

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4189 OF 2012
(Arising out of SLP(C) NO.30417 of 2009)

Ishwardas Rohani ... Appellant

Vs.

Alok Mishra & Ors. ... Respondents

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.

2. The Respondent No.1 herein, Shri Alok Mishra, contested the 2008 elections to the Madhya Pradesh State Assembly as a candidate of the Indian National Congress Party from Cantt. Legislative Assembly No.99 Constituency, Jabalpur. He was defeated in the elections by the Appellant herein as a candidate of the Bharatiya Janata Party. The said Respondent filed Election Petition No.22

of 2009, challenging the election of the Appellant on the ground of corrupt practice, as contemplated in Sub-Sections (1)(A) and (B), (2), (6) and (7) of Section 123 of the Representation of the People Act, 1951, hereinafter referred to as the "1951 Act".

3. The grounds relating to corrupt practice, as alleged by the Respondent No.1 herein, inter alia, were to the following effect :

(i) as an Ex-M.L.A. and Ex-Speaker of the Vidhan Sabha and being a close associate of the Chief Minister of the State, the Appellant was able to exert undue influence on the Collector, the District Returning Officer and other authorities for procuring their assistance for the furtherance of his prospects in the elections;

(ii) that on 2nd November, 2008, when the Respondent No.1 was returning to Jabalpur from New Delhi, as the authorized candidate of the Indian National Congress, his supporters, who came to meet him at the railway station, were arrested, whereas the very next day, no action was taken against the supporters of the

3

Appellant herein who had deployed as many as 300 vehicles in the election rally organised on the occasion of the filing of his nomination, although, permission had been given for use of only 27 vehicles. The Appellant was allowed to erect "welcome gates" at various places and used unauthorized vehicles and also put up flags, hoardings and posters on electric poles and even on temples, despite the objections raised by the Respondent No.1 herein;

(iii) during his election campaign, the Appellant distributed school bags reflecting the name of the Appellant, as also his party flag amongst the children of the voters and huge amounts of money were also paid through cheques under the garb of financial assistance by Garib Sahayata Samiti. Apart from the above, clothes, sweets, blankets, cheques for amounts of Rs.500/- to the female voters and identity and ration cards, were distributed amongst the voters by the supporters of the Appellant, but no action was taken

either against the Appellant or his agent for resorting to such corrupt practice. Accordingly, in the election petition the Respondent No.1, inter alia,

4

prayed for a declaration that the election of the Appellant herein, Ishwardas Rohani, be declared as void and he be declared as the returned candidate.

4. In the pending Election Petition No.22 of 2009, an Application, being I.A.No.58 of 2009, was filed on behalf of the Appellant herein, under Order VII Rule 11 read with Order VI Rule 16 of the Code of Civil Procedure, hereinafter referred to as "C.P.C.", praying that the Election Petition filed by the Respondent No.1 be rejected, inter alia, on the ground that except for making vague allegations of corrupt practice, the Respondent No.1 (Election Petitioner) had failed to disclose material facts and particulars in respect thereof. Another ground of challenge was that the Respondent No.1 had failed to comply with the provisions of Section 81(3)(a) and (b), which are mandatory and in the absence whereof no cause of action could be said to have been available to the Election Petitioner to seek any relief thereunder.

5. I.A.No.58 of 2009, which was filed by the Appellant under Order VII Rule 11 read with Order VI Rule 16 C.P.C. for rejection of the Election Petition or for a direction to set out pleadings specified thereunder, was taken up for

5

hearing by the Madhya Pradesh High Court on 16th July, 2009.

After considering the facts involved in the Election Petition, as also in the Application filed under Order VII Rule 11 read with Order VI Rule 16 of the C.P.C., the High

Court was of the view that although, the allegations of corrupt practice had not been properly drafted, the Election Petition could not be rejected on the said ground. As far as the Application under Order VI Rule 16 C.P.C. is concerned, the High Court observed that non-revision of the voters list is not a ground set out in Section 100 of the 1951 Act for declaring an election to be void. The High

Court also observed that violation of the Model Code of Conduct cannot also be treated as a ground for declaring an election to be void. On the said understanding of the law, the High Court allowed the Appellant's I.A.No.58 in part and directed the Appellant to :

(i) delete the pleadings relating to voters' list and Model Code of Conduct;

(ii) move an appropriate application for amending the pleadings in the light of the objections raised by the Respondent No.1 and the defects as pointed out in

6

paragraph 2, subject to the limits circumscribed by law. The High Court also added that after amending the pleadings suitably, the Appellant would also verify the same by furnishing an affidavit under Order VI Rule 15(4) C.P.C. and further verify the pleadings relating to corrupt practice by filing a proper affidavit in the prescribed Form No.25, as prescribed under Rule 94-A and appended to the Conduct of the Election Rules, 1961.

6. Aggrieved by the directions given by the High Court in I.A. No.58, directing the Respondent No.1 herein to delete the pleadings relating to the voters' list and the Model Code of Conduct and to move an appropriate

application for amending the pleadings in the light of the objections raised by the Appellant herein, the said Appellant has filed the Special Leave to Appeal challenging the said directions dated 5th October, 2009, in Election Petition No.22 of 2009.

7. Appearing for the Appellant, Ishwardas Rohani, Dr. Rajeev Dhawan, learned Senior Advocate, submitted that all the allegations relating to corrupt practice were in

7

respect of periods prior to the date of the notification of the elections, namely, 29th October, 2008, when the Election Petitioner, Shri Alok Mishra, was not yet a candidate, nor was the Appellant herein. Dr. Dhawan pointed out that the elections were notified for the Jabalpur Cantt. Legislative Assembly Constituency No.99 on 29th October, 2008. On 3rd November, 2008, the Election Petitioner, Mr. Alok Mishra, filed his nomination papers and the polling was held on 27th November, 2008. The results of the election were thereafter announced on 8th December, 2008, in which the Appellant was declared to have been elected. Dr. Dhawan termed the period between 29th October, 2008, when the elections were notified, till 8th December, 2008, when the results were declared, as the "active" period, when the conduct of the elected member could be faulted. Dr. Dhawan submitted that the Election Petition had been filed by the Respondent No.1 herein within the period of 45 days, as specified under Section 81 of the 1951 Act. However, the directions given by the High Court to amend the Election Petition were not permissible in law as such amendment would be beyond the period of limitation, as prescribed.

Following such directions of the High Court, the Election Petitioner filed an Application under Order VI Rule 17 CPC

praying for various amendments for providing material facts.

8. Dr. Dhawan urged that given the consequences of disqualification, allegations of corrupt practice would have to be strictly construed, as was held in the case of Surinder Singh Vs. Hardial Singh [(1985) 1 SCC 91], wherein it was, inter alia, observed that for more than 20 years the position had been uniformly accepted that charges of corrupt practice have to be equated with criminal charges and the proof thereof would not be preponderance of probabilities as in civil matters, but proof beyond reasonable doubt as in criminal trials. Reference was also

made to the decision in Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi[(1987) Supp. SCC 93], wherein it was observed as follows :-

"Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the

9

pleadings relating to corrupt practice in a strict manner."

