

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(EI.Pet.)No.172 of 2022
Ref: EI.Pet.No.14 of 2022


Shri. Thounaojam Shyamkumar, 

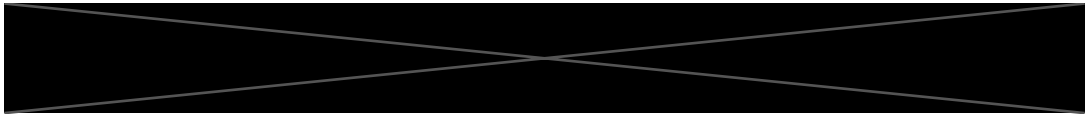




...Applicant

– Versus –


Shri Lourembam Sanjoy Singh, 

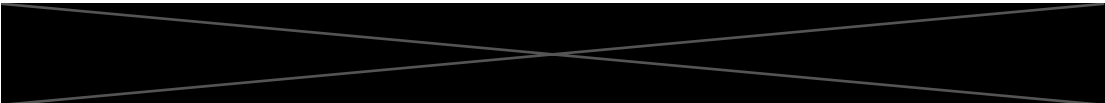


.... Respondent

With

MC(EI.Petn.)No.173 of 2022
Ref: EI.Petn.No.25 of 2022

Shri. Thounaojam Shyamkumar, aged 



...Applicant

– Versus –

Lourembam Sanjit Singh, 



.... Respondent

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN

For the applicants : Mr. M. Gunedhor. Adv.
For the Respondents : Mr. H.S Paonam, Sr. Adv, Mr. BR
Sharma, Adv.
Date of hearing & reserved. : 25.09.2023
Date of Judgment & Order : 13.10.2023.

JUDGMENT & ORDER
(CAV)

[1] These petitions have been filed by the petitioner under Order 7, Rule 11 of the Code of Civil Procedure, 1908 to reject Election Petition Nos.14 and 25 of 2022.

[2] The petitioner herein is the first respondent in both the election petitions. The respondent in MC (El.P) No.173 of 2022 has filed Election

Petition No.14 of 2022. The respondent in MC (E.I.P) No.172 of 2022 has filed Election Petition No.25 of 2022.

[3] The prayer in Election Petition No.14 of 2022 reads thus:

“a. to declare that the election of the Respondent No.1 the returned Candidate of 7-Andro Assembly Constituency to the 12th Manipur Legislative Assembly Election, 2022 is null and void.

b. to declare that the petitioner as the duly elected Member in the 12th Manipur Legislative Assembly Election, 2022 from 7-Andro Assembly Constituency.

[4] The prayer in Election Petition No.25 of 2022 read thus:

“a. to declare that the election of the Respondent No.1 the returned Candidate of 7-Andro Assembly Constituency to the 12th Manipur Legislative Assembly Election, 2022 is null and void.

b. to declare that respondent No.2 as the duly elected Member in the 12th Manipur Legislative Assembly Election, 2022 from 7-Andro Assembly Constituency.

[5] The challenge made in the election petitions relates to 7-Andro (Gen) Assembly Constituency for 12th Manipur General Legislative Assembly Election held on 28.2.2022. The election petitioner in Election Petition No.25 is the younger brother of the election petitioner in Election Petition No.14 of 2022.

[6] For the sake of convenience, the parties are referred to as per their array in Election Petition No.25 of 2022.

[7] The first respondent has filed these petitions to reject the election petitions on the grounds that the election petitioner and the second respondent have failed to mention material facts which would constitute cause of action for filing the election petitions; the allegation made against the first respondent does not constitute any corrupt practice; the election petitions have not disclosed the source of information upon which the allegations have been levelled in the election petitions; no pleading as to the knowledge of the first respondent being arrayed as an accused in the FIR 284(10)04; non-filing of the objection before the returning officer amounts to waiver of their rights and non-compliance of Section 83 of the Representation of People Act, 1951 (for brevity, *“the RP Act”*).

