

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2018

DELIVERED ON : 09.11.2018

CORAM

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

Original Application Nos.94 and 95 of 2017
in
Election Petition No.3 of 2016

Pandia Rajan. K

.. Applicant

VS

S.M.Nasar

.. Respondent

Prayer: Original Application No.94 of 2017 filed under Order XIV Rule 8 of the O.S. Rules, 1956 read with Order VI, Rule 16 of C.P.C. praying to strike off paragraphs 9, 10, 11(a) to 11(m), 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29. 30, 31, 32 in the Election Petition No.3 of 2016.

Prayer: Original Application No.95 of 2017 filed under Order XIV Rule 8 of the O.S. Rules, 1956 read with Order VII, Rule 11 of C.P.C. to reject Election Petition No.3 of 2016.

For Applicant : Mr.H.Karthik Seshadri
for M/s.Iyer & Thomas

For Respondent : Mr.P.Wilson
Senior Counsel
for M/s.Wilson Associates

COMMON ORDER

O.A.No.94 and 95 of 2017 have been filed by the applicant, who is the 1st respondent the Election Petition, seeking to strike off paragraphs 9, 10, 11(a) to 11(m), 12 to 32 in the Election Petition and also to reject the Election Petition No.3 of 2016.

2. Election Petition No.3 of 2016 has been filed by the respondent herein against the applicant and 23 others, *inter alia*, seeking the following reliefs:

(i) declare the election of the applicant to No.006

*Avadi Assembly Constituency in Tamil Nadu on
19.5.2016 as illegal and void.*

*(ii) declare the respondent as being elected to the
No.006 Avadi Assembly Constituency in Tamil
Nadu.*

(iii) direct the applicant to pay the cost of the petition to the respondent.

3.1. Succinctly put, the case of the applicant is as under:

The applicant was duly elected through a fair and proper electoral process by the people of Avadi constituency under Two Leaves Symbol. The respondent having lost the election has made vague and unsubstantiated allegations on the basis of entirely unacceptable source of information, thrown wild and imaginary statements in the Election Petition. The Election Petition filed challenging an election based on the alleged corrupt practices has to be treated as if it is a quasi-criminal matter and the charge of corrupt practices has to be so very specific and it should have to be shown beyond reasonable doubt that the elected candidate had indulged in corrupt practices. The Election Petition does not disclose any such specific charge that will require this Court to deal with. The applicant's past political dispensation does not in any way amount to a corrupt practice and the allegations have been made only with the object of prejudicing, embarrassing and delaying a fair trial.

3.2. It is alleged that the entire allegations stated in

paragraph 10 of the Election Petition requires to be struck off, as the same were wholly unsubstantiated. The applicant had submitted true and correct account of expenses incurred to the District Election Officer as required by law. Moreover, the allegations in paragraph 11(a) to 11(m) of the Election Petition are a figment of imagination, without any material particulars. The allegation of bribery of Rs.500/- per voter for 1,50,000 voters was a figment of the respondent's fertile imagination and is liable to be rejected.

3.3. It is alleged that the respondent himself was unsure of what he was alleging. On one hand, he has made reference to some Whatsapp message purportedly issued by the applicant and the source of such message was not known. Further, who sent the Whatsapp message and where it originated was not known. The allegations in paragraphs 13 and 14 were vexatious and frivolous allegations and do not disclose any cause of action. It was further alleged that there was not a single specific allegation that the applicant had on a particular day instructed any specific person to distribute cash to induce voters or that the applicant had handed over cash to induce voters except for reference to such actions having taken place in various locations by various unknown persons.

3.3. According to the applicant, he had not misused the State machinery in any way. There was absolutely no cause shown in the Election Petition. The allegations levelled in paragraphs 19 to 27 were against the Returning Officer. According to the applicant, the election process was conducted in a fair and proper manner. Results were duly announced after a fair process and the respondent was trying to indulge in mud-slinging against the officers of the Election Commission of India. The allegations in paragraphs 28 to 32 were misleading and were false. According to the applicant, a complete reading of the Election Petition would show that the respondent was unable to make out any specific case as against the applicant qua indulgence in any form of corrupt practice. Vague statements have been thrown left right and centre without any material particulars. According to the applicant, he is now holding the post of a Minister in the Cabinet of the Tamil Nadu Government. The Election Petition filed by the respondent is without any basic materials and therefore, liable to be rejected.

4.1. Resisting the Original Applications, the respondent filed counter stating that the applicant has not filed the applications immediately after entering appearance in the Election Petition, but

rather filed belatedly and, therefore, these applications cannot be maintained for laches. *De hors* the objection as to the maintainability of the applications, it is alleged that these applications were bereft of any merit. It is stated that the allegation that the respondent filed the Election Petition out of disappointment/desperation was wholly untenable and unwarranted and shows the scant respect the applicant has for the legal process. In the Election Petition, the respondent made out several grounds to show how the applicant has indulged in corrupt practices and has attracted disqualification for openly flouting the provisions of the Representation of People Act as well as the Conduct of Election Rules.

4.2. It is further stated in the counter that the applicant openly distributed cash to the voters by placing 500 rupee notes inside the booklets printed with the photograph of Selvi J.Jayalalithaa bearing the photograph, name and address of the applicant, bearing propaganda to vote for the applicant. The applicant cannot be said to have been elected as MLA in a fair and appropriate manner because of the fact that the applicant had indulged in bribing the voters and openly flouting the provisions of the Prevention of Corruption Act.

4.3. In the counter, it is stated that the applicant has also indulged in tampering with postal ballots and has used the official machinery of the State for campaigning purposes and under his consent and instruction, the Returning Officer has also tampered with the EVM machines as stated in the Election Petition. Since the respondent has got materials to make out a case of commission of corrupt practice, it was very much necessary to establish the allegations made out in the Election Petition through a full and proper trial after letting in evidence.

4.4. According to the respondent, the manner in which the applicant entered into the AIADMK party was relevant to the facts and circumstances of the case. During election, the applicant indulged in circulating booth slips door to door to the voters along with a letter on his letter head and the respondent gathered the said information from his party workers, agents and his chief agent. The expenditure to print the booklets was not stated in the declaration of expenditure filed by the applicant and thus, there was a deliberate and wilful failure to maintain separate and correct accounts relating to the expenditure. Therefore, the attempt of the applicant to have some of the paragraphs struck off was nothing but a feeble attempt to escape

facing trial since the applicant was afraid that if he was to face the trial and is confronted with documents and evidence on the allegations contained in the Election Petition, his election would be rendered absolutely illegal and void *ab initio*. According to the respondent, the applicant does not say why para 11(a) to 11(m) have to be struck off except to indicate that the allegations in the said paragraphs were unpalatable to the applicant.

4.5. It is stated in the counter that the applicant was feigning ignorance as if he has not understood the contents of paragraph 12, whereas a bare reading of paragraph 12 would show that the allegations in the said para were that the applicant directed his agents and party workers to circulate a Whatsapp message, which promised the voters of free re-charge of 5 GB 3G internet data and Rs.500/- talk time. Insofar as paragraphs 13 and 14 of the Election Petition were concerned, the applicant has blatantly violated Section 127-A of the Representation of People Act.

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4.6. It has also been stated in the counter that the respondent detailed names, all the material facts with regard to the persons who have been instructed to see that the official machinery of

the State was used to campaign for the applicant, including the cell phone numbers of the said persons and how they worked day and night to ensure that the applicant was elected. Those material facts must be put to trial so as to ascertain their veracity.

4.7. According to the respondent, the assertion of the applicant that since he is a Minister in the Cabinet of the Government of Tamil Nadu, he cannot find time to attend the trial was of no relevance. In the given case, since serious allegation of corrupt practice has been levelled against the applicant and also the respondent had got materials to prove the same, the cause of justice can only be served if the full trial was held into all the issues raised in the Election Petition and therefore, prayed for dismissal of the Original Applications.

