



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-4-E-2020 and CM-13-E-2020 in/and
Election Petition No.3 of 2019 (O&M)

Pronounced on: 10.12.2024

Kashmir Singh Petitioner

Versus

Sukhbir Singh Badal ... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Viren Jain, Advocate,
Ms. Komaljit Kaur, Advocate and
Mr. Tarranum Madan, Advocate for the petitioner.

Mr. Karambir Singh Nalwa, Advocate,
Mr. Lalit Sharma, Advocate and
Ms. Ashima Attri, Advocate for the respondent.

Mr. Prateek Gupta, Advocate for Election Commission of India.

TRIBHUVAN DAHIYA, J.

This issue being adjudicated is, whether the election petition
deserves to be rejected at the threshold for not disclosing the cause of action.

2. The petition has been filed under Section 80/80-A read with
Sections 81, 100 and 101 of the Representation of the People Act, 1951
(hereinafter referred to as ‘the RPA’) for setting aside and declaring election
of the respondent, who is the returned candidate from 10-Firozpur
Parliamentary Constituency in General Elections of Lok Sabha-2019, as
void.



Facts

3. Twenty-two candidates including the petitioner and the respondent contested the election from the aforementioned constituency. The result was declared on 23.05.2019, wherein the respondent, who was an official candidate of the political party-Shiromani Akali Dal, was declared successful having polled 6,33,427 votes, as against the petitioner's 2,387. The instant petition challenging the respondent's election was filed on 08.07.2019. After entering appearance in the case, the respondent filed a miscellaneous application, CM-4-E-2020, under Order VI Rule 16 and Order VII Rule 11(a) read with Section 151 of the Code of Civil Procedure (for short, 'the Code'), and Section 83 of the RPA. It seeks rejection of the petition at the threshold for lacking in material facts; not disclosing the cause of action envisaged under Section 83 of the RPA; alleging corrupt practices without giving material facts as well as material particulars. The non-applicant/petitioner filed reply to the application, and learned counsel for the parties were heard at length.

3.1. To place the grounds of rejection in correct perspective, it is apposite to refer to relevant averments of the petition, which are as under:

7. That the respondent alongwith nomination papers had filed an affidavit, however, complete particulars have not been supplied as required under the rules and guidelines issued by the election Commission of India. Copy of the affidavit submitted by the respondent with nomination application (FORM 26), as downloaded from the official website of the ECI, is annexed as Annexure P-3.

8. That the Respondent had not given the detail of his dependent Daughters in the FORM 26 i.e. the Affidavit filed by the Respondent with the nomination paper. The same is a



mandatory requirement for every candidate who is contesting the general election of Lok Sabha 2019. It is mandatory that all the columns of FORM 26 which is prescribed by the Hon'ble Election of India, is to be filled. If any column is not applicable to the candidate, then such column should be filled with 'Not Applicable' or 'No' or 'Nil' in the vacant column. It is a mandatory condition of the Hon'ble Election of India to fill every column of the FORM 26. The said deliberate omission on part of the respondent constituted a serious matter of the concealment of mandatory facts. This important omission was also ignored by District Election Officer, 10-Ferozepur Lok Sabha Parliamentary Constituency.

9. That the respondent has concealed the information regarding the expenditure incurred by him in the Election. It is pertinent to mention here that the ex-Chief Minister of Punjab-Sh. Prakash Singh Badal had also done rallies in the constituency in support of the respondent. The same has been conveniently excluded from the expenditure list submitted by the respondent. Moreover, with respect to the expenditure list which has been submitted by the respondent, the Returning Officer has already raised a specific objection in form of 'NO' so as to express dissatisfaction upon the expenditure list submitted by the respondent. However, the same has not been acted upon thereon. It is relevant to mention here that Satinder Singh Manta, who was the political aide of the respondent, has also accompanied the respondent during election campaigns and it was categorically informed to the authorities that the said aide was illegally distributing liquor and cash on a very large scale to the electorate and others for winning the elections illegally and unethically; through Jatinder Singh @ Kala Kukkar c/o Brar Filling Station Fazilka Road, Jalallabad. The same constitutes 'corrupt practice'. Several representations have already been submitted in this regard to the Election Commission of India. However, the same have not been acted upon. Moreover,



Charanjeet Singh Brar, who was also a political aide of the respondent campaigned in Ferozepur District.

