



2025:DHC:663



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **EL.PET. 2/2022 & I.A. 1984/2023****MOHINDER SINGH**

.....Petitioner

Through: Petitioner-in-person
(M: 9013493225)

versus

DURGESH KUMAR AND ORS.

.....Respondents

Through: Mr. Gautam Narayan, Sr. Advocate
with Mr. Karan Sharma, Ms. Asmita
Singh, Mr. Mohit Siwach, Mr.
Rishikesh Kumar, and Ms. Sheenu
Priya, Advocates for R-1
Mob: 9999777847
Email: karan.sh70@gmail.com**CORAM:**
HON'BLE MS. JUSTICE MINI PUSHKARNA**JUDGMENT**
04.02.2025

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MINI PUSHKARNA, J:**I.A. 1984/2023 (Application under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 CPC)**

1. The instant petition has been filed challenging the election of respondent no.1 and seeking to set aside/cancel the bye-election of the assembly constituency, i.e., AC-39, Rajinder Nagar, Assembly Constituency in Delhi and praying that the election of respondent no.1 be declared as void. The petitioner has challenged the candidature of the respondent alleging non-compliance of election code and conduct by the respondent. It is alleged



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that the respondent filed a deficient nomination affidavit by concealing the name of his spouse. The present petition has been filed on account of inaction of the returning officer to take any action, despite multiple complaints by the petitioner in this regard.

2. It is to be noted that the petitioner had also filed his nomination from the same constituency and had polled 18 votes, thereby, losing to the returned candidate, respondent no. 1, who polled 40,319 votes.

3. By way of the present application, the respondent no.1 has prayed for rejection of the present Election Petition under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 (“CPC”).

4. In support of the application for rejection of the present petition, following submissions have been made, on behalf of respondent no.1:

4.1 The present petition is liable to be rejected, as on the face of it, the petition fails miserably to disclose any cause of action for declaring the election of respondent no.1 as null and void.

4.2 It is alleged by the petitioner that respondent no.1 is in violation of Section 125 and 126, read with Section 100 of the Representation of People’s Act, 1951 (“1951 Act”). However, the petitioner has not brought on record any facts, which would invite the rigors of any of the provisions. Election of a candidate cannot be challenged on vague and unsubstantiated allegations.

4.3 The petitioner has failed to disclose any basis or source of information, on which he has raised his allegations of alleged non-disclosure in the affidavit. The petitioner has failed to bring on record any document to show that the information provided by respondent no.1, is incorrect. The respondent no.1 has duly filled all the columns with the relevant



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information.

4.4 There are no allegations/averments in the entire petition, which can be subject matter of trial. There are no material particulars given, which could be tested and tried.

4.5 The petitioner's primary objection to election of the respondent, with respect to non-mentioning of name of the respondent's spouse in Form 26 filed with the nomination papers, is incorrect and without any proof, as the respondent had duly filled the said form and stated "not applicable" in the relevant column.

4.6 It is not the case of the petitioner that the respondent has committed any illegality which would have materially affected outcome of the election.

5. The stand of the petitioner, in response to the present application, is encapsulated, as follows:

5.1 The present petition has been filed in terms of Section 83 of the 1951 Act and the petitioner has duly informed the facts and grounds, on which the present petition has been filed.

5.2 The cause of action has been duly pleaded in the election petition, with respect to non-filing of all columns of nomination papers.

5.3 The basis for filing the present petition, as well as cause of action, has been properly disclosed. Therefore, none of the ingredients for rejection of petition are fulfilled. There is no merit in the application and the same deserves to be dismissed.

6. I have heard learned counsels for the parties and have perused the record.

7. The present application has been filed by respondent no.1 seeking dismissal of the present petition for failure to disclose a cause of action.



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8. It is to be noted that the petitioner has challenged the election of respondent no.1, mainly on two grounds. Firstly, the respondent did not disclose the name of his spouse in the nomination form and thereby concealed a 'grievous fact'. Secondly, the petitioner received a video on 19th June, 2022, through WhatsApp from one Arvind Kaushik, in which children were seen distributing election campaigning pamphlets of respondent no.1, at daily wages of ₹ 100/- per day.

9. As regards the first ground of the respondent no.1, pertaining to not mentioning the name of his spouse in his affidavit Form 26, this Court notes the submission of learned Senior Counsel for respondent no.1 that the said allegation is devoid of any material facts. The petitioner has failed to allege that the petitioner was in fact married on the said date, and yet suppressed the fact of his marriage, by not mentioning the name of his spouse at the time of filing the nomination form.

10. Perusal of the form of the respondent no.1 shows that in the column against name of the spouse, the respondent no.1 had written as 'not applicable'. Even if the submission made by learned Senior Counsel for the respondent no.1 that respondent no.1 was not married at that point of time, is not taken into account, and is ignored by this Court, even then, there is no material particular on record to suggest that any information has been suppressed by respondent no.1. There is no averment in the petition that a false statement has been made by the respondent no.1 in the nomination form or that the respondent no. 1 was married at the time of filing the said nomination.

