REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO …. OF 2023
(@ SPECIAL LEAVE PETITION (C) NO. 28241 OF 2019)

KANIMOZHI KARUNANIDHI .....APPELLANT

VERSUS

A. SANTHANA KUMAR & ORS. .....RESPONDENTS

WITH

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J U D G M E N T

BELA M. TRIVEDI, J.

1. Leave granted.

2. The appellant in both the appeals (hereinafter referred to as the returned candidate) has challenged the legality of the impugned common order dated 19.11.2019 passed by the High Court of Judicature at Madras in Original Application Nos. 929/2019 and

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930/2019 filed by the appellant in Election Petition No. 3/2019, whereby the High Court has dismissed both the said applications.

Factual matrix:

3. The factual matrix giving rise to the present appeals are that on 19.03.2019, the nominations were invited pursuant to the notification issued by the Chief Election Commissioner for the elections to the 17th Lok Sabha, scheduled to be held on 18.04.2019. The appellant filed her nomination from No. 36-Thoothukudy Lok Sabha Constituency, along with the affidavit in Form No. 26 as per Rule 4A of the Conduct of Election Rules 1961 (hereinafter referred to as the said Rules). The scrutiny of nomination papers was held by the Returning Officer on 27.03.2019. The elections were held on 18.04.2019 as scheduled, and the appellant was declared elected from the said No. 36 Thoothukudy Lok Sabha Constituency with a margin of 3,47,209 votes on 23.05.2019.

4. The Election petitioner/respondent no. 1 herein claiming to be a voter, has filed the Election Petition being no. 3/2019 before the High Court under Section 80, 80A, 100(1)(d)(iv) of the Representation of the People's Act, 1951 (hereinafter referred to as the RP Act) seeking declaration that the election of the returned candidate, i.e., the

appellant herein, from No. 36, Thoothukudy Lok Sabha Constituency, in the Lok Sabha election conducted pursuant to the notification of the Chief Election Commissioner dated 19.03.2019 was void and liable to be set aside, on the ground that the information sought by the Election Commission of India in regard to the payment of income tax of her spouse was not provided by her in the affidavit – Form no.26 submitted along with the nomination papers, and thus had intentionally suppressed and not disclosed the same to the electors.

5. The precise allegations made in para 5 to 9 of the Election petition read as under:

> "**5.** The petitioner humbly submits that upon perusal of the nomination paper submitted by the 2nd respondent, the returned candidate herein, under Rule 4 of the conduct of election rules 1961, after the dissemination of the same to the public under the Representation of the People Act, it is noticed manifestly that she had failed to furnish the details of the payment of the income tax of her spouse mention in the Tamil language as "THUNAIVAR" namely Aravindan, Citizen of Singapore, in the column requiring to provide the PAN number, the last financial year of filing the Income Tax Return and the total income shown in the income tax return for the past five financial years, for each year in Rupees, in the affidavit FORM 26, under Part A, No. 4 S. No. 2, by mentioning in Tamil language "PORUTHATHU" which information is to be mandatory furnished by the returned candidate in adherence to the information sought by the Election Commission of India in exercise of the statutory powers, conferred under Article 324 of the Constitution of India and suppression of the same by the returned candidate in non-compliance with the provisions of the constitution of India, the result of the election is materially affected.
> **6.** The petitioner humbly submits that in S.No. 3 of Part-B in the affidavit Form 26 the 2nd respondent had provided the information in regard to the constituency Number, name and State as No. 36, Thoothukudi, Tamilnadu, but whereas in Part