[8] Denying the averments made in these petitions, the election petitioner and the second respondent have filed affidavit-in-oppositions stating that there is enough material facts and material particulars pleaded in the election petitions, which would materially affect the election of the first respondent. It is stated that the first respondent intentionally has failed to disclose the non-agricultural land recorded in the name of his spouse where four floor pucca residential building has been constructed. The first respondent

does not clearly understand that the disclosure of agricultural land recorded in the name of the spouse of the first respondent as residential building which is against the relevant law as also swearing a false affidavit and, as such, the same can be termed as undue influence having been done on the voters thereby materially affecting the result of the election. It is stated that the expired voters' votes have been casted thereby violating the free and fair election which is a basic structure of the Constitution of India. As such, the election of the first respondent is liable to be declared as void and the second respondent may be declared as returned candidate.

[9] Mr. M. Gunedhor, the learned counsel for the first respondent submitted that the election petitions are liable to be rejected under Order 7, Rule 11(a) CPC. The first respondent, who is the returned candidate, has got 1220 more votes than the second respondent, who is the brother of the election petitioner in Election Petition No.25 of 2022.

[10] The learned counsel for the first respondent would submit that the election petitions are deficient in pleadings to make out any cause of action and miserably failed to substantiate as to how the result of the election of the first respondent has been materially affected. Therefore, the continuance of the proceedings of the election petitions is not only an abuse of the process of the Court, but is an anathema to the concept of fair trial. The first respondent was not arrayed as an accused in the FIRNo.284(10)04.

[11] According to the learned counsel, the election petitions have been filed upon the grounds of commission of corrupt practice and improper acceptance of nomination paper as stipulated under Section 123 and Sections 100 and 101 of the RP Act. The election petitions lack in material fact constituting the cause of action required under the provisions of the RP Act and that the election petitions do not fulfill the mandatory requirement of law. The election petitions do not contain concise statement of material facts on which the election petitioner and the second respondent rely on and, therefore, do not disclose a triable issue or cause of action.

[12] According to the learned counsel, the election petitions suffer from non-compliance of the provisions contained in Section 83(1)(b) of the RP Act and that the election petitions are completely vague. No trial or enquiry is permissible on the basis of such vague averments. According to the learned counsel, mere pendency of criminal case is no bar to contest and being elected. In the case on hand, two criminal cases are pending against him. Disclosing the particulars of the said FIR in which he was not even arrayed as an accused could not have impacted his entitlement to contest and be elected. There is no averments of particulars, including the date, time, place and the manner and method by which the election petition had informed the returning officer about the alleged FIR against the first respondent.

[13] The learned counsel further submitted that the first respondent has disclosed the property/land in Clause 7B(iv) of the residential buildings column of Form-26 affidavit. If the first respondent failed to mention his non-agricultural land properly in the column meant for non-agricultural land and instead he has mentioned the said land in the column meant for residential buildings, it would not lead to the inference that the first respondent has suppressed material information to mislead the voters to take a decision. In fact, the first respondent has mentioned his spouse agricultural land properly in the column.

[14] The learned counsel urged that the second respondent has failed to produce any material to show who had impersonated the expired voters and also who facilitated those impersonators to get the names of those expired persons in the voters list and to cast their votes. There is no specific allegations that either the first respondent or his election agent or any of the Government officials who were in charge of Polling Station Nos.7/11, 7/12, 7/13, 7/17, 7/18, 7/19, 7/41, 7/42, 7/43 and 7/44 has prevented any person from going to the polling booths or from casting votes. Even where the entire votes of the alleged disputed polling stations, where the voting of expired amounting to 59 are excluded, the first respondent will still have a majority of 1339 votes over the second respondent. There is no allegation that there was any attempt from

anybody on the polling authorities to surrender ballot papers or voting machines.

[15] The learned counsel urged that on the date of scrutiny of the nomination, nobody has raised voice against the poll process and conduct of polls. The allegations of corrupt practice and improper acceptance of nomination paper do not meet out the basic requirement, which could constitute cause of action as required by law. The election petitions are in contravention of Section 83 of the RP Act. Thus, a prayer has been made to reject the election petitions. In support of the submissions, the learned counsel for the first respondent placed reliance upon the decision of the Apex Court in the case of *Krishnamoorthy v. Sivakumar and others*, (2015) 3 SCC 467.

[16] Per contra, Mr. HS Paonam, the learned senior counsel for the election petitioner and the second respondent submitted that M.C.(El. Pet.) Nos.172 and 173 of 2022 are filed without any basis and that there is a cause of action for filing the election petitions. The material facts, which constitute the cause of action for filing the election petitions, have been clearly averred in the election petitions. In fact, the election petitioner and the second respondent in their election petitions categorically averred that the non-disclosure of information or incomplete information while filing the nomination paper along with Form-26 in respect of the election in question amounts to corrupt practice under Section 123 of the RP Act.

[17] The learned counsel would submit that by filing a false affidavit, non-disclosure and disclosing of half-truth information which has the potentiality to have a cacophony that can usher in anarchy have directly or indirectly attempt to interfere with the free exercise of electoral rights of the voters of 7-Andro Assembly Constituency for the 12th Manipur Legislative Assembly Constituency, 2022.

[18] The learned counsel submits that the expired voters votes have been casted in respect of Polling Station Nos.7/11, 7/12, 7/13, 7/17, 7/18, 7/19, 7/41, 7/42, 7/43 and 7/44 of 7-Andro Assembly Constituency and the votes of the expired voters can only be casted in proxy by some other persons for the dead men thereby violated the free and fair election. There are enough material facts and particulars stated in the election petitions which would materially affect the election of the first respondent in the manner and circumstances as narrated in the election petitions can be declared as void in terms of the provisions of the RP Act.

[19] The learned senior counsel added that the first respondent intentionally concealed to furnish the particulars of non-agricultural land and the non-disclosure of the agricultural land recorded in the name of the spouse of the first respondent in the relevant column shatter the free exercise of choice and selection. That apart, the voters' fundamental right to know the particulars

also gets nullified. Similarly, the first respondent has failed to disclose the particulars of the criminal case in FIR No.284(10)04 pending against him. In fact, all the materials particulars about the non-disclosure and how the same has affected the voters have been clearly mentioned by the election petitioner and the second respondent in their respective election petitions. Further, all the provisions of the RP Act have been complied with while filing the election petitions and that the election petitions are not ill-conceived as alleged by the first respondent. Thus, a prayer has been made to dismiss the petitions. In support, the learned senior counsel for the election petitioner and the second respondent rely upon the following decisions:

- (i) *D.Ramachandran v. R.V.Janakiraman, (1999) 3 SCC 267*
- (ii) *P.V.Guru Raj Reddy v. P.Neeradha Reddy, (2015) 8 SCC 331*
- (iii) *Srihari Numandas Totala v. Hemant Vithal Kamat, (2021) 9 SCC 99*
- (iv) *R.K.Imosingh v. Dr.Khawairakpam Loken Singh, 2017 SCC OnLine Mani 127.*
- (v) *Order dated 4.1.2018 passed in MC (EP) No.6 of 2017 (Th. Shyamkumar v. Dr. Nimaichand Liwang).*
- (vi) *Order dated 23.5.2023 passed in MC (EP) No.25/22 (Lorho S.Pfoze v. Houlim Shokhopao Mate @ Benjamin)*
- (vii) *Oder dated 5.7.2023 passed in MC (EP) No.66 of 2022 (Kimneo Haokip Hangshing v. Kenn Raikhan and others)*

(viii) *Order dated 12.9.2023 passed in MC (EP) No.7 of 2023 (Sorokhaibam Rajen Singh v. Pukhrambam Sumati Devi)*

[20] This Court considered the rival submissions and also perused the materials available on record.

[21] The prayer of the first respondent is that the election petitions are liable to be rejected on the ground that the same do not disclose the cause of action in terms of the provisions of the CPC as well as the provisions of the RP Act.

[22] On the other hand, the election petitioner and the second respondent contend that the cause of action for filing the election petitions have been substantially disclosed in the election petitions and they have categorically stated that non-disclosure of information or incorrect information while filing the nomination paper along with Form-26 affidavit amounts to corrupt practice under Section 123 of the RP Act as held by the Hon'ble Supreme Court in a catena of judgments.

[23] The first respondent has filed M.C.(El. Petn.) Nos.172 and 173 of 2022 under Order 7, Rule 11(a) of CPC praying for rejection of the Election Petition Nos.25 and 14 of 2022. The election petitioner and the second respondent assail the election of the first respondent from7-Andro (Gen)

Assembly Constituency for the 12th Manipur Legislative Assembly Elections, 2022 on the grounds of (i) false statements and concealment of material information in respect of criminal cases, particularly, FIR No.284(10)/04 under Sections 12/121-A/124-A/120B IPC, Section 5 of Exp. Sub. Act and under Section 10/13 of UA(P) Act pending against the first respondent in Form-26 submitted along with the nomination papers as candidate in the 12th Manipur Legislative Assembly and (ii) non-disclosure of the agricultural land recorded in the name of his spouse but instead it was disclosed as residential building with four floor pucca structure in Part A Para 7(B)(iv and failure to disclose a non-agricultural land which is recorded in his name in Part A Para B-(ii); (iii) booth capturing in Polling Station Nos.7/11, 7/12, 7/13, 7/41, 7/42, 7/43 and 7/44 amounting to corrupt practice.

[24] According to the election petitioner and the second respondent, the improper acceptance of the nomination by the returning officer and the non-compliance of the provisions of applicable laws by the first respondent at the time of filing of nomination, the election of the first respondent from 7-Andro (Gen) Legislative Assembly Constituency is to be declared as void.

25. Resisting the election petitions, the first respondent has filed written statement, *inter alia*, stating that the material facts pleaded in the election petition are frivolous, concocted, a jealous petition and a petition of unclean hand and only mentioning the word materially affected is not sufficient but also

the extent and manner of the effect should also be pleaded. Wild allegations have been made by the election petitioner and the second respondent that casting of votes will be well substantiated by Form 17A. Such wild allegation without any basis is to make a roving and fishing enquiry of the sacrosanct process of election by indulging in a wild goose chase and shall not be allowed. The first respondent has not indulged any corrupt practice and booth capturing as alleged. Election Petition No.14 of 2022 has been filed on a wrong premises and no cause of action arose to file the said election petition. It is stated that the agricultural land as well as the non-agricultural land which are in question in the election petition have been disclosed in Form 26 affidavit with their area and total valuations. The building structure are standing on the plot of lands and the usage of residential purposes were also disclosed in the relevant para where residential buildings are to be disclosed. The disclosure of such property in the relevant para of residential building cannot be termed as filing of false affidavit. The first respondent filed the nomination paper with Form 26 as prescribed by law as well as by the orders and guidelines of the Election Commission of India. The election petitioner and the second respondent cannot establish or make out any illegality or impropriety in the nomination paper filed in connection with the election of 2022, nor there is non-disclosure of information relating to source of income and assets of the first respondent or his dependents or spouse. The election petitioner cannot allege any allegation over improper acceptance of nomination of the first respondent as a ground in

the election petition as the same happened prior to the declaration of the result of election on 10.3.2022.

[26] The learned counsel for the first respondent argued that an election petition is based on the rights, which are purely the creature of a statute, and if the statute renders any particular requirement mandatory, the Court cannot exercise dispensing powers to waive non-compliance and for the purpose of considering a preliminary objection as to the maintainability of the election petition, the averments in the election petition should be assumed to be true and the Court has to find out whether these averments disclose a cause of action or a triable issue as such; that all material facts, therefore, in accordance with the provisions of the RP Act have to be set out in the election petition. If the material facts are not stated in the election petition, it is liable to be dismissed on that ground, as the case would be covered by Section 83(1)(a) (b) of the RP Act read with Order 7, Rule 11(a) of CPC and that the election petition can be summarily dismissed, if it does not furnish the cause of action in exercise of the power under the CPC.

[27] Placing reliance upon the decision in the case of *Krishnamurthy*, supra, the learned counsel for the first respondent submitted that Section 33(1) of the RP Act envisages that information has to be given in accordance with the Rules. This is in addition to the information to be provided as per Sections 33(1)(i) and (ii) of the RP Act. The affidavit that is required to be filed by the

candidate stipulates mentioning of cases pending against the candidate in which charges have been framed by the Court for the offences punishable with imprisonment for two years or more and also the cases which are pending against him in which cognizance has been taken by the Court other than the cases which have been mentioned in clause (5)(i) of Form 26. According to learned counsel, Section 33A only requires the candidates to furnish information regarding cases where charges have been framed or he has been convicted for any offence and sentenced to imprisonment for one year or more and does not contemplate any information regarding the criminal case pending investigation. In fact, the election petitioner has failed to disclose the date on which the Court had taken cognizance of the offence said to have been made against the first respondent and that certain charges have been framed based on the said FIR. Further, the learned counsel submitted that failure to plead material facts in the election petitions, the election petitions are liable to be rejected for want of cause of action and the facts constituting the cause of action have not been specifically pleaded in the election petitions. Therefore, the Court, invoking power under Order 7, Rule 11 CPC, reject the election petitions.

[28] In *Krishnamurthy*, supra, the Hon'ble Supreme Court held:

“75. On a perusal of the aforesaid format, it is clear as crystal that the details of certain categories of the offences in respect of which cognizance has been taken or charges have been framed must be given/furnished. This Rule is in consonance with Section 33-A of the 1951 Act. Section 33(1) is in addition to the information to be

provided as per Sections 33(1)(i) and (ii). The affidavit that is required to be filed by the candidate stipulates mentioning of cases pending against the candidate in which charges have been framed by the Court for the offences punishable with imprisonment for two years or more and also the cases which are pending against him in which cognizance has been taken by the court other than the cases which have been mentioned in clause (5)(i) of Form 26. Apart from the aforesaid, clause (6) of Form 26 deals with conviction.”

[29] The specific case of the election petitioner is that on 7.10.2004, an FIR, being FIR No.284(10)04, was lodged before Imphal Police Station under Section 121/121-A/400/124-A/120B IPC 5-Exp. Sub. Act, 10/13 UA(P) Act against more than fourteen accused alleging crime committed during the month of October, 2004. The first respondent was arrested by the Special Cell, New Delhi on the allegation of being UNLF outfits along with two others. Thereafter, the prosecution prayed for issuing production warrant of the accused before the Magistrate, Imphal West with reference to the FIR No.284(10)04 and subsequently released on bail. Further, FIR No.284(10)04 is still under investigation and such pendency of the FIR case has not been disclosed by the first respondent in his Form-26 affidavit.

[30] On the other hand, it is the plea of the first respondent that only the cases where charges have been framed or has been convicted is required

to be furnished in the affidavit in Form 26 and Section 33 of the RP Act does not contemplate any information qua the criminal case pending investigation.

[31] Similarly, the argument of the second respondent is that the first respondent has failed to disclose an agricultural land recorded in the name of his spouse, however, the same was disclosed as residential building in Para A Para (7)(B)(iv). Further, the non-agricultural land recorded in the name of the first respondent was not disclosed in Part A Para B (ii), however, the same was disclosed in Part A Para 7(B)(iv). There was also booth capturing thereby forcefully allowing the supports of the first respondent to cast votes in multiple numbers which included the votes of expired persons, which amounts to corrupt practice.

[32] The first respondent denied the aforesaid arguments and submitted that there was no booth capturing as alleged by the second respondent and that the first respondent has given detailed information about the said two lands as per the requirements in Form-26 affidavit. If the first respondent failed to mention his non-agricultural land properly in the column meant for non-agricultural land and instead he has mentioned the said land in column meant for residential buildings, it would not lead to the inference that the first respondent has suppressed the material information to mislead the voters to take a decision.

[33] Considering the arguments canvassed by learned counsel for the first respondent and the election petitioner, this Court is of the view that cases which have been taken cognizance have to be furnished in Form-26 by the candidate. Whether the FIR No.284(10)04 said to have been registered against the first respondent has been deliberately omitted to be furnished in Form-26 or not has to be decided during trial and, at this stage, this Court cannot come to a conclusion that since the investigation is pending, it is not necessary to mention in Form-26 affidavit. Similarly, whether or not the first respondent failed to properly mention his non-agricultural land and the agricultural land in the relevant columns is to be decided only after trial. At this stage, this Court cannot consider the said aspect without oral and documentary evidence.

[34] It is to be noted that the right to get information in democracy is recognized all throughout and it is natural right flowing from the concept of democracy. Article 19(1) and (2) of the International Covenant of Civil and Political Rights states 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.”

[35] Article 19(1)(a) of the Constitution of India provides for freedom of speech and expression. Voters' 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 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 voter may think over before making his choice of electing law breakers as law makers.

[36] In *D.Ramachandran, supra*, Hon'ble Supreme Court held:

"8. We do not consider it necessary to refer in detail to any part of the reasoning in the judgment; instead, we proceed to consider the arguments advanced before us on the basis of the pleadings contained in the election petition. It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.

.....

10. On the other hand, Rule 11 of Order 7 enjoins the court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this Rule. The application filed by the first respondent in OA No.36 of 1997 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order 7 Rule 11(a), learned Senior Counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. See *RoopLalSathi v. Nachhattar Singh Gill*, (1982) 3 SCC 487. We are satisfied that the election petition in this case could not have been rejected in limine without a trial.”

[37] In *P.V. Guru Raj Reddy*, supra, the Hon’ble Supreme Court held that rejection of the plaint under Order 7, Rule 11 CPC is a drastic power conferred in the Court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7, Rule 11, therefore, are

stringent and have been consistently held to be so by the court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7, Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

[38] In *Srihari Hanumandas Totala*, *supra*, the Hon'ble Supreme Court observed that an application under Order 7, Rule 11 must be decided within the four corners of the plaint. The trial Court and the High Court were correct in rejecting the application under Order 7, Rule 11(d).

[39] In *Rajkumar Imo Singh*, *supra*, this Court held that after going through the averments made in the election petition as a whole, it cannot be said that the petition does not contain a concise statement of material facts. In fact, it does disclosing a cause of action. So long as the petition discloses some cause of action or raises some questions fit to be decided by the Court, the mere fact that the case is weak and not likely to succeed, is no ground for dismissing it. Therefore, the trial can continue on merits and it is a different matter if the material facts as stated in the petition, are not sufficient to prove

the allegations. Whether or not the election petitioner is able to prove the allegations is a matter of evidence which can be considered only at the stage of trial.

[40] In *Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others*, (2012) 7 SCC 788, the Hon'ble Supreme Court held that there is no denying the fact that Courts are competent to dismiss petitions not only on the ground that the same do not comply with provisions of Sections 81, 82 and 117 of the RP Act, but also on the ground that the same do not disclose any cause of action. The expression "*cause of action*" has not been defined either in the Code of Civil Procedure or elsewhere and is more easily understood than precisely defined.

[41] In *Kisan Shankar Kathore v. Arun Dattatray Sawant and others*, (2014) 14 SCC 162, the Hon'ble Supreme Court relied upon the decision in the case of *Union of India v. Association for Democratic Reforms and another* (2002) 5 SCC 294, wherein it has been held that it was incumbent upon every candidate, who is contesting the election, to give information about his assets and other affairs, which requirement is not only essential part of fair and free elections, inasmuch as, every voter has a right to know about these details of the candidates, such a requirement is also covered by freedom of speech granted under Article 19(1)(a) of the Constitution of India.