10. That the respondent had concealed the facts about his complete details of his social media account(s) and the expenditure done in respect thereof.

11. That the petitioner as well as other candidates have submitted detailed representations/objections to the RO at several stages, however the same has not been decided. The petitioner has also filed a representation with the Election Commission of India. Copies of said representations are annexed as Annexure P-4 (colly).

12. That the respondent had also held a roadshow on the date of filing the nomination paper in violation of the Rules.

13. That as matter of fact, the booths for distribution of voter slips were setup by the respondent at each and every polling centre, in violation of the Rules.

14. That the Respondent had also not published advertisement of criminal cases in Newspapers and media as per the requirements of the Rules etc., which is also mandatory for the contesting candidate if the candidate have or had been involved in any criminal cases, then it is mandatory as per the guidelines of the Hon'ble Election Commission of India, that the contesting candidate must have to publish three advertisements in reputed and circulating newspapers and also in electronic media before the day of the polling. The same is a serious violation of the mandatory rules.

15. That there was no conciliation report issued by the District Election Officer 10-Ferozepur Lok Sabha Parliamentary Constituency regarding the VVPAT slips with EVMs. As per the direction of the Hon'ble Supreme Court of India, it is mandatory to conciliate/match 5 EVMs with VVPAT Slips in every Assembly segment. There was no conciliation report had been given to the Petitioner instead of his various oral requests,



which renders the process of counting of the 10-Ferozepur Lok Sabha Parliamentary Constituency to be suspicious.

16. That the Petitioner has demanded/applied through RTI, the certified copy of the videography of election meetings, rallies and other campaign/canvassing process of the Respondent, but the District Election Officer, 10-Ferozepur Lok Sabha Parliamentary Constituency has not yet given any response on the above RTI's till date. The above said videography shall be the cogent proof of the various violations committed by the respondent in the election campaign/canvassing.

17. That the District Election Officer and the Expenditure Observer of 10-Ferozepur parliamentary Constituency has dissented with the final expenditure sheet submitted by the Respondent as Remarks "NO" in his report. This dissent of the District Election Officer and the Expenditure Observer of 10-Ferozepur parliamentary Constituency proves itself the corrupt practices of the Respondent to win the above said election.

18. That the District Returning Officer, the General observer, the Expenditure Observer, Assistant Returning officer and MCMC department of 10-Ferozepur parliamentary Constituency issued various notices to the respondent regarding the Violation of Model code of conduct during the election process. The same is a cogent proof of the illegal practices of the respondent to win the aforesaid election. The Petitioner has applied under the RTI to procure the said information.

19. that the petitioner has applied under the RTI of the certified copy of the Expense register with bills/invoice/expenditure vouchers and detail of source of fund generation of the respondent, bank details, Detail of party expenses and its bifurcation with respondent etc. but the District Election Officer, 10-Ferozepur Lok Sabha Parliamentary Constituency has not given any response on the above RTI's till date.



20. That during the election process Police Party of Police Station, Sadar had confiscated huge quantity of liquor. It was general opinion that the above liquor was belongs to the respondent and it would be distributed in electors of the area. The copy of the same information will be presented soon in the Hon'ble Court as soon as the same is made available to the petitioner.

3.2. In the reply filed by the non-applicant/petitioner to the aforesaid application it has been stated that the plaint/petition contains material facts and it has to be read as a whole along with the documents attached therewith. The relevant paragraphs of the reply are as under:

7. In the present case, it has been clearly averred in the plaint/petition that the respondent has violated the law with regard to expenditure regulations in elections. Though the plaint and documents attached thereto always have to be read as a whole, however, only for the purpose of specific reference-para 9, 10, 11, 16, 17, 18, 19 and 20 contain the material facts in this regard. The said averments have to be read in context of the law in this regard.

8. xxx

9. The reading of the plaint and the documents attached thereto as a whole, clearly discloses the cause of action on the ground of violation of the law in regard to election expenses, rendering the respondent to be 'disqualified' and also constituting 'corrupt practice', as defined under law.

