

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
BEFORE HON. SHRI JUSTICE ALOK VERMA,J
E.P. No.33/2014

Premchand Guddu

Vs.

Prof. Chintamani Malviya & Ors.

Shri Prateek Maheshwari, learned counsel for the petitioner.
Shri Sameer Athawale and Shri Sudeep Bhargav, learned counsel
for the respondent.

ORDER

(Passed on 24/09/2015)

This order shall govern disposal of I.A. No.3318/2015, which is an application under Order 7 Rule 11 r/w section 151 of Code of Civil Procedure.

2. This application is filed by the respondent No.1, who is a returned candidate from Lok Sabha Constituency No.22 Ujjain (M.P). A general election for Lok Sabha was held in the months of March, April and May, 2014. The petitioner also contested from the same constituency as nominated candidate of Indian National Congress. Apart from the petitioner and respondent No.1, ten other candidates also contested the election. They are arraigned as respondents No.2 to 11. This petition is filed alleging various corrupt

practices during the election amongst which it is stated that the respondent No.1 was working on the post of professor in Vikram University, Ujjain. His resignation was not accepted according to law and for this, the petitioner filed an objection which was not properly decided. It is further alleged that one of the polling center of Nagoda Khachrod Assembly Constituency No.212, it was observed by agents of the petitioner that the Electronic Voting Machine (EVM) was not working properly and vote caste in favour of any other party was going to Bharti Janta Party. About the malfunctioning of EVMs news was published in various newspapers. The petitioner also filed complaints in respect of these machines, however, no action was taken. It is further alleged that voter slips were distributed much before the date fixed for its distribution at Mahidpur Assembly Constituency No.22 at Booth No.3. This was against the guidelines issued by Election Commission. The petitioner lodged complaints in this respect, but no action was taken.

3. It is further alleged that several baseless scandalous and personal remarks against the petitioner by one Sonu Gahlot who was President of Ujjain Municipal Corporation

were made during a T.V. interview against the petitioner. He spoke many unethical words about the petitioner and thereby committed illegal and corrupt practice by exercising undue influence in free exercise of electoral right under section 100 (b)(d)(ii)(iv) and under section 123 (2), 123(4) and also orders passed by the Election Commission of India. In this regard, a copy of the DVD containing recordings of said facts and documents demonstrating action against the said person are filed with the petition. It is further alleged that there is significant discrepancy in Form No.17-C given at the end of polling on 24.04.2014 and Form No.17-C given at the time of counting on 16.05.2014. For this also several complaints were filed, but of no avail. It is also avert that the respondent No.1 working as professor in Vikram University, Ujjain. During the election, the university staff is engaged on election duty which was never done before this was to help the respondent No.1. According to the petitioner, when the result was declared he secured 3,31,438 votes while 6,41,104 votes were casted in favour of the respondent No.1. On these grounds, it is alleged that process of election was not fair and healthy and, therefore, this petition is filed for following reliefs: -

(i) To declare election of respondent No.1 as void.

(ii) To declare the petitioner as duly elected returned candidate.

(iii) To award appropriate punishment to those found to be involved in corrupt practice and pass such order.

4. These averments and pleadings, according to respondent No.1 do not disclose any cause of action. Accordingly, the application I.A. No.3318/2015 is filed raising following four grounds:-

(i) The petitioner has not disclosed any cause of action in the petition and in the absence of cause of action, the petitioner does not disclose any cause of action.

(ii) The Chief Election Commissioner and returning officer were not made party in the petition who are necessary parties.

(iii) The material facts were suppressed by not disclosing a final outcome of complaints filed by the petitioner and his agents to the returning officer.

(iv) No specific corrupt practice committed by the respondent No.1 or his agents is pleaded. It is also not pleaded that any corrupt practice if committed at the behest of the respondent No.1 and accordingly, there is no cause of action

disclosed by the petitioner and on these grounds under order 7 rule 11 (a) and (d) of CPC, the election petition is liable to be rejected.

