

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:28.03.2018

DELIVERED ON:16.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

O.A.Nos.304 and 305 of 2017

in

Election Petition No.8 of 2016

N.Murugumaran

... Petitioner/1st Respondent
in both applications

Vs.

1.Thol.Thirumavalavan

... Respondent/Election Petitioner
in both applications

2.S.Kalaivanan

3.S.P.Saravanan

4.Dr.K.I.Manirathinem

5.Anbu Sozhan

6.E.Jayasri

7.K.Anbalagan

8.T.Thirumavalavan

9.R.Ravichandran

10.The Returning Officer,

159, Kattumannarkoil (SC)

Assembly Constituency and

Assistant Commissioner (Excise),

Cuddalore.

... Respondents / Respondents

PRAYER:- Applications filed under Order XIV Rule 8 of Original Side Rules r/w Order VII Rule 11 and Section 151 of the Code of Civil Procedure to strike out the pleadings in paragraphs 6 to 11, 15 to 17, 19, 22, 24, 25, 27 and 28 of the election petition and to reject the election petition as not maintainable.

For Petitioner
in both applications : Mr.T.V.Ramanujam
Senior Counsel
for Mr.N.C.Ashok Kumar

For Respondents
in both applications : Mr.P.R.Raman
Senior Counsel
for Mr.D.Ferdinond
for M/s BFS Legal
for R.1
: No Appearance
for R.2 to R.9
: R.10-given up

COMMON ORDER

Mr.Thol.Thirumavalavan, who contested the Kattumannarkovil Assembly Constituency and who was unsuccessful in election, has filed the election petition to set aside the election of the first respondent viz., N.Murugumaran as a successful returned candidate for the Kattumannarkovil

(SC) Constituency.

2. The election petitioner is the President of the political party "Viduthalai Chiruthaigal Katchi" and contested the Tamil Nadu State Legislative Assembly Elections for the Kattumannarkovil (SC) Constituency.

3. The successful candidate viz., N.Murugumaran, who is the applicant in the above applications, who contested the Constituency on behalf of All India Anna Dravida Munnetra Kazhagam (AIADMK).

4. The brief case of the election petitioner is as follows:

4.1. In the election petition, the petitioner has stated that there were instances of the first respondent distributing money to the voters by use of their man/muscle power to ensure the victory of the first respondent. Further the petitioner has stated that there was some technical problem with EVM No.L14732, due to which polling was delayed at Booth No.81

and the videograph of the election at the said booth is proof of the same. The petitioner has also stated that the Returning Officer has not taken any steps to prevent the *malafides*.

4.2. The petitioner has also stated that the Returning Officer rejected 101 postal votes blatantly without providing any reason for the same. The petitioner contended that there were glaring discrepancies and irregularities in the counting process. The Chief Election Agent, M.Dhanakogi immediately sent a representation dated 19.05.2016 to the Returning Officer, requesting him not to declare the election result, as there were discrepancies in the rejection of postal votes. Contrary to the statutory rules and norms, the results of each round of counting were not declared immediately in respect of the Constituency. The Returning Officer, contrary to the rules and the request of the petitioner's election agent proceeded with the counting of 7th to 13th rounds without even rectifying the faulty EVM from 6th round and without declaring the results of the previous rounds. Subsequently, when 13th round

counting was underway, the results of 7th to 12th rounds were declared all at once.

4.3. Further, the petitioner has stated that there was every possibility of some foul play or manipulation during the period that all the election agents were directed to leave the counting area. This suspicious stands confirmed by the fact that the results of the rounds 7 to 12 were declared all at once. Knowing fully well that EVM No.L14732 was faulty even on the polling date and there was technical issue on the date of counting, the Returning Officer deliberately sent all the agents out of the counting centre to ostensibly repair EVM No.L14732 only after gathering the trend of vote polled in rounds 7 to 12. The margin of difference was always close and the petitioner was declared defeated by only 87 votes finally. The Returning Officer ignored his statutory duties in order to improperly and illegally secure the victory of the first respondent, who was a candidate of the Ruling Party.

4.4. On 29.05.2016, the petitioner has written a representation to the Chief Electoral Officer of Tamil Nadu regarding the misdeeds and requesting re-polling in booth No.81 and for recounting of the postal ballots, marking copies of the representation to the Election Commission of India and the Returning Officer. However, the Election Commission of India, by his letter dated 07.06.2016, has rejected the request of the petitioner and directed the petitioner to work out his remedy before the Court of law. The Returning Officer remained a mute spectator to the irregularities and failed to take any action on the representation/protests of the petitioner, thereby miserably failed to discharge his statutory duties and obligations as a Returning Officer. In these circumstances, the petitioner has filed the election petition to set aside the election.

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5. The first respondent in the election petition filed an application in O.A.No.304 of 2017 to strike out the pleadings in paragraph Nos. 6 to 11, 15 to 17, 19, 22, 24, 25, 27 and 28 of

the election petition and an application in O.A.No.305 of 2017 to reject the election petition as not maintainable.

6. In the common affidavit filed in support of these applications, the applicant has stated as follows:

6.1. According to the applicant, the election petition do not disclose any ground under Representation of People Act, 1951 to declare his election as null and void. The non-compliance of the mandatory requirement under the provisions of the Representation of People Act, 1951 warrants the dismissal of the election petition in limine. The first respondent/election petition has not made out any cause of action to declare the election as null and void.

6.2. As far as the allegation of corrupt practice is concerned, all basic facts constituting the ingredients of the corrupt practices alleged by the election petitioner has to be substantiated in the pleadings and as per Section 83(1)(a) of

the Representation of People Act, 1951, the election petition should contain concise statement of material facts on which the election petition relies upon. If these kinds of pleadings were allowed to stand, it will give room to the election petitioner to have a roving enquiry and produce irrelevant evidence thereby wasting the precious time of this Honourable Court. Hence, on the facts and circumstances of the case and to exercise the power under Order VI Rule 16 of the Code of Civil Procedure, the vague and general allegations are liable to be struck off. These allegations are unnecessary and tend to prejudice the fair trial.

6.3. The allegations made in paragraph No.6 is no way related to the relief sought for in the election petition and as such, a portion of the allegation is liable to be struck off. The allegation made in paragraph No.7 was self-serving and as vague as could be and the same are no way related to the relief sought for in the election petition. Similarly in paragraph No.8 also, the election petitioner made self-serving allegations

and it do not give any raise to any cause of action for the relief sought for in the election petition. The allegation made in paragraph No.8 is also very general and is liable to be struck off. In paragraph No.9 of the election petition, the election petitioner alleged corrupt practice of distribution of money and however, he has not pleaded any specific instances of alleged distribution of money except making a general allegation.

6.4. As far as the corrupt practice is concerned, the election petitioner is expected to pled the full particulars of the alleged corrupt practice. Since the entire paragraph No.9 of the election petition is wholly vague and no material particulars have been included, the same is liable to be struck off. Regarding the allegations in paragraph Nos.10 and 11, the election petitioner has not produced any material piece of evidence along with election petition to substantiate his alleged claim of technical problem in EVM. Though he has referred to a representation said to have been given to the Returning Officer by the election petitioner for the use of different EVM

without even filing the so-called representation, the vague and frivolous allegations are liable to be struck off.

6.5. In paragraph Nos.12 and 13 of the election petition, the election petitioner alleged that the postal ballots were improperly and contrary to the election rules disregarded. The allegations are scandalous, frivolous and vexatious against the Returning Officer. In paragraph No.14, again the election petitioner has made allegations against the Returning Officer and also referred to a video footage without filing the copy of the so-called video footage referred in. In paragraph No.15, without any substance, the election petitioner has made scandalous allegations against the Returning Officer which is liable to be struck off. सत्यमेव जयते

6.6. In paragraph No.16, the election petitioner has made allegations in respect of EVM No.L14732, booth No.81 and he has again made allegations against the election officials without naming any one. The entire allegations in paragraph

No.16 are very general. If these allegations are allowed to remain in the election petition, the election petitioner will lead irrelevant evidence and there will be a roving enquiry on the uncertain allegations. Hence, the allegations in paragraph No.16 are liable to be struck off.

6.7. In paragraph No.17, the election petitioner made allegations against the Returning Officer stating that he has proceeded with the counting of 7th to 13th without rectifying the faulty EVM from 6th round. The petitioner also alleged that there was every possibility of some foul play or manipulation. The allegations are baseless, scandalous, frivolous and vexatious. These scandalous allegations will embarrass and delay the fair trial. The election petitioner is expected to plead the material facts and he cannot make out a cause of action by pleading scandalous, baseless and mischievous allegations against the Returning Officer. Based on these unsure allegations, the election petitioner wants to have a roving enquiry and hence, these allegations are liable to be struck off

and as the same do not disclose any cause of action and the same is based on no material.

