

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5679 OF 2009
(Arising out of SLP(C) No.18893 of 2008)

ANIL VASUDEV SALGAONKAR

Appellant (s)

VERSUS

NARESH KUSHALI SHIGAONKAR

Respondent(s)

Date: 20.08.2009 This appeal was called on for judgment today.

For Appellant(s)

Mr. Amarjit Singh Bedi, Adv.

For Respondent(s)

Ms. Binu Tamta, Adv.

Hon'ble Mr. Justice Dalveer Bhandari pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Harjit Singh Bedi.

Leave granted.

The appeal is allowed in terms of the signed judgment.

(Sukhbir Paul Kaur)
Court Master

(Neeru Bala Vij)
Court Master

(Signed Reportable Judgment is placed on the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5679 OF 2009
(Arising out of SLP (Civil) No.18893 of 2008)

Anil Vasudev Salgaonkar

.. Appellant

Versus

Naresh Kushali Shigaonkar

.. Respondent

JUDGMENT

Dalveer Bhandari, J.

1. Leave granted.

2. This appeal is directed against the judgment and order of the High Court of Bombay Bench at Goa passed in Election Application No.5 of 2007 in Election Petition No.1 of 2007 on 4th July, 2008.

3. The respondent herein has filed an election petition in the High Court of Bombay at Goa challenging the election of the appellant (respondent no.1 in the election petition) to Goa Legislative Assembly from 35th Sanvordem Assembly Constituency. In the assembly elections held on 2nd June, 2007, the appellant secured overwhelming mandate from the electorates securing 10705 votes out of total 19657 votes polled whereas, his nearest rival (respondent no.2 in the election petition) set up by the Bharatiya Janata Party secured only 3782 votes and the respondent (election petitioner) polled only 275 votes and forfeited his deposits. In the election petition before the High Court, a prayer has been made to declare the election of the appellant herein as null and void on ground of corrupt practices in which the appellant indulged during the elections.

The allegations in the petition are as under:

- i) The returned candidate with an intent to secure the votes of the voters of his constituency got 13 bore wells constructed at his own cost in the seven villages of the said constituency;
- ii) The returned candidate had also provided ambulances to the villages namely Collem, Sanvordem, Mollem, Dharbandora and Khirpal Dabhal as a part of his action in luring voters to vote in his favour.

4. It has also been alleged that the appellant indulged in the abovementioned corrupt practices and incurred election

expenditure in contravention of section 77 of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") thereby crossing the limit of Rs.5,00,000/- prescribed under the Act and the Rules framed thereunder.

5. The written statement to the election petition was filed by the appellant in the High Court. The allegations mentioned in the election petition were specifically refuted and denied in the written statement. Apart from number of preliminary objections, it was stated by the appellant that the election petition does not comply with the provisions of Chapter II of the Act and is, therefore, required to be dismissed at the threshold.

6. The appellant also stated in the written statement that the election petition does not contain a concise statement of the material facts on which the respondent relies and, therefore, the petition does not comply with clause (a) of sub-section (1) of section 83 of the Act. It was also incorporated in the written statement that the election petition does not set forth the material facts of the alleged corrupt practice. The respondent herein has also failed to disclose the names of the parties alleged to have committed the corrupt practice. In the election petition, the date and place of the commission of such alleged corrupt practice has not been mentioned and, therefore, the election petition deserved to be dismissed as not maintainable.

7. In the written statement it was also stated that the appellant secured 10705 votes whereas the respondent (election petitioner) got only 275 votes. The margin is too huge to state that the candidate has been returned on account of some alleged corrupt practice. The respondent in the election petition is required to show that the candidate has been elected and that the result of the election has been materially affected by any alleged corrupt practice committed as such.

