; or the time and date of making such a speech. Now, unless the relevant or offending passage from the speech is quoted, it cannot be said what exactly Shri Beg had said, and in what context, and whether it was calculated to promote the election prospects of the respondent. Be that as it may, inasmuch as these material facts and particulars to show that the services of Shri Beg were procured by someone with the consent of the respondent or his election agent are not there, the averments pertaining to the charge do not disclose a cause of action. Unless the nexus between the appearance of Shri Beg on the

media and the prior consent of the respondent or his election agent in regard to what he was going to say and the purposes for which he was going to say is set out in the material particulars it cannot be said that it disclosed a cause of action and the test laid down in Manubhai Nandlal case [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] as also Hardwari Lal case [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] is satisfied. The High Court was therefore justified in taking the view that it has taken. We may, in passing, mention a point made by learned counsel for the respondent. It was submitted that the averment must also mention whether the interview was a live one telecast after the date of filing of the nomination. If it was one recorded prior to the said date it may not be of any consequence. This argument also requires consideration but we do not propose to rest our conclusion on this aspect as it is not necessary to do so.

.....

20. In this context the High Court observed:

" The contention of learned counsel for the respondent is that this pleading suffers from lack of material facts because the names of the workers, employed by the respondent, "or his agents, who painted the slogans or uttered them in speeches or broadcast from the vehicles, have not been

indicated. It is pointed that the allegation regarding the painting of slogans is vague because it is stated to have been done by 'workers ... and/or his agents' signifying that the petitioner himself did not know whether painting work was done by workers employed by the respondent or by his agents or by both. I have already pointed out that this kind of statement is vague and embarrassing and, therefore, is contrary to the concept of material facts. In the case of Nihal Singh v. Rao Birendra Singh [(1970) 3 SCC 239] it was held that the allegation that at meetings in different villages, speeches were given on 5-5-1968 and 12-5-1968 was vague in the absence of a specification of date and place of each meeting and evidence could not be permitted to be led in the matter. The allegation of consent of the respondent to the paintings of the slogans or to their utterances in the speeches of his workers is only inferential. There is a distinction between consent and connivance. The pleading is in the nature of a pleading of connivance and not of consent which is not enough vide the case of Charan Lal Sahu v. Giani Zail Singh [(1984) 1 SCC 390 : AIR 1984 SC 309 : (1984) 2 SCR 6] . In the case of Surinder Singh v. Hardial Singh [(1985) 1 SCC 91 : AIR 1985 SC 89 : (1985) 1 SCR 1059] it has been indicated in para 37 that consent is the life-line to link up the candidate

with the action of the other person which may amount to corrupt practice unless it is specifically pleaded and clearly proved and proved beyond reasonable doubt, the candidate cannot be charged for the action of others."

Whether the High Court was right in taking the aforesaid view

21. *There is a glaring omission to mention the names of the workers said to have been employed by the respondent or his agents who have allegedly painted the slogans. So also no material particulars are given as regards the vehicles on which the said slogans have been said to have been painted. There are no material particulars or facts. We are of the view that inasmuch as the material facts and particulars in regard to this alleged practice were not mentioned the High Court was justified in taking the view that it had taken. The averments contained in regard to this charge also do not satisfy the test laid down by the various decisions of this Court adverted hereinabove. A Division Bench of this Court in Nihal Singh v. Rao Birendra Singh [(1970) 3 SCC 239] speaking through Bhargava, J. has observed:*

"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."

22. The principle laid down is that the pleading in regard to matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of a meeting of which dates and particulars are not given would tantamount to failure to incorporate the essential particulars and that inasmuch as there was a possibility that witnesses could be procured in the context of a meeting at a place or date convenient for adducing evidence, the High Court should not even have permitted evidence on that point. In other words, no amount of evidence could cure the basic defect in the pleading and the pleading as it stood must be construed as one disclosing no cause of action. In the light of the aforesaid principle laid down by the Supreme Court which has held the field for more than 15 years, the High Court was perfectly justified in reaching the conclusion called into question by the appellant.

.....