Submissions by learned counsel for the parties

4. In the aforementioned factual background, Mr. K.S. Nalwa, learned counsel for the applicant/respondent has contended that as per the settled law election result of the winning candidate should not be lightly interfered with, as the process is considered sacrosanct. The charge of



corrupt practices is of quasi criminal nature, which is required to be specifically pleaded and proved before the Election Tribunal/this Court. The mandatory requirements under the RPA must be complied with while presenting the petition, which the petitioner has miserably failed to do. The petition does not disclose any material fact constituting the alleged corrupt practices; the allegations levelled in paragraphs 7, 8, 9, 10, 12 and 14 of the petition do not fulfill the mandatory requirements of Section 83 of the RPA. So far as the allegations with regard to concealment of information regarding expenditure, or holding of rallies by the former Chief Minister in respondent's favour are concerned, the same are also vague and lack material particulars. It is not even pleaded that the respondent has incurred expenditure beyond the limit prescribed under Section 77(3) of the RPA. No date/time of any rally has been mentioned, nor have the names of any of the participants in the said rallies been given. In the similar vein are allegations of distribution of liquor and cash on a large scale by one Satinder Singh Manta. It is not even pleaded as to when, where and to whom the alleged cash or liquor was distributed, or that the said person acted to the knowledge of the respondent or his agent. No details or material facts have been provided as to the date, day, time, location and mode of his transfer. Nor has it been alleged that the said person ever accompanied the respondent during the election campaign. Therefore, the petition, as such, is bereft of material facts required for alleging corrupt practices which calls for its rejection at the outset on account of non-disclosure of cause of action. And as per the settled law, the petitioner cannot be allowed to amend the petition in order to incorporate material facts. *Secondly*, Mr. Nalwa has contended that it is mandatory for the election petitioner to plead that the result of election, so



far as it concerns the returned candidate, has been materially affected by the alleged non-compliance of provisions of the RPA. But there is no such pleading in the entire petition. *Thirdly*, as per the provisions of Section 83(1) and Rule 94-A of the Conduct of Elections Rules, 1961 (for short, ‘the Rules’), the petitioner was required to file an affidavit strictly as per Form 25, appended to the RPA. This has also not been done.

4.1. In support of the contentions, Mr. Nalwa has relied upon the law laid down by the Supreme Court in *Shri Udhav Singh v. Madhav Rao Scindia*, (1977) 1 SCC 511; *L.R. Shivaramagowda and others v. T.M. Chandrashekar (Dead) by LRs and others*, (1999) 1 SCC 666; *R.P. Moidutty v. P.T. Kunju Mohammad and another*, (2000) 1 SCC 481; and *V. Narayanaswamy v. C.P. Thirunavukkarasu*, (2000) 2 SCC 294.

5. Mr. Viren Jain, learned counsel for the non-applicant/petitioner, on the contrary, contends that all material particulars have been disclosed in the petition. Allegations like dependency of the respondent’s daughter(s) are a matter of trial; the relevant facts in this regard, as also concerning other allegations regarding concealment of information and corrupt practices by him, will be established by leading evidence. Besides, the petition is to be read along with additional documents attached with miscellaneous applications, CM-9-E-2020 and CM-10-E-2020, which support the material facts. The said documents are: show cause notices issued to the respondent obtained under the Right to Information Act, 2005, with regard to uploading advertisement on social media (Facebook) account without permission of the concerned authorities; a notice regarding suspected paid news on print media without permission; notices regarding understatement of election expenditure under Section 77 of the RPA; publication details as supplied by



the respondent on expenditure memo; and various dated as well as undated newspaper publications. Further, Section 86(5) of the RPA provides that the Court may allow particulars of any corrupt practices alleged in the petition to be amended/amplified. Accordingly, in case the petition lacks any of the material particulars, the Court should permit the petitioner to amend the petition. And for that purpose he has already filed an application, CM-9-E-2020, seeking amendment of the petition under Order VI Rule 17 of the Code. He has also referred to Section 87 of the RPA to contend that the procedure laid down in the Code will be applicable to the trial of election petition as well. Therefore, the petition is to be read along with the documents sought to be placed on record by way of a separate application.