5. I heard Mr.H.Karthik Seshadri for M/s.Iyer and Thomas, learned counsel for the applicant and Mr.P.Wilson for M/s.Wilson Associates, learned Senior Counsel for the respondent and also perused the materials available on record.

6.1. The learned counsel for the applicant contended that the

applicant was duly elected through a fair and proper electoral process by the people of Avadi constituency under Two Leaves Symbol under the leadership of late Dr.J.Jayalalithaa of AI ADMK. The respondent having lost the election fair and square is now using the present Election Petition to conduct a roving enquiry and has made vague and unsubstantiated allegations on the basis of entirely unacceptable source of information.

6.2. The learned counsel further contended that allegations in para 4 of the Election Petition about the past political dispensation of the applicant which was no way to be a corrupt practice and statements pertaining to past political dispensation have unnecessarily been made attempting to allege the applicant indulged in bribery, which was a mere vague statement that holds no substantial proof or material facts and/or particulars.

6.3. The learned counsel submitted that para 10 of the Election Petition needs to be struck off, as it contains wholly unsubstantiated statement and failure to plead even a single material fact leads to an incomplete cause of action. Likewise, the allegations made in para 11(a) to 11(m) in the Election Petition show that the

respondent has sought to throw imaginary allegations without any material particulars. According to the learned counsel, para 12 of the Election Petition was liable to be struck off on the ground that there was no evidence to show that it was based on the inducement of returned candidate or his agent. Qua Whatsapp messages, it is contended that the respondent has not made any statement as to who was the intended recipient of such messages and the respondent has come up with superfluous figures with regard to the expenditure by making thoughtless calculations without any evidence.

6.4. The learned counsel then contended that paras 13 and 14 of the Election Petition do not disclose any cause of action and are liable to be struck off, as the Court is empowered at any stage to strike off pleadings, which may be even before the filing of written statement. As far as the allegations made in paras 15 to 17 in the Election Petition are concerned, the learned counsel submitted that there was not even any allegation that on a given day, the applicant had instructed any specific person to distribute cash to induce voters or money was handed over by him to the voters.

6.5. The learned counsel next submitted that the

administration of the State was always neutral and the respondent has failed to appreciate the concept of separation of powers and accordingly, there was no cause of action for the allegation made in para 18 of the Election Petition. In so far as allegations in paras 19 to 27 are concerned, the same need to be struck off on the ground that those allegations were against the respondents 21 to 24 in the Election Petition, who have been subsequently deleted from the array of parties.

6.6. The learned counsel then submitted that the respondent had merely added para 28 to corroborate it in accordance with Section 123(3A) of the Representation of People Act and however, the respondent has not shown any material evidence on record to prove that the applicant had promoted feelings of enmity and hatred on the grounds of caste. In so far as the allegation in para 36 with regard to providing free transport to the electors on the date of election was concerned, except by making a vague allegation, the respondent had not given any material particulars and details as to the recipient of such transport services. Highlighting the above said submissions, the learned counsel for the applicant seeks to struck off paragraphs 9, 10, 11(a) to 11(m), 12 to 32 in the Election Petition and consequently, to

reject the Election Petition.

6.7. To buttress the above arguments, the learned counsel for the applicant relied upon the following decisions:

- (i) *Udhav Singh v. Madhav Rao Scindia*, reported in AIR 1976 SC 744.
- (ii) *Shri Harasingh Charan Mohanty v. Sh. Surendra Mohanty*, reported in AIR 1974 SC 47.
- (iii) *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*, reported in (1987) Supp. SCC 93.
- (iv) *Virender Nath Gautam v. Sapta Sing*, reported in AIR 2007 SC 581.
- (v) *Bhagwati Prasad Dixit Ghorewala v. Rajeev Gandhi*, reported in (1986) 4 SCC 78.
- (vi) *Ram Awadesh Singh v. Sumitra Devi*, reported in AIR 1972 SC 580.
- (vii) *C.P. John v. Babu M. Palissery and others*, reported in (2014) 10 SCC 547.
- (viii) *Anil Vasude Salgaonkar v. Naresh Kushali Shigaonkar*, reported in (2009) 9 SCC 310.
- (ix) *Azhar Hussain v. Rajiv Gandhi*, reported (1986)

Supp. SCC 315.

(x)G.M.Siddheshwar v. Prasanna Kumar, AIR 2003

SC 1549.

7.1. Per contra, the learned Senior Counsel appearing on behalf of the respondent submitted that the Original Applications seeking to strike off some paragraphs in the Election Petition and to reject the Election Petition cannot be maintained on the ground of laches. The applicant had not filed the Original Applications at the first instance and had filed the same belatedly. Moreover, the Original Applications are bereft of any merit.

7.2. The learned Senior Counsel submitted that a person who has indulged in bribing the voters and having distributed cash for votes cannot be heard to say that the Election Petition before this Court was filed out of disappointment/desperation. In fact, para 9 of the Election Petition specifies the reason as to why the State machinery assisted the applicant during his campaigning phase. He would submit that there were no imaginary calculation or imaginary allegation contained in para 10 of the Election Petition and the allegations were specific and detailed in the Election Petition.

7.3. The learned Senior Counsel then submitted that the applicant has not stated anything why paragraphs 11(a) to 11(m) in the Election Petition have to be struck off. Merely because the allegation in an Election Petition causes some degree of heart-burn to the applicant and exposes illegalities committed by him, the same cannot be a ground to strike off the pleadings in an Election Petition.

7.4. The learned Senior Counsel then submitted that the applicant was feigning ignorance as if he has not understood the contents of para 12 of the Election Petition, whereas a bare reading of the said para would show that the applicant directed his agents and party workers to circulate a Whatsapp message on the date before the election day promising the voters free re-charge of 5 GB 3G internet data and Rs.500/- talk time. Such an offer of free re-charge of internet and talk time was a blatant instance of corrupt practice since it amounts to bribing the voters.

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7.5. The learned Senior Counsel next submitted that the allegation contained in para 14 of the Election Petition was very serious as it pertains to the red-handed capture of one Mr.Valli

Shanmugam, who was none other than the Ward Secretary of AI ADMK party, who has been caught distributing money at Devi Nagar under the consent and instruction of the applicant for which an FIR has been registered. He would submit that the applicant and his party workers distributed cash to voters inside the booklets and in para 15 the respondent had clearly stated the time and place of the occurrence of corrupt practice. He would further submit that each and every allegation of corrupt practice has been specifically supported with all material facts and documents and the same have been filed along with the Election Petition substantiating each and every allegation.

7.6. The learned Senior Counsel then submitted that the veracity of allegations can only be ascertained through full trial and merely because the applicant was acerbated by his illegalities being exposed, a trial into these issues cannot be avoided and the assertion of the applicant that since he is a Minister of the Government of Tamil Nadu, he cannot find time to attend the trial is, of course, of no relevance due to the events that have been transpired in the months of January and February 2017 that have led to the applicant losing his Ministry and also being reduced to the status of a member of a rival faction within the AI ADMK party.

7.7. Finally, the learned Senior Counsel submitted that in the case on hand, very serious allegations of corrupt practices have been levelled against the applicant and each and every allegation was substantiated by material facts including the time, date, place and name of the person who committed the corrupt practice on the applicant's instructions and consent. Therefore, there was no *prima facie* made out in the Original Applications filed by the applicant and prayed for dismissal of the same.

7.8. To fortify his submissions, the learned Senior Counsel cited the following decisions:

- (i) *Mahadeorao Sukaji Shivankar v. Ramaratan Bapu and others*, reported in (2004) 7 SCC 181.
- (ii) *Harkirat Singh v. Amrinder Singh*, reported in (2005) 13 SCC 511.
- (iii) *Nandiesha Reddy v. Kavitha Mahes*, reported in (2011) 7 SCC 721.
- (iv) *G.M.Siddeshwar v. Prasanna Kumar*, reported in (2013) 4 SCC 776.
- (v) *Mahendra Pal v. Ram Das Malanger and others*,

reported in (2000) 1 SCC 261.