[42] In *Ashraf Kokkur v. K.V.Abdul Khader*, (2015) 1 SCC 129, the Hon'ble Supreme Court held that the election petition having disclosed a cause of action should not have been thrown out at the threshold.

[43] In *Kuldeep Singh Pathania v. Bikram Singh Jaryal*, (2017) 5 SCC 345, the Hon'ble Supreme Court has considered the preliminary issues relating to Order 7, Rule 11 CPC in the sense those issues pertain to the rejection at the institution stage for lack of material facts and for not disclosing a cause of action. The Hon'ble Supreme Court held that merely because it is a trial on preliminary issues at the stage of Order 14, the scope does not change or expand. The stage at which such an enquiry is undertaken by the Court makes no difference since an enquiry under Order 7, Rule 11(a) CPC can be taken up at any stage. After consideration of the materials produced, the Hon'ble Supreme Court came to the conclusion that the election petition has disclosed cause of action and remitted the matter for fresh enquiry.

[44] Whether the allegation of the election petitioner and the second respondent are correct or not has to be proved by the election petitioner and the second respondent respectively and further, as to whether, incorrect particulars have been mentioned in the affidavit in Form-26 by the first respondent/returned candidate and whether the alleged false affidavit would amount to violation of the provisions of Section 33 of the RP Act so as to render

the election of the first respondent void are to be considered by the Court in the course of trial.

[45] The learned counsel for the election petitioner has referred to a number of decisions related to cause of action. This Court does not wish to add to the number of judicial pronouncements relied upon by the learned counsel. Suffice to say that cause of action means every fact which, if traversed, it would be necessary for the election petitioner to prove in order to support his right to a judgment of the Court.

[46] On a thorough reading of the election petitions, it cannot be said that the election petitions do not contain a concise statement of material facts. In fact, the election petitions disclose cause of action. Whether or not the election petitioner and the second respondents are able to prove the allegations sets out in the election petitions and similarly disprove the allegations by the first respondent is a matter of evidence which can be considered only at the time of trial.

[47] At this stage, the first respondent is not able to produce any material to substantiate his case that the election petitions do not disclose the cause of action. The first respondent simply stated that the election petitioner and the second respondent have failed to disclose the cause of action to maintain the election petitions in terms of the provisions of the RP Act and the CPC and nothing more.

[48] When this Court read over the averments sets out in the election petitions wholly, it is clear that the election petitioner and the second respondent have stated full and material particulars following the cause of action for filing the election petitions. *Prima facie*, the election petitioner and the second respondent have narrated in the election petitions qua the non-disclosure of certain information and/or incomplete information while filing the nomination paper along with Form-26 affidavit by the first respondent.

[49] 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.

[50] In *Harishankar Jain v. Sonia Gandhi*, (2001) 8 SCC 233, the Hon'ble Supreme Court held that the expression "*cause of action*" would mean facts to be proved, if traversed, in order to support his right to the judgment of the Court and that the function of the party is to present a full picture of the cause of action with such further information so as to make opposite party understand the case he will have to meet.

[51] In *Mayar (H.K.) Ltd. and others v. Owners and Parties, Vessel M.V. Fortune Express and others*, (2006) 6 SCC 100, the Hon'ble Supreme Court held as under:

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants. Similarly, the Court could not have taken the aid of Section 10 of the Code for stay of the suit as there is no previously instituted suit pending in a competent court between the

parties raising directly and substantially the same issues as raised in the present suit.”

[52] In construing a plea in any pleading, the Courts must keep in mind that a plea is not an expression of art and science, but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea.

[53] When this Court carefully examined the decisions in the cases of *Harishankar Jain and Mayar (H.K.) Ltd*, supra, it is clear that the Courts need to be cautious in dealing with the request for dismissal of the election petition at the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the election petition no cause of action is disclosed. In the case on hand, the election petitions establish the cause of action.

