



2025:DHC:664



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ EL.PET. 4/2022 & I.A. 432/2023, I.A. 17421/2023

RAMESH KUMAR KHATRI

.....Petitioner

Through: Petitioner-in-person



versus

DURGESH PATHAK

.....Respondent

Through: Mr. Gautam Narayan, Sr. Advocate
with Mr. Karan Sharma, Ms. Asmita
Singh, Mr. Mohit Siwach, Mr.
Rishikesh Kumar, and Ms. Sheenu
Priya, Advocates**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****JUDGMENT**% **04.02.2025****MINI PUSHKARNA, J:****I.A. 432/2023 (Application under Order VII Rule 11(a) and (d) of CPC)**

1. The instant Election Petition has been filed under The Representation of the People Act, 1951 ("1951 Act") with a prayer to set aside the election of the respondent no. 1 held in AC-39, Rajinder Nagar, Assembly Constituency, thereby, declaring the said election as null and void. Additionally, the petitioner has also prayed for debarring the respondent no. 1 from contesting Assembly Elections for six years, as per Section 8(A) of the 1951 Act.



2. By way of the present petition, it is alleged that the respondent no. 1 has shown fabricated expenses in the day-to-day expenditure register. The respondent no. 1 has not lodged true accounts of expenditure incurred on refreshment, hoarding, banners, pamphlets, brooms, etc. in his election expenditure register.

3. The present application has been preferred on behalf of the respondent no. 1 under Order VII Rule 11(a) and (d) of Code of Civil Procedure, 1908 (“CPC”) for rejection of the present petition, on the ground that the same does not disclose any cause of action and being barred by law.

4. On behalf of the applicant/respondent no. 1, it has been submitted as follows:

4.1 The petition fails to disclose any cause of action for declaring the election of the respondent, as null and void or for debarring the respondent from contesting the elections for six years.

4.2 Mere non-compliance of Sections 77(1) and 77(2) of the 1951 Act, is not a corrupt practice, to attract Section 123 of the 1951 Act. In terms of Section 123(6) of the 1951 Act, corrupt practice only includes incurring or authorising of expenditure in contravention of Section 77 of the 1951 Act, which is beyond the prescribed limit.

4.3 The Election Petition is reiteration of information which is in public forum. The petitioner has only given a list of events and has made wide over-arching allegations. The allegations made by petitioner are in the nature of fishing and roving exercise.

4.4 Averments made in the petition are vague, without any supporting material and do not raise any triable issue.

5. Per contra, on behalf of the petitioner, it has been contended as



follows:

5.1 The respondent no. 1 has shown fabricated expenses in the day-to-day expenditure register. The respondent no. 1 has not lodged true accounts of the expenditure.

5.2 Each contesting candidate has to maintain a day-to-day election expenditure register, but the respondent no. 1 has fabricated the records of election expenditure register.

5.3 An amount of ₹ 15 Lac was credited to the account of respondent no. 1 on 07th June, 2022, but the respondent no. 1 had already spent lacs of rupees before the said amount was credited in his account, which was never shown by respondent no. 1 in any part of the election expenditure register.

5.4 The respondent no. 1 knowingly showed no other expenses other than the stamp duty and notary for filing his nomination. No expenses of conveyance, i.e., car, petrol, refreshment, etc. was shown by him in the day-to-day expenditure register for 03rd June, 2022.

5.5 On 03rd June, 2022, the respondent had shown ₹ 20,000/- cash in hand in affidavits filed by him, but he had paid ₹ 10,310/- on 03rd June, 2022 for nomination, stamp paper and notary. When he had already paid the aforesaid amount on 03rd June, 2022, in his affidavit filed on 06th June, 2022, he again showed ₹ 20,000/- cash in hand, i.e., the exact same amount in his bank account. On account of the same, it is clear that the election expenses shown by respondent in his day-to-day election expenditure, are false and fabricated.

5.6 On 03rd June, 2022, the respondent showed no expenses in the day-to-day expenditure register for Pad Yatra (Campaigning) in the Buddh Nagar Area, Bihari Enclave, Toda Pur Harbhajan Enclave, with more than



20 persons with party's cap, pamphlets, flags and party's muffler.