(vi)Virender Nath Gautam v. Satpal Singh and others, reported in (2007) 3 SCC 617.

(vii)Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others, reported in (2012) 7 SCC 788.

(viii)Public Interest Foundation and others v. Union of India and another, reported in (2015) 11 SCC 433.

8. Election Petition No.3 of 2016 has been filed by the respondent under Sections 80, 80A, 81 read with Sections 77, 78, 100, 101, 123, 125, 126, 127-A and 129 of the Representation of People Act, 1951, hereinafter referred to as "RP Act", seeking to declare that the election of the applicant to No.006 Avadi Assembly constituency in Tamil Nadu on 19.5.2016 as illegal and void and to declare that the respondent as being elected to No.006 Avadi Assembly constituency in Tamil Nadu.

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9. Originally, the Election Petition was filed against 24 respondents therein by arraying the applicant herein as 1st respondent. Later, by an order dated 11.07.2017 passed in O.A.Nos.297 and 298

of 2017, the respondents 21 and 22 in the Election Petition were struck off from the array of respondents.

10. The grievance of the applicant in these Original Applications is that the Election Petition needs to be rejected, as it contains wholly unsubstantiated statement and failure to plead even a single material fact leads to an incomplete cause of action. There was no evidence to show that Whatsapp message was based on the inducement of applicant or his agent. There was not even any allegation that on a given date, the applicant had instructed any specific person to distribute cash to induce voters or money was handed over by him to the voters. The further grievance of the applicant is that failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such charge were liable to be struck off.

11. The learned counsel for the applicant, by relying upon the decision of the Hon'ble Supreme Court in *Udhav Singh v. Madhav Rao Scindia*, supra, submitted that failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order VI, Rule XVI

CPC. If the Election Petition is based solely on the allegations which suffer from lack of material facts, the Election Petition is liable to be rejected for want of cause of action.

12. In *Udhav Singh v. Madhav Rao Scindia*, supra, the Hon'ble Supreme Court held as under:

"..... failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order VI Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action."

13. On the other hand, the learned Senior Counsel for the respondent contended that in the Election Petition, the respondent has given all material facts in support of the allegation levelled against the applicant and therefore, there was no bona fide in the Original Applications filed by the applicant to reject the Election Petition. In support, the learned Senior Counsel relied upon the decision in *Mahadeorao Sukaji Shivankar v. Ramaratan Bapu and others*, supra.

14. In *Mahadeorao Sukaji Shivankar v. Ramaratan Bapu and others*, supra, the Hon'ble Supreme Court held as under:

"6. Now, it is no doubt true that all material facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code. The question, however, is as to whether the petitioner had set out material facts in the election petition. The expression "material facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts are those facts upon which a party relies for his claim or defence. In other words, material facts are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party.

7. But, it is equally well settled that there is distinction between "material facts" and "particulars". Material facts are primary or basic facts which must be pleaded by the petitioner 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 finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise.

8. Now, in the election petition, the petitioner has stated the details in paragraphs 9 to 13 as to corrupt practices adopted by the returned candidate. It was averred that the returned candidate used money power for purchasing votes by distributing cash to voters. He had distributed a large number of darris (carpets), each approximately worth Rs. 600 in Villages Kotjambhara, Keshoroi, Raju Mispiri. In village Raju Mispiri, an amount of Rs. 600 was paid to the voters. It was also alleged that many villages were given aluminium utensils by the returned candidate, one of such villages was Vasni, Tehsil Deori. At village Lendijob, Jashasa, blankets were distributed by the returned candidate. Wine was freely distributed and consignments of wine were escorted by PSI Yadav. It was asserted that 14 boxes each containing 12 bottles were seized after a fax was sent to the Election Commissioner. The consignment was seized from a vehicle by the Election Commissioner. Wine was

distributed by the returned candidate all over the constituency and Police Station House Officer, Deori and Lambat. The returned candidate himself was escorting all vehicles transporting wine. The same process was adopted in salekasa and Amgaon Police Stations. Wine was also distributed in Deori and Chichgad for two days before the polling. What was done by application, Ext. 32 by the election petitioner was to supply particulars in support of the facts stated and allegations made in the election petition. It, therefore, cannot be said that material facts have been set out for the first time in the application, Ext. 32 by the petitioner. Material facts as to the nature of corrupt practice had been set out by the petitioner in the election petition and what was done by him by instituting application, Ext. 32 was to furnish particulars in support of the allegation levelled in the election petition. In our opinion, therefore, it cannot be absence of setting out material facts in the election petition."

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15. On a perusal of the Election Petition, it is seen that the respondent had given material facts in support of the allegations set out in the Election Petition.

16. The learned counsel for the applicant mainly attacks the

Election Petition that averments mentioned in the Election Petition are wholly vague, bereft of material facts and do not disclose any cause of action.

17. Per contra, the learned Senior Counsel appearing for the respondent submitted that in paragraph 15 of the Election Petition, the respondent has given details qua distribution of cash to voters. On a perusal of paragraph 15, it is seen that the respondent had given details about the witnesses of distribution of money who had informed to the respondent.

18. As per Section 83 of the RP Act, a concise statement is required, which the respondent has given along with the Election Petition. The learned Senior Counsel submitted that even otherwise under Section 86(5) of the RP Act, the Election Petition can be amended. Therefore, the dismissal of the Election Petition is not the requirement. He argued that all the material facts were pleaded in the Election Petition. Thus, the facts pleaded in the Election Petition can be proved only by way of conducting the trial.

19. As stated supra, the respondent, in his Election Petition,

has described in which Ward the cash was distributed by the AI ADMK party workers on behalf of the applicant. Further the date and time of the distribution were also given in the Election Petition. When the respondent had detailed the material particulars in his Election Petition, the applicant cannot simply say that no details were furnished qua distribution of money to voters.

20. Section 83 of the RP Act, deals with contents of a petition. Rule 94-A of the Conduct of Elections Rules, 1961, deals with Form of affidavit to be filed along with Election Petition.

21. Section 83 of the RP Act reads thus:

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

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

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

(5 of 1908) for the verification of pleadings:

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

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

22. Rule 94-A of the Conduct of Elections Rules read as under:

"94-A. Form of affidavit to be filed with election petition:- The affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25."

23. The respondent had filed verification affidavit as well as affidavit under Section 94-A of the Conduct of Election Rules along with the Election Petition. In paragraph 4 of the verification affidavit, it has been stated as under:

"4. I submit that paragraph 12 of the accompanying election petition is about the commission of corrupt practice of sending free internet and talk time to voters in exchange for votes is based on the information

provided to me by A.Andrews and the information about the corrupt practice of distribution of cash to the electors, committed by the first Respondent through his agents, AIADMK cadres and office bearers of the District AIADMK units of Avadi Constituency, Chennai District with the consent and knowledge of the First Respondent by paying a sum of Rs.500/- each to the electors are based on the information given by my Chief Election Agent Mr.S.Murthy and my Advocate S.Murthy and my son Asim Raja and witnesses Sharath Kumar, Ahmed, Nehru Prasath, A.Andrews, H.Hasan and R.K.Thanigavelan and what are all stated in paragraph 15 about the commission of corrupt practice by distribution of booklets along with cash of Rs.500/- each to voters by the 1st Respondent through his agents and party cadres under the consent and instructions of the 1st Respondent are based on the information given by my Chief Election Agent Mr.S.Murthy and my Advocate S.Murthy and my son Asim Raja and witnesses G.Rajendran – DMK Ward Secretary, Kumar, Basheer, Prakash – DMK Ward Treasurer, J.Gunasekaran, Prabhuvel, Gajendirakumar, P.Arul, Gajendiran, V.Murugan Kannan, Kodiyarasu Anbalagan, Santhosh and Karthikeyan, Sudharsanam, Selvakumar (DMK workers) Senthil,Babu (DMK workers) Kumar, Sekhar, Sateesh (DMK activists) Deivasigamani, Sampath, Periakumar (DMK activists) T.L.Tamilarasan, Padmanabhan, Ravi Pushpalingam

(DMK activities), Dayalan, Karthi (DMK activities) Sekhar A.Babu (DMK activities) and what are all stated in para 16 about the commission of corrupt practice by one Shankar and Krishnamoorthy under the consent and instructions of the 1st Respondent are based on the information give by NEK Moorthy and what are all stated in paras 28 and 29 about the commission of corrupt practice by giving hate speech by the 1st Respondent are all based on the information given by Puratchidasan and which I believe to be true and correct."

