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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 39]
No. 39]

नई दिल्ली, बुधवार, सितम्बर 3, 2025/भाद्र 12, 1947
NEW DELHI, WEDNESDAY, SEPTEMBER 3, 2025/BHADRA 12, 1947

भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 2 सितम्बर, 2025

आ. अ. 39 (अ).— लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106(क) के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन याचिका सं. 9/2024 में कर्नाटक उच्च न्यायालय (बेंगलुरु खंडपीठ) का दिनांक 05 जून, 2025 का निर्णय/आदेश प्रकाशित करता है।

[सं. 82/केटी-एचपी/9/2024]

आदेश से,

पवन दीवान, सचिव

ELECTION COMMISSION OF INDIA**NOTIFICATION**

New Delhi, the 2nd September, 2025

O. N. 39 (E).—In pursuance of Section 106 (a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment/order of the High Court of Karnataka (Bengaluru Bench) dated 5th June, 2025 in Election Petition No. 9/2024.

[No. 82/KT-HP/9/2024]

By Order,

PAWAN DIWAN, Secy.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

ELECTION PETITION NO.9 OF 2024

BETWEEN:

SHRI MOHAN KUMAR B.,
S/O BASETTY G.,
AGED ABOUT 41 YEARS,
R/O NO.19, 1ST MAIN ROAD,
SRIKANTESHWARA NAGAR,
NANDINI LAYOUT,
BENGALURU NORTH,
BENGALURU - 560 096

...PETITIONER

(BY SRI. HARISH NARASAPPA, SENIOR COUNSEL
SRI. SMARAN SHETTY, ADVOCATE)

AND:

SMT. SHOBHA KARANDLAJE,
D/O LATE MONAPPA GOWDA,
NO.16, 2ND MAIN ROAD,
3RD CROSS, NEW BEL ROAD, CHIKKAMARANHALLI,
BENGALURU - 560 094.

...RESPONDENT

(BY SRI. VENKATESH DALAWAI, ADVOCATE)

THIS ELECTION PETITION IS FILED UNDER SECTION 81 OF REPRESENTATION OF PEOPLE ACT, 1951 PRAYING TO DECLARE THAT THE RESULT OF THE ELECTION OF RESPONDENT, AS THE RETURNED CANDIDATE FROM THE 24 NORTH BENGALURU PARLIAMENTARY CONSTITUENCY IS NULL AND VOID IN TERMS OF SECTION 100(b), SECTION 100(d)(i) AND SECTION 100(d)(iv) OF THE REPRESENTATION OF PEOPLE'S ACT, 1951.

THIS ELECTION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.04.2025, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, MADE THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE E.S. INDIRESH

CAV ORDER

ORDERS ON IA No.2 OF 2024 AND IA No. 3 OF 2024

1. In this petition, the petitioner has sought for declaration that, the election of respondent, being the Returned candidate, from the 24-North Bengaluru Parliamentary Constituency as null and void in terms of Section 100(b), 100(d)(i) and 100(d)(iv) of the Representation of the People's Act, 1951 (hereinafter referred to as Act).

2. On service of summons, respondent entered appearance and filed detailed written statement, denying the averments made in the Election Petition. The respondent has filed application in IA No.2 of 2024 under Section 81(3) of the Act, seeking dismissal of the Election Petition for non-compliance of Section 81(3) of the Act. The respondent has filed IA No.3 of 2024 under Section 83(1)(a)(b)(c) and (2) of the Act read with Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, seeking rejection of Election Petition as devoid of cause of action as well as not complying with the mandatory requirements under Section 83(1)(a)(b)(c) as well as proviso to Section 83(1) and (2) of the Act.

3. The applications were heard on merits and disposed of by this order.

4. In order to decide the applications in IA No.2 of 2024 and IA No.3 of 2024 filed by the respondent for rejection of Election Petition, it is relevant to extract the prayer made in the Election Petition, which reads as under:

- "a) *Call for the entire records from the Returning Officer pertaining to the nomination papers, FORM 26 and all other papers filed by respondent No.1 ;*
- b) *Declare that the result of the Election of respondent No.1 as the returned candidate from the 24 North Bengaluru Parliamentary Constituency is null and void in terms of Section 100(b), Section 100(d)(i) and Section 100 (d)(iv) of the Representation of the People's Act 1951;*
- c) *Pass such other orders as this Hon'ble deems fit in the facts and circumstances of the case, in the interest of justice and equity."*
- d) *Award costs towards this petition.*

(Emphasis supplied)

FACTS OF THE CASE:-

5. The petitioner has presented the Election Petition on 19th July, 2024 stating that the petitioner is an Elector of 24-North Bangalore Parliamentary Constituency and Voter Identification Card of the petitioner is produced at Annexure-B1. It is stated that the petitioner preferred this Election Petition in the capacity as an Elector under Section 81 of the Act. It is further averred in the petition that, the Election Commission of India notified the General Elections to Lok Sabha on 16.03.2024 and calendar of events for Parliamentary Constituency No.24, North Bengaluru is as under:

Event	Schedule
Announcement and Issue of Press Note	16 March, 2024 (Saturday)
Issue of Notification	28 March, 2024 (Thursday)
Last date for filing of Nominations	04 April, 2024 (Thursday)
Scrutiny of Nomination	05 April, 2024 (Friday)
Last date for withdrawal of candidature	08 April, 2024 (Monday)
Date of Poll	26 April, 2024 (Friday)
Date of Counting of Votes	04 June, 2024 (Tuesday)
Date before which the election shall be completed	06 June, 2024 (Thursday)

6. It is further stated in the petition that, the Government of Karnataka by its notification dated 28.03.2024 (Annexure-C) notified the proposed 2024 General Elections as per Annexure-D. It is further averred in the petition that the respondent has filed her nomination paper in FORM 2A under Rule 4 of the Conduct of the Election Rule, 1961 on 03.04.2024 (as per Annexure-E) and same was scrutinized by the Returning Officer. In addition to the nomination paper, the respondent has filed affidavit in FORM 26 under Rule 4A of Conduct of Election Rules, 1961 (hereinafter to referred to as Rules, 1961) as per Annexure-F. The list of candidates for 24 North Bangalore Constituency is produced at Annexure-G. Election was held on 26.04.2024 and after the counting of votes, on 04.06.2024 and the respondent was declared as Returned Candidate for 24-North Bangalore Constituency. It is also averred in the petition that affidavit in FORM 26 filed by the respondent demonstrates the concealment of criminal proceedings and the respondent has not disclosed the status of her financial assets and liabilities. Therefore, it is contended by the petitioner that, the FORM 26 affidavit filed by the respondent is contrary to the provisions of the Act and Rules, 1961 and also the law laid down by the Hon'ble Supreme Court, in this regard.

7. The petitioner has raised following grounds:

- 7.1 The FORM 26 Affidavit of the respondent does not disclose the pending Criminal proceedings.
- 7.2 The FORM 26 Affidavit does not adequately provide details of pending Criminal proceedings.
- 7.3 The Returning Officer has not provided the details in compliance of the direction of the Hon'ble Supreme Court in W.P.(Civil) No.536 of 2011.
- 7.4 The respondent has not disclosed the previous Criminal proceedings.
- 7.5 FORM 26 Affidavit does not properly disclose the Financial Assets and Liabilities of the respondent.
- 7.6 Concealment and Mis-statement in FORM 26 Affidavit amounts to "Corrupt Practice".

8. The petitioner, by urging the aforementioned grounds, pleaded that, as per Rule 4(A) of the Rules, 1961, it is the duty of the candidate to disclose all relevant details as part of the Nomination Process. Such disclosure in FORM 26 Affidavit is intended to provide the Electorate and the public at large as to participate in the democratic process. It is the contention of the petitioner that, the respondent has failed to make necessary disclosure of the Criminal proceedings in which she was arrayed as an accused at the time of filing of FORM 26 Affidavit and therefore, sought for interference of this Court.

8.1 It is also contended by the petitioner that, the respondent has disclosed only five proceedings at Sl.No.5 of the FORM 26 affidavit, whereas, the respondent has failed to disclose other proceedings which were pending as on the date of filing of the nomination paper, particularly, the proceedings in the case of **Joint Director, Directorate of Enforcement Vs. Smt. Shobha Karandlaje** (in MSA No.112 of 2018) which is pending consideration before the competent Court as per Annexure-H. It is the grievance of the petitioner that, the respondent has mentioned the proceedings in MSA No.112 of 2018 during filing of nomination in the 2019 Lok Sabha Election and Copy of the FORM 26 Affidavit filed by the respondent is produced at Annexure-J. Hence, it is stated that the respondent has deliberately omitted to mention the proceedings of MSA No.112 of 2018 in FORM 26 Affidavit and suppression of the said aspect requires to be considered in the Election Petition. It is also contended by the petitioner that, the respondent has been arraigned as accused in PCR No.55750 of 2016 pending consideration before the X Additional Chief Judicial Magistrate, Mayohall, Bengaluru (Annexure-K) and therefore, concealing the aforementioned aspect attracts Section 100 (1) (d) (i) and (iv) of the Act.