8. The allegations of alleged corrupt practices pleaded by respondent (election petitioner) are limited to digging of 13 bore wells in villages falling under the constituency in question after issuance of the election notification. The basis for this allegation is that the machinery allegedly used to dig bore holes in the ground as mentioned in paragraph 16 of the election petition was the same machinery owned by a third party which was hired in the past to work for the Salgaoncar Mining Industries at Vagus valley. The respondent in paragraph 16 of the election petition has also averred that the owner of the Salgaoncar Mining Industries is the appellant herein and on this sole basis the conclusion is sought to be drawn and averment made to the effect that it is obvious that the cost of the said wells and the other wells were borne by the returned candidate through his business concern, namely, Salgaoncar Mining Industries.

9. The pleadings of the said allegations of corrupt practice are limited to digging of bore wells only and there is no pleading on the material facts whether any water drawing equipment was installed in the said bore holes so dug and that such bore holes became water bore wells and that the water could be drawn from them. Neither any facts have been pleaded nor particulars given to the effect of how and in what manner the voters were influenced in favour of the appellant so as to cast votes in his favour. No particulars of such voters have been given in the election petition. As such there is total absence of material pleadings so as to prove that due to the alleged corrupt practice the election has been vitiated in a manner that but for such bore holes not being dug the appellant would not have been returned as a winning candidate and either respondent herein or respondent no.2 of the election petition could have been returned as a winning candidate.

10. There are no averments to the effect whether such bore holes were dug with the consent and/or active knowledge of the

appellant. The estimates of cost involved supplied in the election petition are also limited to the cost of drilling the bore holes and not of installing the water drawing plant and machinery in them to draw water from the bore holes. As such, the said pleading is totally general and vague in nature and is entirely incapable of passing the muster of the test as laid in the Azhar Hussain v. Rajiv Gandhi 1986 (Supp) SCC 315 or such facts as are pleaded in the petition are capable of being later on amplified in view of the test laid down in H.D. Revanna v. G. Puttaswamy Gowda & Others (1999) 2 SCC 217 so as to arrive at a conclusion that a triable case is made out.

11. The second allegation of the alleged corrupt practice is to the effect that the appellant herein has, in the name of his mining company viz. M/s Salgaoncar Mining Industries Pvt. Ltd. Vagus, Palem, Bicholim, Goa, bought 5 Maruti Ambulances from M/s Sai Service Station Ltd., Verna, Salcete, Goa by incurring a cost of Rs.2,50,000/- for each of the ambulances and the cost of the 5 ambulances approximately would be a sum of Rs.12,50,000/- and once the said elections were declared and he filed his nomination for the said election, caused the said company to put the said ambulances at the disposal of the villagers of the said villages.

12. There are absolutely no averments with regard to which villagers or electors had used such ambulances and for whose benefit such ambulances were deployed so as to constitute 'bribe' to the voters and that to an extent that would have influenced the outcome of the election. It is stated that any company operating mines on large scale with heavy machinery is under a statutory duty to maintain safety at the mines and is, as such, statutorily required to provide required facilities including deployment of ambulances in adequate numbers at various mines to ensure safety of the persons working at these mines. The various mines of Salgaoncar Mining Industries are spread over large areas falling in the constituency.

13. The petition is absolutely devoid of any averment with

regard to such ambulances being specifically deployed for the benefit of any elector in the constituency much less a number of electors who would have benefited from such service even if not admitted but proved to be true that could have influenced the election so as to change its outcome.

14. There are absolutely no averments to the effect that these ambulances were deployed at which specific place, at which specific time and for the benefit of whom and whether at the instance or with knowledge of the appellant. As such, the said pleading is incapable of passing the test as laid in the Azhar Hussain's case (supra) or such facts as are pleaded in the petition are capable of being later on amplified in view of the test laid down in H.D. Revanna's case (supra) so as to arrive at a conclusion that a triable case is made out.

15. The third allegation pertains to the election expenses incurred by the appellant on the basis that amount spent on digging of bores holes as well as the cost of 5 ambulances deployed for discharge of statutory requirements for carrying out mining operations by a company ought to be calculated towards the election expenses incurred by the appellant and, as such, devoid of any merit in view of the insufficiency of pleadings in terms of 'material facts' with respect to the two main allegations of corrupt practices relating to digging of borewells and 5 ambulances.