5.1. Still further, Mr. Jain has submitted that non-compliance of the provisions of Section 83 is not fatal to the petition. It is a curable defect, and in case the Court comes to the conclusion that the petition lacks material particulars, an opportunity should be provided to the petitioner to cure the defect. Rejection of the plaint without trial is an exception, and it should not be resorted to in case of curable defects. Hyper-technicalities should not come in the way of maintaining the petition, as the Court is duty bound to see no person gets elected by resorting to corrupt practices.

5.2. In support of the contentions, Mr. Jain has referred to the judgments rendered by the Supreme Court in *K. Babu v. M. Swaraj and others*, 2024 INSC 103, *Umesh Challiyil v. K.P. Rajendran*, 2008 AIR (SC) 1577, *Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others*, (2012) 7 SCC 788.

6. Submissions advanced by learned counsel for the parties have been considered.



Statutory provisions

7. In order to adjudicate the matter, it is pertinent to mention relevant Sections of the RPA, and the Rule 94A of the Rules framed thereunder, which are as follows:

77. Account of election expenses and maximum thereof.—

(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

78. to 80. xxx

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.

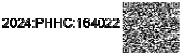
Explanation.—In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

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

82. xxx

83. Contents of petition.—(1) An election petition—

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



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

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

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

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

84. and 85. xxx

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

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

(2) to (4) xxxx xxxx

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

(6) and (7) xxxx xxxx

87. Procedure before the High Court.—(1) Subject to the provisions of this Act and of any rules made thereunder, every



election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

88. to 99. xxx

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) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-
 - (i) by the improper acceptance or any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or



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

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

(2) xxx

101. to 122. xxx

123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) “Bribery”, that is to say,—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing-

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to-

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward-

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.—For the purposes of this clause the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of



entertainment and all forms of employment for reward but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(2) to (5) xxx

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) and (8) xxx

7.1. A perusal of the aforementioned provisions shows, Section 81 of the RPA enables a person to challenge an election on one or more of the grounds specified in sub-section (1) of Section 100. Sub-Section (1) of Section 83 mandates that every election petition must contain a concise statement of ‘material facts’ on which the petitioner relies. And the petition must set forth full particulars of any corrupt practice alleged by the petitioner, including as full a statement as possible of the names of the parties alleged to have committed the corrupt practice, with date and place of commission of each such practice. It also requires that wherever the corrupt practices are alleged, the petition shall be accompanied by an affidavit in the prescribed form supporting the allegations of corrupt practices as well as particulars thereof. Therefore, there is mandatory requirement to disclose the detailed facts with full particulars of corrupt practices in an election petition, that has to be supported by an affidavit in Form 25.

7.2. Further, Section 86 mandates that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117 (requiring the petitioner to deposit a sum of ₹2000 as security for cost of the petition, at the time of presenting the election petition). Section 87 prescribes the procedure for trial of an election petition; as nearly



as may be, it has to be in accordance with the procedure applicable under the Code.

7.3. The grounds for declaring the election petition void have been stipulated under Section 100, and the requirement, as per clause (d) to sub-section (1) is, if the High Court is of the opinion that the result of election has been materially affected insofar as it concerns the returned candidate, due to any of the grounds mentioned in sub-clause (i) to (iv) therein, the election of such candidate shall be declared void. Hence, there is necessity to specifically aver that on account of a corrupt practice or non-compliance of any of the provisions of the Constitution or the Act or by any other ground mentioned in clause (d), the result of election, so far it concerns the returned candidate, has been materially affected.

7.4. As per sub-section (1) of Section 123, any gift, offer or promise by a candidate or his agent, or by any other person with their consent, to any other person with the object of inducing an elector to vote at an election is “bribery”. As per sub-section (6), incurring expenditure in contravention to Section 77 is also a corrupt practice.

Judicial precedents

8. Law on maintainability of the election petition stands settled by a number of judgments by the Supreme Court interpreting the aforementioned provisions of the RPA. A reference is being made to a few of those hereunder.