8.2 It is further contended by the petitioner that, the respondent, at Sl.No.5 of her FORM 26 Affidavit, disclosed the pending Criminal proceedings, however, the respondent failed to provide the material particulars or adequate information and description, namely; i) nature of the Crime, ii) the seriousness of the offence alleged, iii) the involvement of the candidate to the alleged Crime, iv) the punishment for such an offence, and v) the cumulative impact of these factors on the suitability, character and fitness of the candidate to contest in the Lok Sabha Election. It is also stated that, four out of five of the Criminal proceedings disclosed in FORM 26 Affidavit do not contain the description and therefore, sought for interference of this Court.

8.3 It is also pleaded by the petitioner that, the proceedings under Section 45(1) of PML Act read with Section 200 of Cr.P.C., does not disclose the details of the amount alleged to have been invested by the respondent in Shell Company, the details of the alleged Money Laundering, involvement of the respondent in the transaction and corresponding imprisonment were absent in FORM 26 Affidavit.

8.4 It is also stated in the petition that, the respondent has failed to follow the guidelines issued by the Election Commission of India, dated 10.10.2018 and the judgment of Hon'ble Supreme Court in the case of

Public Interest Foundation and Others Vs. Union of India, (W.P.Civil No.536/2011) in a prescribed standard formats, relating to her Criminal antecedents and therefore, it is the duty of the Returning Officer to consider the same as per the provisions under the Act and the Rules 1961. Referring to the judgment of this Court in **Mudiyappa Vs. Basavaraj (W.P.No.107291/2023, dated 10.01.2024)**, it is contended that, not disclosing the Criminal proceedings attracts the provisions under the Act.

8.5 Nextly, it is pleaded in the Petition about the disclosure of financial liabilities and assets in FORM 26 Affidavit. The respondent has disclosed only one loan availed by her to an extent of Rs.4,06,00,640/- owed to M/s. Adarsha Developers and no further information is provided. It is also stated that, the respondent has provided the outstanding amount and further not disclosed nature of the loan i.e. the amount borrowed is secured or un-secured loan, the nature of re- payment as well as the relationship between the respondent and the creditor, which is conspicuously absent in FORM 26 Affidavit. Therefore, it is the contention of the petitioner that, the respondent deliberately suppressed and concealed as well as withhold the crucial information from the electorant, which amounts to guilty of "Corrupt Practice" under Section 123(2) of the Act and same is in violation of the judgment of the Hon'ble Supreme Court in the case of **Krishnamoorthy Vs. Sivakumar and Others** reported in **(2015) 3 SCC 467** and in the case of **Lok Prahari Vs. Union of India** reported in **(2018) 4 SCC 699**. Hence, the petitioner has presented this Election Petition.

9. Upon entering appearance, the respondent filed written statement and also IA No.2 of 2024 and IA No.3 of 2024, seeking rejection of the Petition on the ground that the specific allegations of Corrupt practice as urged in the Petition do not meet the basic requirements of law. It is further stated in the said applications that, no trial or enquiry is required to be made in the Petition as the same does not disclose a triable issue or cause of action and accordingly, sought for dismissal of the Petition.

10. It is the contention of the respondent that the copy of Election Petition served upon the respondent, has not been attested by the petitioner in his own signature as true copy. It is the contention of the respondent that, the petitioner is misleading the Court and not stated in the petition as to what was required in law to be disclosed in the FORM 26 Affidavit, except the information provided by the respondent in FORM 26 Affidavit. It is stated that, the proceedings initiated under PML Act, are essentially attachment proceedings which are not Criminal Proceedings and as such, the Enforcement Directorate preferred MSA No.112 of 2018, which is civil in nature and not required to be disclosed in FORM 26 Affidavit and same is set aside by the Appellate Authority. It is also stated that, the allegation regarding PCR No.55750 of 2016 is pertaining to a private complaint filed by one Roshan Baig against the respondent which came to be dismissed for non-prosecution on 20.05.2017 by same was restored as per the order dated 15.06.2017 of this Court and as on the date of nomination to be filed by the respondent, the competent Trial Court has not taken cognizance nor issued summons to the respondent for appearance and therefore, there is no requirement in law to mention about the said case even though same was mentioned in the previous affidavit. The said case has not been categorized as heinous offence under Section 8 of the Act. It is also averred in the written statement and applications that, the sole requirement prescribed under Section 33-A of the Act, is with regard to cases where cognizance has been taken and charges framed therein by the competent court and in the absence of any positive assumption made in the Election Petition, merely non-mentioning of civil cases does not attract the rigor of disqualification. It is also stated in the applications that, the guidelines laid down by the Hon'ble Supreme Court in the cases referred to above has been followed by the respondent and nomination has been filed along with FORM 26 Affidavit and those documents have been scrutinized scrupulously by the Returning Officer and therefore, sought for dismissal of the Election Petition.

11. In response to the applications in IA No.2 of 2024 and IA No.3 of 2024, the petitioner has filed statement of objections, contending that the said applications have been filed to protract the process of Trial in order to succeed in dragging the proceedings beyond the term for which the respondent has been elected. It is further stated in the statement of objections that, the petitioner has produced all relevant facts and particulars in the Election Petition, which would disclose the cause of action to set-aside the Election of the respondent on the ground of "Corrupt practices". It is further stated that the petitioner has pleaded all the material facts and particulars as required under Section 83(1)(a) and (b) of the Act, which discloses the cause of action. It is also stated in the statement of objections that the existence of cause of action as narrated in the petition is sufficient for conducting trial in the Election Petition and whether the cause of action narrated in the petition against the respondent is weak or strong is a matter of Trial which would be proved during the course of Trial. In addition to this, the petitioner has stated that the petitioner has provided all particulars relating to the "Corrupt practices" indulged by the respondent, as alleged, in the Election Petition and as such, it is contended that, reading of the entire petition comprehensively, makes it clear that the material facts narrated in the Election Petition are within the ambit of Section 123 of the Act. Hence, sought for dismissal of the applications.

12. Heard, Sri. Harish Narasappa, learned Senior Counsel appearing on behalf of Sri. Smaran Shetty, learned counsel appearing for the petitioner and Sri. Venkatesh Dalawai, learned counsel appearing for the respondent.

CONTENTIONS OF THE LEARNED SENIOR COUNSEL APPEARING FOR THE PETITIONER

13. Sri. Harish Narasappa, learned Senior Counsel appearing on behalf of Sri. Smaran Shetty, learned counsel appearing for the petitioner, argued on IA No.2 of 2024 that, Election Petition was filed in strict compliance with Section 81(3) of the Act, and the Registry of this Court has verified additional sets of the Election Petition and found them to be in conformity with law and procedure thereunder, and thereafter this Court has issued notice to the respondent. It is contended by the learned Senior Counsel that, the question of ante dating the verifying affidavit does not arise since, the said affidavit bears the seal and signature of the notary and attestation of the said affidavit reflects the date on which the affidavit was executed by the petitioner. He further contended that, the petitioner did not file the verifying affidavit at the time of filing of the Election Petition though same is not required under the Act, and further, affidavit in FORM 25 was filed along with the petition as per the Rules, however, the Registry of this Court has raised objection regarding the non-filing of verifying affidavit. Thereafter, the petitioner, with the leave of this Court, complied with the office objections raised by the Registry and as such, verifying affidavit has been filed in support of the Election Petition. It is also contended by the learned Senior Counsel that, there exists no consequential defect as alleged by the respondent and accordingly, sought for dismissal of IA No.2 of 2024.

13.1 To buttress his arguments learned Senior Counsel places reliance on the judgments of the Hon'ble Supreme Court in the cases of **Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others** reported in (1964) 3 SCR 573, **Dr. Anup Singh Vs. Shri. Abdul Ghani and Others** reported in (1965) 1 SCR 38 and **Ch. Subba Rao Vs. Member, Election Tribunal** reported in (1964) 6 SCR 213 and argued that, the term "copy" under Section 81(3) of the Act does not require exact transcript and the ministerial errors or omissions by notaries/oath commissioners are not fatal to a Election Petition and same do not provide a ground for dismissal of the Election Petition.

13.2 It is also contended by the learned Senior Counsel that, the petitioner has amended the Election Petition by deleting the Returning Officer, who arraigned as respondent No.2 in the Election Petition and made necessary changes in the Election Petition without urging additional grounds or new documents have been produced and therefore, sought for dismissal of IA No.2 of 2024. It is also contended by the learned Senior Counsel appearing for the petitioner that, the objection raised by the respondent are hyper technical in nature, which are inconsequential and the Hon'ble Supreme Court has consistently held that minor procedural defects are curable and should not result in rejection of the Election Petition, unless, there is a failure of substantial compliance made therein in the petition.