24. In **C.P.John v. Babu M.Palisery and others**, reported in (2014) 10 SCC 547, the Hon'ble Supreme Court held as under:

"18. When we read Section 83, the substantive part of Section 83(1) consists of three important elements, namely, that an election petition should contain a concise statement of material facts which an election petitioner relies upon. The emphasis is on the material facts which should be stated in a concise form. Under Section 83(1)(b) it is stipulated that the election petition should set forth full particulars of any corrupt practice which is alleged by the petitioner. A reading of the said Section 83(1)(b) is to the effect that such particulars should be complete in every respect and when it relates to an allegation of corrupt practice it

should specifically state the names of the parties who alleged to have committed such corrupt practice and also the date and place where such corrupt practice was committed. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as the names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice.

19. To put it differently, when the election petition is taken up for consideration, the Court which deals with such an election petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place, etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both Sections 83(1)(a) and (1)(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should

specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94-A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of the First Class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in Form 25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statements of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.

20. Therefore, a conspectus reading of Section 83(1)(a) read along with its proviso of the Act, as well as, Rule 94-A and Form 25 of the Rules makes the legal position clear that in the filing of an election petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on

heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the election petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas, with which the provisions contained in Section 83(1) read along with Section 86 came to be incorporated while deciding this appeal."

25. In **Ram Sukh v. Dinesh Aggarwal**, reported in (2009) 10 SCC 541, the Hon'ble Supreme Court held thus:

"12. It is evident that the controversy in this appeal

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

13. The phrase "material facts" has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. (See *Mahadeorao Sukaji Shivankar v. Ramaratan Bapu* [(2004) 7 SCC 181] .) Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are "material facts". Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each

case and no rule of universal application can be laid down.

.....

15. At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice the distinction between the phrases "material facts" as appearing in clause (a) and "particulars" as appearing in clause (b) of sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that the opposite party is not taken by surprise.

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

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

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

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

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

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

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

19. Coming to the second limb of the argument viz.

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

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

20. The issue was again dealt with by this Court in Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315] . Referring to earlier pronouncements of this Court in

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

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

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

.....

(d) that the result of the election, insofar as it concerns

a returned candidate, has been materially affected—

.....

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

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

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

26. In ***Hari Shankar Jain v. Sonia Gandhi***, reported in (2001) 8 SCC 233, the Hon'ble Supreme Court held as follows:

"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been

compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishnav. George Fernandez [(1969) 3 SCC 238 : (1969) 3 SCR 603] , Jitendra Bahadur Singh v. Krishna Behari [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

24. It is the duty of the court to examine the petition irrespective of any written statement or denial and

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

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

"33. Without further burdening this judgment by dealing with each and every other averment made in the two election petitions, it would suffice to say that we have carefully read each of the two election petitions and heard each of the two election petitioners (appellants) in very many details especially on the aspect of the election petitions suffering from the vice of not satisfying the mandatory requirement of pleading material facts as required by Section 82(1)(a) of RPA, 1951 and we are satisfied that the two election petitions do not satisfy the requirement statutorily enacted and judicially explained in umpteen number of decisions. The petitions are hopelessly vague and completely bald in the allegations made, most of which could not possibly be within the personal knowledge of

the petitioners but still verified as "true" to their knowledge, without indicating the source. Such pleadings cannot amount to disclosing any cause of action and are required to be rejected/dismissed under Order 7 Rule 11 CPC."

28. The learned Senior Counsel for the respondent submitted that, in the Election Petition, the respondent described the source of information and inasmuch as the respondent had detailed the source of information, it cannot be contended that the Election Petition is vague and completely bald in the allegations made. Thus, in the verification appeared in the Election Petition, the source of averments have been stated properly by the respondent.

29. In **Azhar Hussain v. Rajiv Gandhi**, reported in (1986) Supp SCC 315, the Hon'ble Supreme Court held as under:

"7. The argument is that where the legislature wanted to provide for summary dismissal of the election petition, the legislature has spoken on the matter. The intention was to provide for summary dismissal only in case of failure to comply with the requirement of Sections 81, 82 and 117 [81. Presentation of petitions. —(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and

Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the latter of those two dates.

Explanation.—In this sub-section “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such an election or not. * * *(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

82. *Parties of the petition.*—A petitioner shall join as respondents to his petition— (a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and (b) any other candidate against whom allegations of any corrupt practice are made in the petition.

117. *Security for costs.*—(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a

sum of two thousand rupees as security for the costs of the petition.(2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.] and not Section 83.

8. The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions, non-compliance with which entails dismissal of the election petition, it follows that non-compliance with the requirements of Section 83(1), even though mandatory, do not have lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of Section 87 of the Act [87. Procedure before the High Court.—(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits: Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the

proceedings. (2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.] . Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) which read thus:

"Order 6, Rule 16: Striking out pleadings.—The court may at any stage of the proceedings order to be struck out or amend any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious; or

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

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

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

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

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

10. There is thus no substance in this point which is already concluded against the appellant in *Hardwari Lal v. Kanwal Singh* [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] wherein this Court has in terms

negatived this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A.N. Ray, J. who spoke for the three-judge Bench: (SCC p. 221, paras 22 and 23)

"The allegations in para 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to what kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action.

Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the

provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasized that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed."

11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant case [Samant N. Balkrishna v. George Fernandez(1969) 3 SCC 238] has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Udhav Singh case [Udhav Singh v. Madhav Rao Scindia(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must

be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

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

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

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

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

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

13. The learned counsel for the election petitioner has very fairly contended that out of the 17 grounds embedded in the election petition, grounds other than the seven mentioned by him cannot be pressed into service and that he would restrict his submissions to these seven grounds. It is therefore unnecessary to advert to grounds other than the seven grounds which have been urged in support of this petition. We will

accordingly proceed to consider the plea urged to the effect that in regard to the aforesaid alleged corrupt practices, the High Court was not justified in dismissing the election petition.

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

"(1) What are material facts and particulars? Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition [Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi (1969) 1 SCC 372 : AIR 1969 SC 734 : (1969) 3 SCR 217] .

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be

pleaded [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] :

(a) mode of assistance;

(b) measure of assistance; and

(c) all various forms of facts pertaining to the assistance.

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

(a) kind or form of assistance obtained or procured;

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

(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] .

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

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

.....

