

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

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| Case No. | Election Petition No.0007/2019 |
| Parties Name | <i>Ram Kishan Patel</i> vs. <i>Devendra Singh & another</i> |
| Date of Order | 13/ 07 / 2020 |
| Bench Constituted | Justice B.K. Shrivastava |
| Order passed by | Justice B.K. Shrivastava |
| Whether approved for reporting | Yes |
| Name of counsel for parties | For Petitioner : Shri Mrigendra Singh, Senior Advocate, with Shri Navtej Singh Ruprah and Mrs.Nidhi Padam, Advocates For Respondent No.1 : Shri Sanjay K. Agrawal, Advocate |
| Law laid down | 19, 32, 46, 52 (As per paras) |
| Significant paragraph numbers | 19, 46, 52, 32 |

ORDER
(13.07.2020)

1. This order shall govern the disposal of I.A. No. 8210 of 2019 filed by Respondent No.1 Devendra Singh on 5.7.2019 under Order 7 Rule 11 of CPC read with section 86 of “**Representation of the People Act, 1951**” (referred to as “**Act 1951**”) for dismissal of the election petition No.07 of 2019 as not maintainable under section 86 of the Act, 1951 read with Order 7 Rule 11 of CPC.

2. Notification U/s 30 of R.P. Act,1951 was issued by Election Commission on 02.11.2018 for Legislative Assembly election. Voting was held on 28.11.2018 and the result was declared on 11.12.2018. Respondent No.1 Devendra Singh, Sponsored by the Indian National Congress Party, is the returned candidate (by margin of 8001 votes) for Constituency No.140, Udaipura, District Raisen. Petitioner Ram Kishan Patel, sponsored by Bhartiya Janta Party, who was the loser in that election, filed main election petition under section 80 / 80-A of the Act, 1951 on 24.01.2019 mainly on the ground as contained in Section 100 (1) (d) (i) & (iv) of the Act, 1951.

3. As per the petitioner the election of respondent No.1 is vitiated under section 100 (1) (d) (i) & (iv) of the Act, 1951 because the nomination submitted by the respondent no.1 was not in accordance with the prescribed format as stipulated by the law as neither the affidavit which was submitted by the respondent no.1 along

with the nomination paper was signed by the respondent nor respondent no.1 was properly identified upon the affidavit. The affidavit did not contain signature of the notary on the seal contained at all pages. Therefore, it would be deemed that no affidavit was filed along-with nomination papers by Respondent. Non-compliance of the mandatory provision of law entailed only rejection of the nomination form at threshold at the time of scrutiny of nomination as provided under section 36(2) of the Act, 1951. As per petitioner despite of categorical objection raised by the petitioner before the returning officer, the nomination of the respondent no.1 was accepted. The petitioner also filed the copy of nomination [Ex.P.1], objection raised by the petitioner dated 12.11.2018 [Ex.P.2], reply dated 12.11.2018 filed by the respondent [Ex.P.3] and the order dated 13.11.2018 passed by the Returning Officer rejecting objection [Ex.P.4].

4. As per the petitioner, Section 33 (1) read with section 33(A) of the Act, 1951 and Rule 4-A of the “**Conduct of Election Rules, 1961**” make it clear that nomination paper which include the affidavit in Form 26 is to be completed in all respect. The law is very rigid in relation to the affidavit (Form 26) because the same touches the root of fundamental rights of voter i.e. right to know about the credentials of the candidate. The **blank / unsigned / unverified** affidavit would leave the voter confused and the very object of disclosure stand defeated. Therefore, the affidavit filed by the respondent no.1 ought to have been rejected because the defect of unsigned affidavit is definitely a defect of **substantial character** which cannot be marginalized. The reference of sections 8(1)(e) and 8(2) of Notaries Act, and Rule 8 & 11 of Chapter IV of “**High Court of Madhya Pradesh, Rules, 2008**” also given by the petitioner.

5. The respondent no.1 served, then he filed the Interim Application No. 8210 of 2019 under Order 7 Rule 11 of CPC read with section 86 of Act, 1951, on 05.07.2019. It is submitted by the respondent no.1, that petition filed by the petitioner is not maintainable under section 86 of the Representation of People Act read with Order 7 Rule 11 of CPC.

6. The Respondent No.1 seeks dismissal of Election petition upon the following grounds:-

A. *The election petition does not contain a concise statement of material fact on which the petitioner relies and therefore does not disclose a triable cause of action. The petition thus suffers from non-compliance of the provisions contained U/s 83(1)(b) of the Act, 1951.*

B. *The election petition has not been verified in the manner laid down in the Code of Civil Procedure, 1908 inasmuch as the petitioner has not disclosed the source of information on the basis whereof allegations have been leveled in the petition.*

C. *Copy of the election petition as served upon the answering respondent has not been attested by the petitioner under*

his own signature to be a true copy of the petitioner. The memo of petition bears such attestation but the documents filed along with the election petition do not bear any such attestation. There is thus non-compliance of the provisions contained U/s 81(3) of the Act, 1951.