> A No. 2, she mentioned that her electoral constituency is No. 19 CHEPAUK, Tamil Nadu, exposes the improper submission of nomination form.
>
> **7.** The petitioner humbly submits that having aggrieved against the unconstitutional act of the 2nd respondent the returned candidate, inasmuch as of which the electors of the constituency are unable to have information regarding the income of the spouse of the returned candidate disclosed in the income tax return, consequently as the result is materially affected he is before this Hon'ble Court praying to declare the election of the returned candidate, the 2nd respondent herein, from No. 36, Thoothukudi Constituency as void and set aside the same.
> **8.** The petitioner respectfully submits that the nomination paper, the affidavit FORM 26 is without particulars of the payment of amount of income tax of her spouse (Thunaivar) namely Mr. Arvindan, Citizen of Singapore though the information in regard to the payment of the amount of income tax is sought by the election commission of India in exercise of their statutory powers under Article 324 of the Constitution of India in view of providing information to the public under the Representation of People Act. Besides, it is pertinent to state here that the income from the foreign countries is subject to income tax under the Singapore Income Tax Act and each income tax payer is provided the Income Tax Reference Number by the authority.
>
> **9.** The petitioner humbly submits that the suppression of information by the returned candidate the 2nd respondent herein in regard to the payment of income tax of her spouse herein in regard to the payment of income tax of her spouse (Thunaivar) debar the electors of the constituency to get complete information of the payment of income tax to the income tax authority in Singapore and lead to filing false affidavit in on adherence of the rules."

6. In the said Election petition, the appellant/returned candidate had filed OA No. 929/2019 praying to strike off paragraphs 5 to 17 of the Election petition and had filed OA No. 930/2019 praying to reject the Election petition *in limine* on the ground *inter alia* that the averments and allegations contained in the Election petition were wholly vague and bereft of material facts, and therefore did not meet with the

requirements of Section 81, 83, 86 and 100 of the said Act. It was also averred that the paragraph nos. 5 to 17 of the Election petition were bereft of material facts and did not disclose any cause of action. The High Court vide the impugned common order dismissed both the Original Applications filed by the appellant/returned candidate.

Submissions by the Learned Counsels for the Parties:

7. The learned Senior Advocate Mr. P. Wilson for the appellant made the following submissions:

(i) Section 83(1)(a) the said Act makes it mandatory for all election petitions to contain a concise statement of material facts on which petitioner relies, however in the present case the respondent-election petitioner has failed to plead the material facts and therefore the Election petition is liable to be dismissed *in limine.*

(ii) Placing reliance on the decision of this Court in case of ***Ram Sukh vs. Dinesh Aggarwal***[1]***,*** and in case of ***Hari Shanker Jain vs. Sonia Gandhi***[2], he submitted that the material facts would include positive statement of facts as also positive averment of a negative fact, if necessary,

1 2009 (10) SCC 541
2 2001 (8) SCC 233

and that in absence thereof, the Election petition is liable to be dismissed on that ground alone.

(iii) Relying upon ***Samant N. Balkrishna & Anr. vs. George Fernandez & Ors***.[3], he submitted that failure to plead even a single material fact leads to an incomplete cause of action and the statement of claim becomes bad.

(iv) In the instant case, though the respondent-election petitioner has alleged that the appellant has suppressed facts in the Form No. 26 Affidavit, he has failed to state as to which facts were suppressed, and how there was non-compliance of the provisions of the Constitution or of the Act or the rules made thereunder, which had materially affected the result of the election.

(v) The entire Election petition filed by the respondent is based on vague and bald assumptions, presumptions and conjectures without stating the material facts more particularly the material facts in support of the ground contained in Section 100(1)(d)(iv) of the said Act.

(vi) Lastly, he submitted that though the candidates are required to disclose their status of Income tax, of the

3 1969 (3) SCC 238

assets and liabilities as well as their spouses' assets and liabilities, if the columns in this regard are not applicable in the fact situation, it could not amount to suppression of facts.

8. The learned Advocate Mr. Mukesh S. for respondent no. 1 made the following submissions:

(i) The appellant has violated the law laid down by this Court in ***Union of India vs. Association for Democratic Reforms & Anr***.[4], wherein the Court had directed the Election Commission to get the details of assets and liabilities of the candidates and their family members, without differentiating the status of citizenship.