[54] An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in Sections 100 and 123 of the RP Act cannot obviously be recognized and respected as the decision of the majority of the electorate. The Courts are, therefore, duty bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hyper-technical in their approach and without being oblivious of the ground realities.

[55] The result of the election can be questioned on the grounds enumerated in Section 100 of the Representation of People Act. Section 100(1)(b) and 100(1)(d)(i), (ii), (iii) and (iv) of the RP Act, provides:

“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) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c)

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

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

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

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

(iv) by any non—compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.”

[56] As stated supra, the election petition must set out the material facts on the basis of which the charge can be made and in the event of the

material facts not being stated in the election petition, the same is liable to be dismissed.

[57] Whether in election petition, a particular fact is material or not, and, as such, required to be pleaded is a question which depends on the nature of the charge leveled, the ground relied upon and the special circumstances of the case. All those facts which are essential to clothe the election petition with a complete cause of action are material facts which must be pleaded and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the RP Act.

[58] The object and purpose of pleading material facts is to enable the opposite party to know the case he has to meet and in the absence of such a pleading, a party cannot be allowed to lead evidence. The requirement under Section 83(1)(a) of the RP Act in contradiction to Section 83(1)(b) of the RP Act is that the election petition needs to contain only a concise statement of the material facts and not material particulars. For the purpose of considering a preliminary objection as to the maintainability of the election petition, the averments in the election petition should be assumed to be true and the Court has to find out whether these averments disclose a cause of action or a triable issue as such. However, the Court cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action.

[59] As stated supra, the election petitioner assails the election of the first respondent under Sections 77, 80, 80-A, 81, 84, 100(1)(d)(i), (iii)& 101 of the RP Act. After going through the averments made in the election petitions as a whole, it cannot be said that the election petitions do not contain a concise statement of material facts. In fact, *prima facie*, the election petitions disclose the cause of action.

[60] It is trite that the cause of action is a bundle of facts which is taken with law gives the election petitioner a right to relief against the returned candidate. Every fact and bundle of facts together constitutes a question of facts which are required to be proved for the relief.

[61] It is well settled law that our election law being statutory in character must be strictly complied with since an election petition is not guided by ever changing common law principles of justice and notions of equity. Being statutory in character, it is essential that it must conform to the requirements of our election law. But at the same time the purity of election process must be maintained at all costs and those who violate the statutory norms must suffer for such violation. If the returned candidate is shown to have secured his success at the election by corrupt means he must suffer for his misdeeds.

[62] It is reiterated that the present election petitions as such to disclose the cause of action which if unrebutted could void the election and the

provisions of Order 7, Rule 11 CPC cannot therefore be invoked in the present cases. There is no substance in the contention that some of the allegations are bereft of material facts and, as such, do not disclose a cause of action. It is elementary that under Order 7, Rule 11(a) CPC, the Court cannot dissect the pleading into several parts and consider whether each of them discloses a cause of action.

[63] At this stage, this Court is not considering the issues - whether the first respondent has filed false affidavit at the time of filing his nomination and has failed to disclose true and correct facts, thereby violated the provisions of the RP Act and whether the returning officer has correctly or wrongly accepted the nomination of the first respondent and there was violation of Section 33 of the RP Act or not. These are all the matter of trial. Thus, this Court is of the considered view that there had been substantial compliance with the provisions of Section 83(1)(a) (b) of the RP Act. Moreover, the question as to whether the pleadings made by the election petitioner and the second respondent in the election petitions are sufficient or not can only be determined at the time of final hearing of the election petitions. The election petitions disclose cause of action and are to be tried. In view of the above, the present petitions are devoid of merits and, therefore, the same are liable to be dismissed.

[64] In the result, MC (El. Pet.) No.172 of 2022 in Election Petition No.25 of 2022 and MC (El. Pet.) No.173 of 2022 in Election Petition No.14 of 2022 are dismissed. There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

John Kom