(i) One of the earlier cases on the issue is *Jagan Nath v. Jaswant Singh and others*, (1954) 1 SCC 57, that delineated on the nature of an election petition under the RPA, laying down that an election petition is not



an action in common law or a suit in equity, it is purely a statutory remedy which can be availed strictly in accordance with the statutory provisions/RPA. The rights and liabilities of the parties have to be determined as per the provisions contained therein, and success of the candidate who has won the election is not to be lightly interfered with. At the same time, it is to be seen that people do not get elected by breaching the law or by corrupt practices. The relevant paragraph of the judgment reads as under:

7. The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however have any application if the special law itself confers authority on a tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it. It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence, or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected.



(ii) *Udhav Singh* case (*supra*) lays down that 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 VI, Rule 16 of the Code. If the petition is based on allegations which lack “material facts”, it is liable to be summarily rejected for want of cause of action. The judgment further lays down that primary facts which must be proved at the trial by a party to establish the existence of cause of action or his defence, are "material facts". Accordingly, all the facts constituting the ingredients of a corrupt practice, will be “material facts”. Whereas, “material particulars” are the details of the case set up by a party and, therefore, mean the details necessary to amplify and embellish the “material facts” already pleaded in the petition. Further, the Court can permit a party to amend the petition to plead “material particulars” after the limitation to file the election petition is over, but not the “material facts”. The relevant paragraphs of the judgment are the following:

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.

42. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are “material facts”. In the context of a charge of corrupt practice, “material facts” would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are “material facts” which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1) (a).

43. “Particulars”, on the other hand, are “the details of the case set up by the party”. “Material particulars” within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). ‘Particulars’ serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.

iii) Further, it has been laid down in *Virender Nath Gautam v. Satpal Singh and others*, (2007) 3 SCC 617, that pleading must contain “material facts”, though “material particulars” need not be set out therein because they are not the facts in issue, but relevant facts required to be



proved during trial to establish the fact in issue/material fact. It lays down the following:

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.

(iv) Although Section 86 of the RPA mandates the High Court to dismiss an election petition which fails to comply with Sections 81, 82 or 117, by specifically excluding Section 83, it has been held in *Azhar Hussain v. Rajiv Gandhi*, 1986 (Supp.) SCC 315, that exclusion of Section 83 does not mean powers under the Code cannot be exercised by the High Court. Accordingly, in case mandatory requirement enjoined by Section 83 of the RPA to incorporate the “material facts” in the election petition is not complied with, the petition can be summarily dismissed on account of non-disclosure of cause of action, by exercising power under the Code. As per the law laid down, all the facts which are necessary to clothe the petition with complete cause of action must be pleaded, and failure to plead even a single material fact would amount to disobeying the mandate of Section 83(1)(a), requiring the Court to dismiss the petition for want of cause of action. The relevant paragraphs of the judgment read as under:



9. The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.

10. There is thus no substance in this point which is already concluded against the appellant in *Hardwari Lal v. Kanwal Singh* wherein this Court has in terms negatived this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A.N. Ray, J. who spoke for the three-judge Bench: (SCC p. 221, paras 22 and 23)

The allegations in paragraph 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to what kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the meaning of Section 123 (7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action.

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



emphasized that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed.

11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in *Samant case* has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in *Udhav Singh case* 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.



(v) Another mandatory requirement in terms of the law laid down in *L.R. Shivaramagowda* case (*supra*) is that in order to declare an election void under Section 100 (1)(d)(iv), it is absolutely necessary for the election petitioner to plead that the result of election, insofar as it concerns the returned candidate, has been materially affected by the alleged non-compliance with the provisions of the Act or of the Rules. In the absence of such an averment, it was not open for the petitioner to adduce evidence to that effect. Therefore, failure to plead material facts is fatal to the election petition, and no amendment of the pleadings can be allowed regarding such material facts after the time limit for filing the petition is over. Only absence of “material particulars” can be cured at a later stage by introducing an amendment, but not the absence of “material facts”. The judgment reads as under:

10. That apart, it is rightly pointed out by the appellant's counsel that in order to declare an election to be void under Section 100(1)(d)(iv), it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the Act or of the Rules. We have already extracted para 39 of the election petition which is the only relevant paragraph. One will search in vain for an averment in that paragraph that the appellant had spent for the election an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the appellant to give true and correct accounts of expenditure. In the absence of either averment, it was not open to the appellant to adduce evidence to that effect. It cannot be denied that the two matters referred to above are material facts which ought to find a place in an election petition if the election is sought to be set aside on the basis of such facts.