13.3 Sri. Harish Narasappa, learned Senior Counsel appearing for the petitioner asserts that, IA No.3 of 2024 is devoid of merits and same is filed to protract the proceedings. It is the contention of the learned Senior Counsel that, the petitioner has set out the specific instances of suppression of material information by the respondent in her nomination papers, which squarely fall within the ambit of 'Corrupt Practices' under Section 123 of the Act. He also refers to the judgment referred to in the Election Petition and submitted that, the respondent is attempting to bid to evade the judicial scrutiny of this Court. It is also submitted by the learned Senior Counsel by referring to FORM 26 Affidavit that, the respondent has not disclosed pending Criminal proceeding in MSA No.112 of 2018 and not adequately provide details of pending Criminal proceedings. It is also argued that, the respondent has not disclosed prior Criminal proceedings as per the declaration of law in the case of **Mudiappa** supra, *inter-alia* argued that, FORM 26 Affidavit does not disclose the status of the financial liabilities and assets of the respondent, particularly, referring to the nature of loan availed by the respondent from the creditor and therefore, argued that such concealment in the FORM 26 Affidavit amounts to 'Corrupt Practices' under the Act. Learned Senior counsel appearing for the petitioner places reliance on the judgment of the Hon'ble Supreme Court in the case **Bhim Rao Baswanth Rao Patil vs. K. Madan Mohan Rao and Others** reported in (2023) 18 SCC 231 and contended that, the idea behind disclosure of Criminal antecedents is to ensure transparency and enable the voters to make an informed choice while casting their vote in the election and therefore, the Election Petition cannot be rejected whimsically and cause of action for a full fledged trial is required in this petition.

13.4 Referring to paragraph Nos.20 to 28 of the Election Petition, Sri. Harish Narasappa, learned Senior Counsel appearing for the petitioner argued that, the FORM 26 Affidavit shall contain the required material for fair electioneering process and that apart, the petitioner being a voter of the constituency must know the antecedents of the respondent and therefore, the learned Senior Counsel for the petitioner contended that, dismissing the Election Petition at the threshold for the alleged deficiencies and lack of material facts and particulars, which are curable in nature and therefore, places reliance on the judgment of the Hon'ble Supreme Court in the case of **Sardar Harcharan Singh Brar vs. Sukh Darshan Singh and Others** reported in (2004) 11 SCC 196. It is further contended by the learned Senior counsel that, non-compliance with the affidavit requirement under Section 83(1) of the Act, does not justify dismissal under Section 86(1) of the Act. It is also contended by the learned Senior Counsel appearing for the petitioner that, the Election Petition has to be read as whole and cannot be dissected in piecemeal to determine the cause of action and as such, by referring to the judgment in the case of

Kimneo Haokip Hangshing vs. Kenn Raikhan and Others reported in **2024 INSC 689**, it is argued that, Election Petition should not be rejected at the very threshold where there is a substantial compliance of the provisions. Hence, the learned Senior Counsel appearing for the petitioner submitted that, this Court has to see whether the pleadings in the petition constitute a cause of action and cannot come to the conclusion that, a roving enquiry is not required *inter alia*, dismiss the petition at the threshold.

13.5 Referring to the judgment of the Hon'ble Supreme Court in the case of **G.M. Siddeshwar vs. Prasanna Kumar**, reported in **(2013) 4 SCC 776**, learned Senior Counsel appearing for the petitioner submitted that, the language contained under Section 83(1)(C) of the Act requires the verification as per the provisions under CPC and the said affidavit alone shall stand and such affidavit cannot be considered as incomplete. He also refers to paragraph 25 in the above judgment and contended that the Act does not require a verification of the pleadings in the Election Petition and same do not find place in Section 83(1)(C) of the Act. Referring to the judgment of the Hon'ble Supreme Court in the case of **A. Manju vs. Prajwal Revanna @ Prajwal R. and Others** reported in **(2022) 3 SCC 269**, learned Senior Counsel appearing for the petitioner contended that, it is too early to adjudicate the petition insofar as defect in the affidavit and therefore, contended that, the applications deserve to be dismissed. Referring to the judgment of the Hon'ble Supreme Court in the case of **Madiraju Venkata Ramana Raju vs. Peddireddigari Ramachandra Reddy and Others** reported in **(2018) 14 SCC 1**, learned Senior Counsel appearing for the petitioner submitted that the cause of action embodies a bundle of facts and the petitioner has produced ample material facts for challenging the Election proceedings and triable issues are required to be framed by this Court for final adjudication and therefore, it is too early to consider the allegation made by the learned counsel for the respondent and accordingly, sought for dismissal of the applications. It is also argued that, this Court has to see the averments in the petition alone while considering the application for rejection of petition and further submitted that, there is no merit in IA No.2 of 2024 and IA No.3 of 2024 and accordingly, sought for dismissal of the applications.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT:

14. Sri. Venkatesh P. Dalawai, learned counsel appearing for the respondent- Returned Candidate reiterates the averments made in the written statement and applications in IA No.2 of 2024 and IA No.3 of 2024. It is submitted by the learned counsel appearing for the respondent that, though the defects in the Election Petition, have been pointed out by the respondent herein, however, same has not been considered and complied with by the petitioner and no leverage can be extended to rectify the defects by the petitioner. It is contended that the petitioner has not attested some of the Annexures in the petition as required under Section 81(3) of the Act, and signatures appended in some of the Annexures are different and no explanation is forthcoming in the objections filed to the applications. It is the principal submission of the learned counsel appearing for the respondent that, the affidavit dated 19.07.2024 is different from affidavit filed subsequent to allow the amendment application. It is also contended by the learned counsel appearing for the respondent that, the verifying affidavit was sworn to before the competent notary with ante dated as if it was sworn to by the petitioner on 19.07.2024 and this aspect was not disputed by the petitioner in statement of objections to IA No.2 of 2024 and IA No.3 of 2024 and therefore, contended that the petitioner is misleading the Court by comparing the verifying affidavit with FORM 25 Affidavit. It is contended by the learned counsel appearing for the respondent that, the procedure for the Election Petition requires certain things to be done as per the provisions under the Act, compared to any other petitions and further, though the requirement of the compliance has been pointed out, the petitioner has ignored the same and therefore, in terms of the judgment of the Hon'ble Supreme Court in the case of **C.P. John vs. Babu M. Palisery and Others** reported in **(2014) 10 SCC 547**, Sri. Venkatesh P. Dalawai, learned counsel appearing for the respondent argued that, the Election Petition deserves to be rejected at the threshold. He also submitted that, the prescribed proper procedure for filing of the petition is as per the Rules and same will have to be done in that manner only and same cannot be considered as hyper technical in nature since the intention of the Act and Rules is to fix the responsibility of the person, who files the petition and accordingly, sought for interference of this court to dismiss the petition. Referring to the provisions under Section 83(1) (C) and (2) of the Act, Sri. Venkatesh P. Dalawai, learned counsel appearing for the respondent argued that every document or Annexure filed with the Election Petition mandatorily requires the verification as per the provisions under the Act, as well as Order VI Rule 15 of CPC. These provisions are mandatory in nature and without complying with the aforementioned statutory obligations, the Election Petition is liable to be dismissed.

14.1 Nextly, learned counsel appearing for the respondent made submission on the compliance of FORM 26 Affidavit by the respondent at the time of filing of nomination papers. Referring to the petition averments particularly, paragraphs 15 to 19 and 41 to 49 are not part of FORM 26 Affidavit. In these paragraphs, no allegation has been made with regard to "Corrupt practice" in the Electioneering process. If the said aspect is accepted, then that paragraphs at 15 to 19 and 41 to 49 have to be struck off from the pleadings then the Election Petition become incomplete even for issuance of summons by this Court. Referring to page No.29 of respondent copy, which has been served to the respondent and page No.180 of the Court Copy referring to office objection No.3, it is contended that only the affidavit filed under Rule 94-A of the Rules is enclosed and no verifying affidavit has been filed by the petitioner and accordingly submitted that same contravenes Section 81(3) of the Act and as such sought

for dismissal of the Election Petition.

14.2 Sri. Venkatesh P. Dalawai, learned counsel for the respondent submitted that the Election Petition does not disclose cause of action and no material facts are produced in the Election Petition. Referring to the averments in the Election Petition, it is submitted that there is no suppression of material facts in the FORM 26 Affidavit and as such referred to paragraph No.21 of the Election Petition as well as the provisions contained under Section 33-A(1) of the Act, learned counsel appearing for the respondent contended that the petitioner has not furnished any particulars as required under Section 33-A of the Act and if such an offence is punishable with two or more years of imprisonment and if cognizance is taken and charge is framed thereunder and in the absence of these material facts, the Election Petition requires to be dismissed and same has to be construed as abuse of process of law by the petitioner. Inviting the attention of the Court to the chart, referring to the cases, Sri.Venkatesh P. Dalawai, learned counsel for the respondent submitted that Sl.Nos.1 to 3 are pertaining to same case which came to be dismissed on 17.03.2021 and no charge has been framed against the respondent. Sl.No.4 is pertaining to defamation case filed by one Roshan Baig, in which no cognizance has been taken by the competent court and no charge has been framed. Insofar as the cases referred to at Sl.Nos.5 to 7, it is contended by the learned counsel for the respondent that these are the attachment proceedings which are not criminal in nature though arising out of the provisions of PML Act and the orders were passed in favour of the respondent by the Appellate Authority, and as such refutes the contentions of the learned Senior Counsel for the petitioner.