D. *The averments made in the election petition are completely vague and lacking in material particulars. No trial or enquiry is permissible on the basis of such vague indefinite imprecise averments. The petition therefore, does not disclose a triable issue or cause of action and therefore merits dismissal.*”

7. The petitioner filed the reply of the aforesaid application on 17.10.2019 and opposed the contention raised by the respondent no.1. It is submitted that the allegations made by the petitioner may ultimately be proved to be only devoid of truth but the question is whether the petitioner should be refused an opportunity to prove his allegations. The charge in question is yet to be proved, it may or may not be too. In Para 7 of the reply, the petitioner said :-

“7. That, it is well settle cannon of election law that purity of election is the very essence of real democracy. The charge in question is yet to be prove, it may or may not be too. The allegations made by the petitioner may ultimately be proved to be only devoid of truth, but the question is whether the petitioner should be refused an opportunity to prove his allegation. The answer of all these questions would be definitely be negative. Nevertheless in the case at hand due care has been taken by the petitioner in leveling the allegations, in full facts and particulars thereof has been supplied, so as to enable the petition into trial, thus the instant application so filed by the respondent for dismissal of the petition at threshold U/o VII Rule 11 of C.P.C. read with section 86 and 87 of the Act of 1951 deserves to be dismissed.”

8. No doubt, the powers of Order 7 Rule 11 can be used in the election petition filed under Act,1951. In **Azhar Hussain v. Rajiv Gandhi, AIR 1986 SUPREME COURT 1253 = 1986 Supp SCC 315**, the Apex Court said in para 8 and 9 that **Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a).** The Court said in Para 8 :-

“8. The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions, noncompliance with which entails dismissal of the election. petition, it follows that noncompliance with the requirements of Section 83 (1), even though mandatory, do not have lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of section 87 of the Act. Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a).”

It will be useful to refer **Rule 11 of Order VII of CPC**, which is as under:-

“11. **Rejection of plaint.**-The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of exceptional nature for correction the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

9. In **T. Arivandandam Petitioner v. T. V. Satyapal and another Respondents, AIR 1977 S.C. 2421 [14.10.1977] = (1977) 4 SCC 467**, , while considering the provision of Order 7 Rule 11 and the duty of the trial court the Apex Court has reminded the trial Judges with the following observation:

“The learned Munsif must remember that if on a meaningful, not formal, reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII R. 11, C. P. C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X. C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi.” “It is dangerous to be too good.”

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

11. In **Saleem Bhai v. State of Maharashtra [(2003)1 SCC 557]** it was held with reference to Order 7 Rule 11 of the Code that -

“ 9. ... the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly

irrelevant at that stage,..." (SCC p. 560, para 9).

12. In **Sopan Sukhdeo Sable v. Asstt. Charity Commr. [(2004) 3 SCC 137]** this Court held thus: (SCC pp. 14647, para 15)

" 15. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair splitting technicalities."

13. In **Liverpool & London S.P. & I Assn. Ltd.vs. M.V.Sea Success I & Anr., (2004) 9 SCC 512,** The Court said:-

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

14. In **Hardesh Ores Pvt. Ltd v. M/s. Hede and Co.WITH Sociedade de Fomento Industrial Pvt. Ltd v. M/s. Hede and Co. 2007 AIR SCW 3456 =(2007)5 SCC 614,** the Apex Court said that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether Cl. (d) of R. 11 of O. 7 is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense.

15. In the case of **Karim Bhai Vs. State of Maharashtra & Ors., I.L.R. 2009 M.P. 3167,** the Court held that the instances as given in Order VII Rule 11 cannot be regarded as exhaustive of all the cases, in which the Court can reject the plaint or is limiting the inherent powers of the Court in respect thereof. The provisions are procedural and enacted with an aim and object to prevent vexatious and frivolous litigation. The Court also said that it is required to see that the vexatious and frivolous litigation should not be allowed to proceed so as to kill the time of Court for nothing. Where the plaint does not disclose the cause of action, mere writing by the plaintiff that he is having cause of action, would not itself sufficient to hold that plaintiff has disclosed the cause of action.

16. Apex Court in **The Church of Christ Charitable Trust and Educational**

Charitable Society, rep. by its Chairman v. M/s. Ponniamman Educational Trust rep. by its Chairperson / Managing Trustee, AIR 2012 S.C. 3912 [30.7.2012] = (2012) 8 SCC 706, observed in para 6 as follows: -

“6.....It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII, Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial. This position was explained by this Court in Saleem Bhai and Ors. v. State of Maharashtra and others, (2003) 1 SCC 557 : (AIR 2003 SC 759 : 2003 AIR SCW 174).

17. In paragraph 8 (of AIR) of the **Madanuri Sri Rama Chandra Murthy v. Syed Jalal, AIR 2017 S.C. 2653 = (2017) 13 SCC 174**, the Apex Court has succinctly restated the legal position as follows: -

“8. The plaint can be rejected under Order VII, Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII, Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and merit -less in the sense of not disclosing any right to sue, the court should exercise power under Order VII, Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII, Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII, Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

18. It may be useful to refer para 12 of **Azhar Hussain v. Rajiv Gandhi, AIR 1986 SUPREME COURT 1253 = 1986 Supp SCC 315** in which the Apex Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

“12. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. ”

19. Therefore, upon perusal of the provision of Order 7 Rule 11 of CPC and aforesaid pronouncements, it can be said that :-

[i] The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clause (a) to (e) are made out.