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

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

It is not mentioned as to who procured or obtained the services of Shri Beg, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent. Unless these “essential facts” which would clothe the petition

with a cause of action and which will call for an answer from the returned candidate are pleaded as per the law laid down in Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi [Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi(1969) 1 SCC 372 : AIR 1969 SC 734 : (1969) 3 SCR 217] it cannot be said that the petition discloses a cause of action in regard to this charge. In the absence of these material facts and particulars court could not have rendered a verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition. It is not sufficient to show that a government servant had appeared on the public media to praise one of the candidates. It must also be shown that the assistance of the government servant was obtained either by the respondent or his agent or by any other person with the consent of the election candidate or his election agent. The averments made in the petition do not show (i) who had obtained or procured the assistance of Shri Beg; (ii) how he had obtained or procured the assistance of Shri Beg; and (iii) how it was said that it was with the consent of the respondent or his election agent. Nor is it shown which, if any, facts went to show that it was in furtherance of the prospects of the respondent's election. In the absence of material facts and particulars in regard to these aspects, the petition would not disclose the cause of action. The High Court was therefore, perfectly justified in reaching this

conclusion. The petition also does not disclose the exact words used in the speech; or the time and date of making such a speech. Now, unless the relevant or offending passage from the speech is quoted, it cannot be said what exactly Shri Beg had said, and in what context, and whether it was calculated to promote the election prospects of the respondent. Be that as it may, inasmuch as these material facts and particulars to show that the services of Shri Beg were procured by someone with the consent of the respondent or his election agent are not there, the averments pertaining to the charge do not disclose a cause of action. Unless the nexus between the appearance of Shri Beg on the media and the prior consent of the respondent or his election agent in regard to what he was going to say and the purposes for which he was going to say is set out in the material particulars it cannot be said that it disclosed a cause of action and the test laid down in Manubhai Nandlal case [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] as also Hardwari Lal case [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] is satisfied. The High Court was therefore justified in taking the view that it has taken. We may, in passing, mention a point made by learned counsel for the respondent. It was submitted that the averment must also mention whether the interview was a live one telecast after the date of filing of the nomination. If it was one recorded prior to the said date it may not

be of any consequence. This argument also requires consideration but we do not propose to rest our conclusion on this aspect as it is not necessary to do so.

.....

20. In this context the High Court observed:

" The contention of learned counsel for the respondent is that this pleading suffers from lack of material facts because the names of the workers, employed by the respondent, "or his agents, who painted the slogans or uttered them in speeches or broadcast from the vehicles, have not been indicated. It is pointed that the allegation regarding the painting of slogans is vague because it is stated to have been done by 'workers ... and/or his agents' signifying that the petitioner himself did not know whether painting work was done by workers employed by the respondent or by his agents or by both. I have already pointed out that this kind of statement is vague and embarrassing and, therefore, is contrary to the concept of material facts. In the case of Nihal Singh v. Rao Birendra Singh [(1970) 3 SCC 239] it was held that the allegation that at meetings in different villages, speeches were given on 5-5-1968 and 12-5-1968 was vague in the absence of a specification of date and place of each meeting and evidence could not be

permitted to be led in the matter. The allegation of consent of the respondent to the paintings of the slogans or to their utterances in the speeches of his workers is only inferential. There is a distinction between consent and connivance. The pleading is in the nature of a pleading of connivance and not of consent which is not enough vide the case of Charan Lal Sahu v. Giani Zail Singh [(1984) 1 SCC 390 : AIR 1984 SC 309 : (1984) 2 SCR 6] . In the case of Surinder Singh v. Hardial Singh [(1985) 1 SCC 91 : AIR 1985 SC 89 : (1985) 1 SCR 1059] it has been indicated in para 37 that consent is the life-line to link up the candidate with the action of the other person which may amount to corrupt practice unless it is specifically pleaded and clearly proved and proved beyond reasonable doubt, the candidate cannot be charged for the action of others."

Whether the High Court was right in taking the aforesaid view

21. There is a glaring omission to mention the names of the workers said to have been employed by the respondent or his agents who have allegedly painted the slogans. So also no material particulars are given as regards the vehicles on which the said slogans have been said to have been painted. There are no material particulars or facts. We are of the view that inasmuch as the material facts and particulars in regard to this

alleged practice were not mentioned the High Court was justified in taking the view that it had taken. The averments contained in regard to this charge also do not satisfy the test laid down by the various decisions of this Court adverted hereinabove. A Division Bench of this Court in Nihal Singh v. Rao Birendra Singh [(1970) 3 SCC 239] speaking through Bhargava, J. has observed:

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

22. The principle laid down is that the pleading in regard to matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of a meeting of which dates and particulars are not given would tantamount to failure to incorporate the essential particulars and that inasmuch as there was a possibility that witnesses could be procured in the context of a meeting at a place or date convenient for adducing evidence, the High Court should not even have permitted evidence on that point. In other words, no amount of evidence could cure the basic defect in

the pleading and the pleading as it stood must be construed as one disclosing no cause of action. In the light of the aforesaid principle laid down by the Supreme Court which has held the field for more than 15 years, the High Court was perfectly justified in reaching the conclusion called into question by the appellant.

.....

25. In this case also, no time, date and place of the speeches delivered by the respondent have been mentioned. No exact extracts from the speeches are quoted. Nor have the material facts showing that such statements imputed to the respondent were indeed made been stated. No allegation is made to the effect that it was in order to prejudice the election of any candidate. Or in order to further the prospects of the election of the respondent. The essential ingredients of the alleged corrupt practice have thus not been spelled out. So far as the meeting is concerned, the principle ["... The pleading was so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses. The pleading, in fact, was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this point...."] laid down in Nihal Singh case [(1970) 3 SCC 239]

discussed in the context of the charge contained in ground II(i) is attracted. The view taken by the High Court is therefore unexceptionable."

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

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

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

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

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

.....

10. *In Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511 : AIR 1976 SC 744 : (1976) 2 SCR 246] this*

Court held that failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order VI Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In Charan Lal Sahu v. Giani Zail Singh [(1984) 1 SCC 390 : (1984) 2 SCR 6] an election petition challenging the election of Giani Zail Singh, President was rejected summarily at the initial stage by a Constitution Bench of this Court on the ground that the pleadings contained in the election petition even assuming to be true and correct did not disclose any cause of action for setting aside the election of the returned candidate. The precise question as raised by the appellant was considered at length by this Court in Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315 : AIR 1986 SC 1253 : 1986 All LJ 625] and this Court held that the High Court while dealing with the election petition has power to strike out pleadings under Order VI Rule 16 and to reject the election petition under Order VII Rule 11 if the petition does not disclose essential facts to clothe it with complete cause of action. Failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) and election petition could therefore be and must be dismissed if it suffers from any such

vice. The Court repelled the submission that the power to reject an election petition summarily under the Code of Civil Procedure should not be exercised at the threshold. The Court observed as under:

"In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the

said pleading. The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matter pertaining to ordinary civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections.”

.....

14. Before we consider various paragraphs of the election petition to determine the correctness of the High Court order we think it necessary to bear in mind the nature of the right to elect, the right to be elected and the right to dispute election and the trial of the election petition. Right to contest election or to question the election by means of an election petition is neither common law nor fundamental right, instead it is a statutory right regulated by the statutory provisions of the Representation of People Act, 1951. There is no fundamental or common law right in these matters. This is well settled by a catena of decisions of this Court in *N.P. Ponnuswami v. Returning Officer* [AIR 1952 SC 64 : 1952 SCR 218 : 1 ELR 133] , *Jagan Nath v. Jaswant Singh* [AIR 1954 SC 210 : 1954 SCR 892 : 9 ELR 231] , *Jyoti Basu v. Debi Ghosal* [(1982) 1 SCC 691 : AIR 1982 SC 983 : (1982) 3 SCR 318] . These decisions have settled the legal position that outside the statutory provisions there is no right to dispute an election. The Representation of People Act is a complete and self-contained Code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of the Civil Procedure Code are applicable to the extent as permissible by Section 87 of the Act. The scheme of the Act as noticed earlier would show that an election can be questioned under the statute as provided by

Section 80 on the grounds as contained in Section 100 of the Act. Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under Section 100 of the Act it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner.