6.8. The allegation made in paragraph No.19 is invented one and there was no complaint of any alleged technical snag even on the date of polling and the allegation does not give raise to a cause of action for the election petition. In paragraph No.19 also, the petitioner has made scandalous allegations against the Returning Officer and made a bald and frivolous allegation saying "other officials" without naming any of the officials who have said to have acted illegal and improper manner. In these circumstances, the allegations made in paragraph No.19 is liable to be struck off.

6.9. In paragraph No.20, the election petitioner has made false and frivolous allegation against the against the Returning Officer, which is also liable to be struck off. After due re-verification, the Returning Officer has given the details of postal ballots rejected by him under document No.20 filed

along with the election petition.

6.10 In paragraph No.22, the election petitioner alleged that the Returning Officer acted undue haste in the polling, counting process and declaration of results ignoring his statutory duties. The allegation made in paragraph No.22 is liable to be struck off.

6.11. Similarly in paragraph No.23, the election petitioner has made allegations against the Returning Officer without any basis. In paragraph No.24, the election petitioner speaks of his representation dated 29.05.2016 and the reply given by the election commission, dated 07.06.2016. In paragraph No.25, the election petitioner has made allegations against the Returning Officer and other officials stating that they acted in a partisan manner in favour of the first respondent and the allegations are general, scandalous and bald and will not amount to material facts as mandated under Section 83 of the Representation of People Act. Therefore, the allegations in

paragraph Nos.24 and 25 are liable to be struck off.

6.12 In paragraph No.26, the election petitioner has not disclosed what was the irregularities, misdeeds, inaction and other gross violation committed by the first respondent/applicant. The election petition needs to provide material facts as to the alleged irregularities, misdeeds, inaction and other gross violation. These general, vague allegations will not constitute a cause of action for the relief sought for in the election petition.

6.13. In paragraph Nos.27 and 28, the election petitioner has made general allegations referring to media coverage and the same allegations made therein without any basis are liable to be struck off.

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6.14. The election petitioner should have furnished the basic facts and concise statement of material facts in the election petition. There is total absence of material pleadings

and no triable issues have been made out by the election petitioner. Under Section 83(1) of the Representation of People Act 1951, the election petition shall be accompanied by an affidavit in the prescribed form in support of the allegation of corrupt practice and particulars thereof. In the election petition, the election petitioner has raised the allegation of corrupt practice, but he has not filed the affidavit as prescribed in Form 25 read with Rule 94-A of Conduct of Election Rules, 1961.

6.15. The affidavit filed by the election petitioner along with election petition is not in the prescribed form namely Form 25. The election petitioner should plead material facts and full particulars of the alleged corrupt practices in the election petition and in affidavit in Form 25. He must say that those allegations in election petition are based on his knowledge or based on his information. The non-compliance of filing affidavit under Form 25 read with Rule 94-A of Conduct of Election Rules, 1961 warrants dismissal of the

election petition in *limine*.

6.16. A mere non-compliance or breach of the Constitution or the statutory provision by itself does not result in invalidating the election and it must be stated from such breach or non-observance which resulted in materially effecting the result of the returned candidate. The pleadings do not disclose any cause of action to set aside the election of the applicant/first respondent.

6.17. As far as paragraph Nos.6 and 7 are concerned, they are self-serving, unnecessary and the same will tend to prejudice and also delay the fair trial. Regarding the allegations in Paragraph Nos.8 to 11, 15 to 17, 19, 22, 24, 25, 27 and 28 are concerned, they are unnecessary and very general in nature without disclosing any material piece of evidence and without even referring Rasipuram Assembly Constituency. Apart from that, the allegations are unnecessary and do not disclose any cause of action. These scandalous,

frivolous and vexatious general allegations will embarrass and delay the fair trial. If the allegations in paragraph Nos.6 to 11, 15 to 17, 19, 22, 24, 25, 27 and 28 in the election petition are struck off, the other paragraphs do not make out any cause of action against the applicant/first respondent and therefore, the election petition is liable to be rejected at the threshold. In these circumstances, the applicant/first respondent filed the above applications to strike out the pleadings and to reject the election petition.

7. The brief facts of the first respondent/election petitioner is as follows:

7.1. According to the first respondent/election petitioner, the averments stated in paragraph No.6 of the election petition are not self-serving. Similarly, the averments in paragraph No.8 of the election petition are not self-serving and the applicant has no match to his political acumen or experience and the averments made in the election petition are specific and are not vague. The averments stated in the election

petition clearly specified the improper acts of the Returning Officer to which the applicant cannot have any say, nor can the applicant espouse the case of the Returning Officer.

7.2. The allegations with regard to EVM, counting etc., cannot be construed as scandalous, mischievous or embarrassing to the proceedings especially since the said averments are factually correct. The paper trail of the votes polled have not been properly considered by the Returning Officer as directed by the Honourable Supreme Court rendering the entire exercise of the paper trail otiose. The election petitioner will let in evidence, both oral and documentary to substantiate the materials facts pleaded in the election petition. The averments stated in the election petition are serious in nature and it is only fair that this Court inquires into the matter to ensure the purity and sanctity of the election process.

7.3. The applicant has no reason or *locus standi* to file

the instant application on the alleged embarrassment to the Returning Officer. The election petitioner has clearly made out the cause of action for filing of the election petition. Further, the election petitioner has stated that the requisite forms, affidavits etc., have been filed and as such, there is no infirmity in the election petition as averred. In these circumstances, the election petitioner prayed for dismissal of the applications.

8. Heard Mr.T.V.Ramanujam, learned Senior Counsel appearing for the applicant/first respondent and Mr.P.R.Raman, learned Senior Counsel appearing for the first respondent/election petitioner.

9. Mr.T.V.Ramanujam, learned Senior Counsel appearing for the applicant/first respondent submitted that the allegations made in paragraph Nos.6 to 11, 15 to 17, 19, 22, 24, 25, 27 and 28 of the election petition are vague and this will definitely embarrass the free trial and prejudice the fair

trial. Further the learned Senior Counsel submitted that if these general, bald allegations are allowed to stand, it will give room to the election petitioner to have a roving and fishing enquiry. Further the learned Senior Counsel submitted that the allegations made in the aforesaid paragraphs of the election petition do not make out any case for the alleged corrupt practice within the meaning of the Representation of the People Act.

10. The learned Senior Counsel further submitted that the allegations made in the said paragraphs are scandalous, vague and vexatious and lack in material particulars and they do not disclose any cause of action. Further, the learned Senior Counsel submitted that if the allegations in the said paragraphs are strike off, the other paragraphs do not make out any cause of action against the applicant and therefore, the election petition is liable to be rejected at the threshold.

11. In support of his contentions, the learned Senior

Counsel relied upon the following judgments:

(i) In ***Raj Narain VS. Smt.Indira Nehru Gandhi and another*** reported in ***(1972)3 Supreme Court Cases 850***, wherein the Honourable Supreme Court held as follows:

"14. Now let us turn to the averments in the election petition which alone is relevant for finding out whether the corrupt practice referred to in Issue No. 1 is made out. Relevant averments are said to be in paragraphs 2, 5 and 6. They read as follows :

"2 That the respondent No. 1 Shrimati Indira Nehru Gandhi and the respondent No. 2 Swami Advaita Nand were also candidates in the said election from the 22-Rae Bareilly Parliamentary constituency for the Lok Sabha.

"5 That the said Shri Yashpal Kapur was Gazetted Officer in the Government of India, holding the post of an officer on Special Duty. The respondent No. 1 Shrimati Indira Nehru Gandhi obtained and procured ,the assistance of the said Shri Yashpal Kapur for the furtherance of the prospects of her election from the 8-L1061Sup.Cl/73 constituency aforesaid inasmuch as the said Shri Yashpal Kapur was a gazetted officer in the service of the Government of India when his assistance was obtained and procured (a corrupt practice under section 123(7) of the R.P. Act, 1951 was committed

by the respondent No. 1 Shrimati Indira Nehru Gandhi. The said Shri Yashpal Kapur on the directions of Shrimati Indira Nehru Gandhi organised the electioneering work for her in the constituency as her election agent during the entire period from even before the filing of the nomination paper the filing(?) the counting and the declaration of the result of the election. The election of the respondent No. 1 is liable to be declared void on the ground of the commission of this corrupt practice under [section 100\(1\)\(b\)](#) of 'the Representation of Peoples Act, 1951.