[ii] If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

[iii] The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

[iv] The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

[v] At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and can not be adverted to, or taken into consideration.

[vi] The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed.

[vii] The averments made in the plaint in their entirety must be held to be correct.

[viii] The averments made in the plaint as a whole have to be seen to find out whether Cl. (d) of R. 11 of O. 7 is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation.

[ix] If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

[x] The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial.

20. It will also be useful to refer some important provisions of “The Representation of People Act, 1951” :-

“33. Presentation of nomination paper and requirements for a valid nomination.-

(1) On or before the date appointed under clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under Section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

[Provided

Provided further

Provided]

(1A).

(2)

(3)

(4)

(5)

(6)

(7)

33A. Right to information.-

(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether -

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.”

“33B. Candidate to furnish information only under the Act and the rules.—

Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election which is not required to be disclosed or furnished under this Act or the rules made thereunder.”

“35. Notice of nominations and the time and place for their Scrutiny.—

The returning officer shall, on receiving the nomination paper under sub-section (1) or, as the case may be, sub-section (1A) of section 33], inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the proposer.”

“36. Scrutiny of nominations.-

(1) On the date fixed for the scrutiny of nominations under Section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate but no other person, may attend at such time and place as the Returning Officer may appoint; and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have

been delivered within the time and in the manner laid down in Section 33.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, [reject] any nomination on any of the following grounds :-

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :-Articles 84, 102, 173 and 191,Part II of this Act and Sections 4 and 14 of the Government of Union Territories Act, 1963 (2 of 1963); or,

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in [clause (b) or clause (c) of sub-section (2)] shall be deemed to authorise the [rejection] of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularities has been committed.

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

(5)

(6)

(7)

(8)"

“125A. Penalty for filing false affidavit, etc.-

A candidate who himself or through his proposer, with intent to be elected in an election,-

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information, in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both."

21. In continuation Rule 4 and 4A of “**The Conduct of Election Rules, 1961**” are also relevant :-

“4. Nomination paper.—Every nomination paper presented under sub-section (1) of section 33 shall be completed in such one of the Forms 2A to 2E as may be appropriate: **Provided** that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.

4A. Form of affidavit to be filed at the time of delivering nomination paper.—The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.”

22. Therefore, it appears that S. 33(1) of the Act requires that a nomination paper completed in the prescribed form and signed by the candidates and by an elector of the constituency as proposer shall be filed along with the affidavit as required in rule 4A, on or before the date appointed for the nomination. Section 33(4) lays down that on the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls; provided that **the returning officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected** in order to bring them into conformity with the corresponding entries in the electoral rolls; and where necessary, direct that any clerical or printing error in the said entries shall be overlooked. Section 36 then prescribes for the scrutiny of nomination papers and sub-sec. (2) (b) thereof lays down that the **nomination paper shall be rejected if there has been a failure to comply with any of the provisions of S. 33**. But sub-sec. (4) lays down that the returning officer **shall not reject any nomination paper on the ground of any defect which is not of a substantial character**. The result of these provisions is that the proposer and the candidate are expected to file the nomination papers complete in all respects in accordance with the prescribed form; but even if there is some defect in the nomination paper in regard to either the names or the electoral roll numbers, it is the duty of the returning officer to satisfy himself at the time of the presentation of the nomination paper about them and **if necessary to allow them to be corrected**, in order to bring them into conformity with the corresponding entries in the electoral roll. Thereafter, **on scrutiny the returning officer has the power to reject the nomination paper on the ground of failure to comply with any of the provisions of S. 33 subject however to this that no nomination paper shall be rejected on the ground of any defect which is not of a substantial character**.

23. Now we considering the grounds raised by respondent in his application. The **first** and **fourth** grounds are as under :-

[A]. The election petition does not contain a concise statement of material fact on which the petitioner relies and therefore does not disclose a triable cause of action. The petition thus suffers from non-compliance of the provisions contained U/s 83(1)(b) of the Act, 1951.

[D]. The averments made in the election petition are completely vague and lacking in material particulars. No trial or enquiry is permissible on the basis of such vague indefinite imprecise averments. The petition therefore, does not disclose a triable issue or cause of action and therefore merits dismissal.”

24. It is appropriate to mention here that in the aforesaid two questions, the respondent mainly used three points i.e. **“absence of concise statement”** **“lacking in material particulars”** and **“not disclosure of a triable issue or cause of**

action”. The aforesaid objections are related to election petition, which has been filed by Petitioner before the High Court. Section 81 to 86 of Act, 1951 says :-

“81. Presentation of petitions.—

(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court 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, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2)....[Omitted]

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”

“82. Parties to the petition.—A petitioner shall join as respondents to his petition :-

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and,

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.”

“83. Contents of petition.- (1) An Election petition -

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and,

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

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

(2) Any schedule or annexe to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

“84. Relief that may be claimed by the petitioner.—

A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.”

“86. Trial of election petitions.—

(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect

of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.”

117. Security for costs.—

(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition.

(2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.”

25. It is submitted by the respondent that Section 83 of the Act deals with contents of petition. Clause (a) of Sub Section 1 of Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies. Clause (b) of Sub Section 1 of Section 83 further, provides that such an election petition shall set forth full particulars of any corrupt practices that the petitioner alleges, including as full statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Clause (c) of Sub Section 1 of the Section 83 provides that the election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (v of 1908) for the verification of pleadings. The proviso of Sub Section 1 further mandates that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Sub Section 2 of Section 83 provides that any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. It is further submitted that Section 86 of the Act deals with trial of election petition. Sub Section 1 of Section 86 specifically provides that the High Court shall dismiss an election petition which does not comply with the provision of Section 81 or Section 82 or Section 117.

26. It is further submitted by respondent that in the light of the aforesaid provisions of the Act if the petition filed by the petitioner is examined, the same

would disclose complete non-compliance of the aforesaid mandatory provisions of the Act. The petitioner has not made a concise statement of material facts with full particulars on which the petitioner relies. It is also submitted that even though the non-compliance of the provisions contained under Section 83 of the Act are not covered under Section 86(1) of the Act, it has been settled by a series of judgments by the Hon'ble Apex Court that the petition which does not meet the requirement of Section 83 can also be dismissed under Section 86 of the Act with the aid of Order 7 Rule 11 CPC.

27. In reply the Petitioner submit that he has filed the instant petition with due care and as per the mandatory provisions of the Act of 1951. The law mandates that the election petition must contain concise statement which discloses cause of action. Herein the present case the petitioner has pleaded each and every illegal act of Respondent No. 1 and others very consciously with all particulars. Hence, the allegations of the Respondent No. 1 that the election petitioner has filed the instant petition casually is imaginary and deserves to be rejected.

28. Learned Counsel for Respondent placed reliance upon Virender Nath Gautam v. Satpal Singh and Ors., AIR 2007 S.C.581 = (2007)3 SCC 617 in which the Apex Court defines the expression '**material facts**' and said :-

“29. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of subsection (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order VII of the Code.

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

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

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

evidence a party would be leading at the time of trial.”

29. Learned Counsel for Respondent also placed reliance upon **Hari Shanker Jain Appellant v. Sonia Gandhi, AIR 2001 S.C. 3689 = (2001) 8 SCC 233**. The Apex Court said the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The Court said as under :-

“22. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well-settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. See *Samant N. Balakrishna, etc. v. George Fernandez, (1969) 3 SCR 603; Jitender Bahadur Singh v. Krishna Behari, (1969) 2 SCC 433*. Merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V. S. Achuthanandan v. P. J. Francis, (1999) 3 SCC 737*, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

23. It is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.

24. There are two features common to both the election petitions. Firstly, both the petitions are verified as 'true to personal knowledge' of the two petitioners respectively which is apparently incorrect as the very tenor of pleadings discloses that any of the petitioners could not have had personal knowledge of various facts relating to the respondent personally and during the course of hearing we had put this across to the two petitioners and they responded by submitting only this much that the verification if incorrect was capable of being cured. The second common feature in the two petitions is that there are bald assertions made about the Italian law without stating what is the source of such law as has been pleaded by the election-petitioners or what is the basis for raising such pleadings. These averments also have been verified as 'true to my knowledge' of each of the election-petitioners a position, wholly unacceptable.”

30. Reliance also placed upon para 11 of **Azhar Hussain v. Rajiv Gandhi, AIR 1986 S.C. 1253 = 1986 Supp SCC 315** in which it has been said that all the primary facts which must be proved by a party to establish a cause of action or his

defence are material facts, therefore an election petition can be summarily dismissed if it does not furnish cause of action. :-

“11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in **Samant's case (1969) 3 SCC 238 : (AIR 1969 SC 1201)** has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in **Udhav Singh's case (1977) 1 SCC 311 : (AIR 1977 SC 744)** the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge leveled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of, Section 83(1) (a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.”

31. In Harkirat Singh v. Amarinder Singh, AIR 2006 S.C. 713 = (2005) 13 SCC 511 the petition was dismissed by the High court by saying that it did not state material facts and thus did not disclose a cause of action. But the Supreme Court set aside the order and said that High Court, was wholly unjustified in entering into the correctness or otherwise of facts stated and allegations made in the election petition and in rejecting the petition holding that it did not state material facts and thus did not disclose a cause of action. The Court also said that High Court, stepped into prohibited area of appreciating the evidence and by entering into merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable. In para 81 & 82, the Apex court observed as under :-

“81. As we have already observed earlier, in the present case, 'material facts' of corrupt practice said to have been adopted by the respondent had been set out in the petition with full particulars. It has been expressly stated as to how Mr. Chahal who was a Gazetted Officer of Class I in the Government of Punjab assisted the respondent by doing several acts, as to complaints made against him by authorities and taking of disciplinary action. It has also been stated as to how a Police Officer, Mr. Mehra, who was holding the post of Superintendent of Police helped the respondent by organizing a meeting and by distributing posters. It was also alleged that correct and proper accounts of election expenses have not been maintained by the respondent. Though at the time of hearing of the appeal, the allegation as to projecting himself as 'Maharaja of Patiala' by the respondent had not been pressed by the learned counsel for the appellant, full particulars had been set out in the election petition in respect of other allegations. The High Court, in our opinion, was wholly unjustified in entering into the correctness or otherwise of facts stated and allegations made in the election petition and in rejecting the petition holding that it did not state material facts and thus did not disclose a cause of action. The High Court, in our considered view, stepped into prohibited area of appreciating the evidence and by entering into merits of the case which would be permissible only at the stage of

trial of the election petition and not at the stage of consideration whether the election petition was maintainable.

82. We, therefore, hold that the High Court was wrong in dismissing the election petition on the ground that material facts had not been set out in the election petition and the election petition did not disclose a cause of action. The order passed by the High Court, therefore, deserves to be quashed and set aside.”

32. As per respondent the petition suffers from non-compliance of the provisions contained U/s 83(1)(b) of the Act, 1951, because does not contain a concise statement of material fact on which the petitioner relies. Sub section (b) says about the “full particulars of **corrupt practice**”. It is appears from the reading of entire petition that this petition is not based upon “corrupt practice”. Even the respondent himself raised the objection about “**absence of concise statement of material fact**”, which come under sub section 83(1)(a) not under 83(1)(b). Sub Section (b) of S.83(1) require “full particulars” in the case of Corrupt practice, while sub section (a) require only “concise statement” of the material facts.

33. In the light of the aforesaid law, if we examined the petition, than it appears that the petition has been filed mainly upon the grounds that nomination submitted by the respondent no.1 was not in accordance with the prescribed format as stipulated by the law as ;

(i) Neither the affidavit which was submitted by the respondent no.1 along with the nomination paper was signed by the respondent nor respondent no.1 was properly identified upon the affidavit.

(ii) The affidavit did not contain signature of the notary on the seal contained at all pages, therefore, it would be deemed that no affidavit was filed along-with nomination papers by Respondent.

34. The ground taken by petitioner is mainly related to the affidavit filed along with nomination paper. As per the petitioner the election of respondent No.1 is vitiated under section 100 (1) (d) (i) & (iv) of the Act, 1951 because the nomination submitted by the respondent no.1 was not in accordance with the prescribed format as stipulated by the law as neither the affidavit which was submitted by the respondent no.1 along with the nomination paper was signed by the respondent nor respondent no.1 was properly identified upon the affidavit. The affidavit did not contain signature of the notary on the seal contained at all pages. Therefore, it would be deemed that no affidavit was filed along-with nomination papers by Respondent.

35. As for as “**concise statement of material facts**” is concerned, it appears that in para 6 (A) to 6 (M) of petition, sufficient details are mentioned by the petitioner related to the affidavit. Not only details of defects are mentioned, the relevant provisions of concerned law and rules are also mentioned. Reference of Sections 30, 31, 33, 33A, 36(2), 100(1)(d)(i) & (v) of the “**Representation of the People Act 1951**”, Rule 4-A & Form 26 contained in the “**Conduct of election Rules, 1961**”, Section 8 (1)(e), 8(2) of “**Notaries Act,1952**” has been given. Entire language of any section of law is not required to be pleaded.

36. It is appeared from **Para 6 (A) to 6 (M)** of petition that the petitioner mentioned the entire details of his knowledge and the defects in affidavit. In Para 6 (C) it is stated that as per provisions of section 33-A(3) of the Act, 1951, the respondent no.2 affixed the information / nomination submitted by respondent no.1 on the notice board. Accordingly, the petitioner also got the opportunity to peruse the same and gathered the fact that the nomination form so submitted by respondent no.1 was not in accordance with the prescribed form, as stipulated by the law as neither the affidavit annexed thereto was signed by respondent no.1 nor the same was identified. The affidavit did not contain the signature of the notary on the seal contained at all pages, hence, non-compliance of mandatory provision of law entailed only rejection of nomination form at the threshold at the time of scrutiny of nomination as provided under section 36(2) of the Act, 1951.

37. In other paras it is stated that as per **Rule 4-A** of the **Conduct of Election Rules**, the filing of affidavit is necessary along with the nomination paper filed under section 33(1) of the Act, 1951. The affidavit should be sworn before a Magistrate of the First Class or a Notary in Form 26. The affidavit submitted by the respondent no.1 was not signed by the notary on each page. Respondent no.1 was not properly identified, therefore, it would be deemed that no affidavit was filed along with the nomination paper. The defect of non-verification and identification of the affidavit is a defect of substantial character and, therefore, the nomination form so submitted by the respondent no.1 ought to have been rejected during scrutiny as per section 36(2) of Act,1951. It is also stated that the filing of affidavit is mandatory, as per the direction given by the Apex Court in the case of **People's Union For Civil Liberties Vs. Union of India and another**. As per instructions given by the Supreme Court in that case, the legislature has introduced "**Section 33-A**" in the Act and **Rule 4-A** of the Conduct of Rules, according to which it is mandatory on the part of candidate to furnish an affidavit as per prescribed format i.e. Form 26 stating therein the assets and liabilities, educational qualification and past and present criminal cases so that the voters of the constituency could know full particulars of a candidate. The affidavit filed by respondent no.1 having no any signature / verification as per rule, therefore, the affidavit is not an affidavit in the eyes of law. It is the settled preposition of law that without proper signature / verification and identification, an affidavit is nullity because verification of affidavit testifies the genuineness / authenticity of the candidates. It is also stated that a candidate who has filed an affidavit with false information as well as a candidate who has filed an affidavit with particulars left blank, should be treated as per the same shall tantamount to breach of Fundamental Rights of voter, guaranteed under Article 19(1)(a) of the Constitution (Right to Know) of the citizen, which is inclusive of freedom of speech and expression, as interpreted by Hon'ble the Supreme Court in the case of **Association of Democratic Reform**. In this case, the defect of unsigned affidavit is definitely a defect of substantial character, which cannot be marginalized. The nomination paper was wrongly accepted.

38. Whether in the absence of affidavit, defect in the affidavit, or in case of false affidavit, the nomination should be rejected or not? As per petitioner, looking to the defect in the affidavit filed by respondent no.1, the nomination should be rejected. In this behalf, the petitioner placed reliance upon the following

decisions :-

- [1] Resurgence India v. Election Commission of India and Anr., **AIR 2014 S.C. 344 = 2002 AIR SCW 2186 = (2014) 14 SCC 189** [Three Judges] [13.09.2013]
- [2] Peoples Union for Civil Liberties (PUCL) and another Vs.. Union of India and another = Lok Satta and others Vs. Union of India , **AIR 2003 S. C. 2363** [13.03.2003] [Three Judges]
- [3] Union of India Vs. Association for Democratic Reforms and another, =Peoples Union for Civil Liberties and another Vs. Union of India and another , **AIR 2002 S. C. 2112 = 2002 AIR-SCW 2186 = (2002) 5 SCC 294** [02.05.2002] [Three Judges]

39. In the case of Union of India Vs. Association for Democratic Reforms and another = Peoples Union for Civil Liberties and another Vs. Union of India and another , AIR 2002 S. C. 2112 = 2002 AIR-SCW 2186 = (2002) 5 SCC 294 [Three Judges] , The Supreme Court, directed the Election Commission of India to issue necessary orders, in exercise of its power under Article 324 of the Constitution, to call for information on affidavit from each candidate seeking election to the Parliament or a State Legislature as a necessary part of his nomination paper furnishing therein information relating to his conviction / acquittal / discharge in any criminal offence in the past, any case pending against him of any offence punishable with imprisonment for 2 years or more, information regarding assets (movable, immovable, bank balance etc.) of the candidate as well as of his / her spouse and that of Dependants, liability, if any, and the educational qualification of the candidate. The Apex Court sum up the legal and constitutional position as under :-

- “1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.
2. The limitation on plenary character of power is when the Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary direction, Commission can fill the vacuum till there is legislation on the subject. In Kanhiya Lal Omar's case, the Court construed the expressions "superintendence, direction and control" in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the election commission to issue such orders.
3. The word "elections" includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate according to his thinking and opinion. As stated earlier, in Common Cause case (supra) the Court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election. If on affidavit a candidate is required to disclose the assets held by him at the

time of election, voter can decide whether he could be re-elected even in case where he has collected tons of money.

Presuming, as contended by the learned senior counsel Mr. Ashwini Kumar, that this condition may not be much effective for breaking a vicious circle which has polluted the basic democracy in country as the amount would be unaccounted. May be true, still this would have its own effect as a step-in-aid and voters may not elect law-breakers as law-makers and some flowers of democracy may blossom.

4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

5. The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under: -

"(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

6. Cumulative reading of plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the Executive to subserve public interest.

7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter's (little man-citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers.

40. In the aforesaid case the Court found that the directions issued by the High Court are not unjustified or beyond its jurisdiction. However, considering the submissions made by the learned counsel for the parties at the time of hearing of the matter, the Apex Court **modified the said directions in para 58 as stated below:-**

"58. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper furnishing therein, information on the following aspects in relation to his/her candidature:-

(1) Whether the candidate is convicted / acquitted / discharged of any criminal offence in the past_if any, whether he is punished with imprisonment or fine?

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balances etc.) of a candidate and of

his/her spouse and that of Dependants.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.

(5) The educational qualifications of the candidate.

41. Pursuant to the above directions, the Election Commission, vide order dated 28.06.2002, issued certain directions to the candidates to furnish full and complete information in the form of an affidavit, duly sworn before a Magistrate of the First Class, with regard to the matters specified in Association for Democratic Reforms (supra). It was also directed that non-furnishing of the affidavit by any candidate or furnishing of any wrong or incomplete information or suppression of any material information will result in the rejection of the nomination paper, apart from inviting penal consequences under the Indian Penal Code, 1860. It was further clarified that only such information shall be considered to be wrong or incomplete or suppression of material information which is found to be a defect of substantial character by the Returning Officer in the summary inquiry conducted by him at the time of scrutiny of nomination papers.

42. In **Peoples Union for Civil Liberties (PUCL) and another Vs.. Union of India and another , = Lok Satta and others Vs. Union of India , AIR 2003 S. C. 2363 [Three Judges]** though the Supreme Court reaffirmed the aforementioned decision but also held that the direction to reject the nomination papers for furnishing wrong information or concealing material information and verification of assets and liabilities by means of a summary inquiry at the time of scrutiny of the nominations cannot be justified. Therefore, Court directed to the Commission to revise the instructions. The court observed -

“While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in Association for Democratic Reforms case, the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the returning officer to consider the truth or otherwise of the details furnished with reference to the 'documentary proof'. Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objectors' version. It is true that the aforesaid directions issued by the Election Commission is not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in Association for Democratic Reforms case (supra) and as provided under the Representation of the People Act and its 3rd Amendment.”