15. Now we would consider the various paragraphs of the election petition to determine as to whether the allegations contained therein disclosed any cause of action. The election petition runs into 58 paras containing allegations of various corrupt practices

known to the law. The averments contained in the various paragraphs are in disjointed form and in order to ascertain true intention of the election petitioner, one has to read several paragraphs and connect the same with the others to ascertain the correct import of the allegations. The allegations contained in paras 1 to 7 contain narration of facts as to when the election took place and the petitioner's desire to file his nomination paper by wearing only a "langot" and the obstruction raised by the authorities and the allegation that the police were shadowing the appellant and two of them always kept him company. These paragraphs do not make out any ground under Section 100 of the Act. In para 8, the appellant alleged that on June 5, 6 and 10 he saw a number of jeeps plying in the Parliamentary constituency of Amethi bearing flags of Congress (I) which were being used for electioneering purposes in support of Rajiv Gandhi. The allegations further state that the appellant noticed that food was being given to the workers of Rajiv Gandhi at the kothi of Sanjay Singh at Amethi. Assuming the allegations to be true, these do not make out any case of corrupt practice or any other ground of challenge under Section 100 of the Act. During the course of arguments the appellant urged that the allegations contained in para 8 indicate that Rajiv Gandhi had been using a large number of vehicles and feeding workers and thereby he had been incurring expenses beyond the

permissible limit. This inference is not permissible as each and every corrupt practice must be clearly and specifically pleaded and it should be complete in itself. No corrupt practice can be inferred from reading one sentence here and the other sentence there. A corrupt practice as contemplated by Section 123(6) contemplates incurring or authorising expenditure beyond the prescribed limit. The allegations contained in para 8 do not contain any averment that the respondent incurred or authorised expenditure beyond the prescribed limit. Neither any details of incurring or authorising expenses have been stated therein. Para 9 of the petition, stated that on June 5, 1981 the appellant had seen a number of cars mentioned therein carrying Congress (I) flags. Similarly, allegations contained in paras 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 stated that on the dates mentioned in those paragraphs the election petitioner namely the appellant has seen a number of vehicles plying in the constituency carrying Congress (I) flags. These allegations merely show that a number of vehicles were plying with Congress (I) flags in the constituency which by itself do not constitute any corrupt practice. It appears that the appellant intended that the returned candidate had spent money over the plying of vehicles and thereby he exceeded the limit prescribed by Section 123(6) read with Section 77 of the Act. In the absence of requisite allegations in the aforesaid

paragraphs the basic ingredients to make out a ground for challenging the election under Section 100 of the Act was totally lacking. These paragraphs therefore disclosed no cause of action.

.....

20. Section 77 requires a candidate to keep a separate and correct account of all expenditure "in connection with the election incurred or authorised by him or by his election agent" between the date of his nomination and the date of declaration of the result of the election. The candidate is required to maintain account of only that expenditure which he or his election agent may have authorised before the expenditure was actually incurred, which would imply that the candidate or his election agent undertook to reimburse the expenses which may have been authorised by him or his election agent to be spent at the election. In order to constitute a corrupt practice as contemplated by Sections 77 and 123(6) it is necessary to plead requisite facts showing authorisation, or undertaking of reimbursement by the candidate or his election agent. A mere vague and general statement that the candidate and his workers with his consent spent money in election in excess of the permissible ceiling would not be sufficient to constitute corrupt practice.

.....

28. In para 53(1)(E) of the election petition the appellant stated "that as per Section 123(7) of the Representation of People Act, Rajiv Gandhi's workers with his consent took help from the government officers and high police officers and people of government departments for securing votes of the electors. These officials flouted all rules and laws particulars of which are as under". Thereafter particulars of the help taken from the government officers are detailed in sub-paras (1) to (8). A corrupt practice as contemplated by Section 123(7) contemplates obtaining or procuring by a candidate or his election agent, assistance from the government servants belonging to the classes specified in sub-section (7) of Section 123 for the furtherance of the prospect of the candidate's election. In order to constitute a corrupt practice under Section 123(7), it is essential to clothe the petition with a cause of action which would call for an answer from the returned candidate and it should therefore plead mode of assistance, measure of assistance and all facts pertaining to the assistance. The pleading should further indicate the kind or form of assistance obtained and in what manner the assistance was obtained or procured or attempted to be procured by the candidate for promoting the prospect for his election. The election petitioner must state with exactness the time of assistance, the manner of assistance and the persons

from whom assistance was obtained or procured by the candidate as held by this Court in Hardwari Lal v. Kanwal Singh[(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] and Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315 : AIR 1986 SC 1253 : 1986 All LJ 625] . Allegations contained in sub-paras 1, 2 and 3 of para 53(1)(E) raise a grievance that though the appellant had not appointed any counting agent but still certain persons acted as his counting agents and the Returning Officer did not hold any inquiry into his complaint. Sub-para 4 states that in the Amethi Constituency, there was fear psychosis and "it looked as if the police and other government officials wanted to help Rajiv Gandhi". Sub-paras 5 to 8 refer to certain illegalities and irregularities alleged to have been committed by certain persons on the polling day in helping voters to cast their votes and it further alleged that some persons cast votes 100 to 200 times and their signatures were not obtained. These allegations do not make out any charge of corrupt practice within the provisions of Section 123(7) of the Act. As regards para 53(1)(G) it purports to allege a corrupt practice under Section 123(6) of the Act on the ground that Rajiv Gandhi spent Rs 3,15,500 in excess of the amount permitted under the law. We have already discussed this matter earlier."

32. The learned counsel for the applicant contended that by

way of paragraphs 11(a) to 11(m) of the Election Petition, the respondent has sought to throw imaginary allegations without any material particulars.

33. On a perusal of paragraphs 11(a) to 11(m) of the Election Petition, the respondent had averred that with the consent of the applicant, at his cost, lot of money were expended and the said expenditures have been suppressed by the applicant in his returns. Though the applicant sought striking off of paragraphs 11(a) to 11(m), in the Original Application, he has not stated anything why those paragraphs have to be struck off except to indicate that allegations in the said paragraphs were unpalatable to the applicant.

34. By relying upon the the decision of the Hon'ble Supreme Court in *Harasingh Charan Mohanty v. Surendra Mohanty*, supra, the learned counsel for the applicant submitted that only vague and baseless statements have been made against the applicant in paragraph 12 of the Election Petition and therefore, paragraph 12 is liable to be struck off. Moreover, it does not mention the name of agents and party workers who circulated such messages. He would further submit that if the respondent relies on a corrupt practice

committed by an agent, he must prove that it was committed by him with his consent or with the consent of his election agent. The consent, however, cannot be inferred from mere close authorised agent or consent to any act done by him or other relationship or political affiliation.

35. In *Harasingh Charan Mohanty v. Surendra Mohanty*, supra, the Hon'ble Supreme Court held:

"If the corrupt practice is committed by the returned candidate or his election agent, under S. 100 (1) (b) of the Act the election is void without any further condition being fulfilled. But if the petitioner relies on a corrupt practice committed by any agent other than an election agent, the petitioner must prove that it was committed by him with his consent or with the consent of his election agent."

36. In paragraph 12 of the Election Petition, the respondent stated that one day before the day of election at his cost, the applicant directed his agents and party workers to circulate messages through Whatsapp. Such Whatsapp message offering free recharge was received by one of the voter in the constituency viz., A.Andrews. Immediately, a complaint was lodged before the Muthapudupettai

Police Station and the complaint was also registered by the police in Crime No.247 of 2016 under Section 171(E) IPC.

37. According to the learned Senior Counsel for the respondent, offer of free recharge of internet and talk time was a blatant instance of corrupt practice as it amounts to bribing the voters. This Court finds some force in the submission made by the learned Senior Counsel for the respondent for the reason that the respondent had detailed the name of a person who received such message and the fact remains that a police complaint was also lodged. Lodging of police complaint was not denied by the applicant. Whether or not the said message was sent under the instructions and/or consent of the applicant has to be proved at the time of trial. As rightly argued by the learned Senior Counsel for the respondent, if the applicant wants to dispute the same, it only reinforces the need for a full-fledged trial and evidence has to be let in and the concerned persons have to be examined.