14.3 Next, it is contended by the learned counsel for the respondent that, MSA No.112/2018 was filed by the Enforcement Directorate, which are pending consideration before the competent court and are not in the nature of criminal proceedings. Insofar as the loan particulars furnished by the respondent is concerned, it is contended by the learned counsel for the respondent that nothing has been stated in the Election Petition by the petitioner pointing out the absence of material particulars and therefore, submitted that the Election Petition is devoid of merits and as such, sought for rejection of the same.

14.4 It is also contended by the learned counsel for the respondent that the respondent has been elected with a margin of more than 1.5 lakhs votes in the General Election and as the Election Petition lacks details of the petitioner and his background and has been set up by certain inimical persons and further the present petition has been filed to harass the respondent and accordingly, sought for dismissal of the Election Petition at the threshold on the ground of lack of material facts.

14.5 Referring to the judgment dated 10.01.2024 of this Court in WP No.107291/2023, it is argued by Sri. Venkatesh P. Dalawai that the issue involved in the said writ petition was with regard to the provisions contained under the Gram Panchayat Act and Section 33-A of the Act has not been dealt in the said judgment and therefore, same is not applicable to the facts of this case.

14.6 Next, Sri. Venkatesh P. Dalawai, learned counsel for the respondent referred to the verification paragraph at page 26 of the Election Petition and submitted that, the verification paragraph do not contain the date and place on which the Election Petition has been filed by the petitioner which is mandatorily required as per Order VI Rule 15 of CPC and therefore, it is contended that, the petition deserves to be dismissed.

14.7 It is also submitted by the learned counsel for the respondent that, in the verifying affidavit at page 27, the Annexures at A, B-1, M1 to M7 were included and same has not been incorporated in the copy of the respondent and therefore, it is contended that, the petition requires to be dismissed for non-compliance of Section 100 of the Act. To buttress his arguments, learned counsel for the respondent places reliance on the judgment of the Hon'ble Supreme Court in the case of **Krishnamoorthy** (supra) and in the case of **Dhartipakar Madan Lal Agarwal vs. Rajiv Gandhi** reported in **1987 Supp.SCC 93**. Referring to the judgment of the Hon'ble Supreme Court in the case of **C.P. Jonh vs. Babu M. Pallisery and Others** reported in **(2014) 10 SCC 547**, particularly, referring to paragraphs 18 and 38, it is contended by the learned counsel for the respondent that, as the petitioner has failed to remove the defect in the Election Petition despite the opportunity has been extended to him and therefore, the petition requires to be dismissed.

14.8 Learned counsel for the respondent places reliance on the judgment of the Hon'ble Supreme Court in the case of **Karim Uddin Barbhuiya vs. Aminul Haque Laskar and Others** reported in **2024 SCC Online SC 509** and argued with reference to compliance of Section 100(1) (d) (i) of the Act, that, it is not open for the Petitioner to state at the later stage as to how "Corrupt Practice" has materially affected the result of the election. It is the duty of the petitioner to produce cogent material as to how the Nomination Form of respondent herein contained irrelevant material, so also, suppression of materials by the Returned Candidate. Referring to the judgment of the Hon'ble Supreme Court in the case of **Kanimozhi Karunanidhi vs. A. Santhana Kumar and Others** reported in **2023 SCC Online SC 573**, at paragraphs 27 and 32, it is argued that, the Election Petition deserves to be dismissed summarily on the omission of a single material fact leading to an incomplete cause of action and therefore, it is submitted that, IA No.2 of 2024 and IA No.3 of 2024 have to be allowed. He further contended that,

though the learned Senior counsel appearing for the petitioner submitted that substantial compliance has been made to cure the defects in the Election Petition and the said submission cannot be accepted on the sole ground that, the statutory requirement under the Act has to be scrupulously followed and complied with to remove the entire defect as required under Section 100 of the Act, where the legality of the election of the Return Candidate is challenged and any result in the petition would affect the democratic process and therefore, it is argued that, the petitioner be cautious before filing the Election Petition and as such, sought for dismissal of the Election Petition.

ANALYSIS:

15. In the light of the submission made by the learned counsel for the parties, I have carefully examined the pleadings on record and the rival submission made by the learned counsels for the parties confining to IA No.2 of 2024 and IA No.3 of 2024.

16. IA No.2 of 2024 has been filed by the respondent, seeking rejection of the petition for non-compliance of Section 81(3) of the Act referring to original petition filed before this Court with the copy of the petition sent to the respondent through summons, where a defective copy has been served to the respondent. This court vide order dated 25.09.2024 pursuant to the memo dated 24.09.2024 filed by the respondent, copy of the Election Petition along with the summons received by the respondent was kept in safe custody. These documents were also perused at the time of arguments.

17. Insofar as submission made by the learned counsel appearing for the parties on IA No.3 of 2024 filed by the respondent seeking dismissal of the Election Petition for not complying with the requirement of Section 83(1)(a)(b)(c) as well as proviso to Section 83(1) and (2) and Section 81(3) of the Act, I find that it is expedient to consider the applications on merits.

18. The learned counsel appearing for the respondent has contended that the petition is devoid of merits on the ground of lack of cause of action and learned Senior Counsel appearing for the petitioner replied that the essential facts have been narrated and same is required to be proved during the trial. In this backdrop of the matter, the following points have to be answered on these applications:

- (1) Whether the averments made in the Election Petition lacks material facts and do not disclose the cause of action?
- (2) Whether the grounds urged by the respondent in IA No.2 of 2024 and IA No.3 of 2024 are just and proper, to reject Election petition?
- (3) What order ?

19. Having heard the learned counsel appearing for the parties, it is well established principle in law that, while considering the application under Order VII Rule 11 of the Civil Procedure Code, it is the duty of the Court to look into the averments made in the plaint/petition alone and documents produced along with the plaint/petition. The plaintiff/petitioner must make out a case for conducting trial/enquiry, *inter-alia* demonstrates that, triable issues are involved in the suit/petition and further the Court should not be misguided with the defence taken in the written statement. The petition/plaint could be rejected, if the allegations made in the petition/plaint, are bald and does not disclose the cause of action. It is also pertinent to mention here that while considering such application, the Court has to apply its mind as to grounds urged by the respondent/defendant in the application, comes within the parameters of Order VII Rule 11 of the Code of Civil Procedure. The entire averments in the plaint/petition has to be read in whole as to satisfy the ingredients contemplated under Order VII Rule 11 of the Code of Civil Procedure. At this juncture, it is also to be noted that, if the petition averments lacks cause of action or there is a patent error to exercise the jurisdiction by the competent Court, such application has to be accepted to save the judicial time and not to allow the petitioner/plaintiff to proceed in the matter further as the same will cause hardship/injury to the defendant/respondent. Hence, it is relevant to follow the following law declared by the Hon'ble Apex Court in relation to considering the application filed under Order VII Rule 11 of the Civil Procedure Code, in respect of Election Petition.

20. Recently, the Hon'ble Supreme Court in the case of ***Correspondence, RBANMS Educational Institution vs. B. Gunashekar and Another*** reported in **2025 SCC Online SC 793** at Paragraphs 14 and 15 held as follows:

“14. Let us first examine the scope and purpose of Order VII Rule 11 CPC. This Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra)* dead through legal representatives, explained in detail the applicable law for deciding the application for rejection of the plaint. The relevant paragraphs of the said decision are reproduced below:

“23.1 ...

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

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

23.4. *In Azhar Hussain v. Rajiv Gandhi¹³ this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p.324, para 12)*

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

23.5. *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.*

23.6. *Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint¹⁴ read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

23.7. *Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:*

“14. Production of document on which plaintiff sues or relies.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) *Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*

(3) *A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.*

(4) *Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”*

(emphasis supplied)

23.8. *Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.*

23.9. *In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration¹⁵.*

23.11. *The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I which reads as : (SCC p.562, para 139)*

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

23.12. *In Hardesh Ores (P.) Ltd. v. Hede & Co.¹⁶ the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman.*

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

23.14. *The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra¹⁸. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).*

23.15. *The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.*

24. *“Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.*

24.1. *In Swamy Atmanand v. Sri Ramakrishna Tapovanam¹⁹ this Court held:*

“24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded”

(emphasis supplied)

24.2. *In T. Arivandandam v. T.V. Satyapal²⁰ this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)*

“5. ...The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing

...”