43. Pursuant to the above, the Election Commission, vide order dated 27.03.2003, held its earlier order dated 28.06.2002 non-enforceable with regard to verification of assets and liabilities by means of summary inquiry and rejection of nomination papers on the ground of furnishing wrong information or suppression of material information. Again, the Election Commission of India, vide letter dated 02.06.2004 directed the Chief Electoral Officers of all the States and Union Territories that where any complaint regarding furnishing of false information by any candidate is submitted by anyone, supported by some documentary evidence, the Returning Officer concerned should initiate action to prosecute the candidate

concerned by filing formal complaint before the appropriate authority.

44. Thereafter, in **Resurgence India v. Election Commission of India and Anr., AIR 2014 S.C. 344 = 2002 AIR SCW 2186 = (2014) 14 SCC 189 [Three Judges]** the Petitioner-organization pleaded for issuance of appropriate writ / direction including the writ of mandamus directing the respondents to make it compulsory for the Returning Officers to ensure that the affidavits filed by the candidates are complete in all respects and to reject those nomination papers, which are accompanied by blank affidavits. In that case the nomination paper was filed with affidavit in which space prescribed for particulars was left blank. The court said that its defeats the “right to know” of elector therefore such nomination paper is liable to be rejected. The court said that filing of affidavit stating that the information given in the affidavit is correct but leaving the contents blank does not fulfill the objective behind filing the same. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizen under Article 19(1) (a) of the Constitution of India. The citizens are required to have the necessary information at the time of filing of the nomination paper in order to make a choice of their voting. When a candidate files an affidavit with blank particulars, it renders the affidavit itself nugatory. It is the duty of the Returning Officer to check whatever the information required is fully furnishing at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. Court further observed that the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank cannot be treated at par. If so done it will result in breach of fundamental right guaranteed under Article 19(1)(a) of the Constitution, viz., 'right to know', which is inclusive of freedom of speech and expression. If the Election Commission accepts the nomination papers in spite of blank particulars in the affidavits, it will directly violate the fundamental right of the citizen to know the criminal antecedents, assets and liabilities and educational qualification of the candidate. Further, the subsequent act of prosecuting the candidate under Section 125A(i) will bear no significance as far as the breach of fundamental right of the citizen. It is therefore necessary for the candidate to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank. The court summarized the directions in para 27 as under :-

“27. What emerges from the above discussion can be summarized in the form of following directions:

(i) The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament / Assemblies and such right to get information is universally recognized. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1) (a) of the Constitution.

(ii) The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

(iii) Filing of affidavit with blank particulars will render the affidavit nugatory.

(iv) It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

(v) We clarify to the extent that Para 73 of People's Union for Civil Liberties case (supra) will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.

(vi) The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank.

(vii) Filing of affidavit with blanks will be directly hit by Section 125A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalized for the same act by prosecuting him/her.”

45. In the above case the Court also referred **Shaligram Shrivastava Vs. Naresh Singh Patel , AIR 2003 S. C. 2128 [Three Judges]** in which Apex court said that rejection of nomination is proper upon the ground of failure to fill proforma prescribed by Election Commission eliciting necessary information for deciding whether person is qualified or disqualified. In that case it was found that the candidate did not properly filled such proforma and also remain absent at time of scrutiny of nomination. The Court observed that the failure to fill the proforma prescribed by the election commission eliciting necessary and relevant information in the light of S. 8 to inquire as to whether the person is qualified and not disqualified and also failing to be present personally or through his representative at the time of scrutiny renders the statutory duty / power of Returning Officer for holding proper scrutiny of nomination paper nugatory. No scrutiny of the nomination paper could be made under S. 36(2) of the Act in the light of S. 8 of the Act. It certainly rendered the nomination paper suffering from defect of substantial character and the Returning Officer was within his rights in rejecting the same. Court further said that at the time of scrutiny the Returning Officer is entitled to satisfy himself that a candidate is qualified and not disqualified. Sub-section (2) of S. 36 authorises him to hold an enquiry on his own motions, though summary in nature. The Returning Officer furnished a proforma to the candidates to be filled on affidavit and filed on or before the date and time fixed for scrutiny of the nomination paper. Therefore, providing a proforma, eliciting necessary and relevant information in the light of S. 8 of the Act to enquire as to whether the person is qualified and not disqualified, is an act or function fully covered under sub-section (2) of S. 36 of the Act. The Returning Officer is authorized to seek such information to be furnished at the time or before scrutiny. If the candidate fails to furnish such information and also absents himself at the time of the scrutiny of the nomination papers, is obviously avoiding a statutory enquiry being conducted by the Returning Officer under sub-section (2) of S. 36 of the Act relating to his being not qualified or disqualified in the light of S. 8 of the Act. It is bound to result in defect of a substantial character in the nomination. The court further observed that the information furnished in the form 2-B prescribed under R. 4 contains the declaration of the candidate that he is qualified and not disqualified to be a candidate for being chosen from the constituency. Such bald declaration that the candidate is qualified and not disqualified is not at all sufficient to scrutinise the

nomination paper from the angle of S. 8 of the Act. For the purpose of scrutiny further information is necessary. The scrutiny may call for even suo-motu inquiry by the Returning Officer though summary in nature. It is one of the statutory duties of the Returning Officer to scrutinise the nomination paper in the light of S. 8 of the Act and he is statutorily authorised to hold a summary inquiry about the qualification and disqualification of the candidates. Such a power which vests in the Returning Officer is not dependent instructions issued by the Election Commission, therefore, it is not necessary to enter into the controversy whether the instructions issued by the Election Commission are in exercise or its power under Art. 324 or not.