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38. The learned counsel for the applicant then submitted that paragraphs 14 and 15 of the Election Petition contain only the name of the printer and does not disclose any cause of action. The learned

counsel also submitted that the paragraphs of the Election Petition which do not disclose any cause of action were liable to be struck off. In support of the said plea, the learned counsel relied upon the decision in *Virender Nath Gautam v. Sapta Singh*, supra.

39. In *Virender Nath Gautam v. Sapta Singh*, supra, the Hon'ble Supreme Court held:

"28. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order VII of the Code."

40. In *Bhagwati Prasad Dixit Ghoerewala v. Rajeev Gandhi*, supra, the Hon'ble Supreme Court held as under:

"17. The allegations in the election petition, even if they are taken as true, do not disclose any cause of action. The High Court was, therefore, right in dismissing the petition on the ground that it does not disclose a cause of action."

41. On a reading of the Election Petition, it is seen that pleadings in the Election Petition were precise, specific and unambiguous and also establish a cause of action to file the Election

Petition by the respondent.

42. Placing reliance upon *Ram Awadesh Singh v. Sumitra Devi*; *C.P.John v. Babu M.Palissery and others*; *Vasude Salgaonkar v. Naresh Kushali Shigaonkar*, *G.M.Siddheswjwar v. Prasanna Kumar*, supra, the learned counsel for the applicant contended that in paragraphs 15 to 17 of the Election Petition, the respondent alleged that he came to know from his party workers and the voters that arrangements were made by the applicant, his election agent and his relatives to distribute cash to the voters as a bribe. To establish such allegation, the respondent had not stated details as to who were the actual intended recipients and therefore, the Election Petition is liable to be rejected on the ground that it does not disclose the cause of action.

43. In *Ram Awadesh Singh v. Sumitra Devi*, supra, the Hon'ble Supreme Court held:

"28. Each instance of a corrupt practice pleaded had to be established separately. If every one of those instances are not proved, all of them put together cannot be accepted as true because of the volume of evidence."

44. In *Anil Vasude Salgaonkar v. Naresh Kushali Shigaonkar*, supra, the Hon'ble Supreme Court held:

"67. The legal position has been crystallized by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are "material facts" which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of section 83(1)(a) of the Act."

45. In *G.M.Siddheswjar v. Prasanna Kumar*, supra, the Hon'ble Supreme Court held:

"44. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with."

46. From the above decisions of the Hon'ble Supreme Court, it is clear that the High Court is empowered at any stage of the proceedings to strike out or delete pleadings which are unnecessary,

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

47. It is settled that cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the RP Act. If the allegations contained in the petition do not set out grounds of challenge as contemplated by Section 100 of the RP Act and if the allegations do not conform to the requirement of Sections 81 and 83 of the RP Act, the pleadings are liable to be struck off and the Election Petition is liable to be rejected.

48. The learned Senior Counsel for the respondent submitted that the material facts of corrupt practice said to have been adopted by the applicant had been set out in the Election Petition with full particulars and therefore, the respondent herein is entitled to maintain the Election Petition. In support, the learned Senior Counsel placed reliance upon the decisions of the Hon'ble Supreme Court in *Harkirat Singh v. Amrinder Singh*, reported in (2005) 13 SCC 511; *Nandiesha Reddy v. Mrs.Kavitha Mahesh*, reported in (2011) 7 SCC 721; *G.M.Siddeshar v. Prasanna Kumar*, reported in (2013) 4 SCC 776; *Mahendra Pal v. Ram Dass Malanger and others*, reported in (2000) 1

SCC 261; Virender Nath Gautam v. Satpal Singh and others, reported in (2007) 3 SCC 617; Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others, reported in (2012) 7 SCC 788 and Public Interest Foundation and others v. Union of India and another, reported in (2015) 11 SCC 433.

49. In *Harkirat Singh v. Amrinder Singh*, supra, the Hon'ble Supreme Court held:

"78. As we have already observed earlier, in the present case, 'material facts' of corrupt practice said to have been adopted by the respondent had been set out in the petition with full particulars. It has been expressly stated as to how Mr. Chahal who was a Gazetted Officer of Class I in the Government of Punjab assisted the respondent by doing several acts, as to complaints made against him by authorities and taking of disciplinary action. It has also been stated as to how a Police Officer, Mr. Mehra, who was holding the post of Superintendent of Police helped the respondent by organizing a meeting and by distributing posters. It was also alleged that correct and proper accounts of election expenses have not been maintained by the respondent. Though at the time of hearing of the appeal, the allegation as to projecting himself as 'Maharaja of Patiala' by the respondent had not been pressed by the learned counsel for the appellant, full

particulars had been set out in the election petition in respect of other allegations. The High Court, in our opinion, was wholly unjustified in entering into the correctness or otherwise of facts stated and allegations made in the election petition and in rejecting the petition holding that it did not state material facts and thus did not disclose a cause of action. The High Court, in our considered view, stepped into prohibited area of appreciating the evidence and by entering into merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable.

79. We, therefore, hold that the High Court was wrong in dismissing the election petition on the ground that material facts had not been set out in the election petition and the election petition did not disclose a cause of action. The order passed by the High Court, therefore, deserves to be quashed and set aside.

80. For the foregoing reasons, the appeal deserves to be allowed and is, accordingly, allowed. The order passed by the High Court is set aside. The Election Petition No. 26 of 2002 is restored to file, and is remitted to the High Court to decide the same on merits. Since the election took place in the beginning of 2002 and the petition was dismissed on preliminary

ground as not maintainable and is required to be decided on merits, the High Court is requested to give priority and dispose it of expeditiously. In the facts and circumstances of the case, however, there shall be no order as to costs. Appeal allowed. Election Petition remitted to the High Court to decide the same on merits."

50. In *Nandiesha Reddy v. Mrs.Kavitha Mahesh*, supra, the Hon'ble Supreme Court held:

"22.Bearing in mind the aforesaid legal position when we proceed to consider the facts of the present case we are of the opinion that the Election Petitioner had disclosed material facts and the matter is fit to go for trial. Whether those material facts are true or false is a matter of trial. As regards authorities of this Court in the case of Anil Vasudev Salgaonkar (supra) and Ram Sukh (supra) we are of the opinion that the same do not lend support to the contention of the appellant. In both the cases this Court on fact came to the conclusion that the election petition did not contain statement of material facts and accordingly the election petitions were dismissed at the threshold. However, in the present case, on facts we have found that the election petition does contain material facts and it is not liable to be dismissed at the threshold."

51. In *G.M.Siddeshar v. Prasanna Kumar*, supra, the Hon'ble Supreme Court held:

"66. No submissions were made with regard to the striking out, in accordance with Order VI rule 16 of the CPC, of specifically objectionable paragraphs in the election petition. In any event this is a matter for trial and we see no reason to take a view different from that taken by the High Court."

52. In *Mahendra Pal v. Ram Dass Malanger and others*, supra, the Hon'ble Supreme Court held:

"24. Our perusal of various paragraphs of the election petition and particularly of the averments contained in paragraphs 10 to 13, 16 and 20, go to show that sufficient material facts, to provide a cause of action, for trial of the election petition have been provided in the election petition. In various sub-paras of paragraph 11 of the election petition, particulars of irregularities have also been spelt out. The non-mention of serial numbers of the improperly counted ballot papers, keeping in view the averments made in paragraph 16 of the petition, could not be a ground to nonsuit the election petitioner at the thresh hold, without trial more particularly because of discrepancy between Ex. P.2 and Ex. P.3. Pleadings have to be read as a whole to ascertain their true import. It is the substance and not merely the form, which is required to be looked

into for construing the pleadings. The intention of the party needs to be gathered from the tenor and terms of his pleadings taken as a whole. These well settled principles appear to have been lost sight of by the learned designated Judge. Construed reasonably, the averments in the election petition, in our opinion, do make out a case for the petition proceeding to trial. Whether or not a case is eventually made out to justify recount/inspection would depend upon the evidence led by the parties in support of their pleadings at the trial.