Analysis

9. The corrupt practices have been mentioned in paragraphs 7 to 20 of the petition, as reproduced in para 3.1. above. The first one pertains to *concealment of facts by the respondent in the affidavit filed by him in Form 26, wherein he allegedly did not furnish complete particulars as required under the guidelines issued by the Election Commission of India; he deliberately did not give details of his dependent daughter(s) in Form 26.* This allegation is without details of particulars said to have not been concealed by the respondent which he was mandatorily required to disclose; the only particular mentioned is failure to give details of dependent daughter(s). Even in that regard the petitioner has failed to mention name, age, occupation or any other material particular of the respondent's daughter(s) to indicate their dependance. Merely because the respondent has daughters, would in itself not make them dependent too. It is not a case that a daughter cannot but be dependent on father. Therefore, in the absence of material facts regarding non-furnishing of complete particulars in Form 26, the charge is unsustainable.

9.1. The second charge in the petition pertains to *the corrupt practice of concealment of huge expenditure incurred by the respondent in the election.* As per averments, ex-Chief Minister of Punjab, Mr. Parkash Singh Badal, had also done rallies in the constituency in respondent's support, but the expenditure incurred thereupon has been excluded from the expenditure list submitted by the respondent. Besides, one Satinder Singh Manta, a political aide of the respondent, also accompanied the latter in the election campaign and was allegedly distributing liquor and cash on a very



large scale to the electorate through Jatinder Singh c/o Brar Filling Station, Fazilka Road, Jalallabad, for illegally and unethically winning the election, which constitutes corrupt practice. Another political aide of the respondent, Charanjit Singh Brar, campaigned in Firozpur district. Apparently, this charge also does not give statement of material facts about the corrupt practice. As per Section 123 (vi) of the RPA, incurring or authorising of expenditure in contravention of Section 77 is a corrupt practice. There is no such allegation so far as incurring of expenditure by the respondent is concerned; it is nowhere mentioned that he incurred or authorised incurring of expenditure beyond the limits prescribed under Section 77 of the RPA. So far as holding of rallies by the ex-Chief Minister of Punjab in the constituency is concerned, all the material particulars are conspicuously missing here also; not even a single detail with regard to time, day, venue, presence of the electorate, etc., has been mentioned. It is not the petitioner's case either that the said rallies were held on the asking of the respondent or his election agent. Similarly, so far as the allegation regarding corrupt practice of distributing liquor and cash by Satinder Singh Manta is concerned, it is also bereft of material facts. There is no fact pleaded as to at what time, where and to whom Manta was distributing liquor; nor is it the allegation that it was being done with the consent of the respondent or his election agent. Therefore, all vital facts regarding the alleged corrupt practice are missing.

9.2. The allegation regarding *concealment of facts by the respondent about complete details of his social media accounts* also lacks material particulars; as neither the type of account, user name, URL (Uniform Resource Locator) or its platform have been mentioned. The next allegation



relates to *holding of roadshow by the respondent on the date of filing of nomination papers in violation of Rules*. Particulars of the rules said to have been violated and the nature of violation, which are material, have again not been mentioned. Holding a roadshow in itself is not a violation. It has further been alleged that *booths for distribution of voter slips were set up by the respondent in each of the polling centre in violation of the Rules*. Here again, neither the number of polling centres where the booths were set up in violation of the rules, nor have the particulars of rules statedly violated, been mentioned.

9.3. It has next been alleged that *the respondent has not published the list of criminal cases in newspapers and media as per the requirements of the Rules, etc*. This allegation also lacks material particulars, as none of the criminal cases the respondent is alleged to have been involved in, nor have the particulars of the rules said to have been violated by him in this regard been given. Further, the averment that *dissent of Election Officer and the Expenditure Observer to the final expenditure sheet submitted by the respondent itself proves the commission of corrupt practice by him in the election in question*, is also without any material particular as it has not been stated under which provision dissent of an Election Officer and/or Expenditure Observer to final expenditure sheet can be termed a corrupt practice under the RPA, nor has the date of expenditure sheet, the name of the dissenting Officer or Observer, or the date of dissent been mentioned. Similarly, the *issuance of notices to the respondent regarding violation of Model Code of Conduct during the election process has been termed a cogent proof of illegal practice* without indicating under which provision of law it has been defined as a corrupt practice, nor has it been mentioned



which regulation/instruction of the Model Code of Conduct was violated by the respondent, and in what manner. Particulars of any such notice have also not been given, nor of the decision taken thereupon.