5. In reply, the petitioner submitted that the petition mentioned all the facts and circumstances and enclosed with all the documents required for filing election petition as mandated under section 18 of the Representation of People Act 1951 (hereinafter called 'the Act of 1951'). Nothing more is expected to be provided by the petitioner. In reply to para 2 of the application, it is submitted by the petitioner that under section 82 of the Act of 1951, the necessary parties are prescribed which do not include an election commission and returning officer and, therefore, election commission and returning officer are not required to make parties to election petition. In reply to para 3, the petitioner submits that all material facts and material particulars as required for filing of election petition has been given in the petition about each and every corrupt practices alleged. It is further submitted that the main grievance of the petitioner remains inaction on part of returning officer during the process of election despite numerous complaints made by him. The submission of the respondent No.1 that the petition

deserves dismissal summarily without trial for alleging suppression of facts has no force and on this ground the application is liable to be dismissed. In reply to para 4, it is also submitted that all the material facts and material particulars are given in the petition. The respondent No.1 diminished image of the petitioner in society and speeches were made during the election process and for this the consent has to be presumed and consent need not be specifically pleaded in the petition.

6. It is also submitted that all necessary documents are enclosed to detail such submissions and, therefore, at this stage, it cannot be said that there is no allegations of corrupt practices against the respondent No.1.

7. On these grounds the learned counsel for the petitioner prays that the application under order 7 rule 11 of CPC may be dismissed.

8. Section 83(1)(b) provides thus :-

“83.(1)(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 practices; and”

9. It is apparent that full particulars of corrupt practices is to be given in the election petition including names of the parties alleged to have committed such corrupt practices and date and place of the commission of such practice. The learned counsel for the respondent No.1 cited judgment of Hon'ble Apex Court in case of **Kailash Vs. Nanhku; 2005(4) SCC 480**. In this judgment the Hon'ble Apex Court held that Code of Civil Procedure is applicable as nearly as possible and further the provisions of Civil Procedure will give way to any provisions of the Act and of any rules made thereunder. He also cites judgment of Hon'ble Apex Court in case of **P.C. Thomas vs. P.M. Ismail & Ors.; 2010 AIR (SC) 905** in which it was held that charge of corrupt practice envisaged by the Act is to be equated with a criminal charge and standard of proof thereof would not be preponderance of probabilities as in a civil action but proof beyond reasonable doubt as in a criminal trial. On this point, he also cites the judgment of **Tukaram S. Dighole vs. Manikrao Shivaji Kokate; 2010 (4) SCC 329**. He also cites judgment of Hon'ble Apex Court in **Joseph M.Puthussery vs. T.S. John & Ors.; 2011(1) SCC (Cri) 423** in which it was held

that when there are allegations of false charges of personal character evidence adduced should be taken into consideration and it should not be rejected on a ground that there is no pleadings for the facts stated by the witnesses before the Court. In this regard criminal law has to be followed. On the point of nature on election petition he cites judgment of Hon'ble Apex Court in case of **Ram Sukh vs. Dinesh Aggarwal; 2009 (10) SCC 541** in which it was held that in election petition statutory requirement of election law must be strictly observed and the election contest is not an action at law or a suit in equity, but is purely statutory proceeding unknown to the common law, the requirement of disclosure of “material facts” and “full particulars” as stipulated in the section is mandatory. The Hon'ble Apex Court further observed that the contentions that even if election petition was liable to be dismissed ultimately it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition and since section 83 does not find a place in section 86 of the Act, rejection of petition at the threshold would amount to reading into Sub section (1) of section 86 of the Act and additional grounds

are misconceived and untenable. In case of **Pradip Buragohain vs. Pranati Phukan; 2010 AIR (SCW) 6032**, the Hon'ble Apex Court observed that from a conspectus of the pronouncements of Apex Court three distinct aspects emerge that need to be kept in view while dealing with an election dispute involving commission of corrupt practices. The first is the fact that charge of corrupt practice is in the nature of criminal charge and has to be proved beyond doubt. The second aspect is that it is unsafe to accept oral evidence at its face value unless the same is backed by unimpeachable and incontrovertible documentary evidence. The third aspect which is equally important and fairly well-settled is that while as a Court of first appeal there is no limitation of power of this Court. However, ordinarily it would not disregard the opinion by the trial Judge more so when the trial Judge happens to be a High Court Judge who has recorded the evidence and who has had the benefit of watching the demeanour of witnesses in forming first-hand opinion regarding its credibility.

10. Apart from the case of **Ram Sukh (supra)** the counsel for the respondent No.1 also cited judgment of

Mahadeorao Sukaji Shivankar vs. Ramarantan Bapu;

2004(7) SCC 181 in which distinction between material facts and material particulars was explained. In this case the Hon'ble Apex Court observed that material facts are primary or basic facts which must be pleaded by the party 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 finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise. On the same aspect the learned counsel for the respondent No.1 cited judgment of **Hardwari Lal vs. Kanwal Singh; 1972 Air (SC) 515 : 1972(1) SCC 214.**

In this case the Hon'ble Apex Court held that under section 86 & 87 of the Act of 1951 and order 7 rule 11 of CPC when material facts and particulars of corrupt practice are not set out in the petition so as to furnish a cause of action, petition is to be dismissed under section 87 and not under section 86. On this aspect only the learned counsel also cites judgment of Hon'ble Apex Court in case of **Anil Vasudev Salgaonkar**

vs. Naresh Kushali Shigaonkar; 2009(9) SCC 310. In this case it was pleaded that the returned candidate constructed several Bore wells at his own cost, however, it was not pleaded that water drawing equipments were fixed in those bore holes and no evidence was adduced on that aspect, therefore, it cannot be inferred that water drawing could be drawn from the bore wells.

The Hon'ble Apex Court observed thus:-

“57. In Udhav Singh's case (supra), (*Udhav Singh vs. Madhav Rao Scindia (1977) 1 SCC 511*) 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."

11. In response to the case law cited by the respondent No.1, the petitioner's counsel has cited case law on the point as to what is the principles to decide whether the pleadings and averments in the petition disclose any cause of action. To begin with, he cites judgment of Hon'ble Apex Court in case of **L.R. Shivaramagowda vs. T.M. Chandrashekar; AIR 1999 SC 252.** In para 13 of the judgment the Hon'ble Apex Court while relying the judgment in case of **Udhav Singh vs. Madhav Rao Scindia (1977) 1 SCC 511** observed as under :-

"13. In Udhav Singh v. Madhav Rao Scindia, [1977] 1 SCC 511, a Division Bench of this Court explained the distinction between material facts and material particulars as follows :

"All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts." In the context of a charge of corrupt practice material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate

before he can succeed on that charge. Whether in an election petition a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short all those facts which are essential to clothe the petitioner with a complete cause of action are "material facts" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a)."

12. On the same point, he also cites judgment of Hon'ble Apex Court in case of **V.S. Achuthanandan vs. P.J. Francis; SCC-1999-3-737**. In para 6 of the judgment placing reliance on so many other cases. The Hon'ble Apex Court observed and explained the distinguish between material facts and material particulars. On the very point, he also cites the judgment of Hon'ble Apex Court in case of **Roop Lal Sathi vs. Nachhattar singh Gill; (1982) 3 SCC 487**. The Court observed thus:-

“The dictum of Scott, L.J. in Bruce's case [(1936) 1 KB 697], supra, has been quoted with approval by this Court in **Samant N. Balakrishan v. George Fernandez & Ors. [(1969) 3 SCR 603]** and while observing that the requirements of s. 83 are mandatory, the distinction between material facts and

particulars was brought out in the following terms:

"The word "material" shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet."

Thus, the word "material" in material facts under s. 83 of the Act means facts necessary for the purpose of formulating a complete cause of action; and if any one "material" fact is omitted, the statement or plaint is bad; it is liable to be struck out. The function of "particulars" is quite different, the use of particulars is intended to meet a further and quite separate requirement of pleading imposed in fairness and justice to the returned candidate. Their function is to fill in the picture of the election petitioner's cause of action with information sufficiently detailed to put the returned candidate on his guard as to the case he has to meet and to enable him to prepare for trial in a case where his election is challenged on the ground of any corrupt practice."

13. He further cites the judgment of Hon'ble Apex Court in case of Mohan Rawale vs. Damodar Tatyaba Alias

Dadasaheb and others; (1994) 2 SCC 392. In para 10 on which the Hon'ble Apex Court explained that when the pleadings disclosed some cause of action which may be weak which is likely to succeed the petition cannot be rejected at the preliminary stage. In case of **H.D. Revanna vs. G. Puttaswamy Gowda and others; (1992) 2 SCC 217** cited by the learned counsel for the petitioner, it was held that if any of the relief claim granted, if averments in the petition are true then the petition is maintainable meaning thereby that the pleadings and averments should be such which if proved as such would lead to a conclusion that the election of the respondent can be declared void.

14. He also cites judgment of Hon'ble Apex Court in case of **Ponnala Lakshmaiah vs. Kommuri Pratap Reddy and others; (2012) 7 SCC 788** in which the Hon'ble Apex Court held that the Courts are duty bound to examine allegations of irregularities or illegalities in election process or corrupt practices whenever the same are raised in an election petition within framework of Act, 1951 without being unduly hypertechnical in their approach and without being oblivious of ground realities. It is further observed by

the Apex Court that if there is any defect in affidavit the same can be cured. Learned counsel further cites the judgment of Hon'ble Apex Court in **Ram Sarup Gupta (Dead) by LRs vs. Bishun Narain Inter College and others; (1987) 2 SCC 555** in which it was held that pleading should be liberally construed substance to be seen, however, this was a judgment on Easement Act and not on the Act of 1951. He put great emphasis on the recent judgment of Hon'ble Apex Court in **Ashraf Kokkur vs. K.V. Abdul Khader and others; (2015) 1 SCC 129** in which extent of enquiry required under Order 7 Rule 11 (a) CPC was explained in relation to election petitions. According to which the enquiry should be a limited one only to see whether the petition should be thrown out at the threshold i.e. whether pleadings, if taken as a whole, clearly show they constitute the material facts so as to pose a triable issue. It is further held by the Hon'ble Apex Court that the documents annexed with the petition, forms an integral part of the election petition and which should be seen while deciding the application under section 7 rule 11. The Hon'ble Apex Court in para 28 of the judgment quoting the case of **Ponnala Lakshmaiah (supra)** observed that Courts

need to be cautious in dealing with requests for dismissal of the petitions at the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed. The counsel further quotes case of **F.A. Sapa vs. Singora and others; SCC-1991-3-375** in which it was held that amendment adding material particulars can be allowed, however, amendment in material particulars cannot be allowed, such defects can be cured.

15. He cites three other judgments to show that Election Commission and returning officer are not necessary party. For this, he placed reliance on judgment of Hon'ble Apex Court in case of **Jyoti Basu vs. Debi Ghosal; AIR 1982 SC 983, Michael B. Fernandes vs. C.K. Jaffer Sharief; (2002) 3 SCC 521** and **B. Sundara Rami Reddy vs. Election Commission of India and others; 1991 Supp (2) SCC 624**. These are the main case law quoted by the counsel for the petitioner.

Conspectus of the case law quoted by both the parties is as follows:-

- (i) That the petition should disclose material

facts which should completely describe the corrupt practice alleged and it should show clearly that if proved as stated in the petition, this would lead to a conclusion that by commission of such a corrupt practice the election of petitioner is materially affected.

(ii) The material particulars are those particulars which form the basic concise description of alleged corrupt practices and if the pleadings are lacking in material particulars, the same can be added by amendment.

(iii) The court should not be hypertechnical and even some cause of action which is triable is shown in the petition the petition should not be rejected at the threshold.

(iv) The material particulars in this case is akin to order 6 rule 4 and 5 of CPC Order 6 rule 5 CPC is deleted by amendment Act 1999.

(v) The material particulars can be added by amendment while material facts cannot be added under the Act of 1951.

16. Applying these principles laid down in aforementioned cases quoted by both the sides, we may now proceed to examine the election petition parawise and decide whether any of the para discloses cause of action or any cause of action.

17. In para 6 and 15 of the petition, it is pleaded that on 07.04.2014 the petitioner filed an objection pertaining to the acceptance of resignation from the post of professor by the respondent No.1 in which it was also objected that the respondent No.1 did not vacate his official resident and he was running as election office from his official resident. The objection was rejected by the returning officer. The corresponding documents are filed in the petition as Annexure F, G & H. In para 15 in respect of resignation letter, it is alleged that he failed to submit 3 months advance notice or in lieu thereof an amount equal to three month's salary, thus its acceptance remains contrary to rules. To support contentions of this paragraph the document Annexure-T is annexed to the petition. Going through the documents attached, it is apparent that the petitioner made a complaint on which satisfactory action according to the

petitioner was not taken by the returning officer. Annexure-T is resignation letter by respondent No.1. In para 5 of the resignation letter, he submitted a cheque bearing No.715185 for Rs.62552/- being equal amount of salary of one month in lieu of advance notice for one month. In para 5, he further submitted that according to his knowledge he was under an obligation to submit salary of one month in lieu of advance notice, therefore, he is submitting the amount. In case more amount is due he may be accordingly informed and he is ready to pay the difference. On page 345 of the petition acceptance letter signed by the Vice Chancellor of the University is filed. According to this letter, the Vice Chancellor used power conferred on him under section 15(4) of M.P. University Act. There is no mention of amount of 3 months salary in lieu of notice.

18. Section 15(4) of M.P. University Act confers emergency power on the Vice Chancellor. Under this provision the vice chancellor after taking action, is under an obligation to report his action to such officer, authority, committee or other body as would have in ordinary course dealt with the matter for post facto sanction. There are three

proviso appended to the section, however, the acceptance of resignation of a teacher does not fall within the purview of any of the provisions and, therefore, it cannot be said, at this stage, that resignation was not properly accepted on the basis of averments in the petition as well as the document filed by the petitioner. No other documents or averments are made to show that no action was taken by the concerning department, office of committee after acceptance of resignation by the vice chancellor. So far as the outsiders are concerned, once resignation is accepted by the vice chancellor using power under section 15(4) of the Act lien on the post of professor in the university is terminated and he is no longer an employee of the university. (Section 49 r/w section 65 of the M.P. Universities Act)

19. So far as the use of official residence by the respondent No.1 during the election is concerned, no documents are filed and no material facts are given to show that indeed the official residence was used as an election office and that remained under the occupation of the respondent No.1. And also there are no details of employees of the university deployed for election duty. Therefore, these

paragraphs do not provide any cause of action to the petitioner.

20. Next come the paras 8 and 9 of the petition in which it is pleaded that in Assembly Constituency No.212, the agents of the petitioner were astonished to observe that upon pressing any button of EVM, the tendered vote was going to BJP. According to the petitioner, the EVMs were defective or tampered with to the extent that on tendering vote to any other party it would be caste in favour of BJP. The petitioner avers that he filed complaints to the returning officer, but no action was taken. In para 9 of the petition, it is further contended that the defective EVMs were again used in many of the polling stations.

21. The petitioner has filed the Annexure-JJ to substantiate these contentions. Along with Annexure-JJ which is complaint made to Chief Election Officer, New Delhi, a copy of the panchanama was filed which is a punchnama showing that when certain machines were found defected, the new machines were replaced after the machines were checked by master trainer. No other documents are filed by the petitioner to show that in a

particular polling booth all votes went in favour of BJP. If there is use of such defective machines then 100% votes should have been cast in favour of BJP, but no such documents are filed and nor any evidence is produced neither there is a pleading in this regard. Therefore, these paragraphs also do not provide any cause of action to the petitioner.

22. In para 10 of the petition, it is contended that voter slips were distributed by block officer, Mahidpur Assembly Constituency No.22. According to averments in this paragraphs a complaint was made to the Election Commission of India, copy of which is annexed, but no action was taken. It is also averted that there was flagrant non-compliance of prescribed norms and guidelines issued by Election Commission of India. In this paragraphs also no material facts are given as to how distribution of voter slips prior to the time fixed by block officer, Mahidpur affected the election of the petitioner and respondent No.1 materially. No such instructions are quoted and no material facts are given accordingly, this paragraph also shows no cause of action to the petitioner.

23. In paras 11 and 12, it is alleged that one Sonu Gehlot and one Thawarchand Gehlot levelled false allegations against the petitioner. Copy of DVD containing recording of such fact is filed with the petition while it is said that Thawarchand Gehlot levelled such allegations in a public meeting. It is further submitted that warning was issued to Thawarchand Gehlot by returning officer, but no other action was taken. DVD containing video recording of Thawarchand Gehlot levelling false allegations against the petitioner as filed along with petition as Annexure-M, N, O, P and Q.

24. The main objection raised by the counsel for the respondent No.1 is that no certificate under section 65-B of Evidence Act is filed along with such CDs unless such certificate is filed these DVDs cannot be accepted as evidence other such objection cannot be taken, at this stage, only when the DVDs are being admitted as evidence the certificate under section 65 is needed.

25. So far as the personal allegations are concerned, in these two paragraphs no material facts are given as to what were the allegations against the present petitioner how in

opinion of the petitioner they were false and how such allegations materially affected election of the petitioner. In this regard, the counsel for the respondent No.1 has placed reliance in case of **Joseph M.Puthussery (supra)** while the petitioner relies on judgment of **Prof. Ramchandra G. Kapse vs. Haribansh Ramakbal Singh; (1996) 1 SCC**

206. Section 123(4) of the Act of 1951 provides thus:-

“The publication by a candidate or his agent or by any other person [with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate’s election.

26. According to the section, the allegations in the statement should be of such facts which are false or which the maker of such statement believes to be false or he does not believe it to be true in relation to personal character or conduct of any candidate, therefore, what is expected here is that the petitioner should plead what are the allegations, how in opinion of the petitioner they are false. The

allegations levelled should be proved to be false and for this purpose the principles laid down in case of **Joseph M.Puthussery (supra)** are important in which it was held that such allegations should be supported by evidence for this material facts should be given. No such facts are given not even allegations are pleaded in these paragraphs and, therefore, they do not give any cause of action to the petitioner. This apart, contention of the counsel for the respondent has a force that consent of respondent No.1 is not pleaded. (**Azhar Hussain vs. Rajiv Gandhi; AIR 1986 SC 1253**).

27. In para 13 of the petition it is said that there is a difference in number of votes caste shown in the form No.17-C prepared at the polling station and the same prepared by the District Election Officer. The difference in the tabular form is given as Annexure-R. Going through the Annexure-R, it is apparent that maximum difference is of 10 votes on plus/minus side and only details of 8 polling stations are given. Though the Lok Sabha Constituency is a large area consisting of many polling stations and, therefore, such minor discrepancy in form 17-C cannot

materially alter the election result and there may be various reasons for occurrence of such minor discrepancy and as such this para also does not give any cause of action.

28. In para 14, it is alleged that many complaints were filed by the petitioner before the authorities and no action was taken and then it is pleaded that due to non action by the authorities the election of the respondent No.1 cannot be turned as fair and healthy. The election remained malign etc.

29. So far as the complaint made by the petitioner to the election commission and other authorities are concerned, this Court while dealing with an election petition do not sit as superior authority of these officers. The petitioner has to prove that the complaint made by him were all true and correct and if proper action would have been taken by the authorities, the result of the election could have been materially altered. A judgment filed by the learned counsel for the petitioner in this regard may be referred to with great benefit. The Hon'ble Apex Court in case of **Nandiesha Reddy vs. Kavitha Mahesh; (2011) 7 SCC 721** observed that material facts means all specific and primary facts giving rise to a cause of action which are required to be

proved for relief claimed, the election petition which does not contain a concise statement of material facts are liable to be summarily dismissed what are the material facts would depend upon the material facts on each case. In this case nomination papers were rejected by the returning officer. The Hon'ble Apex Court observed that where the election petitioner pleaded improper rejection of nomination papers by returning officer, she must set out in election petition reasons given by returning officer for refusal to accept nomination paper and facts necessary to show that refusal was improper. Applying this principle to the present case the contention of the petitioner in the election petition as well as in reply of the application under order 7 rule 11 that the main grievance of the petitioner is non action by the concerning authorities can be accepted only when it is shown that if due action would have been taken on the complaints made by the present petitioner, the result could have been different. In this view of the matter, the averments made in the different paragraphs as stated above do not give any cause of action to the petitioner.

30. So far as the necessary parties are concerned, the

counsel for the petitioner places reliance in cases of **Jyoti Basu vs. Debi Ghosal; AIR 1982 SC 983, Michael B. Fernandes vs. C.K. Jaffer Sharief; (2002) 3 SCC 521** and **B. Sundara Rami Reddy vs. Election Commission of India and others; 1991 Supp (2) SCC 624**. According to which the returning officer and election commission are not necessary party and, therefore, the objection raised in the petition by the respondent in this regard cannot be accepted.

31. Accordingly, after the detailed scrutiny as above, I do not find the pleadings and averments made in the election petition show any cause of action and, therefore, the application under order 7 rule 11 filed by the respondent deserves to be allowed and accordingly allowed.

32. The election petition is dismissed at this stage. The substance of this order may be intimated to Election Commission and the Speaker of House of People and authenticated copy of the order shall be sent to election commission without further delay under section 103 of the Act of 1951. Accordingly, the election petition stands disposed of.

**(ALOK VERMA)
JUDGE**