25. We are of the opinion that the election petition did contain an adequate statement of material facts on which the allegations of irregularities or illegalities in counting were founded. The election petition therefore deserved to be tried on merits. We are unable to persuade ourselves to sustain the findings recorded by the learned designated Judge on Issue No. 1. We, however, refrain from expressing any opinion on the merits of the controversy between the parties as that would be a matter to be decided by the designated Judge after affording an opportunity to the parties to lead evidence in support of their respective pleadings. Since, the election petition was dismissed without trial on deciding Issue No. 1 against the Appellant, with which finding we have not agreed, we set aside the finding of the High Court on Issue No. 1 and direct that the election petition be now tried on merits in

accordance with law. The learned designated Judge is requested to expeditiously dispose of the petition. There shall be no order as to costs in so far as this appeal is concerned."

53. In *Virender Nath Gautam v. Satpal Singh and others*, supra, the Hon'ble Supreme Court held:

"47. 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."

54. In *Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others*, supra, the Hon'ble Supreme Court held:

"29. There is no denying the fact that the election of a successful candidate is not lightly interfered with by the

Courts. The Courts generally lean in favour of the returned candidates and place the onus of proof on the person challenging the end result of an electoral contest. That approach is more in the nature of a rule of practice than a rule of law and should not be unduly stretched beyond a limit. We say so because while it is important to respect a popular verdict and the courts ought to be slow in upsetting the same, it is equally important to maintain the purity of the election process. An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in Sections 100 & 123 of the Act cannot obviously be recognised and respected as the decision of the majority of the electorate. The Courts are, therefore, duty bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hyper-technical in its approach & without being oblivious of the ground realities."

55. In *Public Interest Foundation and others v. Union of India and another*, supra, the Hon'ble Supreme Court held:

"9. The issues raised in the Writ Petition would require detailed and elaborate hearing particularly in light of the constitutional provisions viz., Articles 84 and 102 of the Constitution of India for the Members of Parliament and Articles 173 and 191 for the Members

of Legislative Assemblies.”

56. On an examination of the Election Petition in the case on hand, as per the parameters laid down by the Hon'ble Supreme Court in the above cited cases, this Court finds that the respondent had clearly disclosed the cause of action and had *prima facie* established the cause of action against the applicant to maintain the Election Petition. The Election Petition of the respondent contains the time and place of occurrence of corrupt practice and therefore, a full-fledged trial must be held in this matter and then only the truth will come to light. Denial of material facts cannot be gone into at the stage of rejection of Election Petition, but must be a subject matter for trial.

57. In my firm view, the material facts which are required to be pleaded in the Election Petition as required by Section 83 (1) of the RP Act have been pleaded in the Election Petition by the respondent and also cause of action has been disclosed in the Election Petition and, hence, the Election Petition needs full-fledged trial.

58. As stated supra, the present Election Petition discloses material facts and especially corrupt practice and also the date and

place of corrupt practice have been specifically pleaded. Further, names of the persons giving bribe, receiving bribe, the place, date and time of the bribe are all pleaded. When such material facts are pleaded in the Election Petition, the elected candidate is bound to defend himself in the Election Petition.

59. The scanning of the Election Petition would show that the respondent has clearly pleaded complete details of corrupt practice which could constitute a cause of action as contemplated by Section 100 of the RP Act and the respondent also further furnished the material facts and other details of the alleged corrupt practice. The allegations relating to corrupt practice stated in the various paragraphs of the Election Petition do *prima facie* constitute corrupt practice. The Election Petition was drafted with material facts and/or particulars and also constitute a cause of action.

60. For the foregoing reasons, I am of the view that the Election Petition clearly makes out cause of action against the returned candidate. Therefore, the returned candidate was not right in seeking striking out of some of the paragraphs in the Election Petition inasmuch as there are triable issues to be considered in the Election

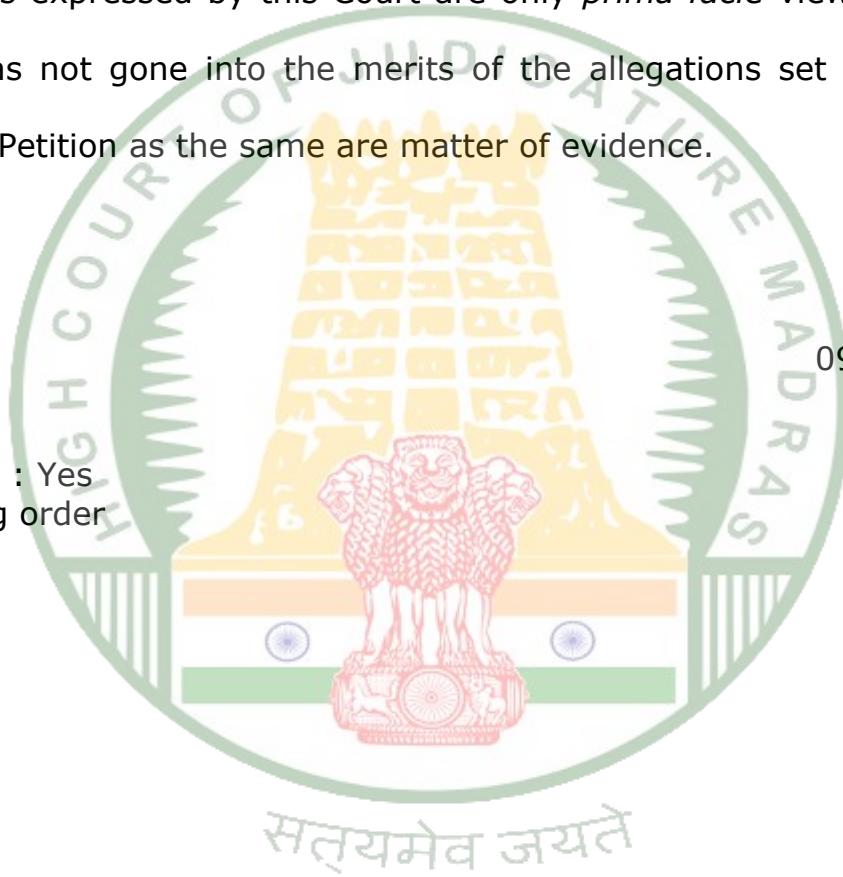
Petition.

61. In the result, Original Application Nos.94 and 95 of 2017 filed by the applicant are dismissed. No costs. It is made clear that the views expressed by this Court are only *prima facie* views and this Court has not gone into the merits of the allegations set out in the Election Petition as the same are matter of evidence.

vs

Index : Yes
Speaking order

09.11.2018



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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
O.A.Nos.94 and 95 of 2017
in Election Petition No.3 of 2016

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09.11.2018

**O.A.Nos.94 and 95 of 2017 in
Election Petition No.3 of 2016**

M.V.MURALIDARAN.J,

Today, the order in O.A.Nos.94 and 95 of 2017 was pronounced as dismissed. But, due to the pendency of the main Election Petition, the same is posted today for filing counter statement. Even after the lapse of two years, the counter has not been filed.

2. The learned Senior Counsel appearing on behalf of the petitioner in Election Petition represented that as per the election rules, the respondents having time limit for six weeks. As per the Representation of the People Act, 1950 and 1951, the trial should be taken as per the Civil procedure Code. Even as per the Civil Procedure Code, the time limit for filing counter is 90 days, but even after lapse of two years, there is no counter statement has been filed in ELP.No.3 of 2016.

3. Therefore, post the main ELP.No.3 of 2016 on 16.11.2018 for exparte evidence.

09.11.2018

vum/vs

M.V.MURALIDARAN.J.,

vum/vs



**O.A.Nos.94 and 95 of 2017 in
Election Petition No.3 of 2016**

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