9.4. Lastly, it has been averred in the petition that *police party of Police Station Sadar had confiscated huge quantity of liquor, and it was general opinion that it belonged to the respondent and would be distributed to electors of the area*. This again is a vague statement bereft of any material fact; neither quantity of liquor, nor the place, date, time of confiscation, or the basis of its attribution to the respondent or his election agent has been alleged. Further, the allegation is that as per '*general opinion*' the liquor belonged to the respondent; that being so, the fact could not have been verified by the petitioner by filing the affidavit in Form 25. Still further, the allegation is not that the liquor was actually distributed, but was meant to be distributed. An election petition cannot be entertained on such vague averments lacking in almost all the material particulars.

9.5. In view of the analysis hereinabove it can be safely concluded that the election petition does not disclose complete cause of action by the petitioner, and cannot be entertained as such for want of complying with the mandatory requirements under Section 83 of the RPA. It needs to be mentioned that the petition lacks in another mandatory requirement also, as it has not been pleaded anywhere by the petitioner that the result of respondent's election has been materially affected by the alleged non-compliance of provisions of the RPA or the Rules. In the absence of averments giving material particulars regarding commission of the alleged corrupt practices, it is not open to the petitioner to adduce evidence establishing the same, which renders the petition not maintainable.



10. Since the election petition is not an action in common law, and is purely a statutory remedy which is meant to be availed strictly in accordance with the provisions of the RPA, there is no merit in the argument advanced by learned counsel for the non-applicant/petitioner that in the light of provisions of the Code, the allegations of corrupt practices in the petition are to be read along with additional documents sought to be filed by the petitioner by way of miscellaneous applications. In terms of the mandatory requirements of Section 83 of the RPA, an election petition must spell out the cause of action by clearly stating all the material particulars constituting corrupt practices. Failure to plead even a single material fact leads to an incomplete cause of action, which makes the petition liable to be dismissed at the threshold on that account. The lacunae in the election petition regarding material facts cannot be removed by referring to additional documents or amending the petition after the period of limitation to file it is over. Accordingly, the petitioner can neither be allowed to rely upon any additional document, nor can he be permitted to amend the petition at this stage to plead material particulars of the alleged corrupt practices. Similarly, there is no substance in the argument by learned counsel that relevant facts with regard to corrupt practices are a matter of trial, and will be established later by adducing evidence. It is well settled that no party can be allowed to lead evidence with respect to a fact not pleaded in the petition; more so, in the case of an election petition which can only be entertained on disclosure of complete cause of action after pleading all the material facts in compliance with the provisions of Section 83 of the RPA.

10.1. The next contention of learned counsel for the non-applicant/petitioner that non-compliance of Section 83 is not fatal to the



petition as it is a curable defect, is also without substance. Explicit language of Section 83 requires an election petitioner to set forth full particulars of any alleged corrupt practice, including as full a statement as possible of the names of the parties who have committed the same, with the date and place of commission of such practice. Hence, non-compliance of the requirement cannot be anything but fatal; nor can it be termed a hyper-technicality either, as it is a mandatory requirement to maintain an election petition.

Judgments relied upon by learned counsel for the petitioner

11. Also, the judgments relied upon by Mr. Jain, learned counsel for the non-applicant, do not advance the petitioner's case in any manner, as the same are clearly distinguishable on facts, apart from being in line with the law laid down in the judgments mentioned in para 8 above.