16. The High Court has totally misdirected itself by misconstruing the ratio laid down in a catena of decision pronounced by this Court including the law laid down in Azhar Hussain's case (supra) and H.D. Revanna's case (supra) which if properly applied to the facts and circumstances of the present case would lead to rejection of the election petition in limine.

17. The other important questions of law of general

importance involved in the present petition require adjudication by this Court are whether amenities or facilities provided in general and not in particular to a candidate or his agent or by any other person with the consent of the candidate, is a corrupt practice or a bribery or a gratification within the meaning of section 100(1)(b) read with section 123(1) of the Act. Whether the absence of the prescribed affidavit in Form 25 as required under Rule 94A of the Conduct of Election Rules, 1961 and in terms of proviso to section 83 of the Act is fatal to the maintainability of an election petition on the ground of corrupt practices?

18. In the election petition the respondent has mentioned that there was scarcity of water supply in certain villages. However, the respondent has failed to mention the numbers of houses which face such alleged water scarcity. In the written statement, the appellant also alleged that the respondent in the election petition has also failed to mention about water availability of these villages; the respondent has further failed to mention as to since when has there been water scarcity?

19. The appellant in the written statement further alleged that the respondent has also not mentioned as to how many houses are there in these villages; how many persons are living in each of the houses; and how many persons are voters in these villages. The respondent has also not mentioned as to how many villages have water connections; and when and where the water scarcity had been noticed in these villages. He has also not mentioned as to when this complete breakdown or insufficient water supply had occasioned to these villages nor has he mentioned the date, time, place or any other details of such breakdown and has generally failed to give the details as required under section 83 of the Act.

20. In the written statement it was also stated that the

drilling machines allegedly owned by Tejaswini Bore Wells which were being operated at Ambeudok. There is, therefore, no concrete evidence that the boreholes drilled were bore wells to establish the flow of water from the ground table to surface ground. Similarly, the respondent has miserably failed to give particulars as to which villages did not have ambulances and what was the number of voters in the said villages. The respondent has failed to give particulars regarding parking of the ambulances i.e. where these ambulances were parked; in which villages they were parked; whether there was any driver to drive the said ambulances and as to where they were parked. Similarly, the respondent failed to give particulars regarding the bore wells whose cost as alleged amounts to Rs.6,38,557/-. Similarly, expenditure of Rs.12,50,000/- has been alleged to have been made for the purchase of ambulances. The particulars have not been provided. It is not clear as to how the respondent has come to the figure of Rs.5,00,000/- which according to him has been spent by the appellant. He did not give any particulars regarding either of the bore wells or the ambulances.

21. The appellant denied crossing the limit of Rs.5,00,000/- as prescribed under the Act and the Rules framed thereunder. It is also alleged that the appellant did not construct any bore wells nor did he provide any ambulances to the villagers and, therefore, the question of showing the same in the election expenses did not arise at all. The appellant denied that an amount of Rs.6,38,557/- and an amount of Rs.12,50,000/- as alleged has been the expenditure factually incurred by the appellant and denied having committed any corrupt practice. The question of the election results being materially affected does not arise at all and, therefore, the election petition is liable to be dismissed.

22. It was specifically argued that the election petition is liable to be dismissed because there has been non compliance of section 83(1) of the Act because there was no sufficiency and

adequacy of pleadings in the election petition. Section 83(1) of the Act reads as under:

83. Contents of petition.--(1) An election petition--

- a) shall contain a concise statement of the material facts on which the petitioner relies;
- b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

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

23. According to the appellant, the High Court had erroneously held that the election petition is not liable to be dismissed in limine under section 86 of the Act for alleged non-compliance of the provisions of section 83(1) of the Act.