25. In this case also, no time, date and place of the speeches delivered by the respondent have been mentioned. No exact extracts from the speeches are quoted. Nor have the material facts showing that such statements imputed to the respondent were indeed made been stated. No allegation is made to the effect that it was in order to prejudice the election of any candidate. Or in order to further the prospects of the election of the respondent. The essential ingredients of the alleged corrupt practice have thus not been spelled out. So far as the meeting is concerned, the principle ["... 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...."] laid down in Nihal Singh case [(1970) 3 SCC 239] discussed in the context of the charge contained in ground II(i) is attracted. The view taken by the High Court is therefore unexceptionable."

(emphasis supplied)

58. In **Azhar Hussain v. Rajiv Gandhi**, supra, the Hon'ble Supreme Court has laid down the legal basis for the power of the Court to reject Election Petition *in limine* under Order VII, Rule 11 C.P.C. and strike off the pleadings by exercising the power under Order VI, Rule 16 of C.P.C. The Hon'ble Supreme Court has also held that both powers should be exercised to prevent frivolous and vague Election Petitions from going to trial.

59. Similarly, in **Dhartipaker Madan Lal Agarwal v. Rajiv Gandhi**, supra, the Hon'ble Supreme Court reiterated the decision in *Azhar Hussain v. Rajiv Gandhi*, supra, and held as under:

"8. The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 of the Code of Civil Procedure and to reject the election petition under Order VII Rule 11 of the Code at the preliminary stage even though no written statement had been filed by the respondent. Section 80 provides that no election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an

election petition may be presented on one or more of the grounds specified in Section 100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Sections 81 and 82 or Section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, Order VI Rule 16 and Order VI Rule 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a

petition which do not disclose any cause of action, are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the Court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the Court need not wait for the filing of the written statement, instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the Court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11.

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10. In *Udhav Singh v. Madhav Rao Scindia* [(1977) 1 SCC 511 : AIR 1976 SC 744 : (1976) 2 SCR 246] this Court held that failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order VI Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In *Charan Lal Sahu v. Giani Zail Singh* [(1984) 1 SCC 390 : (1984) 2 SCR 6] an election petition challenging the election of Giani Zail Singh, President was rejected summarily at the initial stage by a Constitution Bench of this Court on the ground that the pleadings contained in the election petition even assuming to be true and correct did not disclose any cause of action for setting aside the election of the returned candidate. The precise question as raised by the appellant was considered at length by this Court in *Azhar Hussain v. Rajiv Gandhi* [1986 Supp SCC 315 : AIR 1986 SC 1253 : 1986 All LJ 625] and this Court held that the High Court while dealing with the election petition has power to strike out pleadings under Order VI Rule 16 and to reject the election petition under

Order VII Rule 11 if the petition does not disclose essential facts to clothe it with complete cause of action. Failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) and election petition could therefore be and must be dismissed if it suffers from any such vice. The Court repelled the submission that the power to reject an election petition summarily under the Code of Civil Procedure should not be exercised at the threshold. The Court observed as under:

"In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or

the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and

discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matter pertaining to ordinary civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections.”

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14. Before we consider various paragraphs of the election petition to determine the correctness of the High Court order we think it necessary to bear in mind the nature of the right to elect, the right to be elected and the right to dispute election and the trial of the election petition. Right to contest election or to question the election by means of an election petition is neither common law nor fundamental right, instead it is a statutory right regulated by the statutory provisions of the Representation of People Act, 1951. There is no fundamental or common law right in these matters. This is well settled by a catena of decisions of this Court in *N.P. Ponnuswami v. Returning Officer* [AIR 1952 SC 64 : 1952 SCR 218 : 1 ELR 133] , *Jagan Nath v. Jaswant Singh* [AIR

1954 SC 210 : 1954 SCR 892 : 9 ELR 231] , Jyoti Basu v. Debi Ghosal [(1982) 1 SCC 691 : AIR 1982 SC 983 : (1982) 3 SCR 318] . These decisions have settled the legal position that outside the statutory provisions there is no right to dispute an election. The Representation of People Act is a complete and self-contained Code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of the Civil Procedure Code are applicable to the extent as permissible by Section 87 of the Act. The scheme of the Act as noticed earlier would show that an election can be questioned under the statute as provided by Section 80 on the grounds as contained in Section 100 of the Act. Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under Section 100 of the Act it must fail at the threshold. 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.