In this regard, Dr. Dhawan referred to the provisions of Section 8A of the 1951 Act, which sets out the harsh consequences of having been found guilty of corrupt practice by an order under Section 99 of the 1951 Act.

9. Submissions were also advanced by Dr. Dhawan in regard to the distinction between "material facts" and "material particulars", which does not appear to me to be very material for a decision in this case. What is necessary is that the material facts must disclose the plaintiff's cause of action or may be the source for the defence of the defendant.

What is relevant is that the facts as set out in the Election Petition must not be vague and must be such as to enable the Respondent to deal with and give a proper response.

Dr. Dhawan contended that as has been held by this Court in Anil Vasudev Salgaonkar Vs.

Naresh Kushali Shigaonkar [(2009) 9 SCC 310], the failure to state even a single material fact will entail dismissal

of the Election Petition. Furthermore, it is also

10

essential that any action which is attributed to an elected candidate and goes to constitute an allegation of corrupt practice, must be shown to have been done with the consent of the candidate, which, as was observed in Surinder Singh's case (supra), is a lifeline to link up the candidate with the action of the other person which may amount to corrupt practice.

10. Turning to another branch of his submissions, Dr.

Dhawan submitted that where corrupt practices are alleged,

details supporting such allegations have to be pleaded.

Referring to the decision of this Court in R.P. Moidutty

Vs. P.T. Kunju Mohammad [(2000) 1 SCC 481], Dr. Dhawan

referred to paragraph 14 of the judgment, wherein it has

been observed as follows :-

"The legislature has taken extra care to make special provision for pleadings in an election petition alleging corrupt practice. Under Section 83 of the Act ordinarily it would suffice if the election petition contains a

concise statement of the material facts relied on by the petitioner, but in the case of corrupt practice the election petition must set forth full particulars thereof including as full a statement as possible of (i) the names of the parties alleged to have committed such corrupt practice, (ii) the date, and (iii) place of the commission of each such practice. An election petition is required to be signed and verified in

11

the same manner as is laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. However, if the petition alleges any corrupt practice then the petition has additionally to be accompanied by an affidavit in Form 25 prescribed by Rule 94-A of the Conduct of Elections Rules, 1961 in support of the allegations of such corrupt practice and the particulars thereof. Thus, an election petition alleging commission of corrupt practice has to satisfy some additional requirements, mandatory in nature, in the matter of raising of the pleadings and verifying the averments at the stage of filing of the election petition and then in the matter of discharging the onus of proof at the stage of the trial."

11. In fact, in this regard, Dr. Dhawan also referred to Section 83(1)(b) of the 1951 Act, which indicates that full particulars of any corrupt practice that the Petitioner alleges and other details regarding such corrupt practice has to be set forth in the Election Petition and the verification must disclose the exact source of the information. Reference was also made to the decision in V. Narayanaswamy Vs. C.P. Thirunavukkarasu [(2000) 2 SCC 294], where similar sentiments have been expressed.

12. Dr. Dhawan urged that having regard to the above, the Election Petition filed by the Respondent No.1 should have been dismissed by the High Court, without giving an

12

opportunity to the Election Petitioner to rectify some of the defects, outside the period of limitation, as prescribed under Section 81 of the 1951 Act.

13. Dr. Dhawan, learned senior counsel, contended that all the alleged instances referred to in the Election Petition regarding alleged corrupt practice on the part of the Appellant were outside the "active period" when the Respondent No.1 was not even a candidate and consequently the same could not be taken into consideration for the determination of the Election Petition in view of Section 81 of the 1951 Act, which stipulates that such a Petition may be presented by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate.

14. Replying to Dr. Dhawan's submissions, Mr. Rakesh Khanna, learned Senior Advocate, appearing for the Respondent No.1, pointed out that the allegations relating to corrupt practice made against the Appellant, are contained in paragraph 10 of the Election Petition and despite the observations made by the High Court, the same conveyed the manner in which financial allurements and the

13

distribution of gifts were made, as also the issuance of cheques by the Appellant from the Indus Ind Bank near Shastri Bridge, 124, Napier Town, Jabalpur. Mr. Khanna

contended that although Dr. Dhawan had referred to the issuance of cheques as being a fishing expedition, but, in fact, the details relating to the cheques are in the custody of the Indus Ind Bank and are easily available.

Mr. Khanna submitted that the details of the cheque books and the cheque numbers have also been provided in paragraph 9 of the Election Petition which disclosed the strategy adopted by the Appellant for garnering votes in the election.

15. Referring to the decision of this Court in Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh [AIR 2005 SC 22], which also involved the provisions of Section 83 of the 1951 Act, Mr. Khanna pointed out that even if all the bundles of information which constitute the cause of action for the Election Petition were not available in the Election Petition, the same could not be dismissed at the threshold. Mr. Khanna submitted that in Sardar Harcharan Singh Brar's case (supra), this Court had occasion to consider the observations made in the decision in the case of Raj Narain

14

Vs. Smt. Indira Nehru Gandhi [(1972) 3 SCC 850], which, inter alia, laid down that while a corrupt practice has to be strictly proved, it does not follow that a pleading in the election petition should receive a strict consideration. The charge of corrupt practice in an election petition is a very serious charge and has to be proved. It may or may not be proved. The allegations may be ultimately proved or not proved. But the question for the Courts is whether a petitioner should be refused an opportunity to prove his allegations merely because the petition was drafted clumsily.

16. Mr. Khanna submitted that it was in such context that it was observed that opportunity to prove should not be refused and the Court should be reluctant to stay an action on technical grounds. In the said case it was further recorded that "material facts" as referred to in Section 83 of the 1951 Act show that the grounds of corrupt practice and the facts necessary to formulate a complete cause of action, must be stated, but the Election Petition is not liable to be dismissed in limine because full particulars of the corrupt practices alleged were not set

15

out. If an objection was taken and the Tribunal was of the view that full particulars had not been set out, the Petitioner had to be given an opportunity to amend or amplify the particulars. It is only in the event of non-compliance with such order to supply the particulars, that the charge, which remained vague, could be struck down. Mr. Khanna pointed out that a note of caution had been sounded to the effect that rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated with a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the Court to ascertain that principle and implement it.

17. Mr. Khanna submitted that in Sardar Harcharan Singh Brar's case (supra), it was pointed out that the views expressed in Raj Narain's case (supra) had been subsequently reiterated in various other cases set out in paragraph 11 of the judgment.

18. Drawing a parallel with the facts of this case, Mr.

16

Khanna submitted that the High Court had passed the impugned order in complete consonance with the views expressed in Sardar Harcharan Singh Brar's case (supra).

19. Mr. Khanna next referred to the decision of a three Judge Bench of this Court in F.A. Sapa & Ors. Vs. Singora & Ors. [(1991) 3 SCC 375], wherein the requirements of furnishing material facts and full particulars, within

the meaning of Section 83(1) of the 1951 Act, in order to establish corrupt practice, was considered in detail. After considering the various decisions rendered earlier, including that in Raj Narain's case (supra), on the question of verification, Their Lordships held that Clause (c) of Sub-Section (1) of Section 83 of the 1951 Act, provides for an Election Petition to be signed by the petitioner and verified in the manner laid down by the Code of Civil Procedure for the verification of the pleadings.