24. In the impugned judgment, the High Court erroneously concluded that the election petition when read as a whole discloses that it has material facts stated and regarding which triable issues are also framed and, therefore, it cannot be rejected at the preliminary stage.

25. The High Court in the impugned judgment has discussed the decision of this Court in Dharti Pakar Madan Lal Agarwal v. Rajiv Gandhi (1987) Supp. SCC 93. According to the appellant, the High Court erroneously distinguished this case. The impugned judgment of the High Court is neither in consonance with the provisions of the Act nor according to the settled legal position as has been crystallized in a number of cases by this court.

26. Being aggrieved by the impugned judgment, the appellant has preferred this appeal.

27. In this election petition, respondent no.1 has challenged appellant's election primarily on the ground of corrupt practices, alleging that the appellant dug bore wells in the constituency and provided ambulances after the election notification was issued in order to lure the voters from the constituency or induce them to vote for the appellant. According to the appellant, the aforesaid allegations do not even on their face value constitute corrupt practices within the meaning of Section 100 or section 123 of the Act. The Act postulates or contemplates bribery to mean any gift, offer or promise by a candidate of any gratification with the object, directly or indirectly of inducing any elector in order to make him vote for him.

28. For reference, section 100 and section 123 of the 1951 Act read as under:-

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

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(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 returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

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

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

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

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

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

(2) If in the opinion of [the High Court, a returned candidate has been guilty by an agent other than his election agent, of any

corrupt practice but the High Court is satisfied-

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent;

(b) omitted

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void".

"Section 123 - Corrupt practices -- The following shall be deemed to be corrupt practices for the purposes of this Act:--

(1) "Bribery" that is to say--

(A) any gift offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the objects, directly or indirectly of inducing--

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to-

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward--

(a) by a person for standing or not standing as, or for [withdrawing or not withdrawing] from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature."

29. The appellant submitted that corrupt practices pleaded by respondent no.1 are limited to digging of 13 bore wells in villages falling under the constituency in question after notification of holding of election was issued. The basis for this allegation that the machinery allegedly used to dig bore holes in the ground as provided in paragraph 16 of the election petition and the same machinery owned by a third party which was hired in the past to work for the Salgaoncar Mining Industries at

Vagus Valley.

30. Respondent no.1 in paragraph 16 of the election petition has alleged that owner of the Salgaoncar Mining Industries is the appellant herein and on this basis the conclusion is sought to be drawn and the averments made to the effect that "it is obvious that the cost of the said wells and the other wells were borne by the returned candidate through his business concern, namely Salgaoncar Mining Industries".

31. According to the appellant, the pleadings in the election petition regarding corrupt practice are limited to digging of bore wells only and there is no pleading on the material facts whether and in what manner the voters of the constituency were influenced to vote in favour of the appellant. There is no pleadings on the material facts whether any water drawing equipment was installed in the said bore holes so dug and that such bore holes became water bore wells and that the water could be drawn from them.

32. The appellant submitted that there is total absence of material pleadings so as to prove that due to the alleged corrupt practice the election has been vitiated in a manner that such bore holes not being dug by the appellant who has been returned as a winning candidate and either respondent no.2 or respondent no.1 could have been returned as a winning candidate.

33. The material fact whether such bore holes were dug with the consent and/or active knowledge of the appellant is totally missing.

34. The material fact regarding the estimates of costs involved is missing and is limited to the costs of drilling the bore holes and not of installing the water drawing plant and machinery in them to draw water from the bore holes.

According to the appellant, the said pleading is totally general and vague in nature.

35. The second allegation is regarding the alleged corrupt practice by purchasing 5 Maruti Ambulances in the name of his mining company viz. M/s Salgaoncar Mining Industries Pvt.Ltd.

36. According to the appellant, there are no material facts in the pleading of the election petition that for whose benefit such ambulances were deployed so as to constitute a 'bribe' to the voters and that to an extent that would have influenced the outcome of the election.