11.1. In the first judgment *K. Babu* case (*supra*) the issue decided by the Court was, whether the election petition was liable to be rejected at the threshold for non-compliance with the provisions of Section 81(3) of the RPA, requiring that every election petition shall be accompanied by as many copies thereof as there were respondents in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy. The High Court had dismissed the application to reject the petition filed by the returned candidate/appellant before the Supreme Court under Order VII Rule 11 of the Code by holding that triable issues under Section 123(3) of the RPA were made out. The Supreme Court also found that no specific allegation was ever made by the returned candidate that the copy of petition furnished to him was not attested by the first respondent under his own signature to be a true copy of the petition. It was also held that, it was not the



appellant's case that the election petition was not accompanied by as many copies as there were respondents in the petition, as the complaint specifically was that sufficient number of authenticated copies were not furnished as required under Rule 212 of the Rules of 1971. The Court further held that in the light of specific requirements under Section 81(3) of the RPA, it was not permissible in law to read something more into that provision. Rule 212 introduces only the additional requirements prescribed by the High Court, which could not be read into and be made part of Section 81(3). In these circumstances it was held that the High Court was right in dismissing the application to reject the petition at the threshold. The facts of the instant case are distinct, as the dismissal of the petition at the threshold has been sought for violation of mandatory requirements to maintain the petition, viz., non-disclosure of complete cause of action by pleading all the material facts as mandated by Section 83 of the RPA; and as discussed hereinabove, the petitioner has failed to do so as well which renders the petition liable to be dismissed. Violation of Section 81(3) of the RPA or Rule 212 of the Rules of 1971 or any related provision is not the issue raised herein.

11.2. The second judgment relied upon by Mr. Jain, *Umesh Challiyil* case (*supra*), is also besides the point. In that case, after noting down the law laid down in *Azhar Hussain* case (*supra*) that the failure to furnish material facts and particulars in a petition in violation of Section 83 of the Act will call for dismissal of the petition at the outset under provisions of Order VI Rule 16 and Order VII Rule 11 of the Code, it was held that the defects pointed out in the petition were purely cosmetic and do not go to the root of the matter. In case the Court finds them to be serious in nature, at least an opportunity is required to be given to rectify such defects. Whereas, the



defects in the instant case go to the root of the matter, as the petition lacks “material facts”, as already discussed, which are incurable and cannot be termed cosmetic by any standards. Hence, the petitioner cannot be allowed to rectify the same.

11.3. In *Ponnala Lakshmaiah* case (*supra*), the third judgment relied upon by Mr. Jain, the Court was examining whether rejection of the application by the High Court under Order VII Rule 11 of the Code seeking dismissal of the election petition at the threshold for non-disclosure of cause of action was valid. The Court recorded that, ‘*Applying the above principles to the case at hand, we do not see any error in the order passed by the High Court refusing to dismiss the petition in limine on the ground that the same discloses no cause of action. The averments made in the election petition if taken to be factually correct, as they ought to for purposes of determining whether a case for exercise of powers under Order 7 Rule 11 has been made out, do in our opinion, disclose a cause of action. The High Court did not, therefore, commit any error much less an error resulting in miscarriage of justice, to warrant interference by this Court in exercise of its extra-ordinary powers under Article 136 of the Constitution*’. In this background, it was observed that the Courts need to be cautious in dealing with the requests for dismissal of the petitions at the threshold, and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed. Having said that, the Court also delved into the requirement to file an affidavit and consequences of it being defective in the given circumstances; the observations are as under:

31. Suffice it to say, that in the absence of any provision making breach of the proviso to Section 83(1), a valid ground of



dismissal of an election petition at the threshold, we see no reason why the requirement of filing an affidavit in a given format should be exalted by a judicial interpretation to the status of a statutory mandate. A petition that raises triable issues need not, therefore, be dismissed simply because the affidavit filed by the petitioner is not in a given format no matter the deficiency in the format has not caused any prejudice to the successful candidate and can be cured by the election petitioner by filing a proper affidavit.

The facts of the instant case are completely different. As discussed hereinbefore, the petition as such does not disclose any cause of action, nor does it contain mandatory ingredients of corrupt practices/material facts which is fatal to the case. Resultantly, the defects cannot be cured by the supporting affidavit even if it is filed in terms of the requirement of Form 25, and this Court need not examine the issue of validity of petitioner’s affidavit.

12. In the light of reasons recorded, the application filed by the respondent under Order VII Rule 11 stands allowed, and the election petition is dismissed at the threshold.

13. Pending miscellaneous application(s), if any, stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

10.12.2024
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes