

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

ELECTION PETITION NO. 23 OF 2019

Mr. Sadukar Laxman Hatwar,
aged about 51 years, Occ. Service,
R/o Dahegaon Post, Dhanla,
Tahsil Mouda, District Nagpur.

...PETITIONER

Versus

1. ~~The Returning Officer, Kamptee,
Sub-Divisional Officer, Mouda.~~

**Deleted as per Court's order
dated 05/03/2021.**

2. Mr. Tekchand Shrawan Sawarkar,
aged 51 years, Occ. Legislator,
R/o At PO. Near Azad Chauk, Dhanla,
Tah. Mouda, District Nagpur.

...RESPONDENTS

Shri R.M. Bhangde, Advocate for the petitioner.
Shri H.D. Dangre, Advocate for respondent No.2.

.....

CORAM : PUSHPA V. GANEDIWALA, J.
ARGUMENTS WERE HEARD ON : JULY 23, 2021.
JUDGMENT IS PRONOUNCED ON : SEPTEMBER 17, 2021.

JUDGMENT :

The election of the returned candidate/ respondent No.2 which he has contested from 58-Kamptee Assembly Constituency General Elections – 2019, is challenged under Section 81 of the Representation of the People Act, 1951 (“**Representation Act**”). The petitioner is a voter in the said constituency. The petitioner has sought to declare the election

of respondent No. 2 as void under Section 100(1)(d)(i) of the Representation Act, and further prayed to quash and set aside the same. The petitioner states that respondent No. 2's nomination had been improperly accepted by the Returning Officer – respondent No.1, as respondent No. 2 had suppressed, in the affidavit which is to be filed alongwith the nomination form, the names of his dependents, their assets, his assets and liabilities, bank account numbers, mortgage of properties and various loans thereon.

2. Shortly stated, there were 12 candidates in the fray for which the elections were held on 21/10/2019 and the results were declared on 24/10/2019. The respondent secured the highest number of votes, i.e., 118182, while second highest candidate received 107066 numbers of votes. Therefore, the difference in votes secured by these two candidates was of 11116 votes. It is alleged that due to the suppression of material information in the affidavit which was submitted alongwith the nomination form by respondent No.2, the results of the elections have been materially affected, and hence, the relief is sought to declare the election of the returned candidate from the aforesaid constituency, as void.

3. In response to the notice issued to respondent No.2, he filed his written statement below Exh.4. On the basis of pleadings between the parties, the learned counsel for the petitioner submitted draft issues.

4. Shri Dangre, learned counsel for the respondent, vide Civil Application No. 238/2021, sought orders of this Court to frame preliminary issues under Order XIV Rule 2(2) (b) of the Code of Civil Procedure, and till the decision on these issues, the settlement of the other issues be postponed. This Court, after considering the rival submissions, allowed the said application, and framed the following issues as preliminary issues under Order XIV Rule 2(2)(b) of the Code of Civil Procedure vide order dated 10/03/2021 :

“(i) Whether the Election Petition filed by petitioner is barred by the period of limitation as provided under Section 81 of the Representation of the People Act, 1951?”

“(ii) Whether for not disclosing the cause of action which can be said as materially affecting the result of the election, bars the present Election Petition more particularly under clause (a) of Order VII Rule 11 of the Code of Civil Procedure, 1908?”

“(iii) Whether for lack of concise statements of the material facts, as to how the alleged omission materially affecting the result of the election and lead the election as void required as per Section 83 of the Representation of the People Act, 1951 the present Election Petition needs to be dismissed?”

“(iv) Whether for non-compliance of Rule 94-A of the Conduct of Election Rules, 1961 for not filing affidavit in conformity with prescribed Form No.25 the present Election Petition needs to be dismissed?”

“(v) Whether the Election Petition filed by petitioner is bad for non-joinder of necessary party i.e. Election Commission?”

(vi) Consequently, whether present election petition is liable to be rejected and summarily dismissed as per Order VII Rule 11 of the Code of Civil Procedure, 1908 and for non-compliance of Sections 81, 82 & 83 of the Representation of the People Act, 1951 and as per Section 86 of the said Act?

(vii) Whether the present Election Petition needs to be dismissed for want of locus to the petitioner to file present petition?”

Shri Dangre, learned counsel for the respondent, in all his fairness restricted his submissions on the following two consolidated issues :

(i) Bar of Limitation to the petition in terms of Section 81 of R. P Act; and

(ii) Rejection of petition under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 on the ground that the petition does not show cause of action and there are no pleadings in the petition as to how the results of the election have been materially affected.

Shri Dangre, learned counsel for the respondent, at the outset, submitted that it is by now stands well settled law that success gained by the candidate in a public election cannot be allowed to be called in question by making frivolous and baseless allegations, and thereby unnecessarily dragging the successful candidate to the Court proceedings and waste his precious time, which would have otherwise been devoted for

the welfare of members of constituency. A reliance is placed on the judgment of the Hon'ble Apex Court in the case of **C.P. John Vs. Babu M. Palissery and Others, (2014) 10 SCC 547.**

5. First, I propose to discuss the issue of bar of limitation. Shri Dangre, learned counsel for the respondent, submitted that Section 81 of the Representation Act mandates that the election petition shall be presented within 45 days but not earlier than the date of election of the returned candidate, whereas Section 67-A of the Representation Act defines the date of election of the candidate means the date on which the candidate is declared by the Returning Officer under the provisions of Section 53 or Section 66 of the Representation Act to be elected to a Legislature of a State. He further submitted that the collective reading of Section 67-A and Section 81 of the Representation Act, by applying rule of literal interpretation with special emphasis on the word 'within therein', would show that the date on which election results are declared is to be included and counted while computing 45 days limitation period. He further submitted that it is now well settled that the provision of limitation is not applicable to the election petitions as the Representation Act is a self-contained code.

With regard to Section 9 of the General Clauses Act, 1897 ("**General Clauses Act**"), Shri Dangre, learned counsel, submitted that the judgments in the case of **Tarun Prasad**

Chatterjee Vs. Dinanath Sharma, (2000) 8 SCC 649, so also in the case of **K. Venkateswara Rao And Another Vs. Bekkam Narasimha Reddi And Others, AIR 1969 SC 872**, relied on by the learned counsel for the petitioner, can be distinguished for the following reasons :

- (i) The subsequent judgments of the Hon'ble Apex Court, placed on record, impliedly overrules the ratio laid down in these judgments.
- (ii) Legally and logically, when one set of provisions of law (Section 29 of the Limitation Act) is *pari materia* to another set of provisions of law (Section 9 of the General Clauses Act), if former would not apply to a given situation, how can later one be made applicable?

Shri Dangre, learned counsel, submitted that for calculating the period of limitation of 45 days, the date of declaration of result, i.e., 24/10/2019 is to be included, and therefore, the election petition which was filed on 09/12/2019, i.e., Monday is barred by limitation. According to him, the last day of filing of the petition was 07/12/2019, which was working Saturday. That filing of election petition is ministerial function, and thus, it could have been filed on 07/12/2019, and therefore, the learned counsel states that the election petition by the petitioner, treating 08/12/2019 as last day of limitation and filed on next working day, i.e., 09/12/2019, is

hopelessly barred by limitation.

6. On the other hand, Shri Bhangde, learned counsel for the petitioner, submitted that as per Section 9 of the General Clauses Act, the first day in the series of days is required to be excluded for the purpose of calculation of limitation, and this Section applies to all the Central Acts made after the 3rd day of January, 1886 and to all the regulations made on or after the fourteenth day of January, 1887. In support of his submission, he placed reliance on the judgment of the Hon'ble Apex Court in the case of **Tarun Prasad** (*supra*). He further submitted that considering Section 9 of the General Clauses Act, the limitation of 45 days, as per Section 81 of the Representation Act, would commence from 25/10/2019 and expire on 08/12/2019, which was a Sunday. Since the limitation expired on Sunday, the instant petition would be governed by Section 10 of the General Clauses Act also, and therefore, the petitioner is entitled to file election petition on the next working day, i.e., Monday. The petitioner accordingly filed the petition on the next working day, i.e., 09/12/2019 (Monday), which is within limitation.

7. In order to appreciate the rival contentions, the relevant provisions of the Representation Act and the General Clauses Act need to be looked into. Section 81 of the Representation Act reads as follows :

“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 candidates at the election and dates of their election are different, the later 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 election or not.”

8. The “date of election” of the returned candidate has been defined under Section 67-A of the Representation Act, which reads thus :

“67-A. Date of election of candidate.—For the purposes of this Act, the date on which a candidate is declared by the returning officer under the provisions of Section 53 or Section 66, to be elected to a House of Parliament or of the Legislature of a State shall be the date of election of that candidate.”

9. Sections 9 and 10 of the General Clauses Act reads thus :

“9. Commencement and termination of time.—(1) In any Central Act or regulation made after the commencement of

this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from' and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.

(2) This section applies to all Central Acts made after the third day of January, 1868, and to all regulations made on or after the fourteenth day of January, 1887.

10. Computation of time.

(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken on the next day afterwards on which the Court or office is open: Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

10. The issue of limitation is generally a mixed question of law and facts. In terms of Section 81 of the Representation Act, the prescribed period of limitation is of 45 days from the date of election of the returned candidate. However, in the instant case, there is no dispute with regard to the date of election of the returned candidate. Therefore, only the question

of law as to whether the date of the election of the returned candidate is to be included or not in computing the period of limitation of 45 days in filing the election petition, is essential to be considered. Insofar as the applicability of provisions of General Clauses Act to the Representation Act, Section 9(2) of the General Clauses Act mandates that Section 9 is applicable to all the Central Acts made after 3rd January, 1868. Similarly, Rule 2(4) of the Conduct of Election Rules, 1961 (**“Rules of 1961”**) specifically provides for applicability of the General Clauses Act for the interpretation of the rules as it applies for interpretation of an Act of Parliament. Section 9 of the General Clauses Act interprets the commencement and termination of time. It provides that it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word ‘from’ and for the purpose of including the last in a series of days or any other period of time, to use the word ‘to’. Therefore, in terms of Section 9 of the General Clauses Act, for commencement of time, the word ‘from’ is to be used by excluding the first day in a series of days, and for termination of time, the word ‘to’ is to be used by including the last day in a series of days. In the light of this statutory interpretation, there cannot be any doubt for the proposition that the period of 45 days, for filing an election petition, is to be calculated by excluding the day of declaration of the results.

11. A similar question, i.e., whether the first day, i.e., the date of the declaration of the result, is to be included in

computing period of limitation of 45 days in filing election petition, had arisen before the Hon'ble Apex Court in the case of **Tarun Prasad Chatterjee** (*supra*), wherein **their Lordships**, in para 6, have held thus :

“6. As per Section 81(1) of the RP Act, the period of limitation prescribed for filing an election petition is forty-five days from the date of election of the returned candidate. It is also stated that it may not be filed earlier to the date of election of the returned candidate. Prior to Act 27 of 1956, the period of limitation for presentation of election petition was not provided in Section 81(1) of the RP Act, 1951. The period of limitation for presentation of election petition was provided under Rule 119 of the Representation of the People (Conduct of Elections & Election Petitions) Rules, 1951. In this code of Rules, by Rule 2(6), it was expressly provided that the provisions of the General Clauses Act would apply. This express provision was required since the General Clauses Act would not normally be applicable to Rules framed under the Central Act. By Act 27 of 1956, a prescribed period for presentation of petition was provided under Section 81(1) of the RP Act, 1951 instead of giving such legislative power to the rule-making authority. The RP Act, 1951 being a self-contained code, it was held by courts in a series of decisions that the provisions contained in the Limitation Act have no application. However, in a line of decisions it has also been held that the provisions contained in the General Clauses Act, 1897 are applicable in computing the period of limitation for filing election petition under the RP Act, 1951. There is nothing in Section 81(1) to indicate that the

provisions contained in the General Clauses Act have no application.”

12. It was the argument of the learned counsel Shri Dangre that when one set of provisions of law (Section 29 of the Limitation Act) is *pari materia* to another set of provisions of law (Section 9 of the General Clauses Act), if former would not apply to a given situation, how can the later one be made applicable? I do not find any merit in this submission as the Hon'ble Apex Court in the case of **K. Venkateswara Rao** (*supra*) has held that even though the Indian Limitation Act, 1963 does not apply to an election petition, the provisions like Sections 9 and 10 of the General Clauses Act providing for computation of time which are in *pari materia* with Sections 12(1) and (4) of the Limitation Act, would apply to such petition.

13. In the case of **Manohar Joshi Vs. Nitin Bhaurao Patil And Another**, (1996) 1 SCC 169, this question was dealt with in detail, and the Hon'ble Apex Court has held that Section 10 of the General Clauses Act is applicable to the presentation of the election petition. The relevant para, i.e., para 15 of the said judgment is quoted below :

“15. In view of the basic premise that the election petitioner is entitled to avail the entire limitation of 45 days for presentation of the election petition as indicated by Ramlal v. Rewa Coalfields Ltd., (1962) 2 SCR 762, if the contrary

view is taken, it would require the election petitioner to perform an impossible task in a case like the present, to present the election petition on the last day of limitation on which date the High Court as well as its office is closed. It is the underlying principle of this legal maxim which suggests the informed decision on this point, leading to the only conclusion that Section 10 of the General Clauses Act applies in the computation of the limitation prescribed by sub-section (1) of Section 81 of the R.P. Act for presentation of an election petition. So computed, there is no dispute that the election petition presented in the present case on 16-4-1990 was within limitation and there was no non-compliance of sub-section (1) of Section 81 of the R.P. Act.”

14. In the case of **Tarun Prasad Chatterjee** (*supra*), the Hon’ble Apex Court has further observed that Section 9 of the General Clauses Act gives statutory recognition to the well-established principle applicable to the construction of statutes that ordinarily in computing the period of time prescribed, the rule observed is to exclude the first and include the last day.

15. In the light of the above discussion, in the considered opinion of this Court, Sections 9 and 10 of the General Clauses Act would apply in computing the period of limitation under Section 81(1) of the Representation Act.

16. Another logic for excluding the first day in computing the period would be that the petitioner should have full 45 days at his disposal as there isn’t any fixed time for

declaration of the results of the elections and sometimes the results are declared late in the evening.

17. Coming back to the facts of the present case, the results of the election were declared on 24/10/2019. In the light of the above discussion, the period of limitation of 45 days would start from 25/10/2019. The last day of the limitation would fall on 08/11/2019, which was Sunday, and therefore, the election petition, which was filed on the next day, i.e., on 09/11/2019 – Monday, is well within limitation.

18. With regard second issue of rejection of petition for not disclosing 'cause of action' and the necessity to plead material facts as to how the results of the election has been actually and materially affected, Shri Dangre, learned counsel, made the following submissions :

i. The title or prayer clause in the petition does not show that on what grounds the petitioner intends to challenge the said election. However, in para 33 of the petition, it is vaguely and bluntly alleged that the said election is to be declared void under Sections 100(1)(d)(i) & (iv) of the Representation Act. Bare look at the said provisions would show that this Court can declare the election of the returned candidate as void under the said provisions if the result of the election of the returned candidate has been materially affected

by the improper acceptance of any nomination or the result of the election of the returned candidate has been materially affected by any non-compliance with the provisions of the Constitution or the Representation Act or any Rules or Orders made under the said Act.

ii. Bare look at the petition would show that there are no particular averments or grounds much less a whisper in the petition alleging that the nomination of respondent No.2 was improperly accepted. It is the contention of respondent No.2 that although in para 33 of the petition there is flying reference of Clause (i) of sub-section 1(d) of Section 100 of the Representation Act, the petitioner did not set out any case on the said ground. Thus, it is the contention of respondent No.2 that the said ground cannot be pressed into service by the petitioner for trial, and the petition is liable to be dismissed at this stage only for lack of statement of material facts in this regard.

iii. Secondly, bare look at the petition would show that although the petitioner has made lame attempt to point out alleged infirmities in the information furnished by respondent No.2 in his affidavit filed alongwith nomination paper, there is no whisper or averments in the petition that which provisions of the Constitution or the Representation Act or Rules or orders are not complied in view of the said alleged infirmities.

19. With regard to cause of action, Shri Dangre, learned counsel, read out each and every para of the petition so as to demonstrate that the petition does not disclose cause of action as contemplated in law. It is further submitted that bare reading of contents in the petition would show that the petitioner did not give material facts and material particulars giving rise to or/ and constitution of the cause of action to file the petition. In support of his submission, the learned counsel relied on the some authorities which I propose to discuss in the later part of this judgment.

20. Per contra, Shri Bhangde, learned counsel for the petitioner, submitted that para 7 to 27 of the petition contain concise statements of facts. He submitted that the details of the information, suppressed or misrepresented by the returned candidate, have been stated in detail. He specifically mentioned about para 15 of the election petition.

21. With regard to cause of action, which can be said to have materially affected the election, Shri Bhangde, learned counsel for the petitioner, submitted that it is not necessary to plead and prove that election has been materially affected by improper acceptance of nomination form by the Returning Officer. In support of his submission, he placed reliance on the decision of this Court in the case of **Arun Dattatray Sawant Vs. Kisan Shankar Kathore (Election Petition No. 10/2004 decided**

on 16/08/2007). It is further submitted that the said decision of this Court has further been confirmed by the Hon'ble Apex Court in the case of **Kisan Shankar Kathore Vs. Arun Dattatray Sawant And Others, (2014) 14 SCC 162**. It is further submitted that whether the election has been materially affected or not is a question of fact, which would be adjudicated by this Court after recording of evidence, and cannot be decided at this stage. In conclusion, he submitted that the instant petition discloses cause of action as can be seen from the holistic reading of the petition.

22. I have considered the rival submissions. At the outset, the present issue pertains to 'rejection of plaint' for not disclosing cause of action. As per Order 7 Rule 11(a) of the Code of Civil Procedure, the plaint shall be rejected where it does not disclose a cause of action. Considering the nature of the issue, the same has to be examined on the basis of the averments made in the election petition only. The whole exercise of the Court would be to examine as to whether the petition deserves to be dismissed at this stage itself or that the matter needs to go to trial. It is well settled that the plaint has to be read as a whole to find out the cause of action. The holistic view is required to be taken to examine whether there is any cause to the petitioner to take an action. At the same time, the Court should be cautious of the clever drafting of the plaint which may create an illusion of presence of cause of action. The Hon'ble Apex Court in the case of **T. Arivandandam**

Vs. T.V. Satyapal And Another, (1977) 4 SCC 467 has held that if clever drafting of the plaint has created the illusion of a cause of action, nip it in the bud. Cause of action, in legal parlance, is understood as a bundle of facts, if traversed, the plaintiff is required to prove in order to get relief in his favour. For instance, in a suit for specific performance of a contract of sale of immovable property, the plaintiff has to plead and prove a compendium of facts to demonstrate cause of action, i.e., existence of agreement to sell of immovable property with proper description, consideration for sale, plaintiff's readiness and willingness to perform his part of the contract and defendant's avoidance for performing his part of the contract. These are the minimum facts which the plaintiff is required to plead and prove in order to get relief in his favour. In the absence of any one of these facts would lead to rejection of plaint for want of showing complete cause of action.

23. In the case in hand, it being an election petition, which is challenged under Section 100(1)(d)(i) of the Representation Act, before considering the submissions made on behalf of the rival parties, it would be advantageous to refer to the background of provisions of law and authorities thereon pertaining to the requirement of pleadings in an election petition.

24. First and foremost, PART V of the Representation Act deals with the Conduct of Elections, while Chapter I of the PART V consisting of Sections 30 to 39A, which deals with the Nominations of Candidates. Section 33 therein deals with presentation of nomination paper and requirement of a valid nomination. As per Section 33, each candidate shall deliver to the returning officer a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. Rule 4-A of the Rules of 1961 prescribes that the candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of Section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a notary in Form-26. This rule has been inserted by S. O. 935(E), dated 03-11-2002 (w.e.f. 03-09-2002).

Section 36 of PART V of the Act deals with scrutiny of nomination papers by the returning officer. As per Section 36(4), the returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

Section 100 of PART IV of the Representation Act under the heading “Disputes regarding elections” provides for grounds for declaring election to be void. In this petition, the

election of the returned candidate – respondent No.2 is challenged under Section 100(1)(d)(i) of the Representation Act. For ready reference, the said Section is reproduced 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 –

(a) XXXX

(b) XXXX

(c) XXXX

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

(i) by the improper acceptance of any nomination, or

(ii) XXXX

(iii) XXXX

(iv) XXXX

Section 83 of Chapter II of PART VI of the Representation Act pertains to the contents of an election petition. Section 83(1)(a) stipulates that every election petition shall contain a concise statement of ‘material facts’ on which

the petitioner relies. In a series of decisions of the Hon'ble Apex Court, more specifically in the case of **Hari Shanker Jain Vs. Sonia Gandhi, (2001) 8 SCC 233**, it is held 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. The Hon'ble Apex Court further held that 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 and 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 a full picture of the cause of action with such further information in detail so as to make the opposite party understand the case he will have to meet. (**Samant N. Balkrishna And Another v. George Fernandez And Others, 1969 (3) SCC 238**]. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

25. In **V.S. Achuthanandan Vs. P. J. Francis And Another, (1999) 3 SCC 737**, the Hon'ble Apex Court has held 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.

26. In this context, in the case of **Bhagwati Prasad Dixit 'Ghorewala' Vs. Rajeev Gandhi, (1986) 4 SCC 78**, the Hon'ble Apex Court has stated that "It is now well settled that in election petitions pleadings have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action it is liable to be rejected *in limine*."

The pleadings in the election petition have to be perused and appreciated strictly in terms the requirements of the Representation Act.

27. The Hon'ble Apex Court, in the case of **Jyoti Basu And Others Vs. Debi Ghosal And Others, (1982) 1 SCC 691**, has laid down that an election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is further held that it is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. It is further held that in the trial of election disputes, court is put in a strait-jacket. Thus the entire election

process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. Therefore, the pleadings need to satisfy the requirement of Section 83(1)(a) of the said Act to justify such an election petition to go to a full-fledged trial.

28. The Hon'ble Apex Court in the cases of **Ram Sukh Vs. Dinesh Aggrawal, (2009) 10 SCC 541** and **Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar, (2009) 9 SCC 310** has laid down that to clothe the election petition with a complete cause of action, the petitioner is required to plead all material facts and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the said Act. In the context of the question as to what could be said to be "material facts", the Hon'ble Apex Court has laid down that the election petitioner is required to state what can be categorized as *facta probanda* only and not *facta probantia*.

29. In the case of **Virender Nath Gautam Vs. Satpal Singh And Others, (2007) 3 SCC 617**, the Hon'ble Apex Court has observed that "the expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital',

'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus, (Third edn.); p.349]. The phrase 'material facts', therefore, may be said to be 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 the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

30. In the case of **M/s. Ganesh Trading Co. Vs. Moji Ram, AIR 1978 SC 484**, the Hon'ble Apex Court has held that a 'cause of action' is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. If any essential fact is lacking from averments in the plaint, the cause of action will be defective.

31. The aforesaid stringent requirement has been laid down because when considering the validity of an election of a returned candidate, the Court would exercise a power to withdraw the will of the majority of voters and an election petition ought not to be permitted to go to trial if it is found

that the pleadings are scarce under Section 83(1)(a) of the Representation Act. The Hon'ble Apex Court has observed in the case of **Azhar Hussain Vs. Rajiv Gandhi, 1986 (Supp) SCC 315** that the sword of Damocles need not be kept hanging over the head of the respondent unnecessarily, without point or purpose.

32. Now, I proceed to examine whether the pleadings of the election petition disclose any cause of action and raise a triable issue which should have been put to trial. Since this Court is considering the preliminary issue which is framed under Order 14 Rule 2 read with Order 7 Rule 11 of the Code of Civil Procedure, the same is to be examined on the basis of the averments made in the election petition only. As stated earlier, the whole exercise of the Court would be to examine as to whether it deserves to be dismissed at this stage itself or that the matter needs to go to trial. In the case of **T. Arivandandam (supra)** the Hon'ble Apex Court has held that if clever drafting of the plaint has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 of the Code of Civil Procedure, so also in the case of **D. Ramachandran Vs. R.V. Janakiraman And Others, (1999) 3 SCC 267**, the Hon'ble Apex Court observed that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection,

the averments in the petition should be assumed to be true, and the Court has to find out whether those averments disclose a cause of action or a triable issue as such. The Court cannot probe into the facts on the basis of the controversy raised in the counter. Rule 11 of Order 7 instructs the Court to reject the plaint where it does not disclose a cause of action.

33. In the instant petition, the allegations are with regard to non-disclosure of requisite information in the affidavit to be submitted alongwith the nomination paper by respondent No.2. The petition contains in all 40 paragraphs. The relief claimed is that the election of respondent No.2 from the parliamentary Kamptee Constituency be declared void. The first four paragraphs deal with the standing of the respective parties, the schedule, results of the elections and declaration of the returned candidate that respondent No.2 has secured the maximum votes in the elections. Para 5 deals with the submission of nomination form accompanied by an affidavit under the prescribed format. Para 6 states about the election of respondent No. 2 is void and is liable to be set aside on the grounds specified in para 7 to 33 therein. Para 34 deals with period of limitation. Para 35 deals with the sources of all the documents filed by the petitioner. Para 36 states that the cause of action accrued to the petitioner on 24.10.2019 when the results of the elections were declared. Para 37 to 40 are general in nature with regard to list of documents, Court fee, declaration and undertaking.

34. The pleadings in the petition are to be examined by keeping in mind the settled principles with regard to cause of action as discussed above. The contents in paragraphs 7 to 33 are the crux of the petition, which deal with the assertions with regard to the non-disclosure of certain information in the affidavit in Form-26 of the Rules of 1961. Each para from paragraphs 7 to 33 deals with separate issue with regard to the non-disclosure, and therefore, it is necessary to deal with them separately.

35. In para 7, the petitioner alleges that respondent No.2 was required to disclose all the details of his three children and their assets and liabilities under clause 7 onwards of the said affidavit as 'dependents' of him. The petitioner has given date of birth of these children, i.e., Roshni Sawarkar - 02/06/1993, Sheetal Sawarkar - 15/12/1995 and Bhushan Sawarkar - 16/08/1997. The learned counsel Shri Dangre vehemently raised objection for not specifying the entire facts constituting the cause of action. A perusal of the pleadings in this para at once would appear vague, equivocal, indefinite and unspecific inasmuch as it does not specify as to how the children, who appear apparently major on the day of filing of nomination paper, i.e., on 04/10/2019, are dependents of respondent No.2, and what are their assets and liabilities which the respondent No.2 has suppressed in the affidavit. The petitioner has failed to plead the basic facts as to what actual

information was suppressed by respondent No. 2. It is necessary for the petitioner to state concisely as to how these children are dependent on respondent No. 2 and details of their assets which have been kept undisclosed. The petition is lacking in stating these material particulars with regard to the dependency of the children and their assets.

36. In para 8, it is alleged that respondent No.2 has suppressed about the fact of dependency of his mother Smt. Rukhmabai Sawarkar, aged about 75 years, in his affidavit. It is further alleged that the mother of respondent No.2 is the owner of the property bearing Survey No. 792/2 in Village Dhanla, Tah. Mouda, District Nagpur ad measuring 0.93 square meter, and the said property is encumbered for the loan of Rs.1,50,000/-. To this, Shri Dangre, learned counsel for respondent No.2, has again questioned the absence of all the facts, which constitute cause of action on this ground.

37. In this para, even though the petitioner has mentioned about the property in the name of the mother Smt. Rukhmabai Sawarkar, however again, he has failed to plead as to how the mother is solely dependent on him. It ought to have been stated that there is no other sibling to respondent No.2 to take care of the mother and respondent No.2 is the only son on whom the mother is dependent. The petition is also silent about the father of respondent No. 2. In the opinion of this

Court, in the absence of aforesaid facts in the petition, the 'cause of action' cannot be said to have been completed. The petitioner has failed to bring a clear case which the respondent has to deal with about the dependency of his mother. On such vague and unspecific pleading, the cause of action in this regard is patently incomplete. Even if the assertion of the petitioner is accepted that respondent No. 2 has mother alive and she owns property, that itself is not sufficient to constitute a cause of action. The petitioner has to specifically plead all the basic relevant facts to indicate as to how mother of respondent No.2 is dependent on him. These facts are conspicuously absent in the petition.

38. In para 9, it is asserted that respondent No.2 has suppressed, in clause 4 of the affidavit, the Permanent Account Number (PAN) and the total income for last five financial years of his wife – Smt. Nisha Sawarkar. Similarly, the petitioner has suppressed all other details like bank accounts, balance therein, investments, vehicles, loans, movable and immovable assets etc. of the wife that are required to be discussed, and a remark 'निरंक' has been put in every column.

39. A perusal of para 9 would at once reflect that except PAN number of the wife of respondent No.2, the petitioner has failed to mention clearly as to the source of income of the wife of respondent No.2 and her bank accounts,

balance therein, vehicles and other assets. The pleadings are totally vague, equivocal and unspecific in this regard. It is for the petitioner to assert as to what substantial information, with regard to wife of respondent No.2, had been suppressed by respondent No.2 in his affidavit. The petition is clearly lacking in these basic material facts. Even if the pleadings of the petitioner in this regard is accepted as it is, to my mind, the same itself is not sufficient to constitute a cause of action. Holding a PAN number does not lead to an inference that the person must be having a source of income. It is for the petitioner to first plead the source of income of the wife of respondent No. 2 and then to plead this income of the wife has been suppressed by respondent No.2. This basic but crucial fact, necessary to constitute cause of action, is conspicuously absent in the petition.

40. In para 10, it is asserted that respondent No.2 has accounts bearing No.013010100002899 in Nagpur Nagrik Sahakari Bank and account No.915010030706080 in Axis Bank, and these accounts have not been disclosed in clause 7A of the affidavit. It is further asserted that the details of the bank accounts of respondent No.2 and deposits therein in the account number, have been suppressed.

41. On a careful perusal of the contents of this para, this Court is at a loss to find out the cause of action in this

regard. Firstly, he has not stated the source from which this information is gathered. Secondly, there is nothing in the petition about the authenticity and correctness of this information. Thirdly, except for giving the account numbers, the petitioner has failed to give further material particulars as to how these account numbers are in operation and respondent No.2 has balance amount in these accounts. The half - hearted pleading would not sufficient to constitute cause of action in this regard.

In the instant petition, one of the voters has challenged the election of the returned candidate on the sole ground of suppression of information of assets and liabilities. It is very much indispensable for the voter to come with a concrete case of suppression of material information. Only on the basis of feeble and half-hearted attempt on the part of the voter, who appears to carry animosity with the returned candidate, the returned candidate can not be called upon to face the full-fledged trial. The allegation regarding suppression of information are grave in nature, and therefore, it is necessary for the petitioner to spell out clearly the concrete and tangible case of suppression of facts. Even if it is presumed that respondent No.2 is having the aforesaid accounts in the banks as asserted by the petitioner, to my mind, holding of account in a bank, by itself, in the absence of further details, would not amount to suppression of information of a substantial

character. The petitioner has vaguely stated that respondent No.2 has done his election expenses from these accounts. As stated earlier, that is not sufficient.

42. Similarly, with regard to the allegations in para 11 about suppressing the details of insurance policies in the name of respondent No.2, his wife and his children, the pleading is absolutely silent as to what the petitioner has information about the insurance policies of respondent No.2 and his family. Only on the basis of indefinite allegations that respondent No.2 has suppressed insurance policies and details of it in the absence of further pleadings, the returned candidate can not be put to trial only on the ground that one of the voters is alleging that a column with regard to insurance policies is not filled up fully. As stated earlier, for constituting a cause of action, all the material facts must have to be stated, as the cause of action itself is a bundle of facts which the plaintiff has to prove, if traversed. Furthermore, it is pointed out from the affidavit by the learned counsel that respondent No.2 has stated information about insurance policy for himself and his wife in his affidavit.

43. In para 12, it is averred that respondent No.2 has suppressed, in clause 7B of the affidavit, the date of purchase of properties, and only the year of purchase is stated. This Court does not find any substantial non-disclosure on the part

of respondent No.2 for not stating the actual date, and only the year of purchase is stated. It appears that respondent has mentioned his source of property in the relevant clause 7B on the affidavit with all necessary details.

44. In paragraphs 13 and 14, the petitioner averred that respondent No.2 has not mentioned the correct market value of the property of Smt. Nisha Sawarkar as on 04/10/2019. According to the petitioner, the market value of the said property at Chirvha is at least Rs.20,00,000/-.

45. The pleading has to be with regard to the facts and not the opinions. What is the market value of a particular property is a 'relative term' depends upon various factors? The returned candidate can not be put to the trial only because one of the voters think that the market value of the property, disclosed by the candidate, is at least Rs.20,00,000/-, and therefore, he has deliberately not disclosed the correct market price.

46. In para 15, it is averred that respondent No.2 has deliberately shown his property at Survey Nos. 185/2, 3, 4, situated at Nimkheda, Tq. Mouda, District - Nagpur as agricultural property, while the said property was converted to non-agricultural use on 30/01/2002, and a building standing

thereon.

47. The learned counsel for respondent No.2 Shri Dangre conceded that due to an inadvertent mistake, the aforesaid property is filled up in the column provided for agricultural land and not in the column provided for non-agricultural property. However, he has submitted that respondent No.2 has given complete details about all his properties, and therefore, it is not the case of substantial non-disclosure. A perusal of clause 7B of the said affidavit would reflect that respondent No.2 has stated the following properties as immovable properties :

(i) Agricultural land at survey No.174/2 of village Manglitali, Tah. Mouda, District Nagpur, ad measuring 1.48 acre, and it is a joint family property of respondent No.2. The market value of the said property is Rs.9,00,000/-.

(ii) Agricultural land at survey No.219 of village Manglitali, Tah. Mouda, District Nagpur, ad measuring 5.38 acre, and it is a jointly owned property of respondent No.2. First purchased in 2007-08 for Rs.5,00,000/-, and the current market value of the said property is Rs.35,00,000/-.

(iii) Agricultural land at survey No.224/2 of village Manglitali, Tah. Mouda, District Nagpur, ad measuring 2.98 acre, and it is a jointly owned property of respondent No.2.

First purchased in 2007-08 for Rs.5,00,000/-, and the current market value of the said property is Rs.21,00,000/-.

(iv) Agricultural land at survey No.174/2 of village Mangliteli, Tah. Mouda, District Nagpur, ad measuring 1.48 acre, and it is a jointly owned property of respondent No.2. First purchased in 2007-08 for Rs.5,00,000/-, and the current market value of the said property is Rs.10,00,000/-.

(v) Agricultural land at survey No.660 of village Dhanla, Tah. Mouda, District Nagpur, ad-measuring 3.55 acre, and it is a joint family property of respondent No.2. First purchased in 2007-08 for Rs.5,00,000/-, and the current market value of the said property is Rs.25,00,000/-.

(vi) Agricultural land at survey No.543 of village Dhanla, Tah. Mouda, District Nagpur, ad measuring 0.19 acre, and it is a joint family property of respondent No.2. First purchased in 2007-08 for Rs.5,00,000/-, and the current market value of the said property is Rs.15,00,000/-.

(vii) Agricultural land at survey No.792/1 of village Dhanla, Tah. Mouda, District Nagpur, ad measuring 2.02 acre, and it is a joint family property of respondent No.2. First purchased in 2007-08 for Rs.5,00,000/-, and the current market value of the said property is Rs.14,00,000/-.

(viii) Agricultural land at survey No.794/1 of village Dhanla, Tah. Mouda, District Nagpur, ad measuring 4.49 acre, and it is a joint family property of respondent No.2. First purchased in 2007-08 for Rs.5,00,000/-, and the current

market value of the said property is Rs.30,00,000/-.

(ix) Agricultural land at survey Nos.185/2, 3, 4 of village Nimkheda, Tah. Mouda, District Nagpur, ad measuring 5.33 acre, and it is a jointly owned property of respondent No.2. First purchased in the year 2000 for Rs.5,00,000/-, and the current market value of the said property is Rs.30,00,000/-.

(x) A residential building at Mouja Dhanla, Tah. Mouda, District Nagpur at Plot No.696, ad measuring 2000 square feet and construction ad measuring 2000 square feet of ancestral property purchased in the year 2007 for Rs.6,00,000/-, and the current market value of the said property is Rs.15,00,000/-.

(xi) A residential building house No.21 at Mouja Shrikrishna Nagar, Wathoda layout, Nagpur, ad measuring 1845 square feet and construction ad measuring 2000 square feet of ancestral property purchased in the year 2007 for Rs.6,00,000/-, and the current market value of the said property is Rs.16,00,000/- and invested properties for Rs.10,00,000/-.

In the last column, he has stated the total market value of all the aforesaid properties at Rs.2,20,00,000/-.

48. Respondent No.2 has given detailed information about his various properties as per the requirements in the

form. Therefore, if respondent No.2 has failed to mention his N.A. properties properly in the column meant for N.A. properties and instead, he has shown the properties in the column meant for agricultural properties, in the considered opinion of this Court, would not lead to the inference that he has suppressed material information to mislead the voters to take a decision. Furthermore, there are no details, documents and authentic information about the alleged building standing thereon. The petitioner has vaguely stated that a huge building is standing thereon.

49. In paragraphs 16 to 27, the petitioner has pleaded that respondent No.2 has suppressed material information about his loan transactions by mortgaging the aforesaid properties and obtaining loan from Dena Bank, Dhanla. From the 7/12 extracts of the properties, the petitioner has given the following information about the loan transactions on the said properties :

Sr. No.	Description of property	Loan amount (in Rs.)	Bank name
1.	Property bearing Survey No.174/2 of village Mangliteli, Tah. Mouda, District Nagpur	6,00,000/-	Dena Bank, Dhanla
2.	Property bearing Survey No.219 of village Mangliteli, Tah. Mouda, District Nagpur	6,00,000/-	Dena Bank, Dhanla

3.	Property bearing Survey No.224/2 of village Mangliteli, Tah. Mouda, District Nagpur	6,00,000/-	Dena Bank, Dhanla
4	Property bearing Survey No.660 of village Dhanla, Tah. Mouda, District Nagpur	3,50,000/-	Dena Bank, Dhanla
5	Property bearing Survey No.743 of village Dhanla, Tah. Mouda, District Nagpur	3,50,000/-	Dena Bank, Dhanla
6	Property bearing Survey No.792/1 of village Dhanla, Tah. Mouda, District Nagpur	3,50,000/-	Dena Bank, Dhanla
7	Property bearing Survey No.794/1 of village Dhanla, Tah. Mouda, District Nagpur	2,70,000/-	Dena Bank, Dhanla
8	Property bearing Survey No.185/3 of village Nimkheda, Tah. Mouda, District Nagpur	7,80,000/- 15,00,000/-	Nagpur Nagri Sahakari Bank
9	Property bearing Survey No.185/4 of village Nimkheda, Tah. Mouda, District Nagpur	7,80,000/-	Nagpur Nagri Sahakari Bank
10	Property bearing Survey No.215/3 of village Mangliteli, Tah. Mouda, District Nagpur	99,000/-	Bank of India
11	Property bearing Survey No.216/2 of village Mangliteli, Tah. Mouda, District Nagpur	99,000/-	Bank of India

50. The learned counsel Shri Dangre has pointed out clause 8 in the affidavit of respondent No.2 and submitted that respondent No.2 has given all the information about the

liabilities of respondent No.2. In clause 8 of the impugned affidavit, the following information was given by respondent No.2 about his liabilities to the public financial institutions and the Government :

Sr. No.	Description	Self	Husband's name	Hindi Undivided Family	Dependent Person-1
		Shri Tekchand Sawarkar	Mrs. Nisha Sawarkar		
1	Bank (of financial institution / institutions) loan or amount due, name of bank or financial institution, outstanding amount, nature of loan	7,92,000/-	Nirank	Not applicable	Not applicable
	Dena Bank Dhanla, Tah. Mauda, Dist. Nagpur Loan Total Crop Loan 2016				
	Bank of Baroda, Dhanla, total gold loan 2019	2,25,000	Nirank	Not applicable	Not applicable
	Loans or dues of any person / organization other than those mentioned above, name (s), outstanding amount, nature of loan	Nirank	Nirank	Not applicable	Not applicable

	Any other obligations	Nirank	Nirank	Not applicable	Not applicable
	The total sum of liability	9,17,000	Nirank	Not applicable	Not applicable

51. It is not the case of the petitioner that whatever information respondent No.2 has given in column 8 is false information. It appears that respondent No.2 has filled up the columns as per its requirements, and his total liabilities he has written as Rs.9,17,000/-. It is for the petitioner to plead as to in what circumstances this information is wrong. The petitioner has only stated that respondent No.2 has suppressed all information about his loan transactions with Dena Bank on the aforesaid properties. The petition is absolutely silent about the information, which respondent No.2 has provided in clause 8 of the affidavit, is false and fictitious. The petitioner ought to have pleaded that the information, about the liability of respondent No.2 in the affidavit, is per se incorrect and ought to have specifically stated that on the date of submission of nomination paper, respondent No.2 was having liabilities of outstanding loan amount on different loan accounts. In the absence of specific case with regard to liabilities of respondent No.2, on the basis of vague pleading in the nature that respondent No.2 obtained loan from Dena Bank on his properties and the said loan is outstanding on the date of filling of nomination paper, cause of action is not completed. For these reasons, in the considered view of this Court, the pleading is not sufficient to constitute a cause of action on this

aspect requiring the returned candidate to undergo a trial.

52. The other remaining paragraphs from 28 to 33 are general and repetitive in nature alleging that respondent No.2 has not made real and complete disclosure of the information as required by the Representation Act and the Rules made thereunder.

53. Para 34 is with regard to limitation, and the same has already been dealt with at length while deciding the issue of limitation in the earlier part of this judgment.

54. Para 39 discloses the source of documents which the petitioner has availed. A perusal of the list of documents would reveal that apart from 7/12 extracts of the properties of respondent No.2, there are no other independent and authenticated documents in support of the pleadings of the petitioner with regard to the dependency of the children and mother of respondent No. 2, his accounts details, income details of the wife of respondent No.2, etc. The petition is lacking with the authenticity of data and figures in the petition. For seeking declaration of the election of the returned candidate as void, the returned candidate cannot be put to a full-fledged trial only for the sake of asking of the same by one of the voters, on the basis of his vague, equivocal and

unspecific pleadings.

55. For the reasons aforesaid, even if the pleadings in the petition is considered holistically, I don't find out cause of action of the nature required in the election petition. As stated earlier, in the case of **M/s. Ganesh Trading Co. (*supra*)**, the Hon'ble Apex Court has held that a 'cause of action' is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. If any essential fact is lacking from averments in the plaint, the cause of action will be defective. I have demonstrated by taking each issue of non-disclosure separately as to how the petition is lacking essential facts from the petition.

56. Insofar as the argument that the petitioner has failed to show as to how the results of the election have been materially affected so far as the returned candidate is concerned, the co-ordinate Bench of this Court in the case of **Md. Nafis s/o Shifat Khan Vs. Election Commission Of India Through Chief Election Commissioner and others (Civil Application (O) Nos. 753/2020 and 12/2021 in Election Petition No. 12/2019 decided on 26/02/2021)**, after considering exposition of law in various decisions, came to the conclusion that if the election of the returned candidate is challenged under section 100(1)(d)(i) of the Act of 1951 alleging improper acceptance of the nomination of the returned

candidate then on the same being proved it would sufficient to declare the election of the returned candidate to be void and it would not be necessary in such case to plead and prove that the result of the election insofar as it concerns the returned candidate has been materially affected. It is held that improper acceptance of the nomination form of the returned candidate itself materially affects the election. It is further observed that on the other hand where the election is challenged under Section 100(1)(d)(iv) of the Act of 1951 and non-compliance with the provisions of the Constitution of India or the Act of 1951 or any Rules or Orders made thereunder is alleged, it would be necessary to plead and prove that on account of such non-compliance the result of the election insofar as it concerns the returned candidate has been materially affected.

57. The learned counsel Shri Bhangde has laid much emphasis on the judgment of the co-ordinate Bench of this Court in the case of **Arun Dattatray Sawant** (*supra*). It is worthwhile to note that the decision of this Court in this case is after full trial. Moreover, the petitioner therein had averred each and every allegation of suppression and misrepresentation of the information in the petition alongwith the source and authenticity of the data by filing relevant documents in the petition. The co-ordinate Bench of this Court has expansively dealt with each and every aspect of the matter. It would be relevant to note the facts of the said case. In the said election

petition, the petitioner had given specified information/ details of the Criminal Case pending against the respondent - elected candidate, being Criminal Case No. 12/1997 under Sections 143, 147, 149, 325, 336, 504 and 506 of the Indian Penal Code and under Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 pending in the Court of the Judicial Magistrate, First Class, Ulhasnagar, which was not disclosed, and in order to show the source and authenticity of the information, the petitioner therein had filed supporting documents alongwith the petition. The pleading was specific in nature. The petitioner therein had given details of the dues owed by the respondent to the Maharashtra State Electricity Board on account of two unpaid bills for Rs.79,200/- and Rs. 66,250/- which the returned candidate had not disclosed in the affidavit. The petitioner had given the details of the properties owned by the wife of the respondent which were not disclosed, being Bunglow No. 866/4, situated in the limits of the Kulgaon Badlapur Municipal Council and the property at Bhilkhede, Taluka Jamner, District - Jalgaon. The petitioner had given details of the vehicle owned by his wife being Motor Vehicle No. MH-05-AC-555 - Mahendra Scorpio, as also the loan from Thane District Central Co-operative Bank, which the respondent had not disclosed in the affidavit. The petitioner had also not given details of the property being Survey No. 48, Hissa No.9, Plot No. 3 at Mouje - Kulgaon, District Thane purchased in the name of M/s. Padmavati Developers of which the respondent was a partner and which was not disclosed by

the respondent in the affidavit. Insofar as the property in the name of the wife of the respondent at Bhilkhede, Dist. Jalgaon is concerned, the joint purchaser of the said property was one Vimal Gokul Patil, wife of Gokul Patil, who was a Senior Inspector of Police and who was arrested in what is known as Telgi scam. It was therefore the case of the petitioner therein that it was for the said reason that the property in the name of the wife of the respondent was not disclosed. The Court, on appreciation of the evidence which was adduced at the trial of the said election petition, came to the conclusion that the allegation in respect of the wife of the respondent in respect of the purchase of the property at Bhilkhede could not be said to be proved. However, insofar as the other allegations are concerned, the Court held that the non-disclosure of the assets and liabilities was a defect of a substantial nature, as the respondent, by the said non-disclosure, had thereby violated the orders issued by the Election Commission, and the said fact would therefore amount to wrongful acceptance of the nomination of the respondent.

58. Insofar as the present petition is concerned, except the bald, vague and unspecific assertions with regard to the dependency of the children and mother of respondent No.2, the income of his wife, bald statement with regard to the alleged account numbers of respondent No. 2 without any source and authenticity of the figures of those of account

numbers and further details about those accounts, bald statements about the loan accounts of respondent No.2 without any further details of the outstanding amount on the date of the filling of the nomination form, the petition is lacking in material particulars so as to constitute cause of action. As per the provisions of the Representation Act, while scrutinizing the nomination forms, the returning officer has to see if there is any non-disclosure of any substantial character in the affidavit. Interestingly, the petitioner does not say that respondent No.2 has given any false information in the affidavit nor it is the case of keeping blank spaces in the prescribed format of affidavit. The case of the petitioner is based on the suppression of the material information. However, the petitioner has failed to demonstrate in the petition as to how there is suppression of information of material character. Even if what is stated in the petition is taken as a gospel truth, the election of respondent No.2 cannot be declared as void as this is not the case of suppression of information of substantial character so as to affect the decision of the voter. Fortunately or unfortunately, there are no allegations that respondent No. 2 has suppressed any criminal case pending against him nor is the case that respondent No.2 had indulged in corrupt practices so as to affect results of the elections in his favour.

59. In the above conspectus, it is thus clear, that the pleadings in the election petition do not satisfy the stringent

requirements of Section 83(1)(a) of the Representation Act, in the light of the law laid down by the Hon'ble Apex Court in that context. There are no details regarding the source of such information and data. No reference is made to any official source for such figures, thereby showing the vague nature of pleadings, which do not state any material facts. Upon traversing the entire election petition and upon applying the requirements of law as noted above, this Court has come to the considered conclusion that the election petition does not satisfy the requirements of Section 83(1)(a) of the Representation Act and that the cause of action, as required therein, has not been made out by the petitioner even for considering the petition to go to trial. The present election petition clearly does not satisfy the requirements as laid down by the Hon'ble Apex Court that material facts, presenting complete cause of action, 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 Representation Act. Therefore, I answer this issue in the affirmative, and resultantly, the election petition needs to be nipped in the bud, being a vexatious litigation, without having any cause of action. The petition stands rejected under Order 7 Rule 11(a) of the Code of Civil Procedure with costs.

60. In compliance with Section 103 of the Representation Act, the Registry is directed to intimate the substance of this decision to the Election Commission and the

Speaker of the State Legislature concerned within a period of 15 days and shall also send to the Election Commission an authenticated copy of this decision.

JUDGE

Sumit