37. The appellant also submitted that there are no averments with regard to such ambulances being specifically deployed for the benefit of any elector in the constituency.

38. The appellant submitted that any company operating mines on large scale with heavy machinery is under an obligatory duty to maintain safety of the mines and is, as such, statutorily required to provide required facilities including deployment of ambulances in adequate numbers at various mines to ensure safety of the persons working in the mines. The various mines of Salgaoncar Mining Industries are spread over large areas falling in the constituency.

39. According to the appellant there is no material fact in the pleading of the election petition to the effect regarding the deployment of such ambulances at which specific places at which specific time and for the benefit of whom and whether that was done at the behest and influence of the appellant.

40. According to the appellant, the third allegation pertains to the election expenses incurred by the appellant on the basis of that amount spent on digging of bore holes as well as the cost of

5 ambulances deployed for discharge for statutory requirement for carrying out mining operations by a company ought to be calculated towards the election expenses incurred by the appellant is devoid of any merit in view of the insufficiency of pleadings in terms of 'material facts' with respect to the two main allegations of corrupt practices relating to digging of bore holes and purchase of 5 ambulances.

41. According to the appellant, the High Court in the impugned judgment has totally misdirected itself by misconstruing the ratio laid down in a catena of cases pronounced by this Court. The other material questions of general importance arising in the petition for determination by this court are whether amenities or facilities provided in general and not in particular by a candidate or his agent or by any other person with the consent of the candidate, is a corrupt practice or a bribery or a gratification within the meaning of section 100 (1)(b) read with section 123 (1) of the 1951 Act. According to the appellant, the respondent did not furnish affidavit in Form 25 as required under Rule 94A of the Conduct of Election Rules, 1961 and in terms of proviso to Section 83 of the Act, is fatal to the maintainability of an election petition on the ground of corrupt practices.

42. According to the appellant, the respondent failed to plead the fact which constitutes an offence under section 100 of the Act and the appeal deserves to be allowed and the election petition deserves to be dismissed.

43. The short question which falls for adjudication in this case is whether the election petition is liable to be dismissed because of lack of material facts. This controversy is no long res integra. More than a century ago, in *Phillips v. Phillips*, (1878) 4

QBD 127: 48 LJ QB 135, Cotton, L.J. stated:

"What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial."

44. In *Bruce v. Odhams Press Ltd.* (1936) 1 KB 697: (1936) 1 All ER 287 (CA), Scott, L.J. referring to Phillips' case (supra)

observed:

"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad; it is 'demurrable' in the old phraseology, and in the new is liable to be 'struck out' under R.S.C. Order 25 Rule 4 (see *Phillips v. Phillips*); or 'a further and better statement of claim' may be ordered under Rule 7."

45. In *Halsbury's Laws of England* (4th Edn.), Vol. 36, para 38, it has been stated:

"38. The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been variously stated, namely, either to limit the generality of the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required. Each party is entitled to know the case that is intended to be made against him at the trial, and to have such particulars of his opponent's case as will prevent him from being taken by surprise. Particulars enable the other party to decide what evidence he ought to be prepared with and to prepare for the trial. A party is bound by the facts included in the particulars, and he may not rely on any other facts at the trial without obtaining the leave of the court."

46. When we revert to the Indian cases, we find that our courts have accepted the principle laid down by the English cases. We would like to refer to some of them.

47. In *Manubhai Nandlal Amorsev v. Popatlal Manilal Joshi & Others* (1969) 1 SCC 372, this Court observed as under:

"5. The first question is whether the trial judge should have allowed the amendment. Section 83(1)(b) provides that "An election petition shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice". The section is mandatory....."

48. In *Samant N. Balkrishna & Another v. George Fernandez & Others* (1969) 3 SCC 238, this Court observed as under:

"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."

49. In *Hardwari Lal v. Kanwal Singh* (1972)1 SCC 214, a three judge Bench of this Court observed as under:

"22. 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."