(ii) The appellant, in response to the query regarding income tax dues of her spouse, had mentioned "NO". The appellant had failed to disclose the status of filing of income tax return of her spouse in foreign country, as required to be disclosed in the Form No. 26. The appellant had simply stated in the said Form that her spouse was a foreign citizen without disclosing the status

4 2002 (5) SCC 294

of filing of income tax return and the income tax reference number provided in Singapore.

(iii) The appellant was bound to disclose the details of status of filing of income tax return by her spouse in the foreign country and non-disclosure of the same tantamounted to the suppression of facts and non-compliance of the statutory rules framed under the said Act.

(iv) By not disclosing the financial status of her family, the appellant had deprived the opportunity to the voters to decide about the casting of votes.

(v) Lack of transparency and non-disclosure of facts in the Form No. 26 had materially affected the result of the election.

Relevant Provisions of the Constitution of India and of the R.P. Act, 1951:

9. In order to appreciate the rival contentions raised by the learned counsel for the parties, it would be beneficial to refer to some of the relevant provisions contained in the Constitution of India as also the R.P. Act, 1951.

10. Part -XV of the Constitution of India deals with the Elections. The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to the Parliament and to the legislature of every State and of elections to the offices of President and Vice-President held under the Constitution have been vested in the Election Commission under Article 324 of the Constitution of India. Article 325 provides that there shall be one general electoral roll for every territorial constituency and that no person shall be ineligible for inclusion in such rolls on the grounds only of religion, race, caste, sex or any of them. Article 326 provides that elections to the House of people and to the legislative assemblies of States shall be on the basis of adult franchise. Article 327 enables Parliament to make laws with respect to all matters relating to elections to either House of Parliament or to the Houses of the legislature of a State. Article 328 enables the legislature of a State, if Parliament has not made such legislation, to make laws with respect to all matters relating to elections to the Houses of legislature of the State. Article 329 bars interference by courts in electoral matters and clause (b) in particular provides that no election to the either House of Parliament or to the House or either House of the

legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature.

11. So far as the R.P Act, 1951, is concerned, its object as is reflected in its short title is to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the legislature of each State, the qualifications and the disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. Part-VI of the R.P. Act, 1951 deals with the disputes regarding Elections, and Chapter II thereof deals with the presentation of the Election petitions to the High Court. Section 80 thereof states that no election shall be called in question except by an election petition presented in accordance with the provisions of Part-VI.

12. Section 80A confers jurisdiction on the High Court to try election petitions. Section 81 deals with the presentation of petitions which reads as under:

> **"Section 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 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) [***]
>
> [(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.]

13. Section 82 mandates as to who shall be the parties to the Election petition. Section 83 pertains to the contents of the petition, which reads as under:-

> **83. Contents of petition**- (1) An election petition—
>
> (*a*) shall contain a concise statement of the material facts on which the petitioner relies;
>
> (*b*) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
>
> (*c*) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:
>
> [Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]
>
> (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.]

14. As per Section 86, the High Court is empowered to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. Section 87 deals with the procedure to be followed by the High Court which reads as under:

> **"87. Procedure before the High Court.—**
>
> (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:
>
> Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.
>
> (2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.**"**

15. The grounds on which the High Court could declare the election of the returned candidate to be void are enumerated in Section 100 which reads as under:-

> **100. Grounds for declaring election to be void. -** (1) Subject to the provisions of sub-section (2) if the High Court is of opinion-
>
> (a) ---
>
> (b) ---
>
> (c) ---
>
> (d)that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

> (i) ---
>
> (ii) ---
>
> (iii) ---
>
> (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void."

16. In the instant case, the respondent-election petitioner has challenged the election of the appellant on the ground that the result of the election, insofar as it concerned the appellant, was materially affected by non-compliance with Article 324 of the Constitution and by non-compliance with Rule-4A of the said Rules read with Section 33 of the Act. It may be noted that Section 33 of the Act pertains to the presentation of nomination paper and the requirements for a valid nomination. Section 36 pertains to the scrutiny of nominations by the Returning Officer. Sub-section(2) thereof empowers the Returning Officer, either on the objections made to any nomination or on his own motion, to reject any nomination on the grounds mentioned therein. One of the grounds to reject the nomination is, when there has been failure to comply with any of the provisions of Section 33. Sub-section(4) of Section 36 states that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

17. Part-II of the Conduct of Election Rules, 1961 deals with the General Provisions. Rule-4 and Rule-4A which pertain to the submission of nomination paper and the Form of affidavit to be filed at the time of delivering nomination paper read as under:-

> **"4. Nomination paper**- Every nomination paper presented under sub-section (i) 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."

Legal position:

18. The scheme of the Constitutional and statutory provisions contained in the R.P. Act in relation to the nature of the right to elect, the right to be elected and the right to dispute an election have been explained and interpreted by various Constitutional Benches since 1952. To cite a few are ***N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency & Ors.***[5]***,*** in ***Jagan Nath vs. Jaswant Singh & Ors.***[6]***,*** in

5 1952 (1) SCC 94
6 AIR 1954 SC 210

Bhikji Keshao Joshi & Anr. vs. Brijlal Nandlal Biyani & Ors.[7], in ***Murarka Radhey Shyam Ram Kumar vs. Roop Singh Rathore & Ors.***[8] etc.

19. What has been gleaned from the said authorities may be summed up by stating that a right to elect, though fundamental it is to democracy, is neither a fundamental right nor a common law right. It is purely a statutory right. Similarly, right to be elected and the right to dispute an election are also statutory rights. Since they are statutory creations, they are subject to statutory limitations. An Election petition is not an action at common law, nor in equity. It is a special jurisdiction to be exercised in accordance with the statute creating it. The concept familiar to common law and equity must remain strangers to election law unless statutorily embodied. Thus, the entire election process commencing from the issuance from the notification calling upon a constituency to elect a member or members right upto the final resolution of the dispute, concerning the election is regulated by the Representation of People Act 1951. The said R.P. Act therefore has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election dispute.

7 AIR 1955 SC 610
8 AIR 1964 SC 1545

20. In a very interesting and important decision in case of ***Union of India v/s Association for Democratic Reforms and Another***[9], a three-judge Bench of this Court raising a question - in a nation wedded to republican and democratic form of government, whether before casting votes, the voters have a right to know relevant particulars of their candidates contesting election to the Parliament or to the legislature of States, deliberated on the powers of the Election Commission under Article 324 of the Constitution, and observed as under:-

> **"46.** To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:
>
> **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 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. The 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 variety 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 directions, the Commission can fill the vacuum till there is legislation on the subject. In Kanhiya Lal Omar case [(1985) 4 SCC 628] the Court construed the expression "superintendence, direction and control" in Article 324(1) and held that a direction may

9 (2002) 5 SCC 294

> mean an order issued to a particular individual or a precept which many 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. ….**
>
> **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.**"**

21. It is also pertinent to note that the insertion of Rule-4A and Form-26 appended to the said Rules is also culmination of the said observations made this Court in the aforesaid case, which require the candidate to disclose the information and particulars in the form of affidavit to be submitted along with the nomination paper.

22. The respondent-Election petitioner in this case has challenged election of the appellant-returned candidate under Section 100(1)(d)(iv) on the ground of non-compliance of the said Rule-4A and the Form-26. However, the appellant had filed the applications seeking dismissal of the Election petition *in limine*, for the non-compliance of the provisions of Section 83(1)(a) of the said Act, read with Order VII, Rule 11 of CPC.

23. The law so far developed and settled by this Court with regard to the non-compliance of the requirement of Section 83(1)(a) of the EP Act, namely - “an Election petition must contain a concise statement of material facts on which the petitioner relies”, is that such non-compliance of Section 83(1)(a) read with Order VII, Rule 11, CPC, may entail dismissal of the Election Petition right at the threshold. “Material facts” are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the Election petition on the basis of the facts pleaded in the petition. 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. Material facts would include positive statement of facts as also positive statement of a negative fact.

24. A Three-Judge Bench in Hari Shanker Jain vs. Sonia Gandhi (supra) had an occasion to deal with Section 83(1)(a) of the RP Act and the Court dismissed the Election petition holding that the bald and vague averments made in the election petitions do not satisfy the

requirements of pleading "material facts" within the meaning of Section 83(1)(a) of the RP Act read with the requirements of Order VII Rule 11 CPC. It was observed in para 23 and 24 as under: -

> **"23.** Section 83(1)(*a*) of RPA, 1951 mandates that an election petition *shall* contain a concise statement of the *material facts* on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford *a basis* for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna* v. *George Fernandez* [(1969) 3 SCC 238 : (1969) 3 SCR 603] , *Jitendra Bahadur Singh* v. *Krishna Behari* [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan* v. *P.J. Francis* [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.
>
> **24.** It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

25. In case of ***Mahadeorao Sukaji Shivankar vs. Ramaratan Bapu & Ors.***[10]**,** a Three-Judge Bench of this Court again had an occasion to deal with the issues as to what would constitute "material facts" and what would be the consequences of not stating the "material facts" in the Election petition, as contemplated in Section 83(1)(a) of the RP Act, and the Court observed as under:

> **"6.** Now, it is no doubt true that all material facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by clause (*a*) of Rule 11 of Order 7 of the Code. The question, however, is as to whether the petitioner had set out material facts in the election petition. The expression "material facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts are 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 existence of cause of action or defence are material facts and must be stated in the pleading of the party.
>
> **7.** But, it is equally well settled that there is distinction between "material facts" and "particulars". Material facts are primary or basic facts which must be pleaded by the petitioner 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."

10 2004 (7) SCC 181

26. In ***Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar***[11], this Court has discussed number of earlier decisions on the issue as to when the Election petition could be dismissed summarily if it does not furnish the cause of action in exercise of powers under the Code of Civil Procedure read with Section 83 of the R.P. Act.

> **"50.** The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.
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> **51.** This Court in *Samant N. Balkrishna case* [(1969) 3 SCC 238] has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In *Udhav Singh* v. *Madhav Rao Scindia* [(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(*a*). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.
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> **52.** In *V.Narayanaswamy* v. *C.P. Thirunavukkarasu* [(2000) 2 SCC 294] this Court reiterated the legal position that an election petition is liable to be dismissed if it lacks in material facts. In *L.R. Shivaramagowda* v. *T.M. Chandrashekar* [(1999) 1 SCC 666] this Court again

11 2009 (9) SCC 310

considered the importance of pleadings in an election petition alleging corrupt practice falling within the scope of Section 123 of the Act and observed as under: (SCC p. 677, para 11)

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

53. In *Udhav Singh case* [(1977) 1 SCC 511] this Court observed as under: (SCC pp. 522-23, para 41)

> "*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 a 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."

54. In *H.D. Revanna case* [(1999) 2 SCC 217] the appeal was filed by the candidate who had succeeded in the election and whose application for dismissal of the election petition in limine was rejected by the High Court. This Court noticed that it has been laid down by this Court that

non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. In *Harmohinder Singh Pradhan* v. *Ranjeet Singh Talwandi* [(2005) 5 SCC 46] this Court observed thus: (SCC p. 51, para 14)

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

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

> "*51*. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.
>
> *52*. All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will

> entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

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

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

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

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

> "*48*. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or 'primary'. [*Burton's Legal Thesaurus* (3rd Edn.), p. 349.] The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts

> of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."

27. In ***Ram Sukh vs. Dinesh Aggarwal*** (supra), this Court again while examining the maintainability of Election petition filed under Section 100(1)(d)(iv) of the RP Act, elaborately considered the earlier decisions and observed that it was necessary for the election petitioner to aver specifically in what manner the result of the election in so far as it concerned the returned candidate was materially affected due to omission on the part of the Returning Officer. The Court in the said case having found that such averments being missing in the Election petition, upheld the judgment of the High Court/Election Tribunal rejecting the Election petition at the threshold. The Court observed in para 14 to 21 as under: -

> **"14.** The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in *Samant N. Balkrishna* v. *George Fernandez* [(1969) 3 SCC 238]. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., inter alia, laid down that:
>
> (*i*) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;

(*ii*) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;

(*iii*) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;

(*iv*) material facts and particulars are distinct matters—material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and

(*v*) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.

15. At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice the distinction between the phrases "material facts" as appearing in clause (*a*) and "particulars" as appearing in clause (*b*) of sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on the other hand, are details in support of the material facts, pleaded by the parties. 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. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that the opposite party is not taken by surprise.

16. The distinction between "material facts" and "particulars" and their requirement in an election petition was succinctly brought out by this Court in *Virender Nath Gautam* v. *Satpal Singh* [(2007) 3 SCC 617] wherein C.K. Thakker, J., stated thus: (SCC pp. 631-32, para 50)

"*50*. There is distinction between *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia* (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."

17. Now, before examining the rival submissions in the light of the aforestated legal position, it would be expedient to deal with another submission of the learned counsel for the appellant that the High Court should not have exercised its power either under Order 6 Rule 16 or Order 7 Rule 11 of the Code to reject the election petition at the threshold. The argument is twofold viz.:

(*i*) that even if the 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

(*ii*) since Section 83 does not find a place in Section 86 of the Act, rejection of the petition at the threshold would amount to reading into sub-section (1) of Section 86 an additional ground.

In our opinion, both the contentions are misconceived and untenable.

18. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail.

19. Coming to the second limb of the argument viz. absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer res integra. A similar plea was negatived by a three-Judge Bench of this Court in *Hardwari Lal* v. *Kanwal Singh* [(1972) 1 SCC 214] , wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said: (SCC p. 221, para 23)

"*23*. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under

Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed."

20. The issue was again dealt with by this Court in *Azhar Hussain* v. *Rajiv Gandhi* [1986 Supp SCC 315] . Referring to earlier pronouncements of this Court in *Samant N. Balkrishna* [(1969) 3 SCC 238] and *Udhav Singh* v. *Madhav Rao Scindia* [(1977) 1 SCC 511] wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in *Azhar Hussain case* [1986 Supp SCC 315] held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(*a*) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.

21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83(1)(*a*) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(*d*)(*iv*). For the sake of ready reference, the said provision is extracted below:

"**100.** *Grounds for declaring election to be void*.—

(1) Subject to the provisions of sub-section

(2) if the High Court is of opinion—

***

(*d*) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—

***

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

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

It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected.**"**

28. The legal position enunciated in afore-stated cases may be summed up as under:-

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgement of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

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

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.

Conclusion:

29. In the light of the afore-stated legal position, let us see whether the respondent/election petitioner had complied with the requirements of Section 83(1)(a) of the RP Act, by stating “material facts” in the Election petition, constituting cause of action and the ground as contemplated in Section 100(1)(d)(iv) of the RP Act, for declaring the election of the Appellant-returned candidate to be void. The bone of contention raised by the learned counsel appearing for the respondent-election petitioner is that the Election Commission of India had called for the information prescribing the Form 26 in regard to status of filing of income tax return of candidates and their family members by exercising powers under Article 324 of the Constitution of India and in that the petitioner had provided information that her spouse was working as consultant at foreign country and earning salary against the column No. 8, Serial No.9(b) and 9A(b), respectively under Part A of Form 26. Besides, she had mentioned “No” to the query regarding Income tax dues of her spouse, (mentioned as “Ethumilai” in Tamil language). She had further stated that her spouse had bank accounts in Singapore with deposit of dollars against column No. 7 Serial No.(ii) of column in Part A of Form 26 but had failed to disclose the status of filing income tax return of

her spouse in the foreign country. He therefore submitted that these material facts which have already been stated in the Election petition, were sufficient to constitute cause of action for filing Election petition under Section 100(1)(d)(iv) of the RP Act.

30. It may be noted the precise allegations made by the respondent-election petitioner in para 5 to 9 of his Election petition have already been reproduced hereinbefore, from which it clearly transpires that the election petitioner i.e., the respondent has made very bald and vague allegations without stating the material facts as to how there was non-compliance of any of the provisions of the Constitution of India or of the RP Act or of the rules made thereunder. If the averments made in the Election petition are read in juxtaposition to the information furnished by the appellant-returned candidate in Form No. 26, it clearly emerges that against the information sought about the PAN number of the spouse of the appellant, it has been stated that “No PAN No.”, “Spouse K. Aravindhan Foreign Citizenship”. Against the information sought with regard to “The financial year for which the last income tax return has been filed”, the information supplied by the appellant about her spouse is “Not applicable”. The appellant has filled in all the columns of Form No. 26 by furnishing the

information with regard to her Permanent Account Number and status of filing of income tax return etc. and of her husband wherever applicable. If according to the respondent-election petitioner, the appellant-returned candidate had suppressed the Permanent Account Number of her spouse and also about the non-payment of income tax of her spouse in the foreign country, it was obligatory on the part of the Election petitioner to state in the Election petition as to what was the Permanent Account Number of the spouse of the returned candidate in India which was suppressed by her and how the other details furnished about her husband in the said Form No. 26 were incomplete or false.

31. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition. As well settled not only positive statement of facts, even a positive statement of negative fact is also required to be stated, as it would be a material fact constituting a cause of action. The material facts which are primary and basic facts have to be pleaded by the Election petitioner in support of the case set up by him to show his cause of action and omission of a single material fact would lead to an incomplete cause of action, entitling the returned

candidate to pray for dismissal of Election petition under Order VII Rule 11(a) CPC read with Section 83(1)(a) of the RP Act.

32. It is also significant to note that an affidavit in Form 26 along with the nomination paper, is required to be furnished by the candidate as per Rule 4A of the said Rules read with Section 33 of the said Act. The Returning Officer is empowered either on the objections made to any nomination or on his own motion, to reject any nomination on the grounds mentioned in Section 36(2), including on the ground that there has been a failure to comply with any of the provisions of Section 33 of the Act. However, at the time of scrutiny of the nomination paper and the affidavit in the Form 26 furnished by the Appellant-returned candidate, neither any objection was raised, nor the Returning Officer had found any lapse or non-compliance of Section 33 or Rule 4A of the Rules. Assuming that the election petitioner did not have the opportunity to see the Form No. 26 filled in by the Appellant-returned candidate, when she submitted the same to the Returning Officer, and assuming that the Returning Officer had not properly scrutinized the nomination paper of the appellant, and assuming that the election petitioner had a right to question the same by filing the Election petition under Section 100(1)(d)(iv) of the said

Act, then also there are no material facts stated in the petition constituting cause of action under Section 100(1)(d)(iv) of the RP Act. In absence of material facts constituting cause of action for filing Election petition under Section 100(1)(d)(iv) of the said Act, the Election petition is required to be dismissed under Order VII Rule 11(a) CPC read with Section 13(1)(a) of the RP Act.

33. As elaborately discussed earlier, Section 83(1)(a) of RP Act mandates that an Election petition shall contain a concise statement of material facts on which petitioner relies, and which facts constitute a cause of action. Such facts would include positive statement of facts as also positive averment of negative fact. Omission of a singular fact would lead to incomplete cause of action. So far as the present petition is concerned, there is no averment made as to how there was non-compliance with provisions of the Constitution or of RP Act or of the Rules or Order made thereunder and as to how such non-compliance had materially affected the result of the election, so as to attract the ground under Section 100(1)(d)(iv) of the RP Act, for declaring the election to be void. The omission to state such vital and basic facts has rendered the petition liable to be dismissed under

Order VII, Rule 11(a) CPC read with Section 83(i)(a) of the RP Act, 1951.

34. In that view of the matter, Election petition being no. 3/2019 filed by the respondent-election petitioner deserves to be dismissed, and is accordingly dismissed.

35. The impugned judgment of the High Court is set aside. The appeals stand allowed accordingly.

….....J.
[AJAY RASTOGI]

….....J.
[BELA M. TRIVEDI]

NEW DELHI;
04.05.2023