5.7 On 04th June, 2022, the respondent no. 1 knowingly showed no expenses for campaigning in the day-to-day expenditure register, which is not sustainable in the eyes of law, as the respondent had done Pad Yatra with approximately 100 persons with flags and banners in Rajiv Gandhi Camp area of Rajinder Nagar Assembly Constituency. The respondent no. 1 has not lodged true accounts of expenditure incurred on refreshment, hoardings, banners, pamphlets, etc. in his election expenditure register.

5.8 The respondent no. 1 had failed to show the details of loan, gift and donation received from the concerned persons with his correct address, name and place in correct manner.

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

7. At the outset, this Court notes that the present Election Petition has been filed on the basis that the respondent no. 1 indulged in corrupt practice, by not maintaining proper accounts or accurately disclosing the expenditure undertaken by him. On this basis, the petitioner is seeking setting aside of the election of the respondent no. 1 held in the constituency of Rajinder Nagar Assembly AC-39, on 23rd June, 2022. The petitioner is also seeking disqualification of the respondent from contesting any election for a period of six years.

8. It is to be noted that the petitioner had also filed his nomination from the same constituency. The petitioner polled 22 votes and lost to the respondent no. 1, who polled 40,319 votes.

9. The present application has been preferred by the respondent no. 1 under Order VII Rule 11(a) and (d) of the CPC read with *inter alia* Section



83 of the 1951 Act, seeking dismissal of the petition for failure to disclose a cause of action and being barred by law.

10. Under Section 100(1)(b) of the 1951 Act, election of a returned candidate can be countermanded on the basis that a corrupt practice has been committed by him or his election agent. Section 100(1)(b) of the 1951 Act, reads as under:

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

... ..

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

xxx xxx xxx”

11. Perusal of the Election Petition shows that the allegations raised by the petitioner against the respondent no. 1 are that the respondent no. 1 failed to maintain proper accounts of the election expenditure or to make an accurate disclosure of the expenses.

12. Section 123 of the 1951 Act defines corrupt practice. With regard to the aspect of expenditure, the said Section stipulates that incurring or authorising of expenditure, in contravention of Section 77, constitutes corrupt practice. Section 123(6) of the 1951 Act, reads as under:

“123. Corrupt practices.— *The following shall be deemed to be corrupt practices for the purposes of this Act:—*

xxx xxx xxx

(6) The incurring or authorising of expenditure in contravention of Section 77.

xx xxx xxx”

13. Under Section 77 of the 1951 Act, a candidate is obliged to maintain a separate account of the expenditure incurred. The said Section reads as



under:

“77. Account of election expenses and maximum thereof.—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between 195[the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

[Explanation 1.—For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section;

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of Section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.—For the purposes of clause (a) of Explanation 1, the expression “leaders of a political party”, in respect of any election, means,—

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral



Officers of the State, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.]

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.”

14. Reading of the aforesaid Section makes it evident that every candidate at an election, shall keep a separate and correct account of all expenditure, in connection with the election, incurred or authorized by him, or by his election agent. Further, in terms of Section 77(3) of the 1951 Act, the total of the said expenditure shall not exceed such amount, as may be prescribed.

15. However, every contravention of Section 77 of the 1951 Act, does not constitute a corrupt practice. As per the law laid down by the Supreme Court, contravention of Sections 77(1) and 77(2) or the failure to maintain correct accounts with the prescribed particulars, does not fall within the definition of corrupt practice, as defined in Section 123(6) of the 1951 Act. It is only if the candidate incurs or authorizes expenditure in excess of the prescribed amount in contravention of Section 77(3) of the 1951 Act, that a candidate would be considered to have committed corrupt practice in terms of Section 123(6) of the 1951 Act.

16. Thus, Supreme Court in the case of ***Dalchand Jain Versus Narayan Shankar Trivedi and Another, (1969) 3 SCC 685***, has held as follows:

“xxx xxx xxx

13. Counsel for Respondent 1 contends that as the appellant did not keep correct account under Section 77(1) and as his return of election expenses is false in material particulars the appellant committed the corrupt practice under Section 123(6). We are unable to accept this contention.