50. The question of materials facts in the election petition was comprehensively dealt with by this Court in *Azhar Hussain's* case (*supra*). The court observed that it is not disputed that the Code of Civil Procedure applies to the trial of an election petition by virtue of section 87 of the Representation of the People Act, 1950. Section 87(1) and section 87(2) of the Act apply to the election petition. Section 87(1) of the Act reads as under:

"87. Procedure before the High Court - (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of the suits ;

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) xxx xxx xxx"

51. In this view of the matter, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) of the Code. These

provisions are set out as under:

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

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

or

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

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

Order 7, Rule 11(a): Rejection of plaint.-- The plaint shall be rejected in the following cases--

a) where it does not disclose a cause of action;

xxx	xxx	xxx
xxx	xxx	xxx"

42. 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.

53. This Court in Samant N. Balkrishna's case (supra) has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all.

54. 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.

55. In *V. Narayanaswamy v. C.P. Thirunavukkarasu* (2000) 2 SCC 294, this Court reiterated the legal position that an election petition is liable to be dismissed if it lacks in material facts.

56. In *L.R. Shivaramagowda & Others v. T.M. Chandrashekar* (dead) by *LRs & Others* (1999) 1 SCC 666, this Court again considered the importance of pleadings in an election petition alleging corrupt practice falling within the scope of Section 123 of the Act and observed as under:

"11. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment....."

57. In *Udhav Singh's case* (supra), this Court observed as under:

"41. Like the Code of Civil Procedure, this section also envisages a distinction between "material facts" and "material particulars". Clause (a) of sub-section (1) corresponds to Order 6, Rule 2, while clause (b) is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of cause of action. In the case of a petition suffering from a deficiency of material particulars the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."

58. In *H.D. Revanna's case* (supra), the appeal was filed by the candidate who had succeeded in the election and whose application for dismissal of the election petition in limine was rejected by the High Court. This Court noticed that it has been

laid down by this Court that non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure.

59. In Harmohinder Singh Pradhan v. Ranjeet Singh Talwandi & Others (2005) 5 SCC 46, this Court observed thus:

"14. Necessary averment of facts constituting an appeal on the ground of "his religion" to vote or to refrain from voting would be material facts within the meaning of clause (a) of sub-section (1) of Section 83 of the Act. If such material facts are missing, they cannot be supplied later on, after the expiry of period of limitation for filing the election petition and the plea being deficient, can be directed to be struck down under Order 6 Rule 16 of the Code of Civil Procedure, 1908 and if such plea be the sole ground of filing an election petition, the petition itself can be rejected as not disclosing a cause of action under clause (a) of Rule 11 Order 7 of the Code."

60. 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:

"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."

61. In Sudarsha Avasthi v. Shiv Pal Singh (2008) 7 SCC 604, this Court observed as under:

"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....."

62. 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.

63. The election petition must contain a concise statement of "material facts" on which the petitioner relies. There is no definition of "material facts" either in the Representation of Peoples 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.

64. This court in Harkirat Singh's case (supra) tried to give various meanings of "material facts". The relevant paragraph 48 of the said judgment is reproduced as under:-

"The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus, (Third Edn.); p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."

65. In the context of a charge of corrupt practice, "material facts" would mean all basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner

(respondent herein) is bound to substantiate before he can succeed on that charge. It is also well-settled that if "material facts" are missing they cannot be supplied after expiry of period of limitation for filing the election petition and the pleading becomes deficient.

66. According to the appellant, in the election petition, there was no averment 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 (respondent herein) and the election petition is liable to be summarily dismissed on that ground.

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

68. 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. Considering the facts and circumstances of this case and principles applicable to the election petition, this appeal deserves to be allowed and we accordingly allow this appeal. Consequently, the election petition stands dismissed.

69. In the facts and circumstances of this case, we direct the parties to bear their own costs.

(Dalveer Bhandari)J.

(Harjit Singh Bedi)

.....J.

New Delhi,
August 20, 2009.