It was noted that under Section 83(2) any schedule or annexure to the pleading must be similarly verified.

Referring to Order VI Rule 15 of the Code, Their Lordships took note of Sub-Rule (2) which provides that the person verifying has to specify with reference to the numbered paragraphs of the pleading, what he verifies on his own

17

knowledge and what he verifies upon information received and believed to be true.

The verification has to be signed by the person making it and must state the date on and the place at which it was signed.

However, Their Lordships also went on to say that the defect in the verification could be of a formal nature and not very substantial, or one which substantially complies with the requirements, or that which is material but capable of being cured.

Mr.

Khanna submitted that the bottom line of the aforesaid decision was that any defect in the verification was not fatal to the entertainment of the Election Petition at the threshold and as indicated in Sardar Harcharan Singh Brar's case (supra), an opportunity ought to be given to the Election Petitioner to cure such defect.

20. Mr. Khanna submitted that the submissions advanced by Dr. Dhawan in, relation to the order passed by the High

Court, were contrary to the decisions rendered by this Court in Sardar Harcharan Singh Brar's case (supra) and also in F.A. Sapa's case (supra), and all that the Court had directed was in keeping with the spirit of the said decisions which contemplated that an Election Petition, where corruption had been alleged, should not be thrown out

18

on a purely technical ground, such as defect in verification of the pleadings, and without giving an opportunity to the Election Petitioner to cure such defect.

21. From the decisions cited by learned counsel for the respective parties, one line of decisions rendered by this Court suggests that since an Election Petition has serious consequences under Section 8A of the 1951 Act, the provisions of the Act have to be strictly construed and, particularly, in cases where corruption is alleged, any omission in the pleadings to mention such corrupt practice would render the Election Petition not maintainable. On

the other hand, as indicated immediately hereinbefore, the other line of decisions suggests that since the issue involved in an Election Petition alleging corrupt practice, was of great public interest, an Election Petition should not be rejected at the threshold, but an opportunity should be given to the Election Petitioner to cure the defects which are curable. In the instant case, what has been

contended by Dr. Dhawan is that in the absence of a cause of action or incomplete cause of action for the Election Petition on account of the verification thereto not being in conformity with the provisions of Order VI Rule 15 of

19

the C.P.C. the Election Petition was liable to be dismissed. Such submission is not acceptable to me in the

light of the decisions in Sardar Harcharan Singh Brar's case (supra) and also in F.A. Sapa's case (supra), despite the fact that in F.A. Sapa's case it was indicated that if the affidavit of schedule or annexure forms an integral part of the Election Petition itself, strict compliance would be insisted upon.

22. I am inclined to agree with the trend of thinking in F.A. Sapa's case, where it had been indicated that a charge of corrupt practice has a two dimensional effect, namely, its impact on the returned candidate has to be viewed from the point of view of the candidate's future political and public life and from the point of view of the electorate to ensure the purity of the election process.

Accordingly, there has to be a balance in which the provisions of Section 81(3) of the 1951 Act are duly complied with to safeguard the interest, both of the individual candidate, as well as of the public.

In this case, while accepting the case made out by the Appellant regarding the deficiencies in the Election Petition, the Division Bench of the High Court, in my view, did not commit any error in directing the Election Petitioner to cure the defects in

20

the Election Petition, which had been brought out during the hearing of the Election Petition.

23. The decisions cited on both sides, lay down the law in regard to Election Petitions and how Election Petitions are to be presented and the procedure to be strictly followed in filing such Election Petitions, in which corruption, in particular, is the allegation made against the returned candidate. There is little doubt that the provisions have to be strictly construed, but that does not mean that any defect in the Election Petition cannot be

allowed to be cured in the public interest. If after an opportunity is given, still no steps are taken by the Election Petitioner to cure the defects which are noticed, then the rigours of the procedure indicated by the 1951 Act, come into effect with full vigour.

24. I, therefore, see no reason to interfere with the order of the High Court appealed against and the appeal is, accordingly, dismissed.

21

25. There will, however, be no order as to costs.

.....J.

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(ALTAMAS KABIR)

New Delhi
Dated : 03.05.2012

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4189 OF 2012
[Arising out of SLP (C) NO.30417 OF 2009]

Ishwardas Rohani

....Appellant

Versus

Alok Mishra & Ors.

....Respondents

J U D G M E N T

Chelameswar, J.

Both the petitioner (herein after referred to as 'the returned candidate') and the 1st respondent (herein after referred to as 'the election petitioner') contested the General Election to the Legislative Assembly of the

State of Madhya Pradesh from the Jabalpur Cantonment Constituency. The returned candidate was the candidate of the Bharatiya Janata Party. The election petitioner was the candidate of the Indian National Congress, who lost the election with a margin of 24731 votes to the returned

23

candidate. The election petitioner questioned the validity of the election of the returned candidate by Election Petition No.22 of 2009 on the file of the High Court of Madhya Pradesh. In the said petition, the election petitioner not only sought a declaration that the election of the petitioner is void, but also sought a further declaration that;

"the petitioner No.1 as Return candidate and directed to be unseated Respondent No.1."

It is further prayed:

"The Hon'ble High Court further kindly be directed the Respondent to declare the petitioner as Elected candidate."

Certain other reliefs are also prayed for in the election petition, the details of which are not necessary for our purpose. The said election petition was filed on 20-01-

2009, admittedly, within the period of limitation prescribed for the said purpose. On 16-06-2009, I.A.No.58

of 2009 was filed by the petitioner herein (returned candidate) under Order 7 Rule 11 of the Code of Civil Procedure, seeking the dismissal of the election petition

24

on the following grounds:

- (a) The allegations of corrupt practice lacks material facts and particulars, inasmuch as it is not

disclosed on what date and time the alleged corrupt practice had been committed;

- (b) The mandatory affidavit in Form 25 of the Conduct of Election Rules does not fulfil the mandatory contents as required in law;
- (c) Election Petitioner has not filed affidavit as required under the provisions of CPC;
- (d) The copy of the petition supplied by the Respondent No.1 to the Petitioner is not identical to the copy of the petition filed and the documents annexed to the election petition have not duly been verified by the Respondent No.1;
- (e) The averments contained in a number of paragraphs are frivolous in nature and does not disclose any cause of action against the Petitioner herein."

2. The abovementioned IA was partly allowed by the impugned Judgment on 05-10-2009. The operative portion of the Judgment is as follows:

"Consequently, the I.A. is allowed in part. In the result, the petitioner is directed to -

- (i) delete the pleadings relating to
25

voter list and Model Code of Conduct.

- (ii) move an appropriate application for amending the pleadings in the light of the objections raised by the respondent no.1 and the defects as pointed out in Para 2 (above) subject to the limits circumscribed by law."

Hence, the present S.L.P.