6. That as the petitioner's candidature was being supported not only by Samyukta Socialist Party to which the petitioner belonged but also by the Jan Sangh, the Indian National Congress (Organization), Bhartiya Kranti Dal and the Swatantra Parties and since the candidature of respondent No. 1, Shrimati Indira Nehru Gandhi was being supported by the Muslim Majlis, Muslim League and the Communist Party of India (it was apprehended by Shrimati Indira Nehru Gandhi and her election agent Shri Yashpal Kapur that an overwhelming majority of Hindu voters might cast their votes for the petitioner against Shrimati Indira Nehru Gandhi. It was accordingly decided by them to induce the respondent No. 2 Swami Advaitanand to also stand as a candidate in the election. The said Shri Yashpal

Kapur, the election agent of Shrimati Indira Nehru Gandhi offered and paid a sum of Rs. 50,000/- to the respondent No. 2 Swami Advaitanand as a gift with the object of directly including him to stand as a candidate at the said Selection. The offer and payment of the amount of Rs. 50,000/- was made by the said Shri Yashpal Kapur to Swami Advaitanand on the 28th January 1971 in the town of Rae Barlow. A corrupt practice of 'bribery under [section 123](#) (1) (A) (a) was thus committed by Shri Yashpal Kapur, election agent of Sm. Indira Nehru Gandhi and her election is therefore liable to be declared void under [section 100](#) (1) of the R.P. Act."

18. From these two provisions, it follows that if the allegations made regarding a corrupt practice do not disclose the constituent parts of the corrupt practice alleged, the same will not be allowed to be proved and further those allegations cannot be amended after the period of limitation for filing an election petition-, but the court may allow particulars of any corrupt practice alleged in the petition to be amended or amplified. The scope of these provisions has been considered in several decisions of this Court. The leading decision on this point is *Harish Indra Bajpai v. Trilok Singh*(1). It is not necessary to go to that decision as the ratio of that decisions has been elaborately (1) [1957] S.C.R. 370.

explained by this Court in Samant N. Balakrishna etc. v. George Fernandez and ors. etc.(1). Dealing with the scope of ss. 83 and 86(5), this Court observed that s. 83 requires that the petition must contain a concise statement of the material facts on which the petitioner relies and the fullest possible particulars of the, corrupt practice alleged. 'Material facts' and 'particulars' may overlap but the word 'material' shows that the ground of corrupt practice and the facts necessary to formulate a complete cause, of action must be stated. The function of the particulars is to present as full a picture of the cause of action as to make the opposite party understand the case he will have to meet. Unders. 86(5), if corrupt practice is alleged in the petition, the particulars of such corrupt practice may be amended or amplified for ensuring a fair and effective trial, that is, more and better particulars of the charge may be given later, even after the period o' limitation; but if a corrupt practice is not previously alleged in the petition, an amendment which will have the effect of introducing particulars of such a corrupt practice will not be permitted, after the period of limitation, because, it would tantamount to making a fresh petition. The same view was taken by this Court in Hardwari Lal v. Kanwal Singh(3). From these decisions, it follows that facts stated in the petition relating to any corrupt practice must be sufficient to constitute a cause of action. In other words the facts

must bring out all the ingredients of the corrupt practice alleged. If the facts stated fail to satisfy the that requirement then they do not give rise, to a triable issue. Such a defect cannot be cured by any amendment after the period of limitation for filing the election petition. But even if all the material facts are stated in the election petition. For a proper trial better particulars may still be required. If those particulars are not set out in the election petition, they may be incorporated into the election petition with the permission of the court even after the period of limitation. The controversy in this case is whether the election petition discloses a cause of action for trying Issue No. 1. We think it does. The- allegations made in paragraphs 2, .5 and 6 of the petition, if read together do show that the allegation against the respondent is that she obtained the assistance of Yashpal Kapur, a gazetted officer, to support her candidature by organising her electioneering work. These allegations bring out all the ingredients of the corrupt practice alleged though they are lacking in better particulars such as the date on which the respondent became a candidate and the date on which Yashpal Kapur was entrusted with the responsibility of organizing the electioneering work of the respondent. The absence of those particulars does not per se invalidate the charge. They can be Supplied even now with the permission of the Court. In this con- (1) [1969] 3 S.C.R. 603.

(2) [1972] S.C.C. 14.

nection it is necessary to mention that the respondent in her written statement did not say that the allegations in question did not raise a triable issue. No such objection appears to have been taken at the time of the framing of the issues or in any of her pleadings. It seems that the objection was taken up for the first time when the petition to set aside the interrogatories was heard. We are saying all these only, to show as to how the parties understood the allegations at the earlier stages, of the proceedings.

19. Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking,, there lies a juristic principle. It is the duty ' of the court to ascertain that principle and implement it. What then is the principle underlyings. 86(5)? In our opinion the aim of that section is to see that a person accused of a corrupt practice must know precisely what he is accused of so that he may have the opportunity to meet the allegations made against him. If the accusation made is nebulous and is capable of being made use of for establishing more than one charge or if it does not

make out a corrupt practice at all then the charge fails at the very threshold. So long, as the charge levelled is beyond doubt. s. 86(5) is satisfied; rest is mere refinement. They either pertain to the region of particulars or evidence. That section is not designed to interdict a mere clumsy pleading like the petition before us. The purpose of that section is to see that every charge of corrupt practice should be brought before the court before the prescribed period of limitation and none thereafter so that the trial of the case may not be converted into a persecution by adding more and more charges or by converting one charge another as the trial proceeds. The best illustration of the problem that s. 86(5) tries to meet is found in, Hardwatri Lal's case (supra). The allegations made in paragraph 16 of the petition ,therein were as follows :

"That the respondent committed the corrupt practice of obtaining and procuring or- attempting to obtain and procure the assistance for the furtherance of the prospects of his election from the following, persons who are in the service of the Government and belonging to the prohibited classes within the meaning of section 123 (7) of the Act-

- 1. Shri Chand Ram Rathi, Lecturer in Political Science, Government College, Gurgaon.*
- 2.Shri Gulab Singh, B.A.B.Ed., Govt. High School Jharsa (Gurgaon).*

3. Pt. Bhim Singh, Asstt. Sub-inspector, Police Security Lines, Lytton Road, New Delhi. 4 .Ch. Chhatar Singh, M.A.B.T., Teacher, V.& P.O. Bharai via Bahadurgarh, District Rohtak.

5. Ch. Mukhtiar Singh, Inspector of Police, Delhi-

6. Ch. Raghubir Singh, M.A., B.T., Bahadurgarh. The respondent has written letters under his own signatures to the above Government servants soliciting their help and assistance in furtherance of the prospects of his election."

20. These were all the material facts stated in the petition. From those averments, it was not possible to make out from whom among the government servants mentioned, the returned candidate alleged to have obtained or procured assistance for the furtherance of the prospects of his election and who are those from whom he is alleged to have attempted to obtain and procure the assistance for the said purpose. That petition was also silent as regards the type of assistance obtained or procured or attempted to be obtained or procured. In that case, it was necessary to state the type of assistance obtained or procured or attempted to be obtained or procured because a candidate can take the assistance of government servants in certain respects. The allegations made in the petition were so elastic that it could have been used for establishing multitude of charges, leaving it

free to the petitioner to pick and choose the charge he is in a position to establish. That was an intolerable position for his opponent. In substance, the petitioner therein had merely quoted the relevant provision of law; he had failed to state the material fact, to bring out the charge sought to be levelled. He had cast a wide net. This is not so in the case before us. Herein all the ingredients of the corrupt practice viz. (1) that the respondent obtained the assistance of Kapur; (2) Kapur was a government servant and (3) his services were obtained in support of the candidature of the respondent by organising her election campaign are mentioned in the petition. The question when the respondent became a candidate is merely a matter of evidence.

(ii) In **Azhar Hussain Vs. Rajiv Gandhi** reported in **1986(Supp) Supreme Court Cases 315**, wherein the Honourable Supreme Court held as follows:

" 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 Damocle 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 matters 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 a 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 wind the vote of the people but also to win the vote of the Court in a long drawn out litigation before he can whole-heartedly engaged himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as a hindrance if he be entrusted with some public office in his elected capacity. He may even have occasions 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 metal, the constraint introduced by the pendency of an election petition may have some impact on his sub-conscious 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.