(emphasis supplied)

24.3. Subsequently, in *I.T.C. Ltd. v. Debt Recovery Appellate Tribunal*²¹ this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Ramachandra Murthy v. Syed Jalal*²² held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

.....

28. A three-Judge Bench of this Court in *State of Punjab v. Gurdev Singh*²³ held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order VII Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.”

14.1. Thus, it is clear that the above provision viz., Order VII Rule 11 CPC serves as a crucial filter in civil litigation, enabling courts to terminate proceedings at the threshold where the plaintiff's case, even if accepted in its entirety, fails to disclose any cause of action or is barred by law, either express or by implication. The scope of Order VII Rule 11 CPC and the authority of the courts is well settled in law. There is a bounden duty on the Court to discern and identify fictitious suit, which on the face of it would be barred, but for the clever pleadings disclosing a cause of action, that is surreal. Generally, sub-clauses (a) and (d) are stand alone grounds, that can be raised by the defendant in a suit. However, it cannot be ruled out that under certain circumstances, clauses (a) and (d) can be mutually inclusive. For instances, when clever drafting veils the implied bar to disclose the cause of action; it then becomes the duty of the Court to lift the veil and expose the bar to reject the suit at the threshold. The power to reject a plaint under this provision is not merely procedural but substantive, aimed at preventing abuse of the judicial process and ensuring that court time is not wasted on fictitious claims failing to disclose any cause of action to sustain the suit or barred by law. Therefore, the appeal before us requires careful consideration of the scope of rejection of the plaint under Order VII Rule 11 CPC, particularly, in the context of the suit filed based on an agreement to sell against third parties in possession.

15. Order VII Rule 11(a) CPC mandates rejection of the plaint where it does not disclose a cause of action. In *Om Prakash Srivastava v. Union of India*²⁴, this Court pointed out that cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support their right to judgment. It consists of bundle of facts which narrate the circumstances and the reasons for filing such suit. It is the foundation on which the entire suit would rest. Therefore, it goes without saying that merely including a paragraph on cause of action is not sufficient but rather, on a meaningful reading of the plaint and the documents, it must disclose a cause of action. The plaint should contain such cause of action that discloses all the necessary facts required in law to sustain the suit and not mere statements of fact which fail to disclose a legal right of the plaintiff to sue and breach or violation by the defendant(s). It is pertinent to note here that even if a right is found, unless there is a violation or breach of that right by the defendant, the cause of action should be deemed to be unreal. “

19. The Hon'ble Supreme Court in the case of ***Harcharan Singh Josh vs. Hari Kishan*** reported in (1997) 10 SCC 294, at paragraphs 1 and 2 held as follows:

“1. This appeal arises against the order of the Delhi High Court made on 26-5-1995 in Election Petition No. 6 of 1994. The appellant is an unsuccessful candidate in respect of one of the Assembly Constituencies known as No. 64, Sadar Bazar, to the National Capital Territory of Delhi Assembly. The elections were held on 6-11-1993. The respondent secured 27,126 votes while the appellant secured 25,786 votes. The latter filed an election petition on diverse grounds including corrupt practices under Section 123 of the Representation of the People Act, 1951. The High Court dismissed his election petition under Section 86 of the Act on its findings on four issues framed in that case. While upholding the findings in favour of the appellant on Issues 1 to 3, it held that the requisite number of true copies of the election petition were not supplied to the

respondent in compliance with Section 81(3) of the Act. Reasons in support thereof are some grave mistakes including omission to supply full text of page No. 18 of the election petition. Another contention raised by the respondent was that the affidavit is not a true copy of the affidavit which was filed in the court along with the election petition. Though it was rejected by the High Court as one of the grounds against the rejection of the election petition, the respondent has filed cross-objections.

2. It is not necessary for us to go into the grounds on which the election petition was dismissed by the High Court. Suffice it to state that the objections raised by the respondent regarding non-supply of the true copy of the affidavit is a formidable objection which merits acceptance in view of the recent judgment of this Court in *Shipra (Dr) v. Shanti Lal Khoiwal*. Therein the copy of the affidavit supplied to the respondent was not attested by the Oath Commissioner. This Court, after considering the entire case-law, held that the affirmation before the prescribed authority in the affidavit and the supply of its true copy is mandatory so that the returned candidate would not be misled in his understanding that imputation of the corrupt practices were solemnly affirmed and duly verified before the prescribed authority. For that purpose, Form 25 prescribed by Section 83 requires verification before the prescribed authority. The concept of substantial compliance has no application in such a case. It is seen that the copy of the affidavit supplied to the respondent does not contain the affirmation by the Oath Commissioner. Under these circumstances, the defect is not a curable defect. Therefore, the dismissal of the election petition on this ground is sustainable in law.”

20. The Hon'ble Supreme Court in the case of *Kanimozhi Karunanidhi (supra)* reported in **2023 SCC Online SC 573**, at paragraphs 11 to 15 and 18 to 28 held that,

“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 Civil Procedure Code, 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 Civil Procedure Code, 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.”

* * *

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 v. Returning Officer, Namakkal Constituency, in Jagan Nath v. Jaswant Singh, in Bhikji Keshao Joshi v. Brijlal Nandlal Biyani, in Murarka Radhey Shyam Ram Kumar v. Roop*

Singh Rathore 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.

20. *In a very interesting and important decision in case of Union of India v. Association for Democratic Reform, 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 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-retained 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 v. 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 Civil Procedure Code, 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 the case of Mahadeorao Sukaji Shivankar vs. Ramaratan Babu, 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 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.”

26. *In the case of Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar, 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 Act. Paragraphs 50 to 58 reads as under:*

“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.

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.

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 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 Civil Procedure Code, 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 the case of Ram Sukh v. Dinesh Aggarwal (supra), this Court again while examining the maintainability of Election petition filed under Section 100(1)(d)(iv) of the 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 insofar 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 paragraphs 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 aforesaid 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 Civil Procedure Code, 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 judgment 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."*

23. It is also relevant to cite the judgment of the Hon'ble Supreme Court in **Karim Uddin Barbhuiya vs. Aminul Haque Laskar and Others** reported in **2024 SCC Online SC 509** at paragraphs 12 to 16 and 19 to 24 it is held that,

"12. At the outset, it may be noted that as per the well settled legal position, right to contest election or to question the election by means of an Election Petition is neither common law nor fundamental right. It is a statutory right governed by the statutory provisions of the RP Act. Outside the statutory provisions, there is no right to dispute an election. The RP Act is a complete and self-contained code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of Civil Procedure Code are applicable to the extent as permissible under Section 87 of the RP Act.

13. *It hardly needs to be reiterated that in an Election Petition, pleadings have to be precise, specific and unambiguous, and if the Election Petition does not disclose a cause of action, it is liable to be dismissed in limine. It may also be noted that the cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the RP Act. As held in Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi and in Dharti Pakar Madan Lal Agarwal v. Rajiv Gandhi, if the allegations contained in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the pleadings are liable to be struck off and the Election Petition is liable to be rejected under Order VII, Rule 11 CPC.*

14. *A beneficial reference of the decision in case of Laxmi Narayan Nayak v. Ramratan Chaturvedi be also made, wherein this Court upon review of the earlier decisions, laid down following principles applicable to election cases involving corrupt practices:—*

“5. This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being:

(1) *The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide Dharti Pakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93] and Kona Prabhakara Rao v. M. Seshagiri Rao [(1982) 1 SCC 442].*

(2) *The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide Manphul Singh v. Surinder Singh [(1973) 2 SCC 599 : (1974) 1 SCR 52], Kona Prabhakara Rao v. M. Seshagiri Rao [(1982) 1 SCC 442] and Dharti Pakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93].*

(3) *The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide Jumuna Prasad Mukhariya v. Lachhi Ram [(1954) 2 SCC 306 : (1955) 1 SCR 608 : AIR 1954 SC 686] and Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660].*

(4) *The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide Ram Sharan Yadav v. Thakur Muneshwar Nath Singh [(1984) 4 SCC 649].*

(5) *It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660], M. Narayana Rao v. G. Venkata Reddy [(1977) 1 SCC 771 : (1977) 1 SCR 490], Lakshmi Raman Acharya v. Chandan Singh [(1977) 1 SCC 423 : (1977) 2 SCR 412] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260].”*

(6) *The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660], Mohan Singh v. Bhanwarlal [(1964) 5 SCR 12 : AIR 1964 SC 1366] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260].”*

15. *The legal position with regard to the non-compliance of the requirement of Section 83(1)(a) of the RP Act and the rejection of Election Petition under Order VII Rule 11, CPC has also been regurgitated recently by this Court in case of Kanimozhi Karunanidhi v. A. Santhana Kumar (supra):—*

“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 judgment 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."*