3. Before I proceed to examine the correctness of the conclusion reached by the High Court, I deem it necessary to extract para 2 of the Judgment under appeal in toto:

"2. At the outset, it may be remarked

that the election petition is not a good piece of drafting. A bare perusal thereof would reveal that not a single paragraph is free from grammatical and typographical errors and omissions. Even provisions of law have not been correctly referred to. For example : sub-section (1)(A) and (B) have been mentioned as sub-section (A) and (B) Section 123. This apart, there is apparent conflict between contents of some of the annexures and the corresponding pleadings. Moreover, some averments are mere mechanical repetitions of the facts already pleaded [See Para 2 (wrongly numbered as 1), 3A and 7]. Further, the petitioner has used certain uncommon words such as Cambal, Chadar & Floor-Sari. It appears that the petitioner is labouring under a misconception that an election petition must be drawn up in

26

English language whereas it is well settled that in Madhya Pradesh, an election petition drafted in Hindi language would be maintainable (Vijay Laxmi Sadho v. Jagdish AIR 2001 SC 600 referred to). Although, these defects would not provide any reasonable ground for rejection of the petition in limine yet, the negligent and indifferent manner in which the petition has been drafted and filed without even reading it, deserves to be deprecated."

4. In my view, the election petition is not only a bad piece of drafting, but also it is difficult to state with precision as to what exactly is the substance of the complaint in the election petition. The absurdity of the election petition can only be understood by reading it, but cannot be explained. There are vague allegations that the returned candidate committed corrupt practices falling under Sections 123 (A) and (B), 123 (2), (6) and (7) of the Representation of the People Act, 1951 (henceforth referred to as 'the R.P. Act'). To demonstrate the utter chaos of the pleadings, I extract a passage from the election petition:

"..... Since the Respondent No.1 have wrongly and illegally adopted the corrupt practices by distributing the amount in cash as well as through the Cheque,

has also command on the Respondent Distt. Election Officer and taken the Assistance from police and other authority, so that it is apparent that respondent No.1 Iswardas Rohani has committed milled corrupt practices, which is same under Section 123A, B, 123(2) and also giving threat and other provision of this act have also been violating therefore, his Election is deserve to be declare void."

5. On the basis of such pleadings, of which the above is only a sample, the respondent invites an adjudication that corrupt practices falling under Section 123(2), (6), (7) and 123(A) and (B) of the R.P. Act, have been committed. There are no Sections numbered 123(A), (B) in the R.P. Act, 1951. The High Court, however, generously construed such reference to Sections 123(A) and (B) occurring under para 13 of the election petition as references to Section 123(1)(A) and (B).

6. The substance of the chaotic pleadings in the election petition is culled out by my learned brother as follows:

"The ground relating to corrupt practice, as alleged by the Respondent No.1 herein, inter alia, was to the following effect :

(i) as an ex-M.L.A. and Ex-Speaker of the Vidhan Sabha and being a close associate of the Chief Minister of the
28

State, the Appellant was able to exert undue influence on the Collector, the District Returning Officer and other authorities for procuring their assistance for the furtherance of his prospects in the elections.;

(ii) that on 2nd November, 2008, when the Respondent No.1 was returning to Jabalpur from New Delhi, as the authorised candidate of the Indian National Congress, his supporters, who

came to meet him at the railway station, were arrested, whereas the very next day, no action was taken against the supporters of the Appellant herein who had deployed as many as 300 vehicles in the election rally organised on the occasion of the filing of his nomination, although, permission had been given for use of only 27 vehicles. The Appellant was allowed to erect "welcome gates" at various places and used unauthorised vehicles and also put up flags, hoardings and posters on electric poles and even on temples, despite the objections raised by the Respondent No.1 herein;

(iii) during his election campaign, the Appellant distributed school bags reflecting the name of the Respondent No.1, as also his party flag amongst the children of the voters and huge amounts of money were also paid through cheques under the grab of financial assistance by Garib Sahayata Samiti. Apart from the above, clothes, sweets, blankets, cheques for amounts of Rs.500/- to the female voters and identity and ration cards, were distributed amongst the voters by the supporters of the Appellant, but no action was taken either against the Appellant or his agent for resorting to

29

such corrupt practice. Accordingly, in the election petition the Respondent No.1, inter alia, prayed for a declaration that the election of the Appellant herein, Ishwardas Rohani, be declared as void and he be declared as the returned candidate."

7. For the purpose of deciding the present petition, I shall also presume that the election petitioner intended to complain that various corrupt practices, i.e., bribery falling under Section 123 (1)(A) and (B); unduly influencing the voters, falling under Section 123(2); incurring or authorising expenditure in contravention of Section 77 - corrupt practice under Section 123(6) and procuring the assistance from the employees of the State, falling under Section 123(7), were committed.

8. Before examining the correctness of t

Judgment under appeal, a brief survey of the Scheme of the relevant provisions of the R.P. Act, 1951, would be useful.

Section 100 provides the grounds on which an election could

be declared void. The said Section, insofar as it is

relevant for our present purpose, reads as under:

"Subject to the provisions of sub-section (2) if the High Court is of the opinion -

(a) 30

(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;....

(c)

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

(i).....

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

(iii).....

(iv).....

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

It can be seen from the above that the election of a returned candidate can be declared void, if the High Court is satisfied;

(A) that any corrupt practice has been committed either by the returned candidate or his election agent or

any other person with the consent of either the candidate or his election agent;

(B) that any corrupt practice has been committed by any agent other than the election agent.

In the case of the satisfaction of the High Court of the 1st of the abovementioned two contingencies, the High Court can straightaway declare the election of the returned candidate to be void. Whereas in the 2nd of the abovementioned contingencies, the High Court must also be satisfied that such commission of the corrupt practice has materially affected the result of the election because the corrupt practices falling under the later category are committed without the consent of the returned candidate or his election agent.

9. The meaning of the expressions "candidate", "election agent" and "agent other than the election agent" is required to be ascertained. Part VI of the R.P. Act deals with disputes regarding elections. Part VII of the R.P. Act deals with corrupt practices and electoral offences. Section 79, with which part VI commences, contains the definitions of various expressions employed in Part VI and Part VII of the R.P. Act. Section 79, insofar as it is relevant for the present purpose, reads as follows:

32

"In this Part and in Part VII unless the context otherwise requires,-

(a).....

(b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election;"

The expression "election agent" is not defined therein.

But, Section 40 provides for the appointment of "election

agent". It stipulates that a candidate at an election can appoint any person, who is not subject to

disqualification stated in Section 411, to be his election

agent2. Therefore, the expression "election agent"

occurring under Section 100 must be understood to be only

an election agent appointed by the candidate under Section

40. The meaning of the phrase "agent other than the

election agent" requires an examination. Sections 46 and

1 41. Disqualification for being an election agent.- Any person who is for the time
being disqualified under the Constitution or under this Act for being a member of either H
ouse
of Parliament or the House or either House of the Legislature of a State or for voting at
elections, shall, so long as the disqualification subsists, also be disqualified for being
an
election agent at any election.

2 40. Election Agents.- A candidate at an election may appoint in the prescribed manner any
one person other than himself to be his election agent and when any such appointment is
made, notice of the appointment shall be given in the prescribed manner to the returning
officer.

33

47 of the Act, provide for the appointment of polling
agents3 and counting agents4, respectively, by th
e

contesting candidates at an election.

I am conscious of

the fact that the phrase may take within its sweep other

persons also, but for the purpose of the present case, it

is not necessary to explore the full contours of th
e

phrase.