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 Amarsey v. Popatlal Manilal Joshi & Ors.](#), [1969] 3 S.C.R. 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. [Hardwari Lal v. Kanwal Singh](#), [1972] 2 S.C.R. 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 [Hardwari Lal v. Kanwal Singh](#). (supra) (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 [Hardwari Lal v. Kanwal Singh](#) (supra) (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. [Hardwari Lal v. Kanwal Singh](#) (supra).

(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.

18. The averments contained in paragraph 4 pertaining to Ground No.1 do not satisfy the test prescribed in [Manubhai Anarsey v. Popatlal Manilal Joshi & Ors.](#), (supra) and [Hardwari Lal v. Kanwal Singh](#), (supra). 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 Amarsey v. Popatlal Hanilal Joshi & Ors.](#), (supra) 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 the 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 from 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 Manubhal Nandlal's case, as also Hardwari Lal's case 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.

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 and 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 S.C.C. 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 (1) laid down in Nihal Singh's case (*supra*) discussed in the context of the charge contained in ground (II)(i) is attracted. The view taken by the High Court is therefore unexceptionable.

28. It will be noticed that in the election petition it has been mentioned that a copy of the poster would be subsequently filed, and the cuttings of some newspaper reports would also be filed later on. The election petitioner sought an amendment to delete the averments on both these aspects. The High Court rejected the prayer in regard to poster (Ex. B), but granted the prayer in respect of the cuttings. The High Court has taken the view that the poster was claimed to be an integral part of the election petition and since it was not filed (much less its copy furnished to the respondent) the pleading suffered from infirmity and non-compliance with [Section 83\(1\)](#) read with [Section 86\(1\)](#) of the Act. Non-filing of the poster is fatal to

the election petition as in the absence thereof the petition suffers from lack of material facts and therefore the statement of cause of action would be incomplete. Nothing turns on the facts whether or not the words "a copy of the said poster would be filed as Exhibit B" are allowed to be retained in the election petition or are deleted as prayed for by the appellant. The fact remains that no copy of the poster was produced. It must also be realized that the election petitioner did not seek to produce the copy of the poster, but only wanted a reference to it deleted so that it cannot be said that the accompaniments were not produced along with the election petition. The fact remains that without the production of the poster, the cause of action would not be complete and it would be fatal to the election petition inasmuch as the material facts and particulars would be missing. So also it could not enable the respondent to meet the case. Apart from that the most important aspect of the matter is that in the absence of the names of the respondent's workers, or material facts spelling out the knowledge and consent of the respondent or his election agent, the cause of action would be incomplete. So much so that the principle enunciated by this Court in Nihal Singh's case (supra) would be attracted. And the Court would

not even have permitted the election petitioner to lead evidence on this point. The High Court was therefore fully justified in taking the view that it has taken.

40. Counsel for the appellant has taken exception to the fact that the High Court has dismissed the election petition in exercise of powers under Order 7 Rule 11 of the Code of Civil Procedure notwithstanding the fact that under the said provision if the petition does not disclose cause of action it can only be rejected (and not dismissed). The contention urged by the learned counsel would have had some significance if the impugned order was passed before the expiry of the period of limitation for instituting the election petition. In the present case the election petition was filed on the last day on which the election petition could have been presented having regard to the rigid period of limitation prescribed by Section 81 of the Act. It could not have been presented even on the next day. Such being the admitted position, it would make little difference whether the High Court used the expression 'rejected' or 'dismissed'. It would have had some significance if the petition was 'rejected' instead of being 'dismissed' before the expiry of the limitation inasmuch as a fresh petition which contained material facts and was in conformity with the

requirements of law and which disclosed a cause of action could have been presented 'within' the period of limitation. In this backdrop the High Court was perfectly justified in dismissing the petition. And it makes no difference whether the expression employed is 'dismissed' or 'rejected' for nothing turns on whether the former expression is employed or the latter. There is thus no valid ground to interfere with the order passed by the High Court, and the appeal must accordingly fail."

(iii) In **S.A.Khan Vs. CH.Bhajan Lal and Others** reported in **(1993)3 Supreme Court Cases 151**, wherein the Honourable Supreme Court held as follows:

"22. In the present case, no evidence has been let in proof of the statement of facts contained in the newspaper report. The absence of any denial by Ch. Bhajan Lal will not absolve the applicant from discharging his obligation of proving the statement of facts as appeared in the Press report. In fact, Ch. Bhajan Lal in his counter affidavit has taken a stand that the statements attributed to him based on the newspaper report are mere hearsay and cannot in law be relied upon for the purpose of initiating such proceedings. Therefore, in the absence of required legal proof, the

Court will not be justified in issuing a suo moto notice for contempt of court."

(iv) In ***Virender Nathagautam Vs. Satpal Singh and Others*** reported in ***(2007)3 Supreme Court Cases 617***, wherein the Honourable Supreme Court held as follows:

"29. From the relevant provisions of the Act reproduced hereinabove, it is clear that an election petition must contain a concise statement of 'material facts' on which the petitioner relies. It should also contain 'full particulars' of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof .

34. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the

plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.

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."

(v) In **Anil Vasudev Salgaonkar Vs. Naresh Kushali**

Shigaonkar reported in **(2009)9 Supreme Court Cases**

310, wherein the Honourable Apex Court held as follows:

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

51. This Court in *Samant N. Balkrishna's case* (*supra*) has expressed itself in no uncertain 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. In *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\(l\)\(a\)](#). 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.

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

(vi) In ***Ram Sukh Vs. Dinesh Aggarwal*** reported in **(2009)10 Supreme Court Cases 541**, wherein the Honourable Apex Court held as follows:

"8. 7. Before examining the merits of the issues raised on behalf of the election petitioner with reference to the relevant statutory provisions, it would be appropriate to bear in mind the observations of this Court in

Jagan Nath Vs. Jaswant Singh and Ors. Speaking for the Constitution Bench, Mehr Chand Mahajan, C.J., had said that the statutory requirement of election law must be strictly observed and that the election contest is not an action at law or a suit in equity, but is purely statutory proceeding unknown to the common law and that Court possesses no common law power. It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. Nevertheless, it is also to be borne in mind that one of the essentials of the election law is to safeguard the purity of the election process and, therefore, the courts must zealously ensure that people do not get elected by flagrant breaches of that law or by indulging in corrupt practices, as enumerated in the Act.

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 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 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 Vs. Satpal Singh & Ors.5, wherein C.K. Thakker, J., stated thus: (SCC p.631, para 50) "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."

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 VI Rule 16 and Order VII 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.

24. It needs little reiteration that for purpose of [Section 100\(1\)\(d\)\(iv\)](#), it was necessary for the election petitioner to aver specifically in what

manner the result of the election insofar as it concerned the first respondent, was materially affected due to the said omission on the part of the Returning Officer. Unfortunately, such averment is missing in the election petition."

(vii) In **Markio Tado Vs. Takam Sorang and Others** reported in **(2012)3 Supreme Court Cases 236**, wherein the Honourable Supreme Court held as follows:

"22.16. To begin with, one must note that in an election petition, one has to plead the material facts at the outset, and the failure to plead the same is fatal to the election petition. For reference one may see the judgment of a bench of three judges of this Court in Hari Shanker Jain Vs. Sonia Gandhi reported in [2001 (8) SCC 233]. 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 Vs. Janmeja Singh reported in [2000 (8) SCC 191]."

(viii) In **Jitu Patnaik Vs. Sanatan Mohakud and others** reported in **(2012)4 Supreme Court Cases 194**, wherein the Honourable Supreme Court held as follows:

" 48. 35. A close analysis of first part of paragraph 7(D)

of the election petition would show that the statements comprise of the following facts :

7 Illegality deliberately committed by the counting personnels while recording the counting figure in Form-20 with respect to Booth No. 179.

7 The total number of voters as recorded in the electoral roll with respect to Booth No. 179 is 1109. 7 Whereas in Form-17C, certified copy, deliberately this figure has been shown wrongly as 1091. 7 On the date of polling, on a plain perusal of register of voters maintained in Form-17A, it will be abundantly clear that the total number of voters came to vote and signed 17-A register is 1091; whereas in Form-17C, it has been deliberately shown as 772 making a deliberate suppression of 319 votes.