46. Therefore, it is clear position of law that in case of absence of affidavit or the false affidavit or affidavit with blank space is not an affidavit in the eyes of law. The contention of the petitioner that the “affidavit filed by respondent is not an affidavit in the eye of law” may be examined during the trial of this case. Sufficient opportunity is required to be given to the respondent no.1 to explain his position. As far as objections of respondent no.1 are concerned, it appears that the petition having a concise statement of material fact and the petition discloses a trivial issue or cause of action. Therefore, the grounds 3(A) and 3(D) raised by respondent no.1 in his application are not acceptable and are not sufficient for dismissal of the petition.

47. Ground No. B -

“(B). The election petition has not been verified in the manner laid down in the Code of Civil Procedure, 1908 inasmuch as the petitioner has not disclosed the source of information on the basis whereof allegations have been leveled in the petition.”

As per respondent no.1, the election petition has not been verified in the manner laid down in the Code of Civil Procedure, 1908 and the petitioner has not disclosed the source of information on the basis whereof allegations have been leveled in the petition. It appears from the petition that all objections are related to the affidavit filed by respondent no.1. The source of information has been clearly mentioned in Para 6(C) in which it is stated that the respondent no.2 affixed the nomination and affidavit, on the notice board, therefore, upon perusal of the notice board, the petitioner got the knowledge of the fact. The objection regarding the verification of petition also having no any force. The petitioner Ram Kishan Patel signed every page of petition. Notary also affixed his seal with his signature on each and every page of the petition. The verification also found at Page No.9 and the aforesaid petition is also supported by an affidavit of petitioner Ram Kishan Patel sworn before the Notary. This affidavit also having the seal and signature of Notary and the signature of petitioner. Before the Notary petitioner Ram Kishan was identified by another person Vinod Kumar Sahu. Therefore, the objection raised, having no any force and not acceptable.

48. Ground No. C -

“[C]. Copy of the election petition as served upon the answering respondent has not been attested by the petitioner under his own signature to be a true

copy of the petitioner. The memo of petition bears such attestation but the documents filed along with the election petition do not bear any such attestation. There is thus non-compliance of the provisions contained U/s 81(3) of the Act, 1951.”

49. In this objection it is stated by respondent no.1 that the copy which has been served upon him has not been attested by the petitioner under his own signature being a true copy. The memo of petition bears such attestation but the documents filed along with the election petition do not bear any such attestation. Therefore, non-compliance of provisions contained under section 81 (3) of the Act, 1951 is made out. It is mentioned in the application that section 81 of the Act deals with presentation of the petitions. Sub Section 3 of the Section 81 specifically provides that *“every election petition shall be accompanied by as many copies thereof as there are respondent mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition”*. Section 86 of the Act deals with trial of election petition. Sub Section 1 of Section 86 specifically provides that the High Court shall dismiss an election petition which does not comply with the provision of Section 81 or Section 82 or Section 117.

50. In reply, the petitioner submitted (in his written reply) that said allegation made in the application is nothing but ipse-dixi of Respondent No. 1. From perusal it is clear that each and every page of the election petition is attested by the petitioner under his own signature. Hence, the allegation deserves to be rejected at threshold. In fact, the petitioner has filed the election petition as per the provision of the Act of 1951 and it is duly signed and verified by him as provided under clause (c) of sub section 1 of section 83 of the Act of 1951 and as per provision of Code of Civil Procedure.

51. Sub section (3) of Section 81 of Act,1951 says every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. Upon perusal of the photo copy of petition, filed along with application under consideration, it is clear that each and every page of the election petition has been attested by the petitioner under his own signature with the word 'T.C.', which is the short form of “True Copy”. The respondent himself admitted in his application that memo of petition bears such attestation but he said that the documents filed along with the election petition do not bear any such attestation.

52. The respondent said that the documents filed along with the election petition do not bear any such attestation. Sub section (2) of Section 83 of Act, 1951, says any schedule or annexe to the petition shall also be signed by the petitioner and verified in the same manner as the petition. This argument is not convincing because section 81(3) says only about the copy of petition, not about schedule or annexe. Section 83(2) says only about the manner of filing the schedule or annexe. It is provided that *“any schedule or annexe to the petition shall also be signed by the petitioner and verified in the same manner as the petition”*. This requirement is not applicable to the copies of documents / annexe submitted for giving to respondent. In this petition, the documents filed by petitioner shows that all are the

certified copies of documents issued by Returning officer under his seal and signature. Because the documents are the certified copies of public documents, issued by public authority during discharging his official duties, therefore section 83(2) is not applicable. Hence point No. "C" also not acceptable.

53. Therefore, I.A. 8210 of 2019 is dismissed.

(B.K.SHRIVASTAVA)
JUDGE

TG/-