16. *Bearing in mind the aforesaid legal position, let us consider the averments and allegations made by the respondent no. 1 in the Election Petition in which the election of the Appellant is sought to be challenged basically on two grounds : (1) that the appellant has committed corrupt practice and (2) the result of the election in so far as it concerned the appellant, was materially affected by the improper acceptance of his nomination. In short, the respondent no. 1 has invoked Section 100(1)(b) and Section 100(1)(d)(i) of the Act, for declaring the election of the Appellant as void.*

* * *

19. *Now, from the bare reading of the Election petition, it emerges that the respondent no. 1 has made only bald and vague allegations in the Election Petition without stating the material facts in support thereof as required to be stated under Section 83(1)(a) of the RP Act. Apart from the fact that none of the allegations with regard to the false statements, and suppression and misrepresentation of facts allegedly made by the respondent no. 1 with regard to his educational qualification or with regard to his liability in respect of the loan availed by him for his partnership firm or with regard to his default in depositing the employer's contribution to provident fund, would fall within the definition of "Corrupt practice" of "undue influence" as envisaged in Section 123(2) of the RP Act, the Election petition also lacks concise statement of "material facts" as contemplated in Section 83(a), and lacks "full particulars" of the alleged Corrupt practice as contemplated in Section 83(b) of the RP Act.*

20. *So far as the allegations of "Corrupt practice" are concerned, the respondent no. 1 was required to make concise statement of material facts as to how the appellant had indulged into "Corrupt practice" of undue influence by directly or indirectly interfering or attempted to interfere with the free exercise of any electoral right. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of making a concise statement of the "material facts" in the Election Petition. The material facts which are primary and basic facts have to be pleaded in support of the case set up by the Election petitioner to show his cause of action. Any 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) of CPC read with Section 83(1)(a) of the RP Act. The said legal position has been well settled by this Court in Azhar Hussain v. Rajiv Gandhi, wherein this Court after referring to the earlier pronouncements in Samant N. Balkrishna v. George Fernandez and Shri Udhav Singh v. Madhav Rao Scindia, 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. It was further 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. It is also pertinent to note at this juncture that a charge of "Corrupt practice" is easy to level but difficult to prove because it is in the nature of criminal charge and has got to be proved beyond doubt. The standard of proof required for establishing a charge of "Corrupt practice" is the same as is applicable to a criminal charge. Therefore, Section 83(1)(b) mandates that when the allegation of "Corrupt practice" is made, the Election Petition shall set forth full particulars of the corrupt practice that the Election Petitioner alleges, including as full a statement as possible of the names of parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The pleadings with regard to the allegation of corrupt practice have to be precise, specific and unambiguous whether it is bribery or undue influence or other corrupt practices as stated in Section 123 of the Act. If it is corrupt practice in the nature of undue influence, the pleadings must state the full particulars with regard to the direct or indirect interference or attempt to interfere by the candidate, with the free exercise of any electoral right as stated in Section 123(2) of the Act. We are afraid, Mr. Gupta has failed to point out from the pleadings of the Election petition as to how the appellant had interfered or attempted to interfere with the free exercise of any electoral right so as to constitute "undue influence" under Section 123(2) of the Act.

22. So far as the ground contained in clause (d) of Section 100(1) of the Act, with regard to improper acceptance of the nomination of the Appellant is concerned, there is not a single averment made in the Election Petition as to how the result of the election, in so far as the appellant was concerned, was materially affected by improper acceptance of his nomination, so as to constitute a cause of action under Section 100(1)(d)(i) of the Act. Though it is true that the Election Petitioner is not required to state as to how corrupt practice had materially affected the result of the election, nonetheless it is mandatory to state when the clause (d)(i) of Section 100(1) is invoked as to how the result of election was materially affected by improper acceptance of the nomination form of the Appellant.

23. As transpiring from the Election Petition, the respondent no. 1 himself had not raised any objection in writing against the nomination filed by the Appellant, at the time of scrutiny made by the Returning Officer under Section 36 of the Act. According to him, he had raised oral objection with regard to the education qualification stated by the Appellant in the Affidavit in Form-26. If he could make oral objection, he could as well, have made objection in writing against the acceptance of nomination of the Appellant, and in that case the Returning Officer would have decided his objection under sub-section (2) of Section 36, after holding a summary inquiry. Even if it is accepted that he had raised an oral objection with regard to the educational qualification of the Appellant before the Returning Officer at the time of scrutiny, the respondent no. 1 has failed to make averment in the Election Petition as to how Appellant's nomination was liable to be rejected by the Returning Officer on the grounds mentioned in Section 36(2) of the Act, so as to make his case fall under clause (d)(i) of Section 100(1) that there was improper acceptance of the nomination of the Appellant. The non-mentioning of the particulars as to how such improper acceptance of nomination had materially affected the result of the election, is apparent on the face of the Election Petition.

24. As stated earlier, in Election Petition, the pleadings have to be precise, specific and unambiguous. If the allegations contained in Election Petition do not set out grounds as contemplated in Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the Election Petition is liable to be rejected under Order VII, Rule 11 of CPC. An 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 Election petitioner relies for establishing a cause of action, would entail rejection of Election Petition under Order VII Rule 11 read with Section 83 and 87 of the RP Act."

24 In the light of the dictum of the Hon'ble Supreme Court referred to above, I have carefully considered the verification paragraph mentioned in the Election petition by the petitioner, stated at page No. 26 of the Election Petition and in this regard, it is relevant to extract Order VI Rule 15 of CPC which reads as under:

"Order 6, Rule 15 CPC

15. Verification of pleadings.

(1) Save as otherwise provided by any law for the time being in force, every pleading shall be varied at the foot by the party or by one of the parties pleading or by some other person proved to the

satisfaction of the Court to be acquainted with the facts of the case.

(2) *The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.*

(3) *The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.*

(Emphasis supplied)

25 The language employed in Order VI Rule 15 (3) of CPC, wherein the word “shall”, reflects that, the said compliance of providing details in the verification paragraph is mandatory. On careful examination of the verification appended to the Election Petition at paragraph 26 of the Election petition, the learned counsel for the respondent is justified in submitting that, the verification paragraph do not contain the place and date as required under Order VI Rule 15(3) of CPC. Though it is a procedural requirement by the petitioner /plaintiff to rectify the same, by filing a fresh affidavit/verification to cure the procedural defect in filing the Election Petition and following the judgment of the Hon'ble Supreme Court in the case of **Salem Advocate Bar Association, Tamil Nadu vs. Union of India** reported in **AIR 2003 SC 189**, wherein, an opportunity has to be extended to the petitioner to cure the said defect, however, same has not been complied with by the petitioner herein and therefore, I find force in the submission made by the learned counsel for the respondent that, the Election Petition has been filed without removing defects and callousness, in filing the petition so also, to harass the respondent-the Returned Candidate.

26. In the case of **Krishnamoorthy** (supra) the Hon'ble Supreme Court after considering entire gamet of law relating to disclosure of antecedents of candidate, at paragraphs 20, 94 held as follows:

“20.Dharmadhikari, J. in his supplementing opinion, observed thus:

"127. The reports of the advisory commissions set up one after the other by the Government to which a reference has been made by Brother Shah, J., highlight the present political scenario where money power and muscle power have substantially polluted and perverted the democratic processes in India. To control the ill- effects of money power and muscle power the commissions recommend that election system should be overhauled and drastically changed lest democracy would become a teasing illusion to common citizens of this country. Not only a half-hearted attempt in the direction of reform of the election system is to be taken, as has been done by the present legislation by amending some provisions of the Act here and there, but a much improved elections system is required to be evolved to make the election process both transparent and accountable so that influence of tainted money and physical force of criminals do not make democracy a farce - the citizen's fundamental "right to information" should be recognised and fully effectuated. This freedom of a citizen to participate and choose a candidate at an election is distinct from exercise of his right as a voter which is to be regulated by statutory law on the election like the RP Act."

94. *In view of the above, we would like to sum up our conclusions:*

94.1 *Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.*

94.2 *When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.*

94.3 *Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.*

94.4 *As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.*

94.5 *The question whether it materially affects the election or not will not arise in a case of this nature."*

27. In the case of **C.P. John** (supra), the Hon'ble Supreme Court at paragraphs 18 to 20 and 38 held as follows:

"18. When we read Section 83, the substantive part of Section 83(1) consists of three important elements, namely, that an Election Petition should contain a concise statement of material facts which an election petitioner relies upon. The emphasis is on the material facts which should be stated in a concise form. Under Section 83(1)(b) it is stipulated that the Election Petition should set forth full particulars of any corrupt practice which is alleged by the petitioner. A reading of the said sub-clause 83(1)(b) is to the effect that such particulars should be complete in every respect and when it relates to an allegation of corrupt practice it should specifically state the names of the parties who alleged to have committed such corrupt practice and also the date and place where such corrupt practice was committed. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as the names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice.