50. We now revert back to the pleadings set out in paragraph 7(D) as analysed above. There is no averment that the election petitioner or any of his polling agents had perused the register of voters maintained in Form 17A. The basis of the knowledge that the register of voters maintained in Form 17A records that 1091 voters came to vote is not disclosed at all. Moreover, there is no pleading that 1091 voters who came to vote at Booth No. 179 in fact voted. There is no merit in the contention of Mr. Mukul Rohatgi that the facts stated in paragraph 7(D) with regard to Form 17A shall be established at the trial after Form 17A is

summoned by the Court. We are afraid such fanciful imagination of proof at the trial cannot be a substitute of the pleading of material facts about the total number of voters who came to vote and in fact voted at Booth No. 179.

51. The averment that in Form-17C, certified copy, it has been deliberately shown as 772 making a deliberate suppression of 319 votes hardly improves the pleading in the election petition. There is no averment that the election petitioner or his agents challenged part II of Form-17C before authorities. At least, there are no facts pleaded concerning that.

52. There is no pleading that there was any challenge by the election petitioner or his agents in respect of the counting figure in Form-20. The only pleading is that the illegality has been deliberately committed by the counting personnels while recording the counting figure in Form-20 with respect to Booth No. 179. There is, thus, no disclosure of material facts in respect of the challenge to the correctness of Form-20 and Form-17C.

53. The pleading of material facts with regard to suppression of 319 votes in paragraph 7(D) is also incomplete as it has not been disclosed who suppressed 319 votes; who was the counting agent present on behalf of the election petitioner at the time of counting; how 319 votes were suppressed and why recounting was not demanded. Moreover, there is no express

pleading as to how the result of the election has been materially affected by less counting of 319 votes.

54. In Samant N. Balkrishna and Another v. George Fernandez and Others¹¹ while dealing with the requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure, this Court, inter alia, exposited the legal position that omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad."

(ix) In **Subramanian Swamy Vs. Election Commission of India** reported in **(2013)10 Supreme Court Cases 500**, wherein the Honourable Supreme Court held as follows:

"28. From the materials placed by both the sides, we are satisfied that the "paper trail" is an indispensable requirement of free and fair elections. The confidence of the voters in the EVMs can be achieved only with the introduction of the "paper trail". EVMs with VVPAT system ensure the accuracy of the voting system. With an intent to have fullest transparency in the system and to restore the confidence of the voters, it is necessary to set up EVMs with VVPAT system because vote is nothing

but an act of expression which has immense importance in democratic system."

(x) In ***Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari and another*** reported in **(2014)5 Supreme Court Cases 312**, wherein the Honourable Apex Court held as follows:

"11.5. We have heard the learned counsel for the parties and perused the record.

12.. [Section 87](#) of the Act provides that the election petition is to be tried by the High Court applying the provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') "as nearly as may be" and in accordance with the procedure applicable under CPC and the provisions of the [Indian Evidence Act](#), 1872 (hereinafter referred to as the '[Evidence Act](#)') shall also be applicable subject to the provisions of the Act.

13.. It is a settled legal proposition that the statutory requirements relating to election law have to be strictly adhered to for the reason that an election dispute is a statutory proceeding unknown to the common law and thus, the doctrine of equity, etc. does not apply in such dispute. All the technicalities prescribed/mandated in election law have been provided to safeguard the purity

of the election process and courts have a duty to enforce the same with all rigours and not to minimize their operation. A right to be elected is neither a fundamental right nor a common law right, though it may be very fundamental to a democratic set-up of governance. Therefore, answer to every question raised in election dispute is to be solved within the four corners of the statute. The result announced by the Returning Officer leads to formation of a government which requires the stability and continuity as an essential feature in election process and therefore, the counting of ballots is not to be interfered with frequently. More so, secrecy of ballot which is sacrosanct gets exposed if recounting of votes is made easy. The court has to be more careful when the margin between the contesting candidates is very narrow. "Looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots must be avoided, as it may tend to a dangerous disorientation which invades the democratic order by providing scope for reopening of declared results". However, a genuine apprehension of mis-count or illegality and other compulsions of justice may require the recourse to a drastic step."

(xi) In **C.P. John Vs. Babu M. Palissery and others** reported in **(2014)10 Supreme Court Cases 547**, wherein

the Honourable Supreme Court has held as follows:

"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 94A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of 1st 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 No.25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars

relating to such corrupt practices are alleged. It also mentions as to which of those statement of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.

20. Therefore, a conspectus reading of [Section 83\(1\)\(a\)](#) read along with its proviso of the Act, as well as, Rule 94A and Form No. 25 of the Rules make 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.

33. In the case on hand, since the allegation of bribery falling under Section 123(1)(A) was a serious allegation, if according to the Appellant, for levelling the said allegation there were no details furnished as to on which date and by whom the bribe amount was promised to be paid to the Second Respondent then, when such averments were not duly supported in the affidavit and when such serious defects were pointed out in the written statement as well as in the affidavit filed in support of I.A. No.3 of 2011, the Appellant having taken a rigid stand that he wanted to go by whatever averments contained in the Election Petition and affidavit filed in support of the Election Petition, he cannot subsequently turn around and state that inspite of such a categoric stand taken by him, the High Court should have gone out of the way and

called upon him to rectify the defects, which were very serious defects concerning material particulars relating to corrupt practice, for which there was no necessity for the High Court to show any such extraordinary indulgence to the Appellant. We, therefore, do not find any scope to apply the decision in Umesh Chaliyill (supra) to support the stand of the Appellant.

38. There can be no two opinions that consequences envisaged by [Section 86\(1\)](#) of the Act will have no application to the non-compliance of [Section 83\(1\)](#) or (2) or its proviso. But the question before us is when the mandatory requirement of the pleadings as stipulated under [Section 83\(1\)](#) and its proviso was brought to the notice of the Appellant, as well as, to the Court, and when a specific application was filed for rejecting the Election Petition for want of particulars and consequent lack of cause of action for maintaining the Election Petition and the election petitioner, namely, the Appellant herein chose not to cure the defects but insisted that his Election Petition can be proceeded with keeping the material defects on record, he cannot later on be heard to state that at any later point of time he must be given an opportunity to set right the defects. We are unable to appreciate such an extreme stand made on behalf of the Appellant. Therefore, even while applying the above proposition of law stated by this Court in

paragraph 7, we do not find any scope to interfere with the order impugned in these appeals.

44. With that when we come to the next part of the judgment, namely, the alleged corrupt practice under [Section 123\(4\)](#) based upon Annexure IV, which was the pamphlet distributed in the name of Second Respondent, the contention was that the First Respondent was responsible for issuing the said pamphlet in the name of the Second Respondent with a view to divert the votes of UDF and thereby, the candidature of the Appellant was put to serious prejudice. Dealing with the said issue, the High Court has stated as under in paragraphs 17 and 19:

"17. The question is even if the case of the election petitioner is to be accepted and the notice was printed and published by the first respondent in the name of the second respondent, whether it is a corrupt practice as provided under sub section (4) of [Section 123](#). The argument of the learned counsel appearing for the election petitioner is that election petitioner is the candidate of the United Democratic Front and by reading the appeal the voters may think that second respondent, who is having identical name as that of the election petitioner, is the candidate of the United Democratic Front and it was printed and published with the intention of causing loss of votes to the election petitioner, as those who read the appeal may think that second respondent is the candidate of the

United Democratic Front and would cast their votes to the second respondent on a mistaken impression that instead of the election petitioner second respondent is the candidate of the United Democratic Front. Learned senior counsel appearing for the election petitioner argued that unless Annexure IV appeal contains any statement which are false and either the first respondent believed to be false or did not believe to be true and such statements are in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate and that too reasonably calculated to prejudice the prospects of that candidate's election, it will not constitute a corrupt practice as provided under sub section (4) of [Section 123](#) of the Act.

19. It is clear that in order to attract sub section (4) of [section 123](#), there should be a publication by a candidate or his agent or by any other person with the consent of the candidate or his election agent. The statement of fact in the publication must be false. The candidate should either believe it to be false or does not believe it to be true. The statement must be in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate. The statement must be reasonably calculated to prejudice the prospects of that candidate's election. Even if the statement is false and the candidate did not believe the statement to be

true or believe it to be false, unless the statement is in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, it is not a corrupt practice. Even if the statement is in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, unless it was reasonably calculated to prejudice the prospects of that candidate's election, it will not amount to a corrupt practice. Each of the ingredients in the section has its own importance. The omission to plead any one of the ingredients is fatal. In the absence of any of the ingredients, it will not constitute a complete cause of action to challenge the election on the ground of corrupt practice under [section 123\(4\)](#) of the Act."

45. On a reading of the above discussion made by the High Court with which we fully concur, we do not find any scope to take a different view. The said conclusion of the High Court in the context of [Section 123\(4\)](#) is the only way to understand the implication of the Annexure IV-pamphlet alleged to have been distributed by the Second Respondent at the instance of the First Respondent. Therefore, on this ground, as well, we do not find any scope to interfere with the impugned judgment of the High Court."

(xii) In ***Jagabandhu Behera Vs. Subrat Tarai and others*** reported in **2016(6) SCC 256**, wherein the Honourable Supreme Court held as follows:

" Material particulars had been given in para 7(B) which disclosed cause of action. Hence, only said para, forming the part of the election petition is ordered to be restore. So far as rest of the paras are concerned, the High Court was right while striking them off – Representation of the People Act, 1951 – Ss.100(1)(b)&(d)(iv), 83, 86 and 87 – Civil Procedure Code, 1908, Order 6, Rule 16 and Order 7 Rule 11."

12. Countering the submissions made by the learned Senior Counsel appearing for the applicant/first respondent, Mr.P.R.Raman, learned Senior Counsel appearing for the first respondent/election petitioner submitted that the averments mentioned in paragraph Nos.6, 7, 10 and 24 of the election petition may be eschewed and so far as the averments in other paragraphs are concerned, the election petitioner would prove the same by adducing oral and documentary evidences.

13. That apart, the learned Senior Counsel also submitted that the non-filing of Form 25 of the Conduct of Election Rules is a curable defect and the same can be cured by the election petitioner. The learned Senior Counsel further submitted that the election petitioner can prove the allegations made in the election petition only by adducing oral and documentary evidences. That part, the learned Senior Counsel also submitted that the election petitioner has made out the cause of action for filing the election petition to set aside the election of the applicant.

14. In support of his contentions, the learned Senior Counsel relied upon the following judgments:

(i) In ***Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and others*** reported in ***(2012)7 Supreme Court Cases 788***, wherein the Honourable Supreme Court held as follows:

"2. The factual matrix in which the election petition came to be filed by the respondent has been

set out at length by the High Court, hence need not be recounted except to the extent the same is essential for the disposal of the appeal. The High Court has, while holding that the averments made in the election petition raised triable issues and disclosed a cause of action, observed:

"23. As seen from the statement showing voter turn out report in connection with General Elections, 2009 to 98-Jangaon Legislative Assembly Constituency on 16.04.2009, the total votes polled, as reported by the Returning Officer, is shown as 1,50,678 from 251 polling stations. Whereas the final result sheet in Form no.20, total valid votes is shown as 1,51,411. So, from this document, it is clear that prima facie a proper counting had not taken place. Therefore, prima facie it can be said to be an irregularity on the part of the Returning Officer involved in dereliction of the duty. Similarly, there is a specific allegation that out of 653 postal ballots, the election petitioner would have secured more than 300 votes, if properly counted, and out of the said votes, 142 votes which were validly polled in favour of the election petitioner, were illegally declared as invalid and another 52 votes polled in favour of the election petitioner were counted in favour of the first respondent, and 45 invalid votes were illegally counted in favour of the first respondent. Since the margin between the elected candidate and the nearest rival is only 236 votes, had postal ballots been

counted properly, then there would be a possibility of materially affecting the result of the election in so far as the returned candidate. So, under no stretch of imagination, it can be said that the allegations in the Election Petition are vague.

24. No doubt, it is true that in view of the decision of the Apex Court, recounting of the votes cannot be resorted to as a matter of course and every endeavour should be made to protect the secrecy of the ballots. But, at the same time suspicion of the correctness of the figures mentioned in the crucial documents of the statement showing voters' turn out report and Form-20-final result sheet, where there is a variance between total number of votes polled and votes counted. The two basic requirements laid down by the Apex Court, to order recounting, are: (a) the election petition seeking recount of the ballot papers must contain an adequate statement of the material facts on which the allegations of irregularity or illegality in counting are founded; and (b) on the basis of evidence adduced in support of the allegations, the Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete and effectual justice between the parties, making of such an order is imperatively necessary.

Therefore, the questions—whether counting of votes by the officials is in accordance with the rules and

regulations and also whether the votes polled in favour of the election petitioner were rejected as invalid or there was improper counting of votes polled in favour of the returned candidate, are required to be decided after adducing evidence only. The allegation that because of the improper counting of postal ballots polled in favour of the election petitioner, the election petitioner could not secure 300 votes, if accepted as true at this stage, it would materially affect the election result because the margin of votes polled between returned candidate and his nearest rival is very narrow. In the Election Petition, the allegation with regard to irregularity or illegality in counting of votes, which affects election of the returned candidate materially, has been clearly stated in the Election Petition. It is not a vague or general allegation that some irregularities or illegalities have been committed in counting. Similarly, there is allegation that in the first instance, after totalling of all votes, the election petitioner secured a majority of 44 votes and the same was informed to the electronic media, and some TV channels telecasted the same immediately. A Compact Disc (CD) is also field along with the Election Petition, in support of the said allegation. It is also alleged that none of the contested candidates filed any petition for recounting of votes within maximum period of five minutes after the election petitioner was declared to have secured a majority of 44 votes. Therefore, there

is prima facie material to show that there was irregularity or illegality in counting of votes which resulted in affecting materially the election of the returned candidate, so as to proceed further with the Election Petition. As, at this stage, prima facie case for recounting, as seen from the allegations in the Election Petition, is made out, the pleadings cannot be struck off as unnecessary. Therefore, rejecting the Election Petition at this stage does not arise."

5. *It is equally well settled that while examining whether a plaint or an election petition discloses a cause of action, the Court has a full and comprehensive view of the pleading. Averments made in the plaint or petition cannot be read out of context or in isolation. They must be taken in totality for a true and proper understanding of the case set up by the plaintiff.*

6. This Court has in [Shri Udhav Singh v. Madhav Rao Scindia](#) (1977) 1 SCC 511 given a timely reminder of the principle in the following words:

"We are afraid, this ingenious method of construction after compartmentalisation, dissection, segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal canon of interpretation, according to which, a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage

and to read it out of the context, in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole."

9. We may also gainfully refer to the decision of this Court in *H.D. Revanna v. G. Puttaswamy & Ors.* (1999) 2 SCC 217, where this Court held that an election petition can be dismissed for non-compliance of *Sections 81, 82 and 117* of the Representation of the People Act, 1951 but it may also be dismissed if the matter falls within the scope of Order VI Rule 16 or Order VII Rule 11 of the CPC. A defect in the verification of the election petition or the affidavit accompanying the election petition was held to be curable, hence, not sufficient to justify dismissal of the election petition under Order VII Rule 11 or Order VI Rule 16 of CPC. The following passage in this regard is instructive:

".....the relevant provisions in the Act are very specific. Section 86 provides for dismissal of an election petition in limine for non-compliance with Sections 81, 82 and 117. Section 81 relates to the presentation of an election petition. It is not the case

of the appellant before us that the requirements of [Section 81](#) were not complied with..... [Sections 82](#) and [117](#) are not relevant in this case. Significantly, [Section 86](#) does not refer to [Section 83](#) and non-compliance with [Section 83](#) does not lead to dismissal under [Section 86](#). This Court has laid down that non-compliance with [Section 83](#) may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 or Order 7 Rule 11 CPC. Defect in verification of the election petition or the affidavit accompanying the election petition has been held to be curable and not fatal."

12. [In Raj Narain v. Indira Nehru Gandhi & Anr.](#) (1972) 3 SCC 850, this Court held that if allegations regarding a corrupt practice do not disclose the constituent parts of the corrupt practice alleged, the same will not be allowed to be proved and those allegations cannot be amended after the period of limitation for filing an election petition but the Court may allow particulars of any corrupt practice alleged in the petition to be amended or amplified. Dealing with the rules of pleadings, this Court observed:

"Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally

speaking, there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it."

13. The Court in *Raj Narain* case further held that just because a corrupt practice has to be strictly proved does not mean that a pleading in an election petition must be strictly construed. Even in a criminal trial, a defective charge did not necessarily result in the acquittal of the accused unless it was shown that any such defect had prejudiced him. The Court held that it cannot refuse to enquire into allegations made by the election petitioner merely because the election petitioner or someone who prepared his brief did not know the language of the law. The principle was reiterated by this Court in *H.D. Revanna v. G. Puttaswamy & Ors.* (1999) 2 SCC 217, *V.S. Achuthanandan v. P.J. Francis & Anr.* (1999) 3 SCC 737, *Mahendra Pal v. Ram Dass Malanger & Ors.* (2000) 1 SCC 261, *Sardar Harcharan Singh Brar v. Sukh Darshan Singh & Ors.* (2004) 11 SCC 196.

16. We need only emphasise that the burden which lies on an election petitioner to prove the allegations made by him in the election petition whether the same relate to commission of any corrupt practice or proof of any other ground urged in support of the petition has to be discharged by him at the trial. There is no dilution of that obligation when the court refuses to dismiss a petition at the threshold. All that the refusal to dismiss

the petition implies is that the appellant has made out a case for the matter to be put to trial. Whether or not the petitioner will succeed at the trial remains to be seen till the trial is concluded. Even so on a somewhat erroneous understanding of the law settled by this Court, the successful candidates charged with commission of corrupt practices or other illegalities and irregularities that constitute grounds for setting aside their elections seek dismissal of the petitions in limine on grounds that are more often than not specious, in an attempt to achieve a two fold objective. First, it takes a chance of getting the election petition dismissed on the ground of it being deficient, whether the deficiency be in terms of non-compliance with the provisions of Sections 81, 82 & 117 of the Act or on the ground that it does not disclose a cause of action. The second and the more predominant objective is that the trial of the election gets delayed which in itself subserve the interests of the successful candidate. Dilatory tactics including long drawn arguments on whether the petition discloses a cause of action or/and whether other formalities in the filing of the petition have been complied with are adopted with a view to prevent or at least delay a trial of the petition within a reasonable time frame.

18. Mr. Rao next argued that the election petition was liable to be dismissed also on the ground that the same

was not accompanied by an affidavit which the election petitioner was obliged to file in terms of proviso to [Section 83](#) (1) of the Act. He urged that the use of the word 'shall' in the proviso made it mandatory for the petitioner to support the averments in the election petition with an affidavit in Form 25 prescribed under Rule 94 (A) of the Conduct of Election Rules, 1961. Inasmuch as an affidavit had not been filed in the prescribed format, the election petition, argued Mr. Rao, was no election petition in the eye of law and was, therefore, liable to be dismissed in limine. Reliance in support of his submissions was placed by Mr. Rao upon the decisions of this Court in [M. Kamalam v. Dr. V.A. Syed Mohammed](#) (1978) 2 SCC 659, [R.P. Moidutty v. P.T. Kunju Mohammad](#) (2000) 1 SCC 481, [V. Narayanswamy v. C.P. Thirunavukkarasu](#) (2000) 2 SCC 294, [Kamalnath v. Sudesh Verma](#) (2002) 2 SCC 410, [Mithilesh Kumar Pandey v. Baidyanath Yadav & Ors.](#) (1984) 2 SCC 1, [Ravinder Singh v. Janmeja Singh](#) (2000) 8 SCC 191, [Ram Sukh v. Dinesh Aggarwal](#) (2009) 10 SCC 541.

19. On behalf of the respondent, it was argued by Mr. Ranjit Kumar that the non-filing of an affidavit in terms of proviso to [Section 83\(1\)](#) of the Act was never taken as a ground before the High Court in the application which the High court has decided in terms of the impugned order nor was the point ever argued at the

bar. The appellant cannot, therefore, urge that point before this Court for the first time. Relying upon the decision of this Court in *Balwan Singh v. Prakash Chand & Ors.* (1976) 2 SCC 440, Mr. Kumar argued that a plea relating to defective verification of the petition was not allowed to be taken by this Court for the first time in appeal.

20. It was further submitted by Mr. Kumar that an affidavit in support of the election petition had indeed been filed by the respondent-petitioner in which the averments and the grounds alleged by the respondent were set out and reiterated on oath. An affidavit filed under Order VI Rule 15(4) of the CPC supporting the averments made in the election petition has also been filed including averments made in para 12 to 15 of the election petition. It was urged that two affidavits mentioned above sufficiently complied with the requirements of *Section 83* of the Act and Rule 94(A) of The Conduct of Election Rules 1961. He submitted that even assuming that there was any deficiency in the affidavit sworn by the respondent, not being in the format in which the same was required to be filed, yet the same was not fatal to the election petition inasmuch as the Court trying the petition can at any stage of the proceedings direct the election petitioner to file a proper affidavit if it finds that the one already filed is deficient in any way.

21. There is considerable merit in the submission made by Mr. Kumar. The ground urged by Mr. Rao was not admittedly raised in the application filed by the appellant before the High Court nor was it argued at the bar. The High Court had in that view no occasion to deal with the contention that is sought to be advanced before us for the first time. There is no reason why the appellant should not have urged the point before the High Court, if he was serious about its implications.

22. Even otherwise the question whether non-compliance of the proviso to [Section 83](#) (1) of the Act is fatal to the election petition is no longer res-integra in the light of a three-Judge Bench decision of this Court in [Sardar Harcharan Singh Brar v. Sukh Darshan Singh & Ors.](#) (2004) 11 SCC 196. In that case a plea based on a defective affidavit was raised before the High Court resulting in the dismissal of the election petition. In appeal against the said order, this Court held that non-compliance with the proviso to [Section 83](#) of the Act did not attract an order of dismissal of an election petition in terms of [Section 86](#) thereof. [Section 86](#) of the Act does not provide for dismissal of an election petition on the ground that the same does not comply with the provisions of [Section 83](#) of the Act. It sanctions dismissal of an election petition for non-compliance of [Sections 81, 82 and 117](#) of the Act only. Such being the position, the defect if any in the verification of the affidavit filed in support of the

petition was not fatal, no matter the proviso to [Section 83\(1\)](#) was couched in a mandatory form.

24. More importantly the Court held that if the High Court had found the affidavit to be defective for any reason it should have allowed an opportunity to the election petitioner to remove the same by filing a proper affidavit. This Court observed:

*"15. Having formed an opinion that there was any defect in the affidavit, the election petitioner should have been allowed an opportunity of removing the defect by filing a proper affidavit. Else the effect of such failure should have been left to be determined and adjudicated upon at the trial, as held in *G. Mallikarjunappa and Anr.'s case (supra)*."*

*25. To the same effect is the decision of a three-Judge bench of this Court in *G. Mallikarjunappa and Anr. v. Shamanur Shiv Ashankappa and Ors.* (2001) 4 SCC 428. The High Court had in that case also dismissed the election petitions taking the view that there had been non-compliance with Rule 94-A of the Conduct of Elections Rules, 1961 inasmuch as the affidavit filed in support of the allegations of corrupt practices with the election petitions did not comply with the requirements of the format as prescribed in Form 25. Allowing the appeal this Court observed:*

"An election petition is liable to be dismissed in limine under [Section 86\(1\)](#) of the Act if the election petition

does not comply with either the provisions of "[Section 81](#) or [Section 82](#) or Section 117 of the RP Act". The requirement of filing an affidavit along with an election petition, in the prescribed form, in support of allegations of corrupt practice is contained in [Section 83\(1\)](#) of the Act. Non-compliance with the provisions of [Section 83](#) of the Act, however, does not attract the consequences envisaged by [Section 86\(1\)](#) of the Act. Therefore, an election petition is not liable to be dismissed in limine under [Section 86](#) of the Act, for alleged non-compliance with provisions of [Section 83\(1\)](#) or (2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but [Section 86\(1\)](#) of the Act in terms cannot be attracted to such a case."

A similar view was taken by a three-Judge Bench of this Court in [F.A. Sapa and Ors. v. Singora and Ors.](#) (1991) 3 SCC 375 and in [Dr. Vijay Laxmi Sadho v. Jagdish](#) (2001) 2 SCC 247.

26. We may also refer to a Constitution Bench decision of this Court in [Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore & Ors.](#) (AIR 1964 SC 1545) where this Court held that a defective affidavit is not a sufficient ground for summary dismissal of an election petition as the provision of [Section 83](#) of the Act are not

mandatorily to be complied with nor did the same make a petition invalid as an affidavit can be allowed to be filed at a later stage or so. Relying upon the decision of a three-Judge Bench of this Court in *T. Phungzathang v. Hangkhanlian and Ors.* (2001) 8 SCC 358 this Court held that non-compliance with [Section 83](#) is not a ground for dismissal of an election petition under [Section 86](#) and the defect, if any, is curable as has been held by a three-Judge Bench of this Court in *Manohar Joshi v. Nitin Bhaurao Patil* (1996) 1 SCC 169 and *H.D. Revanna v. G. Puttaswamy Gowda & Ors.* (1999) 2 SCC 217.

28. The decisions relied upon by Mr. Rao do not in terms deal with a comparable situation to the one this Court was dealing with in *Sardar Harcharan Singh Brar's case* (supra). The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper

affidavit when directed to do so. "

29.