14. Section 123(6) lays down that “the incurring or authorising of expenditure in contravention of Section 77” is a corrupt practice. Every contravention of Section 77 does not fall within Section 123(6). Section 77 consists of three parts. Section 77, sub-section (1) requires the candidate to keep a separate and correct account of all election expenses incurred or authorised by him within certain dates. Section 77, sub-section (2) provides that the account shall contain such particulars as may be prescribed. Section 77, sub-section (3) requires that the total of the said expenditure shall not exceed the prescribed amount. Section 123(6) is related to Section 73(3). If the candidate incurs or authorises expenditure in excess of the prescribed amount in contravention of Section 77(3) he commits corrupt practice under Section 123(6). The contravention of Section 77, sub-sections (1) and (2) or the failure to maintain correct accounts with the prescribed particulars does not fall within Section 123(6). See Sri Krishna v. Sat Narain [CA No 1321 of 1967, decided on 22-3-68] . The same opinion has been expressed in several decisions of the High Courts, see Savitri Devi v, Prabhawati Misra; [15 ELR 358, 369] N.L. Verma v. Muni Lal; [15 ELR 495, 499] Narasimhan v. Natesa [AIR 1959 Mad 514, 517-518] and the cases referred to therein.

15. Section 124(4) as it stood before its amendment by Act 27 of 1956 provided that the making of any return which was false in material particulars was a minor corrupt practice. That provision has now been deleted and the submission of an incorrect return of expenses is no longer a corrupt practice.

xxx xxx xxx”

(Emphasis Supplied)

17. There is no averment in the Election Petition that the respondent no. 1 has spent for the election, an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the respondent no. 1 to give true and correct accounts of the expenditure. The petitioner has annexed certified copy of the accounts, as submitted by the respondent no. 1, to the competent authority. Perusal of the said documents filed along with the Election Petition by the petitioner, discloses that the respondent no. 1 had incurred lesser expenditure as per the record maintained by the representatives of the Election Commission of India, than



what was claimed by the respondent no. 1.

18. Perusal of the Register for Maintenance of day-to-day accounts of election expenditure by contesting candidates, as filed along with the petition, shows that inspections of the said register containing the accounts of election expenditure by the respondent no. 1, was conducted on three separate occasions by the representative of the Election Commission of India, and no fault whatsoever was found with the accounts maintained by the respondent no. 1.

19. Holding that failure on the part of the returned candidate to maintain accounts, as required by Sections 77(1) and 77(2) of the 1951 Act, will in no case affect the result of the election and does not fall within the scope of corrupt practice, the Supreme Court in the case of ***L.R. Shivaramagowda and Others Versus T.M. Chandrashekhar (Dead) by LRs and Others, (1999) 1 SCC 666***, has held as follows:

“xxx xxx xxx

10. That apart, it is rightly pointed out by the appellant's counsel that in order to declare an election to be void under Section 100(1)(d)(iv), it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the Act or of the Rules. We have already extracted para 39 of the election petition which is the only relevant paragraph. One will search in vain for an averment in that paragraph that the appellant had spent for the election an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the appellant to give true and correct accounts of expenditure. In the absence of either averment, it was not open to the appellant to adduce evidence to that effect. It cannot be denied that the two matters referred to above are material facts which ought to find a place in an election petition if the election is sought to be set aside on the basis of such facts.

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18. We shall now proceed to the second limb of the argument of the



appellant's counsel. The High Court has held that the appellant had not maintained a true and correct account of expenditure incurred or authorised and the same amounted to corrupt practice. "Corrupt practices" have been set out in Section 123 of the Act. According to the first respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section, the incurring or authorising of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Elections Rules, 1961 sets out the particulars to be contained in the account of election expenses. **Sub-sections (1) and (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Elections Rules prescribes the maximum limit for any Assembly Constituency. In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-section (1)(b) of Section 100 relates to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. In order to bring a matter within the scope of sub-section (1)(b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section (3) of Section 77, i.e., the incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Sections 77(1) and (2) would also fall within the scope of Section 123(6). Consequently, it cannot fall under Section 100(1)(b). The attempt here by the first respondent is to bring it within Section 100(1)(d)(iv). The essential requirement under that sub-section is that the result of the election insofar as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Sections 77(1) and (2) will in no case affect, and much less materially, the result of the election.**

19. This view has been expressed by this Court in *Dalchand Jain v. Narayan Shankar Trivedi* [(1969) 3 SCC 685]. **A Bench of three Judges held that it is only sub-section (3) of Section 77 which**



can be invoked for a corrupt practice under Section 123(6) and the contravention of Section 77 sub-sections (1) and (2) or the failure to maintain correct accounts with the prescribed particulars does not fall under Section 123(6). The Bench has referred to several earlier decisions of the High Court and the decision of this Court in *Shri Krishan v. Sat Narain* [37 ELR 13].

xxx xxx xxx”

(Emphasis Supplied)

20. Applying the aforesaid law, even if the allegations made by the petitioner are taken to be *prima facie* correct, these would not constitute a ground for countermanding the election under Section 100(1)(b) of the 1951 Act. The petitioner has made allegations in the petition that the respondent no.1 has not maintained proper account of his election expenditure. However, there is no allegation whatsoever to the effect that the respondent no.1 has spent more than the prescribed maximum amount in terms of Section 77(3) of the 1951 Act. Even if the allegations made in the petition regarding not maintaining proper account is established, that would still not amount to constituting a corrupt practice, in terms of the law laid down by the Supreme Court. Accordingly, the petition does not disclose any cause of action.

21. It is settled law that an election petition, which does not set out material facts as required by Section 83(1)(a) of the 1951 Act and, therefore, does not disclose a cause of action, can be dismissed at the threshold. Thus, Supreme Court in the case of *Ram Sukh Versus Dinesh Aggarwal, (2009) 10 SCC 541*, has held as follows:

“xxx xxx xxx

18. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The



object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail.

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24. It needs little reiteration that for the purpose of Section 100(1)(d)(iv), it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the first respondent was materially affected due to the said omission on the part of the Returning Officer. Unfortunately, such averment is missing in the election petition.

xxx xxx xxx”

(Emphasis Supplied)

22. Underscoring that material pleadings have to be made so as to prove that due to the alleged corrupt practice, the election has been vitiated in a manner that the petitioner could have been returned as a winning candidate, the Supreme Court in the case of *Anil Vasudev Salgaonkar Versus Naresh Kushali Shigaonkar*, (2009) 9 SCC 310, has held as follows:

“xxx xxx xxx

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

51. This Court in Samant N. Balkrishna case [(1969) 3 SCC 238] has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a



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

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55. In *Harkirat Singh v. Amrinder Singh* [(2005) 13 SCC 511] this Court again reiterated the distinction between “material facts” and “material particulars” and observed as under: (SCC p. 527, paras 51-52)

“51. A distinction between ‘material facts’ and ‘particulars’, however, must not be overlooked. ‘Material facts’ are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. ‘Particulars’, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. ‘Particulars’ thus ensure conduct of fair trial and would not take the opposite party by surprise.

52. All ‘material facts’ must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.”

56. In *Sudarsha Avasthi v. Shiv Pal Singh* [(2008) 7 SCC 604] this Court observed as under: (SCC p. 612, para 20)



“20. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose.”

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

58. There is no definition of “material facts” either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. **In a series of judgments, this Court has laid down that all facts necessary to formulate a complete cause of action should be termed as “material facts”. All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. “Material facts” in other words mean the entire bundle of facts which would constitute a complete cause of action.** This Court in Harkirat Singh case [(2005) 13 SCC 511] tried to give various meanings of “material facts”. The relevant para 48 of the said judgment is reproduced as under: (SCC pp. 526-27)

“48. 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 (3rd Edn.), p. 349.] The phrase ‘material facts’, therefore, may be said to be those facts upon which a party relies for its 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.”

xxx xxx xxx

60. According to the appellant, in the election petition, there was no



avermment whether the bore wells were dug with the consent and/or active knowledge of the appellant. This averment was absolutely imperative and the failure to mention such an important averment in the petition is fatal for the election petitioner (the respondent herein) and the election petition is liable to be summarily dismissed on that ground.

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

62. When we apply the aforementioned test to the election petition in this case, then the conclusion becomes irresistible that the election petition lacks the materials facts. The election petition read as a whole does not disclose any cause of action.