15. Now we would consider the various paragraphs of the election petition to determine as to whether the allegations contained therein disclosed any cause of action. The election petition runs into 58 paras containing allegations of various corrupt practices known to the law. The averments contained in the various paragraphs are in disjointed form and in order to ascertain true intention of the election petitioner, one has to read several paragraphs and connect the same with the others to ascertain the correct import of the allegations. The allegations contained in paras 1 to 7 contain narration of facts as to when the election took place and the petitioner's desire to file his nomination paper by wearing only a "langot" and the obstruction raised by the authorities and the allegation that the police were shadowing the appellant and two of them always kept him company. These paragraphs do not make out any ground under Section 100 of the Act. In para 8, the

appellant alleged that on June 5, 6 and 10 he saw a number of jeeps plying in the Parliamentary constituency of Amethi bearing flags of Congress (I) which were being used for electioneering purposes in support of Rajiv Gandhi. The allegations further state that the appellant noticed that food was being given to the workers of Rajiv Gandhi at the kothi of Sanjay Singh at Amethi. Assuming the allegations to be true, these do not make out any case of corrupt practice or any other ground of challenge under Section 100 of the Act. During the course of arguments the appellant urged that the allegations contained in para 8 indicate that Rajiv Gandhi had been using a large number of vehicles and feeding workers and thereby he had been incurring expenses beyond the permissible limit. This inference is not permissible as 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 here and the other sentence there. A corrupt practice as contemplated by Section 123(6) contemplates incurring or authorising expenditure beyond the prescribed limit. The allegations contained in para 8 do not contain any averment that the respondent incurred or authorised expenditure beyond the prescribed limit. Neither any details of incurring or authorising

expenses have been stated therein. Para 9 of the petition, stated that on June 5, 1981 the appellant had seen a number of cars mentioned therein carrying Congress (I) flags. Similarly, allegations contained in paras 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 stated that on the dates mentioned in those paragraphs the election petitioner namely the appellant has seen a number of vehicles plying in the constituency carrying Congress (I) flags. These allegations merely show that a number of vehicles were plying with Congress (I) flags in the constituency which by itself do not constitute any corrupt practice. It appears that the appellant intended that the returned candidate had spent money over the plying of vehicles and thereby he exceeded the limit prescribed by Section 123(6) read with Section 77 of the Act. In the absence of requisite allegations in the aforesaid paragraphs the basic ingredients to make out a ground for challenging the election under Section 100 of the Act was totally lacking. These paragraphs therefore disclosed no cause of action.

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20. Section 77 requires a candidate 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 of his nomination and the date of declaration of the result of the election. The candidate is required to maintain account of only that expenditure which he or his election agent may have authorised before the expenditure was actually incurred, which would imply that the candidate or his election agent undertook to reimburse the expenses which may have been authorised by him or his election agent to be spent at the election. In order to constitute a corrupt practice as contemplated by Sections 77 and 123(6) it is necessary to plead requisite facts showing authorisation, or undertaking of reimbursement by the candidate or his election agent. 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.

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28. In para 53(1)(E) of the election petition the appellant stated "that as per Section 123(7) of the Representation of People Act, Rajiv Gandhi's workers with his consent took help from the government officers and high police officers and people of

government departments for securing votes of the electors. These officials flouted all rules and laws particulars of which are as under". Thereafter particulars of the help taken from the government officers are detailed in sub-paras (1) to (8). A corrupt practice as contemplated by Section 123(7) contemplates obtaining or procuring by a candidate or his election agent, assistance from the government servants belonging to the classes specified in sub-section (7) of Section 123 for the furtherance of the prospect of the candidate's election. In order to constitute a corrupt practice under Section 123(7), it is essential to clothe the petition with a cause of action which would call for an answer from the returned candidate and it should therefore plead mode of assistance, measure of assistance and all facts pertaining to the assistance. The pleading should further indicate the kind or form of assistance obtained and in what manner the assistance was obtained or procured or attempted to be procured by the candidate for promoting the prospect for his election. The election petitioner must state with exactness the time of assistance, the manner of assistance and the persons from whom assistance was obtained or procured by the candidate as held by this Court in *Hardwari Lal v. Kanwal Singh*[(1972) 1 SCC 214 : AIR 1972 SC 515