(ii) In **G.M.Siddeshwar Vs. Prasanna Kumar** reported in **(2013)4 Supreme Court Cases 776**, wherein the Honourable Apex Court held as follows:

"22. A plain reading of Rule 15 suggests that a verification of the plaint is necessary. In addition to the verification, the person verifying the plaint is "also" required to file an affidavit in support of the pleadings. Does this mean, as suggested by learned counsel for Siddeshwar that Prasanna Kumar was obliged to file two affidavits – one in support of the allegations of corrupt practices and the other in support of the pleadings?

23. A reading of [Section 83\(1\)\(c\)](#) of the Act makes it clear that what is required of an election petitioner is only that the verification should be carried out in the manner prescribed in the CPC. That Order VI Rule 15 requires an affidavit "also" to be filed does not mean that the verification of a plaint is incomplete if an affidavit is not filed. The affidavit, in this context, is a stand-alone document.

25. It seems to us that a plain and simple reading of [Section 83\(1\)\(c\)](#) of the Act clearly indicates that the

requirement of an 'additional' affidavit is not to be found therein. While the requirement of "also" filing an affidavit in support of pleadings filed under the CPC may be mandatory in terms of Order VI Rule 15(4) of the CPC, the affidavit is not a part of the verification of the pleadings – both are quite different. While the Act does require a verification of the pleadings, the plain language of [Section 83\(1\)\(c\)](#) of the Act does not require an affidavit in support of the pleadings in an election petition. We are being asked to read a requirement that does not exist in [Section 83\(1\)\(c\)](#) of the Act.

29. While the necessity of an affidavit in support of facts stated in a plaint may be beneficial and may have salutary results, but we have to go by the law as it is enacted and not go by the law as it ought to be. The CPC no doubt requires that pleadings be verified and an affidavit "also" be filed in support thereof. However, [Section 83\(1\)\(c\)](#) of the Act merely requires an election petitioner to sign and verify the contents of the election petition in the manner prescribed by the CPC. There is no requirement of the election petitioner "also" filing an affidavit in support of the averments made in the election petition except when allegations of corrupt practices have been made."

15. On a careful consideration of the materials available

on record, the submissions made by the learned Senior Counsel appearing on either side and also the judgments relied upon by the learned Senior Counsel appearing on either side, it could be seen that the first respondent/election petitioner has filed the election petition to set aside the election of the applicant as the successful returned candidate for 159-Kattumannarkovil (SC) Constituency. In the affidavit filed in support of the election petition, the first respondent/election petitioner has made allegations against the Returning Officer, for not conducting the election in a proper manner. The applicant/first respondent filed the above applications viz., O.A.No.304 of 2017 to strike out the pleadings in paragraph Nos. 6 to 11, 15 to 17, 19, 22, 24, 25, 27 and 28 of the election petition and O.A.No.305 of 2017 to reject the election petition as not maintainable. According to the applicant/first respondent, the allegations made in the aforesaid paragraphs are vague and no material particulars have been pleaded and the same are liable to be struck off.

16. The learned Senior Counsel appearing for the first respondent/election petitioner submitted that the averments stated in paragraph Nos.6, 7, 10 and 24 may eschewed and so far as the other paragraphs are concerned, they are matter for evidence and therefore, an opportunity should be given to the election petitioner to substantiate the averments stated in the election petition by adducing oral and documentary evidences.

17. Since the first respondent/election petitioner himself has stated that the averments stated in paragraph Nos.6, 7, 10 and 24 can eschewed, recording the same, I strike out the pleadings in paragraph Nos.6, 7, 10 and 24.

18. So far as the contention of the non-filing of Form -25 as per Rule 94(A) of the Conduct of the Election Rules is concerned, the Honourable Apex Court has held that the non-filing of Form 25 is a curable defect and an opportunity can be

given to the election petitioner to rectify the same by filing Form 25. Therefore, for this reason, the election petition cannot be rejected.

19. So far as the averments and allegations made in other paragraphs are concerned, the first respondent/election petitioner has made the allegations against the applicant/first respondent as well as the Returning Officer stating that the election was not conducted in a proper manner and that he has also made allegations of corrupt practice. So far as the allegations made in the election petition are concerned, the allegations cannot be construed as vague, for the reason that the allegations made therein are matter for evidence. In the case of the first respondent/election petitioner failing to substantiate the averments by adducing oral and documentary evidences, his case cannot be accepted and should be rejected. When the first respondent/election petitioner is able to establish his case by adducing oral and documentary evidences, in such case, the case of the election petitioner

should be accepted. Therefore, when he has made allegations of corrupt practice and also made allegations against the conduct of the election, it is not a fit case to strike out the pleadings under Order VI Rule 16 of the Code of Civil Procedure and to reject the election petition for want of cause of action.

20. The applicant/first respondent himself has stated that if the pleadings made in the aforesaid paragraphs are struck off, the election petition is liable to be rejected. In the case on hand, the averments stated in the election petition cannot be construed as vague. Whether the allegation has got basis or whether they are scandalous, can be established by the parties only at the time of trial by letting in oral and documentary evidences. Though there is no dispute with regard to judgments relied upon by the learned Senior Counsel appearing for the applicant/first respondent, since the facts and circumstances of the present case are different, they are not applicable.

21. In these circumstances, I do not find any reason to strike off the pleadings made in paragraph Nos.8, 9, 11, 15 to 17, 19, 22, 25, 27 and 28 of the election petition. The pleadings made in Paragraph Nos.6, 7, 10 and 24 are struck off. The petition to reject the election petition is also liable to be rejected. Accordingly the same is dismissed.

22. In the result, the application in O.A.No.304 of 2017 is partly allowed by striking off the pleadings in Paragraph Nos.6, 7, 10 and 24 and the application in O.A.No.305 of 2017 stands dismissed. No costs.

सत्यमेव जयते

16.04.2018

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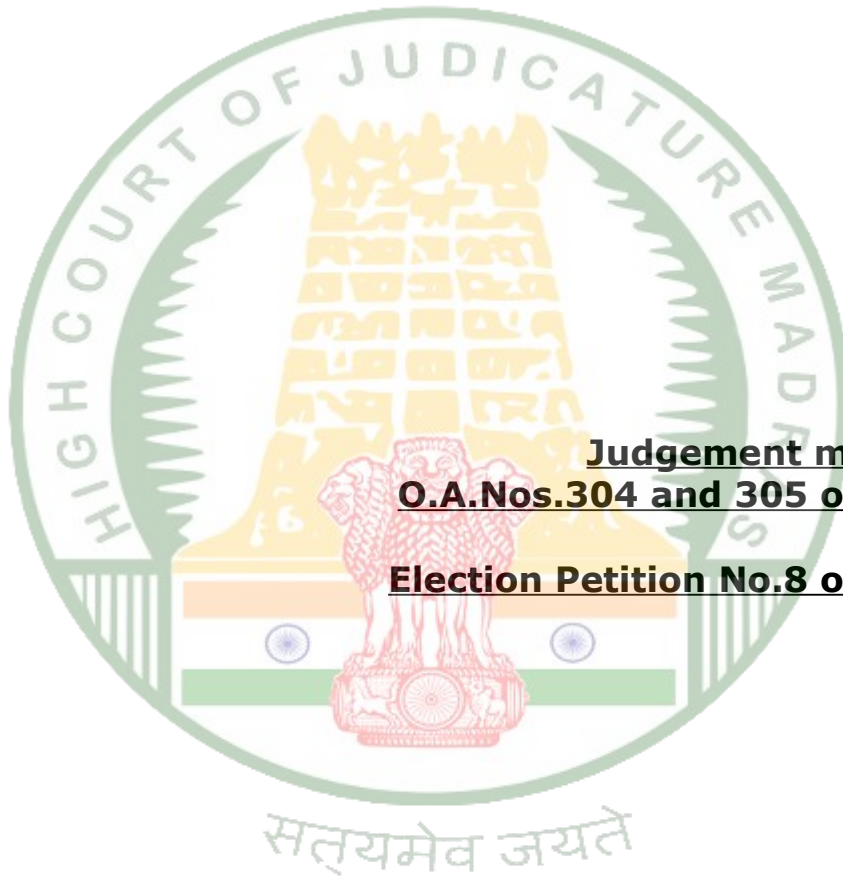
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M.DURAISWAMY,J.

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Judgement made in
O.A.Nos.304 and 305 of 2017
in
Election Petition No.8 of 2016

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