10. Section 123 of the R.P. Act deals with

corrupt practices. It declares 10 activities to be corrupt

practices. They are; (i) bribery; (ii) undue influence;

(iii) appeal in the name of religion; (iv) promotion of

enmity or hatred between different classes of citizens on

grounds of religion, race, caste, community, etc.; (v
)

propagation or glorification of the practice of sati; (vi)

publication of any false statement in relation to the personal character of any candidate, etc. reasonably calculated to prejudice the prospects of that candidate's

3 46. Appointment of polling agents.- A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station provided under section 25 or at the place fixed under sub-section (1) of section 29 for the poll.

4 47. Appointment of counting agents.- A contesting candidate or his election agent may appoint in the prescribed manner one or more persons, but not exceeding such number as may be prescribed, to the present as his counting agent or agents at the counter of votes, and when any such appointment is made notice of the appointment shall be given in the prescribed manner to the returning officer.

34

election; (vii) hiring or procuring vehicles for the free conveyance of any elector to the polling station; (viii) incurring expenditure in contravention of Section 77; (ix) obtaining or procuring any assistance of various categories of persons specified under sub-section (7); and (x) booth capturing.

It must be mentioned that each one of the sub-sections of Section 123, deals with a distinct corrupt practice, which contemplates commission or omission of an act or acts indicated therein either by the candidate or his agent or any other person with the consent of either the candidate or his election agent. The only sub-section, which does

not refer to the election agent or any other person is sub-section (6), i.e., the corrupt practice of incurring or authorising the expenditure in contravention of Section 77.

11. It is argued by the learned senior counsel Dr. Rajeev Dhawan appearing for the returned candidate that

the allegations of corrupt practice contained in the election petition fall into two categories; (1) corrupt practices attributed to the returned candidate; and (2) corrupt practices attributed to other persons. The learned

counsel argued that the returned candidate cannot be

subjected to the pain of going through the trial of the

35

election petition on these allegations for the following

reasons:

(i) the allegations of commission of corrupt practices

either pertain to the period anterior to 03-11-2008; or,

(ii) lack in material facts to constitute any corrupt

practice satisfying the description of any one of the

corrupt practices enumerated under Section 123.

12. Coming to the allegations of corrupt practice

said to have been committed by certain named and unnamed

persons in the election petition the learned counsel argued

that, once again, the allegations are vague, without any

reference to the dates on which such acts were committed

and do not disclose any cause of action.

Further, there is

no allegation in the election petition that such named

persons, who are alleged to have committed certain corrupt

practices, did so with the consent of either the returned

candidate or his election agent.

Interestingly, the

election petition does not even contain any specific

allegation against the election agent of the returned

candidate. Even the name of the election agent is not

mentioned.

13. On the other hand, the learned counsel for

the election petitioner submitted that the election

36

petition contained all the material facts required to be

pleaded for establishing the commission of corrupt

practices. Such pleadings are required to be scrutinized

liberally in the larger interests of the purity of election

system as was done by the High Court.

The learned counsel

also submitted that in view of the fact that what is at

stake is the purity of the election system, the High Court rightly directed the election petitioner to move an appropriate application for the amendment of the pleadings.

I am only reminded of a caution given by this Court in Kunwar Nripendra Bahadur Singh vs. Jai ram Verma and others, (1977) 4 SCC 153:

"21., the provisions of the election law which have got to be construed strictly, must work with indifference to consequences, immediate or mediate....."

14. Admittedly, the returned candidate filed his nomination on 03-11-2008. It is only with effect from that date the petitioner became a candidate for the election in dispute. Goes without saying that an election agent could have been appointed by the returned candidate only after filing his nomination. To be guilty of committing a

37

corrupt practice, the returned candidate or his election agent or some other person duly authorised either by the returned candidate or his election agent must have committed some act or omission contemplated under one of the clauses under Section 123 of the R.P. Act, after the 03-11-2008, but before the completion of the election process.

15. It was so held by this Court in Mohan Rawale vs. Damodar Tatyaba, (1994) 2 SCC 392. It was a case where the election of the appellant before this Court was called in question by the respondent therein on the ground that the appellant committed corrupt practices falling under Section 123(2), (3) and (3)(A). The returned candidate raised various preliminary objections regarding the maintainability of the election petition. One of the objections was that the various allegations said to be constituting corrupt practices, pertain to a period long

anterior to the date of the nomination of the returned candidate and, therefore, it was argued by the returned candidate that even if these allegations were to be proved, they would not amount to the commission of a corrupt practice by the returned candidate. Such an objection did not find favour with the Bombay High Court. Reversing the

conclusion of the Bombay High Court, this Court held at para 6 as follows:

"..... The view fails to take note of and give effect to the substitution of the definition of the expression "candidate" in Section 79(b). All sub-sections of Section 123 of the Act refer to the acts of a 'candidate' or his election agent or any other person with the consent of the candidate or his election agent. substituted definition completely excludes the acts by a candidate up to the date he is nominated as a candidate."

The

16. The allegations in the election petition on hand are required to be examined in the light of the principle of law laid down by this Court.

17. Para 1 of the election petition narrates the incidents that are alleged to have occurred from 30-10-2008 to 02-11-2008 and it reads as follows:

"That, the context of the situation is that the petitioner was out of City at Jabalpur he was at Delhi for confirmation of his Ticket from Indian National Congress Party, the same was confirmed on 30.10.2008 from his Party on 1.11.2008 the petitioner No.1 was come from Delhi on 2.11.2008, the petitioner come from Delhi to Jabalpur by Mahakohal Express Train, after receiving the information from the petitioner his supporter were reach to the Jabalpur Railway station, where a number of person have received to the petitioner after come-out from the

Railway Station there was crowd of the supporter who were reached there by own

vehicle or by hire that very day District Returning Officer, Respondent and his observer including the police men and authority an subordinate officer, who have been authorised by the State Election Commission on the instance of Respondent no.1 Speaker of State Legislative Assembly they have wrongly and illegally misused their power and seized the personal vehicle of petitioner supporter and confined to the police station Cantt. And police station Civil Lines with the intention to demoralize and breaking the support with the help of police dispute of that Gathering was not political movement nor any object to moved in the shape of Rally, but all of a sudden it was happen, the Respondent No. 1 winning candidate have declare his Rally for submitting the Election nomination form for this very purpose. The Respondent Nod.1 have arranged as much as 300 Vehicle in that Rally Respondent and his subordinate officer (observer) who ere watching the Gathering and strand of vehicle in the Rally they have never raised any objection, nor seized any of the vehicle, despite of the permission was obtain for only 27 vehicles for used in the Election, but 10 time's more vehicles were present in the Rally on the date of submitting his nomination form the Respondent his subordinate and police have not acted fairly and Reasonably in the Election of Cantt Constituency and they are working/acting in support of Respondent No.1, who is speaker of State legislative Assembly and having infalance on the Respondent on the Distt. Election Officer including all the Executive Officer, who are working

40

in district Jabalpur including the police Officer, they have exercise the colour of power in favour of Respondent No.1 and against the petitioner, the complaint was made to the Chief Election Commission and State Election Commission, but they have not taken any action against the Respondent No.1."

The gist of this paragraph appears to be (giving some allowance to the bad drafting) that while the returned candidate was permitted to take out a rally with a large number of vehicles without any objection from anybody, the vehicles of the election petitioner's supporters were

seized on the 02-11-2008 when they took out a rally from the Jabalpur railway station after the election petitioner's return from Delhi. Assuming all the allegations extracted above to be true and such allegations constitute on 02-11-2008 (I only assume for the limited purpose), the returned candidate had not yet filed his nomination. Even according to the election petitioner the returned candidate filed the nomination on 03-11-2008:

"That on the next day 3.11.2008 the Respondent No.1 had proceeded to fill up the nomination form / paper."

That apart, from a reading of the above-extracted portion,

the allegation appears to be that the vehicles of the

41

election petitioner and his supporters were seized by the State Election Commission and its officers, but not the returned candidate:

"that very day District Returning Officer, Respondent and his observer including the police men and authority an subordinate officer, who have been authorised by the State Election Commission on the instance of Respondent No.1 Speaker of State Legislative Assembly they have wrongly and illegally misused their power and seized the personal vehicle of petitioner supporter and confined to the police station Cantt. And police station Civil Lines with the intention to demoralize and breaking the support with the help of police"

Therefore, looked at either way, the returned candidate cannot be legally accused to be guilty of any activity falling within the scope of any one of the corrupt practices enumerated under the sections of the R.P. Act, 1951, as, on 02-11-2008, the returned candidate had not yet filed his nomination.

18. Coming to the allegation that the returned candidate being a Member of the Legislative Assembly and also the Speaker at the relevant point of time, was able to

exert undue influence on the Collector, who was the District Returning Officer, and other authorities for

42

procuring their assistance for the furtherance of his prospects in the elections-allegations are too omnibus.

Such allegations are to be found in para 3 of the election

petition. The vagueness of the pleading is better extracted than explained:

"PROCURING ASSISTANCE FROM GAZETTED OFFICER:

It is respectfully submit that the Bhartiya Jana Party is the Rulling Party in the State and also have its influence to all the Executive Officer, who are serving in the State of Madhya Pradesh. They are directly or indirectly having relation with the Respondent No.1 who is Speaker of State Legislative Assembly and during last five year the Govt. of Bhartiya Janta Party was dealing their power and handling the same with the help of all the Gazetted Officer including the Collector of the District including the Police Officer Shri Shivraj Singh Chouhan is the Chief Minister of Madhya Pradesh and has got hold over the Administrative Machinery during the Election period they have directly or indirectly supported to the Respondent No.1 who is Speaker of State Assembly the 'lure' work in a Better way than the command to the Administrative Officer and there subordinate to them with the Aid an Assistance of Chief Minister Shivraj Singh Chouhan, the Respondent No.1 having very thick Relationship with the Respondent. So that the District Election Officer, Jabalpur was regularly oblige to the Respondent No.1 by way of supporting the act of Respondent No.1 and objecting the same act by illegal manner, the Respondent have performed several act to oblige the Respondent No.1 the same are as under;"

43

Further, there are five sub-paras (A) to (E) in para 3.

Sub-para (C) deals with some alleged irregularities in the preparation of the voters list, which can never be the subject matter of an election petition and the High Court rightly⁵ directed the deletion of those allegations.

Sub-

para (D) deals with the objection of the petitioner

regarding employment of Electronic Voting Machines.

These

too are the vague allegations with which the returned

candidate is no way concerned. Sub-paras (A) and (B), once

again, repeat the allegations contained in para 1 of the

election petition, i.e., allegations regarding the seizure

of the vehicles of the election petitioner and his

supporters, etc.

Para 4 of the election petition, once

again, exclusively deals with the complaint regarding the

preparation of the voters list.

19. Paras 5 and 6 contain the allegations of

5 see Kunwar Nripendra Bahadur Singh vs. Jai Ram Verma and others = (1977) 4 SCC 153 :
25. Thus in a catena of cases this Court has consistently taken the view that the finality of the electoral roll cannot be challenged in an election petition even if certain irregularities had taken place in the preparation of the electoral roll or if subsequent disqualification had taken place and the electoral roll had on that score not been corrected before the last hour of making nominations. After that deadline the electoral roll of a constituency cannot be interfered with and no one can go behind the entries except for the purpose of considering disqualification under Section 16 of the 1950 Act.

26. The election could be set aside only on the grounds mentioned in Section 100 of the 1951 Act. In this case reliance was placed under Section 100(1)(d)(iii) for invalidating the election on the ground of reception of void votes. We have already shown that the electoral roll containing the particular names of voters was valid and there is, therefore, no question of reception of any vote which was void.

There is, thus, no substance in that ground for challenging the election.

44

distribution of cash, cheques, clothing material and school

bags to the children. The allegations in para 5 pertain to

the distribution of "cloths" on 17-10-2008 and cash to 200

persons on 21-10-2008 and a cheque drawn on the IndusInd

Bank, Shastribridge, Jabalpur, for an amount of Rs.500/- in

favour of Shiv Durga Utsava Sammittee on 08-10-2008.

Assuming for the sake of arguments that all the

abovementioned allegations are true and constitute some corrupt practice, all these allegations pertain to a period prior to the filing of the nomination, i.e., 03-11-2008, by the returned candidate.

20. Para 6, once again, contains allegations of the returned candidate issuing cheques, the numbers of which are given without disclosing in whose favour such cheques were given, but it is relevant to notice that even according to the election petitioner, such cheques were given some time prior to 30-10-2008, because it is alleged in para 6 that the election petitioner lodged a complaint dated 30-10-2008, marked as Annexure P-12 to the petition, with regard to the issuance of the cheques. Obviously, the cheques must have been issued prior to that date. At the cost of repetition it must be stated that by 30-10-2008, the returned candidate had not filed his nomination:

45

"That the Respondent No.1 have issued the Cheque to the several other person. Even after notification issued by the Election Commission and prior to the date, he has given the cheque to the several other person from the month of Sept. 2008, Oct. 2008, Nov. 2008 and Dec. 2008 continuously cheque of IndusInd Bank was issued the same was encashed by the person the Cheque No. mentioned in list submitted the Cheque No.348127 to 348150 and 716616 to 716894 approximately 200 cheque were given to get vote from the Voter the list of the Cheque is filed with the complaint dated 30.10.2008, marked as ANNEXURE P-12 with the petition. The petitioner have also submitted the facts. The Respondent No.1 with the help of their reliable Ward member, Punch and Surpanch through the worker the amount was distributed on 29.10.200, even in the Eve of Depawali. The Respondent No.1 have distributed the amount in the Box of Sweet with Sweet also the petitioner have submitted the Complaint before the Respondent, Distt. Election Officer, but no action was taken by the Distt. Election Officer, Respondent, even they are supporting to the Respondent No.1 this Complaint dated 30.10.2008 is already filed as Annexure P-12, but no action was taken."

21. Para 7, once again, repeats the allegations contained in para 1 of the election petition.

22. Para 8 contains vague allegations regarding the erection of welcome gates. Assuming for the sake of arguments that the so-called "welcome gates" were erected

46

without the permission of the District Election Officer, as alleged by the election petitioner, I simply fail to understand, under what Head of corrupt practice such an activity could be brought.

23. Para 9, once again, contains some vague allegations regarding distribution of clothing material, etc. Just to demonstrate the vagueness of the pleading, I extract the paragraph:

"....., further the Respondent No.1 have also given the number of Article to the Women of the Cantt. Constituency in which he had distributed the Payal, Long, Bichhiya, Clothes, Cambal and other thing the complaint. The Respondent No.1 have also distributed the Cash amount to the several person or Sammittee the petitioner have made the complaint in time to time before the district Election officer and State Election Commission and Superior Authority, by they have not acted upon nor taken any action against the Respondent No.1 nor made any inquiry on the Complaint submitted by the petitioner and his Party supporter or agent the complaint dated 17.10.2008, 21.10.2008, 23.10.2008, 30.10.2008, 31.10.2008, 13.11.2008 and 14.11.2008. Even the Respondent have distributed the amount by Cheque during the Course of Election from 1.9.2008 to upto December 2008, from two cheque book as Cheque No.716886 of this series and Cheque book No 348130 upto 100 and more cheque from the Series was distributed by the Respondent No.1 in favour of Voter or there benefited person. So in this way the Respondent No.1 have adopted the corrupt practices during the Election or

47

before the notification he was trying to gain Vote from the Voter a any cost."

24. In my opinion, if a returned candidate is asked to face trial of an election petition, such as the one, which is the subject matter of the instant S.L.P., it would be an absolute travesty of justice and opposed to all the settled principles of law regarding the election disputes. It was held in *Rahim Khan vs. Khurshid Ahmed and others*, (1974) 2 SCC 660, as follows:

"9. An election once held is not be treated in a lighthearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an

48

election which has been concluded."

25. Coming to the pleadings in an election petition, an election petition is required to contain all the material facts, which, either if proved or went uncontraverted, would be sufficient to constitute the cause of action for setting aside the election of the returned candidate on one or some of the grounds specified under Section 100 of the R.P. Act. It is held repeatedly by this Court that allegations of corrupt practice are in the nature of criminal charges. In *Dhartipakar Madan Lal Agarwal vs. Rajiv Gandhi*, 1987 Supp SCC 93, this Court

examined the nature of the allegations of corrupt practice and the effect of the vagueness of the pleading in an election petition and held as follows at para 108:

"Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict

49

manner."

Emphasis Supplied

Again, in Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar, (2009) 9 SCC 310, it was held as follows:

"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."

Emphasis Supplied

The distinction between 'material facts' and 'material particulars' fell for the consideration of this Court repeatedly. In Samant N. Balakrishna vs. George Fernandez and others, (1969) 3 SCC 238, this Court held as follows:

"29. 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

will have to meet."

In Anil Vasudev Salgaonkar (supra), this Court reiterated
the difference between the material facts and particulars:

"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."

The absolute necessity of mentioning all the material facts
in an election petition is reiterated:

"48. 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."

26. Though the failure to give the 'material particulars' has not been held to be fatal, the failure to give 'material facts' has always been held to be fatal to

the election petition.

27. The Judgment under appeal recorded a finding
that the election petition contained all material facts.

At para 12 of the Judgment, the learned Judge recorded as
follows:

"12. Keeping in view the criteria for distinguishing material facts from material particulars, it can safely be

concluded that the election petition contains material facts in respect of other corrupt practices alleged to have been committed by the respondent no.1. It is true that the allegations suffer from lack of certain material particulars particularly as to the consent of the returned candidate or his election agent but, as explained in Rai Naraiian's case (supra), this Court may allow the deficient particulars to be amended or elaborated."

Emphasis Supplied

And opined that it is permissible to allow amendment of the election petition to enable the election petitioner to supply the particulars. Such a conclusion, according to the High Court, is warranted on the basis of a Judgment of this Court in Sardar Harcharan Singh Brar vs. Sukh Darshan Singh and others, (2004) 11 SCC 196. It was a case where the appellants before the Court filed election petition

52

challenging the election of the respondent to the Panjab Legislative Assembly. One of the grounds in the said election petition is that the respondent obtained the assistance of a public officer, thereby committing a corrupt practice under Section 123 (7) of the R.P. Act.

One of the issues framed was whether the election petition lacked material facts and, therefore, did not disclose any cause of action. The High Court found the said issue against the election petitioner. On appeal, this Court reversed the conclusion of the High Court, holding as follows:

"13. Having gone through the contents of the election petition, we are satisfied that the High Court has not been right in directing the petition to be dismissed at the threshold by forming an opinion that the averments made in the election petition were deficient in material facts. It is not necessary to burden this judgment with reproduction of the several averments made in the election petition. The High Court has already done it. The test laid down in the several authorities

referred to hereinabove and in particular in the case of Raj Narain (supra) is fully satisfied. The grounds of corrupt practice and the facts necessary to formulate a complete cause of action have been stated."

While arriving at such a conclusion, this Court relied upon

53

Raj Narain vs. Smt. Indira Nehru Gandhi and another, (1972)

3 SCR 841. At para 9, this Court 'summarised' the principles emanating from Raj Narain (supra) as follows:

"9. Some of the principles elaborated in Raj Narain v. Smt. Indira Nehru Gandhi and Anr. [1972] 3SCR841, are relevant for our purpose. Dealing with the corrupt practice, the Court held that :

(i) While a corrupt practice has got to be strictly proved, it does not follow that a pleading in an election proceeding should receive a strict construction. Even a defective charge does not vitiate a criminal trial unless it is proved that the same has prejudiced the accused. If a pleading on a reasonable construction could sustain the action, the court should accept that construction. The courts are reluctant to frustrate an action on technical grounds.

(ii) The charge of corrupt practice in an election petition is a very serious charge and has to be proved. It may or may not be proved. The allegations may be ultimately proved or not proved. But the question for the courts is whether a petitioner should be refused an opportunity to prove those allegations merely because the petition was drafted clumsily. Opportunity to prove should not be refused.

(iii) If the allegations made in an election petition regarding a corrupt practice do not disclose the constituent parts of the corrupt practice alleged, the same will not be allowed to be proved and those allegations cannot be amended after the period of limitation for filing an election petition, but the court may allow

54

particulars of any corrupt practice alleged in the petition to be amended or amplified.

"Material facts" in Section 83 of the

Representation of People Act, 1951 shows that the ground of corrupt practice and the facts necessary to formulate a complete cause of action must be stated. The function of the particulars is to present a full picture of the cause of action so as to make the opposite party understand the case he has to meet. Under Section 86(5) of the Representation of People Act if the corrupt practice is alleged in the petition the particulars of such corrupt practice may be amended or amplified.

(iv) An election petition is not liable to be dismissed in limine because full particulars of corrupt practice alleged were not set out. If an objection was taken and the Tribunal was of the view that full particulars have not been set out, the petitioner : has to be given an opportunity to amend or amplify the particulars. It is only in the event of non-compliance with such order to supply the particulars, that the charge which remained vague could be struck down."