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(Emphasis Supplied)

23. The Supreme Court has consistently held that material facts consist of all those facts which are necessary to plead, for a court to decide the petition in favour of the petitioner, even if the respondent has failed to appear to defend himself. Thus, where no cause of action is established and no material facts and particulars have been given, then in such a case, the election petition is liable to be dismissed at the threshold.

24. Elucidating the authority of the court to dismiss an election petition if the same does not disclose material facts and particulars and cause of action, the Supreme Court in the case of ***Azhar Hussain Versus Rajiv Gandhi, 1986 SCC OnLine SC 394***, has held as follows:

“xxx xxx xxx

12. Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of



the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. **The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action.** Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. **The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matter pertaining to ordinary civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections.** So long as the sword of Damocles of the election petition remains hanging an elected member of the legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of



*being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to win the vote of the people but also to win the vote of the court in a long drawn out litigation before he can wholeheartedly engage himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as hindrance if he be entrusted with some public office in his elected capacity. He may even have occasion to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern mettle, the constraint introduced by the pendency of an election petition may have some impact on his subconscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the nation, the controversy is set at rest at the earliest, if the facts of the case and the law so warrant. **Since the court has the power to act at the threshold the power must be exercised at the threshold itself in case the court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law.** To wind up the dialogue, to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled.*

xxx xxx xxx”

(Emphasis Supplied)

25. The fundamental rule underlying Order VII Rule 11 CPC is that a



court is required to examine the allegations made in the petition alone. It is the petition which must *ex facie* disclose cause of action, on the basis of which the case would proceed further for trial. However, where the allegations made in the petition are taken to be true and correct on the face of it, and the same does not disclose any cause of action or triable issue, then said petition would be liable to be dismissed, by invoking the authority under Order VII Rule 11 CPC. Thus, the Supreme Court in the case of ***Karim Uddin Barbhuiya Versus Aminul Haque Laskar and Others, 2024 SCC OnLine SC 509***, has held as follows:

“xxx xxx xxx

12. At the outset, it may be noted that as per the well settled legal position, *right to contest election or to question the election by means of an Election Petition is neither common law nor fundamental right. It is a statutory right governed by the statutory provisions of the RP Act. Outside the statutory provisions, there is no right to dispute an election. The RP Act is a complete and self-contained code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of Civil Procedure Code are applicable to the extent as permissible under Section 87 of the RP Act.*

13. It hardly needs to be reiterated that in an Election Petition, 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 dismissed in limine. It may also be noted that the cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the RP Act. As held in Bhagwati Prasad Dixit ‘Ghorewala’ v. Rajeev Gandhi⁴ and in Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi⁵, if the allegations contained in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the pleadings are liable to be struck off and the Election Petition is liable to be rejected under Order VII, Rule 11 CPC.

xxx xxx xxx

24. As stated earlier, in Election Petition, the pleadings have to be precise, specific and unambiguous. If the allegations contained in Election Petition do not set out grounds as contemplated in Section



100 and do not conform to the requirement of Section 81 and 83 of the Act, the Election Petition is liable to be rejected under Order VII, Rule 11 of CPC. *An omission of a single material fact leading to an incomplete cause of action or omission to contain a concise statement of material facts on which the Election petitioner relies for establishing a cause of action, would entail rejection of Election Petition under Order VII Rule 11 read with Section 83 and 87 of the RP Act.*

xxx xxx xxx”

(Emphasis Supplied)

26. Consequently, it is held that the present petition does not disclose any cause of action. The only allegations that have been made in the election petition, are pertaining to improper maintenance of accounts by the respondent, which as per the law laid down by the Supreme Court, does not fall within the scope of ‘corrupt practice’ as defined in Section 123(6) of the 1951 Act.

27. The present application is allowed and the petition is rejected, in terms of Order VII Rule 11 (a) and (d) of CPC.

28. The present petition, along with the pending applications, is accordingly, disposed of.

**(MINI PUSHKARNA)
JUDGE**

FEBRUARY 04th, 2025

KR/au



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



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



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.



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***



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



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 plaint without disclosing a proper cause of action cannot be said to be a good plaint, 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.

xxx xxx xxx

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.

xxx xxx xxx”

(Emphasis Supplied)

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



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



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



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
KR**