: (1972) 2 SCR 742] and Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315 : AIR 1986 SC 1253 : 1986 All LJ 625] . Allegations contained in sub-paras 1, 2 and 3 of para 53(1)(E) raise a grievance that though the appellant had not appointed any counting agent but still certain persons acted as his counting agents and the Returning Officer did not hold any inquiry into his complaint. Sub-para 4 states that in the Amethi Constituency, there was fear psychosis and "it looked as if the police and other government officials wanted to help Rajiv Gandhi". Sub-paras 5 to 8 refer to certain illegalities and irregularities alleged to have been committed by certain persons on the polling day in helping voters to cast their votes and it further alleged that some persons cast votes 100 to 200 times and their signatures were not obtained. These allegations do not make out any charge of corrupt practice within the provisions of Section 123(7) of the Act. As regards para 53(1)(G) it purports to allege a corrupt practice under Section 123(6) of the Act on the ground that Rajiv Gandhi spent Rs 3,15,500 in excess of the amount permitted under the law. We have already discussed this matter earlier."

60. Thus, the Court is empowered at any stage of the proceedings to strike out or delete pleadings which are

unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit.

61. As held by the Hon'ble Supreme Court, if the Court, on an examination of the Election Petition finds that it does not disclose any cause of action, it would be justified in striking out the pleadings. Admittedly, in this case, the petitioner has failed to establish cause of action against the returned candidate.

62. In **Markio Tado v. Takam Sorang, reported in (2012) 3 SCC 236**, the Hon'ble Supreme Court held thus:

"22. To begin with, one must note that in an election petition, one has to plead the material facts at the outset, and he failure to plead the same is fatal to the election petition. For reference one may see the judgment of a bench of three judges in this Court in Hari Shankar Jain v. Sonia Gandhi. Besides no evidence can be led on a plea which is not raised in the pleadings and no amount of evidence can cure the defect in the pleadings as held in para 7 of Ravinder Singh v. Janmeja Singh."

63. Failure to plead even a single material fact would

amount to disobedience of the mandate of Section 83(1)(a) of the Representation of the People Act and the Election Petition could therefore be liable to be dismissed.

64. It is also settled that an Election Petition is liable to be dismissed *in limine* at the initial stage if it does not disclose any cause of action. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Representation of the People Act. If the allegations contained in the petition do not set out grounds of challenge as contemplated by Section 100 of the Representation of the People Act and if the allegations do not conform to the requirement of Sections 81 and 83 of the Act, the pleadings are liable to be struck off and the Election Petition is liable to be rejected. Therefore, the pleadings in an Election Petition have to be specific and unambiguous and if it is vague or does not disclose the cause of action, then it necessarily has to be struck off and the Election Petition has to be rejected.

65. As stated supra, the present Election Petition lacks concise statement of material facts and especially when corrupt practice is alleged, the date and place of corrupt practice need to be

specifically pleaded, which is absent in this case. Further, the names of the persons giving bribe, receiving bribe, the place, date and time of the bribe are all not pleaded. When such material facts are not pleaded in the Election Petition, the elected candidate cannot defend himself in the Election Petition.

66. The scanning of the Election Petition would show that the petitioner has failed to plead complete details of corrupt practice which could constitute a cause of action as contemplated by Section 100 of the Representation of the People Act and he further failed to give the material facts and other details of the alleged corrupt practice. The allegations relating to corrupt practice, even if assumed to be true as stated in the various paragraphs of the Election Petition, do not constitute any corrupt practice. The Election Petition was drafted in a highly vague and general manner.

67. Before concluding, this Court would like to refer to the decision of the Hon'ble Supreme Court in *Anil Vasudeo Salgaonkar v. Naresh*, (2009) 9 SCC 310, wherein it has dealt with the consequence of not pleading material facts in the election petition. In paragraph 50, it was stated an election petition can be summarily

dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. The Hon'ble Supreme Court further held in paragraph 51 that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition, therefore, can be and must be dismissed if it suffers from any such vice.

68. As observed above, if material facts are not stated in the petition, then it would be liable to be rejected straight-way under Order VII, Rule 11 C.P.C. The law does not permit to inject a life in a dead petition by inserting the material facts and furnishing cause of action thereby. Continuance of the trial sans cause of action would amount to an abuse of process of the court within the meaning of section 151 C.P.C.