28. Raj Narain and Indira Gandhi contested from Rae Bareilly constituency in the General Election to the Lok Sabha held in March, 1971. Raj Narain lost the election and challenged the election of Indira Gandhi. After the issues were framed in the election petition, an application was filed by Indira Gandhi to strike out issues No. 1 to 3 therein. Raj Narain filed an application to

55

amend the election petition. His application was rejected and the application of Indira Gandhi was allowed by the High Court on the ground that he was seeking to add material facts beyond the period of limitation for filing the election petition. Raj Narain carried the matter to this Court. This court examining the question whether the High Court was justified in striking out of the first issue, i.e., whether Indira Gandhi obtained the assistance of Yashpal Kapur, a gazetted officer in the service of the Government of India, in furtherance of the prospects of her election, held as follows:

"10. The appellant's contention is that the respondent after she became a

candidate in the election in question obtained the services of Yashpal Kapur when he was still a gazetted officer in the Government of India for the furtherance of the prospects of her election. In order to establish that plea, he must plead and prove:

(1) That the respondent obtained the assistance of Yashpal Kapur when he was a gazetted officer;

(2) That the assistance obtained by her was for the furtherance of the prospects of her election and

(3) That she obtained that assistance after she became a candidate."

Emphasis Supplied

And at para 13, this Court recorded that in order to establish his plea, Raj Narain had to establish that the

56

assistance of Yashpal Kapur was obtained when he was still a government servant and at the time such an assistance was

obtained Indira Gandhi had become a candidate. This Court

after examining the relevant averments of the election petition, which were extracted in extenso, recorded a

finding that the election petition nowhere stated as to

when Indira Gandhi had become a candidate. It was, in this

context, this Court observed at para 16 as under:

"..... But if the petition is read reasonably, as it should be, it is clear that the allegation of the petitioner is that the service of Yashpal Kapur were obtained by the respondent when she had already become a candidate and when she so obtained his assistance, Yashpal Kapur was still a gazetted officer. It is true that one of the ingredients of the corrupt practice alleged i.e. that when the respondent obtained the assistance of Kapur, she was a candidate is not specifically set out in the petition but from the allegations made; it flows as a necessary implication. While a corrupt practice has got to be strictly proved but from that it does not follow that a pleading in an election proceeding should receive a strict construction. This Court has held that even a defective charge does not vitiate a criminal trial unless it is proved that the same has prejudiced the accused. If a pleading on a reasonable construction could sustain the action, the court should accept that construction. The courts are reluctant to frustrate an action on technical grounds.

The charge of corrupt practice in an election is a very serious charge. Purity

57

of election is the very essence of real democracy. The charge in question has been denied by the respondent. It has yet to be proved. It may or may not be proved. The allegations made by the appellant may ultimately be proved to be wholly devoid of truth. But the question is whether the appellant should be refused an opportunity to prove his allegations? Should the Court refuse to enquire into those allegations merely because the appellant or someone who prepared his brief did not know the language of the law. We have no hesitation in answering those questions in the negative. The implications of the rule of law are manifold."

All that this Court held is that the particulars of a corrupt practice can be supplied by amendment provided that the basic facts constituting the corrupt practice are pleaded. This Court held in Raj Narain (supra):

"It is true that one of the ingredients of the corrupt practice alleged i.e. that when the respondent obtained the assistance of Kapur, she was a candidate is not specifically set out in the petition but from the allegations made; it flows as a necessary implication."

The fact that Indira Gandhi was a candidate at the election in dispute would be a logical implication of the fact that it was her election, which was under challenge. The observations were not meant to dilute the long established

58

principles of pleadings in the election disputes but were limited to the context.

29. This Court in Sardar Harcharan Singh Brar (supra), in my opinion, also came to the same conclusion. Principle No.(iii) stated in para 9 of Sardar Harcharan Singh Brar (supra) makes it abundantly clear.

30. In my opinion, the election petition on hand hopelessly lacks in stated the material facts constituting the various corrupt practices mentioned in the election petition to enable the declarations sought by the election petitioner. The conclusion recorded by the High Court (extracted at para 27 supra) that;

"It is true that the allegations suffer from lack of certain material particulars particularly as to the consent of the returned candidate or his election agent."

In my opinion is wholly erroneous in law. Consent by the candidate or his election agent is an essential material fact, which is required to be pleaded and proved when the allegation is that somebody other than the candidate or his election agent committed a corrupt practice. The election petition on hand, in my opinion, is incapable of being read

59

as disclosing any cause of action on the basis of any known cannon of interpretation of documents - whether a rule of reasonable construction or any other construction.

In view of the conclusion reached above, I do not propose to examine the other submissions regarding the legal fact of the non-filing of an affidavit in Form No.25 and absence of proper verification of the pleadings and annexures.

31. I may also mention here that though the learned counsel for the election petitioner did not bring to our notice (obviously he was not briefed in this regard), Dr. Rajeev Dhawan, learned counsel for the returned candidate placed before us a photocopy of an application seeking the amendment of the election petition pursuant to the directions of the High Court.

I do not propose to examine the content of the said application except to take note of the fact that the same appears to

have been presented on 02-05-2011. Even otherwise, any such application could, obviously, have been filed only after 05-10-2009, which is the date of Judgment under appeal. In view of the fact that the results of the election in question were declared on 08-12-2008, the application was filed beyond the period of limitation prescribed under the R.P. Act, to challenge the election.

60

In view of my conclusion that the election petition, as originally presented, did not contain the necessary material facts to constitute the cause of action to challenge the election of the returned candidate, the abovementioned application filed by the election petitioner, even if it contain the necessary material facts, cannot be allowed as it would amount to permitting the amendment of the election petition beyond the period of limitation.

32. I, therefore, not only grant leave in the S.L.P., but also allow the appeal and dismiss the election petition.

.....J.

.....
(J. CHELAMESWAR)

New Delhi;

May 3, 2012.

61

ITEM NO.1
[FOR JUDGMENT]

COURT NO.2

SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)
No(s).30417/2009

(From the judgement and order dated 05/10/2009 in EP
No.22/2009 of The HIGH COURT OF M.P AT JABALPUR)

ISHWARDAS ROHANI

Petitioner(s)

VERSUS

ALOK MISHRA & ORS.

Respondent(s)

(With office report)
(for final disposal)

Date: 03/05/2012 This Petition was called on for JUDGMENT
today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s)

Mr. Navin Prakash,AOR.

For Respondent(s)
R1

Mr. Rakesh K.Khanna, Sr. Adv.
Mr. Ashwani Kumar Dubey,AOR.
Mr. Arvind Tomar, Adv.

Mr. Snehasish Mukherjee ,AOR

62

Hon'ble Mr. Justice Altamas Kabir,
pronounced the judgment comprising of His
Lordship and Hon'ble Mr. Justice J.
Chelameswar, granting leave and
dismissing appeal, with no order as to
costs.

Hon'ble Mr. Justice J.
Chelameswar, while regretting inability
to agree with the judgment of Hon'ble Mr.
Justice Altamas Kabir, pronounced
separate judgment, granting leave in the
Special Leave Petition, allowing the
appeal and dismissing the Election
Petition.

Having regard to the fact that we
have differed in delivering the judgment
in this matter, let the matter now be
placed before Hon'ble the Chief Justice
of India, for placing the matter before a
Third Judge.

(Sheetal Dhingra)

(Juginder Kaur)

Court Master

Assistant Registrar

[Signed Reportable Judgments are placed on the file]