19. *To put it differently, when the Election Petition is taken up for consideration, the Court which deals with such an Election Petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both Sections 83(1)(a) and (1)(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of 1st class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in FORM 25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statement of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.*

20. Therefore, a conspectus reading of Section 83(1)(a) read along with its proviso of the Act, as well as, Rule 94A and FORM 25 of the Rules make the legal position clear that in the filing of an Election Petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the Election Petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the Court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas, with which the provisions contained in Section 83(1) read along with Section 86 came to be incorporated while deciding this appeal."

* * *

38. There can be no two opinions that consequences envisaged by Section 86(1) of the Act will have no application to the non-compliance with Section 83(1) or (2) or its proviso. But the question before us is when the mandatory requirement of the pleadings as stipulated under Section 83(1) and its proviso was brought to the notice of the appellant, as well as, to the Court, and when a specific

application was filed for rejecting the election petition for want of particulars and consequent lack of cause of action for maintaining the election and the election petitioner, namely, the appellant herein chose not to cure the defects but insisted that his election petition can be proceeded with keeping the material defects on record, he cannot later on be heard to state that at any later point of time he must be given an opportunity to set right the defects. We are unable to appreciate such an extreme stand made on behalf of the appellant. Therefore, even while applying the above proposition of law stated by this Court in para 7 of G. Mallikarjunappa case, we do not find any scope to interfere with the order impugned in these appeals."

28. In the case of **Senthil Balaji Vs. A. P. Geetha** reported in (2023) SCC Online 679, the Hon'ble Supreme Court at paragraph 16 held as follows:

"16. The consensus of judicial opinion is that the failure to plead material facts concerning alleged corrupt practice is fatal to the election petition. The material facts are the primary facts which must be proved on trial by a party to establish the existence of a cause of action. In the present case, taking the averments made in the petition as it is, not a single material fact is pleaded making out an allegation of corrupt practice covered by Section 123 of the RP Act of 1951. All that the first respondent has pleaded is that he made representations to the Returning Officer and other authorities complaining about the corrupt practice on the part of the appellant. What is the nature of the corrupt practice is not mentioned even in brief. Therefore, material facts, which according to the first respondent constitute corrupt practice were not pleaded in the Election Petition."

29. In the Election Petition, the petitioner has mentioned at paragraph 42 as to details of prior criminal proceedings. It is as follows:

Sl. No.	Court and Case Number	Involvement of Respondent No.1	Disposal Date
1.	PCR 30/2019 Before CCH 91, VX Additional City Civil and Sessions Judge, Bengaluru	Respondent No.1 arrayed as Accused No.1	Disposed on 17.03.2021.
2.	Criminal Petition No.6815 of 2019 before the Hon'ble High Court of Karnataka	Respondent No.1 was the Petitioner and sought quashing of PCR 30/2019	Disposed on 01.10.2020
3.	Special C 865/2019 Before CCH82 LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE	Respondent No.1 Was arrayed as Accused No.1	Disposed on 02.12.2020
4.	Criminal Petition No.4555 of 2017 before the Hon'ble High Court of Karnataka, at Bengaluru	Respondent No.1 was arrayed as Respondent therein	Disposed on 15.06.2017
5.	FPA-PMLA- 636/BNG/2014 And FPA-PMLA- 588/BNG/2014 before the Appellate Tribunal For Prevention of Money Laundering Act	Respondent No.1 Was the Appellant in the said proceedings	Disposed on 22.06.2017
6.	FPA-PMLA- 2127/BNG/2017 Before the Appellate Tribunal For Prevention of Money Laundering Act.	Respondent No.1 Was the Appellant in the said proceedings	Disposed on 18.06.2018
7.	WP 26622/2014 (GM-RES) Before the Hon'ble High Court of Karnataka, Bengaluru	Respondent No. 1 was the Petitioner in the said proceeding	Disposed on 25.06.2014

30. Section 33-A of the Act, reads as under:

“33A. Right to information.—

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

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

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

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

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

31. Perusal of the language employed in Section 33-A (1)(i) of the Act, requires only pending cases is to be disclosed in which charge has been framed and punishment is more than two years. Applying the aforementioned provision to the case on hand, the petitioner has referred to the proceedings in MSA No.112 of 2018 and the said case has not been mentioned in FORM 26 Affidavit. In the case of **Vijay Madanlal Choudhary and Others Vs. Union of India and Others** in Special Leave Petition (Criminal) No.4634 of 2014 disposed off on 27.07.2022, it is held that, as the special mechanism has been envisaged under the Prevention of Money Laundering Act, 2002, the proceedings will be ended with attachment of property and no penal action to be taken against the respondent-accused therein and same has to be considered as in the nature of civil proceedings and therefore, the contention raised by the learned Senior Counsel for the appellant cannot be accepted.

32. On careful examination of page 42 of the Election Petition, wherein Sl.No.1- in PCR 30 of 2019, the criminal case was disposed off on 17.03.2021. The said judgment in PCR No.30 of 2019 was questioned before this Court in Criminal Petition No.6815 of 2019 which came to be disposed off on 01.10.2020. The Hon'ble Supreme Court in the case of **Union of India Vs. Association for Democratic Reforms and Another with Peoples Union for Civil Liberties and Another Vs. Union of India and Another** reported in **AIR 2002 SC 2112**, laid down the guidelines relating to furnishing the antecedents of the candidates and pursuant to the same the Election Commission of India has issued Circular dated 10.10.2018 specifically stated that, the candidates at elections to the Houses of Parliament and Houses of State Legislature have to furnish pending cases or cases of conviction in passed and to the political parties that set up such candidates. The said circular has been issued in terms of the judgment of the Hon'ble Supreme Court, wherein, it is clearly stated by the Hon'ble Supreme Court that, the candidates has to furnish pending criminal cases and cases in which order of conviction is passed against him/her. Insofar as the contention with regard to not disclosing proceedings in PCR No.55750 of 2016, private complaint filed by one Roshan Beig against the respondent was dismissed for non-prosecution and thereafter, same was restored as per the order dated 15.06.2017 of this Court and in this regard, the respondent has neither received notice not aware about the revival of the proceedings and therefore, the contention raised by the learned Senior Counsel appearing for the petitioner cannot be accepted.

33. Perusal of the FORM 26 Affidavit by the respondent, wherein the respondent has furnished the pending criminal cases in which she has been arraigned as accused, so also, in terms of the judgment of the Hon'ble Supreme Court in **Krishnamoorthy** (supra) case, has to furnish pending cases in which the punishment is more than two years and therefore, I find force in the submission made by the learned counsel appearing for the respondent that, there is no cause of action to prefer the Election Petition. In that view of the matter, the judgment referred to by the Learned Senior Counsel for the petitioner in the case of **Bhim Rao Baswanth Rao Patil** (supra) is not applicable to the case on the hand as the respondent has disclosed the pending criminal cases, in which, the punishment is more than two years and therefore, the contentions raised by the petitioner cannot be accepted.

34. It is to be noted that, unless there is a specific averment and material evidence in support of the contention that such material of non-disclosure of pending or prior criminal cases and also as to not filing the requisite assets and liabilities as contended by the petitioner, to establish the “Corrupt Practice” in the Election Petition, it is the

duty of the petitioner or anyone who challenges the election of the Returned Candidate must required to plead essential material statement of facts with full particulars of any Corrupt Practice with a full statement of possible name of the parties who have committed such “Corrupt practice” along with a date and place of commission of such practice, this Court has to exercise jurisdiction under Order VII Rule 11 of CPC. It is evident from reading of the averments made in the petition that, a clever drafting has been made to create a illusion of cause of action and same cannot be entertained within the purview of Order VII Rule 11 of the Code of Civil Procedure. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of the petition particularly the grounds urged do not disclose any cause of action.

35. On careful examination of the language employed under Section 123 of the Act, which discloses the type of a practice which shall be considered as a “Corrupt Practice” where the same has been done by a candidate or his agent or any other person with the consent of the candidate or his agent.

36. I am also well conscious of the fact that the Election Petition can not be summarily rejected, if the averments made in the petition are sufficient to conduct trial in the matter. However, Hon’ble Supreme Court in the case of **Samant N. Balkrishna vs. George Fernandis** reported in (1969) 3 SCC 238 held that the omission of single material fact would lead to an incomplete cause of action and that too, in Election Petition, in the absence of material fact relating to a Corrupt practice, has to be consider seriously and such petition is not a Election petition. The said aspect was also reiterated by the Hon’ble Supreme Court in the case of **Udhav Singh vs. Madava Rao Scindia** reported in (1977)1 SCC 511, that all the primary facts has to be reflected in the pleadings which must be proved by a party to establish a cause of action or his defence or material facts. The basic facts which constitute the ingredients of a particular corrupt practice alleged by the petitioner must be averred in the petition in order to succeed in the petition.