69. That apart, in *Jyoti Basu v. Debi Ghosal*, AIR 1982 SC 983, the Hon'ble Apex Court observed that a right to elect, is a pure and simple statutory right. So is the right to be elected. So is the

right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to Election Law unless statutorily embodied. Therefore, an election petition, which does not conform to the statutory requirements, is a dead petition and must be dismissed out rightly.

70. In the case on hand, in view of the findings on the aforesaid points the election petition suffers from material infirmities as it does not, *inter alia*, fulfil the statutory requirements.

71. Moreover, the Hon'ble Supreme Court time and again reiterated that if the allegations are vague and general in nature and the particulars of corrupt practice are not stated in the pleadings, the trial of an election petition cannot be proceeded with

and the petitioner should not be allowed to have a "fishing expedition" or to have a "roving inquiry". The allegations in the present petition do not give any details. They are of vague and general character and the names of the parties, who alleged to have committed corrupt practices, are not mentioned in the petition. The petition is not in accordance with Section 83 of the Act. In these circumstances the allegations made in the election petition are liable to be struck out under Order VI, Rule 16 of the Civil Procedure Code. As all the grounds urged by the petitioner are bereft of material particulars, the election petition is liable to be rejected.

72. For the foregoing reasons, I am of the view that the Election Petition does not make out any cause of action against the returned candidate. Therefore, the returned candidate was right in invoking the provisions under Order VI, Rule 16 C.P.C. to strike out the pleadings in the Election Petition. In my considered view, after striking out the pleadings as stated above, no triable issue remains to be considered in the Election Petition.

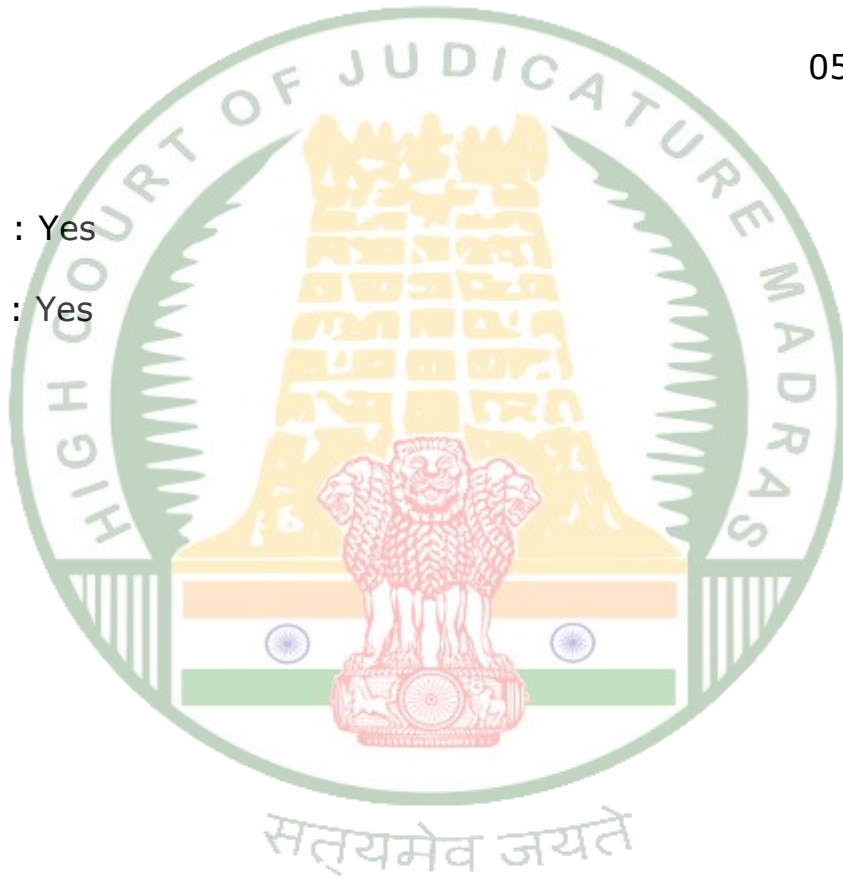
73. In the result, O.A.Nos.1052 and 1053 of 2017 are allowed. Consequently, Election Petition No.13 of 2016 is rejected. However, there is no order as to costs.

05.06.2018

vs

Index : Yes

Internet : Yes



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
O.A.Nos.1052 and 1053 of 2017 and
Election Petition No.13 of 2016

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05.06.2018