11. Merely stating that the respondent no.1 has concealed the fact by not mentioning the name of his spouse in the nomination form, does not give



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rise to any cause of action, when, perusal of the said form shows that the respondent no.1 has duly stated, 'not applicable', in the column regarding name of the spouse. When there is no averment that the respondent no.1 was actually married at the material time and yet has suppressed the fact of his marriage, the averment in the petition in this regard, is plainly vague and clearly does not disclose any material particular.

12. Secondly, the petitioner has alleged that he received a WhatsApp message, with a video, where children are seen distributing the pamphlets of the respondent no.1 for ₹ 100/- per day. The said video has admittedly not been annexed with the petition. Further there are no particulars with regard to the date/time and place, where the children were seen distributing the pamphlets of the respondent. The pleading of the petitioner in this regard is totally silent *qua* material particulars, and fails to disclose a cause of action.

13. This Court also notes that as per the averments made in the petition, the said video was apparently sent to the Election Commission vide Email dated 19th June, 2022, however, the Commission has not taken any action pursuant thereto. In the absence of any material particulars and, importantly, the alleged video, which has not been placed on record, the averments with regard thereto, are again bald and do not disclose a cause of action.

14. It is no longer *res integra* that an Election Petition, which does not set out material particulars and does not disclose a cause of action, can be dismissed at the threshold. While dealing with an application filed under Order VII Rule 11 CPC, the basic question to be decided by the Court is as to whether a real cause of action has been set out in the plaint or something purely illusory has been stated. Thus, in the case of ***Sopan Sukhdeo Sable and Others Versus Assistant Charity Commissioner and Others, (2004) 3***



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SCC 137, it has been held as follows:

“xxx xxx xxx

10. *In Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557]* it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are germane : the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

11. *In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70]* it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See *T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467]*.)

13. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487]* only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

xxx xxx xxx”

(Emphasis Supplied)

15. It is trite law that an Election Petition shall contain a concise statement of material facts on which the petitioner relies. The material facts required to be stated are those facts which can be considered as material



supporting the allegations made. Material facts have been held to include positive statement of facts, and also positive averments of a negative fact, if necessary. Failure to plead material facts is fatal to an Election Petition. Thus, Supreme Court in the case of *Hari Shankar Jain Versus Sonia Gandhi*, (2001) 8 SCC 233, has held as follows:

“xxx xxx xxx

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. Balkrishna v. 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



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which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.

xxx xxx xxx”

(Emphasis Supplied)

16. Underscoring that entire and complete cause of action must be in the petition in the shape of material facts, Supreme Court in the case of **Samant N. Balkrishna and Another Versus George Fernandez, (1969) 3 SCC 238**, has held as follows:

“xxx xxx xxx

29. Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of Peoples Act. Here we have to consider Sections 81, 83 and 84 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. That as we have shown above creates the substantive right. Section 83 then provides that the election-petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also 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. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars? The word “material” shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars 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. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person



making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficiency of the words “material facts” will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be co-related to one of the heads of corrupt practice. Just as a complaint without disclosing a proper cause of action cannot be said to be a good complaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture.

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37. From our examination of all the cases that were cited before us we are satisfied that an election petition must set out a ground or charge. In other words, the kind of corrupt practice which was perpetrated together with material facts on which a charge can be made out must be stated. It is obvious that merely repeating the words of the statute does not amount to a proper statement of facts and the section requires that material facts of corrupt practices must be stated. If the material facts of the corrupt practice are stated more or better particulars of the charge may be given later, but where the material facts themselves are missing it is impossible to think that the charge has been made or can be later amplified. This is tantamount to the making of a fresh petition.

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(Emphasis Supplied)

17. The fact that the respondent no.1 wrote ‘not applicable’ against the



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column pertaining to 'name of spouse', in no manner holds out against the respondent no.1. The said expression used by the respondent no.1 clearly indicates the status of the respondent no.1, as being not married. In the light of the said factual position, it was not possible for respondent no.1 to write the name of his spouse, where none existed. This Court also notes that in the column pertaining to 'HUF' and 'Dependant', the respondent no.1 had written, 'not applicable'. The aforesaid again clearly indicated that the respondent no.1 was neither part of any HUF, nor did he have any dependants. Therefore, when the respondent no.1 had already written 'not applicable' in the column against the 'name of the spouse', no cause of action has been made out by the petitioner to contend that the column pertaining to 'name of the spouse' has been left blank.