37. It is also pertinent to mention here that a particular fact is material or not is depend upon the nature of the allegation made in the petition under the circumstance of each case, on merits. Therefore, it is required for the petitioner in the present case to narrate the essential facts with complete cause of action has to be pleaded in the petition and failure to plead even a single material fact is contrary to requirement of Section 83(1)(a) of the Act. It is also to be considered that the allegations of “Corrupt Practice” as narrated in the Election Petition are in the nature of criminal charges against the respondent- Returned Candidate and therefore, there should precision and specific allegation and shall not be vagueness in making allegation, so that, the respondent may know the case as to meet and contradicts the allegations in the petition. The charge of “Corrupt practice” being quasi-criminal in nature and as such, the Court has to insist on strict compliance with the provisions of law. Therefore, it is equally essential that the particulars of a charge of allegations must clearly and precisely stated in the petition. The burden, is on the petitioner who challenges the election, to narrate material facts and same shall be specific with providing details of such allegations. It is also to be noted that the provision under Section 83(1)(a) of the Act, requires that, while challenging the Election of the returned candidate, the Election petitioner should take extra care, leave no room for doubt, while making such allegation of “Corrupt Practice” indulged in by the successful candidate in the Election, if any [See (2014)10 SCC 547]. It is also pertinent to mention here that the respondent herein had succeeded in the election by a margin of more than one lakh votes, has got the support of majority of the voters who cast their vote in her favour. The success gained by the respondent in a Lok Sabha Election cannot be allowed to be called in question by a voter by making frivolous or baseless allegations and thereby, no room for unnecessarily drag the respondent to the Court proceedings.

38. The scope of Order VII Rule 11 of the Code of Civil Procedure is to avoid roving enquiry and therefore, it is duty of the Court to scrutinize the pleadings in Election Petition relating to “Corrupt Practice” in a strict manner. It is settled principle by the Hon’ble Supreme Court in the aforementioned cases that the Election Petition must contain a concise statement of essential material facts in which the relief sought for by the petitioner and failure to state even a single material fact would entail the dismissal of the Election Petition.

39. At this juncture, it is relevant to cite the judgment of Honb’le Supreme Court in the case of **Ram Sevak Yadav vs. Hussain Kamil Kidwai and Others** reported in (1964) 6 SCR 238, wherein, it is held that the relief not founded in the pleadings should not be granted to the petitioner. It is also observed by the Hon’ble Supreme Court that, no party should be permitted to travel beyond the pleadings and the parties are bound to disclose all material facts in support of their case in the petition. On the other hand, it is to be held that pleadings, in the petition must ensure that each of the parties to the proceedings are aware about the issues that are likely to be raised as well as there must be an opportunity of placing the relevant evidence before the Court for its consideration. If the pleadings are short of material proposition of fact, then it is not permissible for the Court to frame an issue not arising out of the pleadings urged by the parties as no evidence can be let in by the parties based on the pleadings, so also, the absence of material facts in the petition on a particular issue. Applying the principles laid down by the Hon’ble Supreme Court in the case of **Kanimozhi Karunanidhi** (supra), wherein Hon’ble Supreme Court has laid down the guidelines, after discussing the entire gamet of law relating to the application of Order VII Rule 11 of the Code of Civil Procedure in relation to Election Petition and following the dictum of the

Hon'ble Apex Court, I am of the view that the judgments referred to by the learned Senior Counsel appearing for the petitioner are not applicable to the case on hand since the averments made in the Election Petition, have to be looked into based on allegations made thereunder coupled with the circumstances and the essential facts narrated to prove such allegations in a manner known to law. It is also to be noted that the cases referred to by the learned Senior Counsel appearing for the petitioner are considered in the light of the factual aspects and the judgment of the Hon'ble Supreme Court, referred to above, the material enclosed along with the Election Petition has to establish the Corrupt practices alleged against the respondent-Returned Candidate and further the cases referred to by the learned Senior Counsel appearing for the petitioner were referred to in the case of **Kanimozhi Karunanidhi** (supra). The Hon'ble Supreme Court has arrived at a conclusion that the unsuccessful candidate in the election must make out a case for trial and the entire gamut of law was discussed in the said judgment by Hon'ble Supreme Court in the case of **A. Manju** (supra) and applying those principles to the facts narrated in the present petition and further taking into consideration the entire factual aspects on record as averred in the petition as well as the averments made thereunder, I am of the view that, same do not constitute cause of action to conduct a trial in the case as the petition is devoid of cause of action. Therefore, the judgments referred to by the learned counsel appearing for the respondent are applicable to case on hand as the pleadings in the Election Petition is devoid of cause of action in terms of law declared by Hon'ble Supreme Court in the case of **Karim Uddin Barbhuiya** (supra) and as such, the points for determination referred to at paragraph 22 favours the respondent as the petitioner fails to fulfill the mandatory requirement under law.

40. I have also noticed the averments in IA No.2 of 2024, for non compliance of Section 81(3) of the Act. In the amended petition filed on 28.08.2024, paragraph 3 in the verifying affidavit at page 28, notarized on 28.08.2024, extracted as follows:

“3. I state that, the documents produced at Annexure-P is original. I state that, documents produced at Annexure-B- 2, E, and N are certified copies. I state that, Annexure-A, B-1, C, F, M1 to M7 are true prints.”

41. In the original Election Petition filed on 19.07.2024 at page 27, verifying affidavit notarized on 19.07.2024, wherein paragraph 'C' extracted as under:

“C. I state that, the documents produced at Annexure-P is original. I state that, documents produced at Annexure-B- 2, E, and N are certified copies. I state that, Annexure-A, B-1, L-2 to M-7 are true prints.”

42. On comparison of these two affidavits, I find force in the submission made by the learned counsel appearing for the respondent that there is discrepancy in the verifying affidavits filed by the petitioner. The declaration of law made by the Hon'ble Supreme Court in the case of **C.P. John** (supra), at paragraph 16 reads as under:

“ 16. As regards the other deformity in the Election Petition, the learned Senior Counsel contended that the First Respondent in his written statement to the Election Petition pointed out the serious defects in the Election Petition, but yet the Appellant did not take any steps to correct the errors. The learned Senior Counsel further contended that when the First Respondent filed I.A. No.3 of 2011 raising a preliminary objection as to lack of cause of action in the said I.A., the Appellant filed a counter affidavit maintaining his stand that his Election Petition fully complied with the statutory requirement of the Act and, therefore, nothing more was required to be done. The learned Senior Counsel, therefore, contended that since sufficient opportunities were made available to the Appellant and the same having not been availed by him, the High Court cannot be expected to show any extraordinary indulgence to the Appellant for filing any further affidavit to fill up the serious lacunae in his pleadings. The learned Senior Counsel, therefore, contended that none of the decisions would support the said stand of the Appellant and, therefore, the impugned judgment does not call for any interference. It was also contended on behalf of the First Respondent that such defects which have been noted by the High Court while allowing I.A. No.3 of 2011 and dismissing the Election Petition were not merely cosmetic in nature in order to extend any further opportunity to the Appellant.”

43. Following the declaration of law made by the Hon'ble Supreme Court in the above case, I find force in the submission made by the learned counsel appearing for the respondent that, there is discrepancy in filing the affidavit and also ante-dating of the affidavit by the notary is forthcoming. Therefore, I am of the view that, non-compliance of Section 83 of the Act by the petitioner and the judgment of the Hon'ble Supreme Court referred to above is, squarely, applicable to accept the applications. Hence, IA No.2 of 2024 is liable to be allowed on the sole ground that, the petitioner herein has miserably failed to remove the defects even after identified by the respondent herein and brought to the notice of the petitioner.

44. I have also keenly noticed the callousness on the part of the petitioner in filing the Election Petition and perusal of prayer column in the Election Petition is self-explanations, wherein, there is no provision of Section 100(b), 100 (d)(i) and Section 100 (d)(iv) under the Act as contained in the prayer column. Though the correct provision is not mentioned in the prayer column, and same be cured by way of amendment, however, the petitioner has not made efforts to notice the same and correct the provision, which has been incorporated by way of amendment knowing fully well that, there is no such provision under the Act.

45. On overall reading of the Election Petition, this Court is of the opinion that the petition lacks material fact constituting the cause of action as required under the provisions of the Act and does not fulfill the mandatory requirement of law. That apart, the Election Petition does not contain a concise statement of material fact, *inter-alia* and also does not disclose a triable issue or cause of action. The contentions and allegations of the petitioner is based on assumption and imagination and same cannot be a basis for challenging the Election of the respondent. In the light of the aforesaid judgments rendered by the Hon'ble Supreme Court, and the analysis made in this order, I am of the view that, there is no escape from the conclusion that the Election Petition can be summarily rejected as the Election Petition do not conform to Section 83 of the Act. In the result, I pass the following:

ORDER

Applications in IA No.2 of 2024 and IA.3 of 2024 filed by the respondent-Returned Candidate seeking rejection of the petition are hereby **allowed**. Consequently, Election Petition is **rejected**.

No order as to costs.

Pending applications, if any, stands disposed of.

Sd/-
JUDGE