18. In a case where objection was raised regarding the format of the affidavit filed by the returning candidate, the Supreme Court rejected such objection noting that the returned candidate had written 'nil' as regards the information pertaining to any dues owed by the returned candidate to any financial institution or government authority. The Supreme Court noted that there was no positive averment in the election petition that the returned candidate actually had any outstanding liability to a financial institution or government authority. Thus, holding that where an affidavit has been filed by the candidate and what is pointed out is only a defect in the format of the affidavit or the like, the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character, Supreme Court in the case of *Shambhu Prasad Sharma Versus Chandradas Mahant and Others, (2012) 11 SCC 390*, has held as follows:

“xxx xxx xxx



15. Suffice it to say that the case pleaded by the appellant was not one of complete failure of the requirement of filing an affidavit in terms of the judgment of this Court and the instructions given by the Election Commission but a case where even according to the appellant the affidavits were not in the required format. What is significant is that the election petition did not make any averment leave alone disclose material facts in that regard suggesting that there were indeed any outstanding dues payable to any financial institution or the Government by the returned candidate or any other candidate whose nomination papers were accepted. The objection raised by the appellant was thus in the nature of an objection to form rather than substance of the affidavit, especially because it was not disputed that the affidavits filed by the candidates showed the outstandings to be nil.

16. The directions [(2002) 5 SCC 294] , [(2003) 4 SCC 399] issued by this Court, and those issued by the Election Commission make the filing of an affidavit an essential part of the nomination papers, so that absence of an affidavit may itself render a nomination paper non est in the eye of the law. But where an affidavit has been filed by the candidate and what is pointed out is only a defect in the format of the affidavit or the like, the question of acceptance or rejection of the paper shall have to be viewed in the light of sub-section (4) of Section 36 of the Act which reads:

“36. (4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.”

17. Even the instructions issued to the Returning Officers point out that a nomination paper shall not be rejected unless the defect is of a substantial character. The instructions issued to the Returning Officers in the Handbook published by the Election Commission enumerate, though not exhaustively, what can be said to be grounds for rejection of the nomination papers. Para 10.1(vii) reads:

“10.1 You must reject a nomination paper, if:

(vii) The nomination paper is not substantially in the prescribed form, or

***”

18. From the above it is evident that the form of the nomination papers is not considered sacrosanct. What is to be seen is whether there is a substantial compliance with the requirement as to form. Every departure from the prescribed format cannot, therefore, be made a



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ground for rejection of the nomination paper.

19. In the case at hand, the appellant alleges that the affidavit did not in the prescribed format state whether the candidates had any outstanding liabilities qua financial institutions or the Government. Now a departure from the format may assume some importance if the appellant alleged that there were such outstanding liabilities which were concealed by the candidates. That, however, is not the case of the appellant. Any departure from the prescribed format for disclosure of information about the dues, if any, payable to the financial institutions or the Government will not be of much significance, especially when the declaration made by the returned candidate in his affidavit clearly stated that no such dues were recoverable from the deponent. The departure from the format was not, in the circumstances, of a substantial character on which the nomination papers of the returned candidate could be lawfully rejected by the Returning Officer.

xxx xxx xxx”

(Emphasis Supplied)

19. Likewise, in the present case, the respondent no.1 has stated against the name of the spouse as ‘not applicable’. The petitioner has raised the objection that the respondent no.1 has not disclosed the name of his spouse in the nomination form, as one of the grounds for challenging the election of the respondent no.1. However, in the petition, petitioner has neither made any positive averment that the petitioner was indeed married at that point of time, nor has indicated the name of the spouse of respondent no.1 in the petition, which the respondent no.1 failed to disclose. Therefore, it is clear that no cause of action has been disclosed by the petitioner, in this regard.

20. Similarly, the second ground for challenging the election of respondent no.1 also does not disclose any cause of action in the absence of any material particulars. The averment regarding the petitioner having received a video through WhatsApp message, related to distribution of pamphlets by children for election campaigning of respondent no.1, does not give rise to any cause of action, in the absence of the video in question and



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by failure of the petitioner to give any material particulars with regard to the alleged video.

21. Delving on the issue of disclosing complete cause of action with full and complete material facts in the case of an Election Petition in view of the same being a serious remedy, Supreme Court in the case of ***Hardwari Lal Versus Kanwal Singh, (1972) 1 SCC 214***, has held as follows:

“xxx xxx xxx

22. 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.

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.**

xxx xxx xxx”

(Emphasis Supplied)

22. Tested on the anvil of the aforesaid judgments, it is manifest that the Election Petition filed by the petitioner lacks material particulars. The petitioner has failed to assert that the respondent no.1 was indeed married at



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the time of filing of his nomination and has failed to disclose the name of his spouse, despite being married. Likewise, no particulars with regard to the date and time and other details as regards the allegation of children distributing the pamphlets of respondent no.1, have been given in the petition. Thus, it emerges clearly that the petitioner has not asserted the material facts, which are required to maintain the present Election Petition.

23. In view of the aforesaid discussion, it is held that the present petition does not disclose any cause of action. The present application is allowed and the instant petition is accordingly, rejected under Order VII Rule 11(a) CPC.

24. The present petition, along with pending applications, is accordingly, disposed of, in terms of the aforesaid.

**(MINI PUSHKARNA)
JUDGE**

**FEBRUARY 4th, 2025
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