

Court No. - 9

Case :- ELECTION PETITION No. - 11 of 2022

Petitioner :- Prem Pal Singh

Respondent :- Prem Pal Singh Dhangar And 12 Others

Counsel for Petitioner :- Sanjay Kumar Srivastav,Virendra Singh

Counsel for Respondent :- Adya Prasad Tewari,Jai Prakash Rao,Rajesh Kumar Tiwari,A/R0350

Hon'ble Rohit Ranjan Agarwal,J.

1. This election petition filed under Section 80/81 of The Representation of People Act, 1951 (*hereinafter called as “the Act of 1951”*) questions the election of one Prem Pal Singh Dhangar, respondent no. 1, to U.P. Legislative Assembly from Tundla Constituency No. 95 (reserved for Scheduled Castes).

2. This election petition was nominated to this Court by orders of Hon'ble The Chief Justice dated 28.08.2023 exercising power under sub-section (2) of Section 80-A of the Act of 1951.

3. During pendency of election petition, election petitioner filed an amendment application Paper No. A-34, while the respondent no. 1 filed an application under Order VII Rule 11 CPC Paper No. A-28 for dismissing election petition as it does not disclose the cause of action for declaring the election to be void. Both the applications were heard together and are being decided by a common order with the consent of counsel for the parties.

4. Facts, leading to filing of election petition, are that the election for U.P. Legislative Assembly was announced by Election Commission in the month of January, 2022. 25.01.2022 was the date of filing nomination. The last date for filing nomination was 01.02.2022. Scrutiny of nomination papers was held on 02.01.2022, while the last date of withdrawal of candidature was 04.02.2022.

5. The votes were polled on 20.02.2022, while the counting of votes was held on 10.03.2022 and result was declared on the same day i.e. 10.03.2022. Respondent no. 1, Prem Pal Singh Dhangar stood elected from Tundla Constituency No. 95 by a margin of 47631 votes. The present election petition has been filed by petitioner questioning the election of respondent no. 1 on the ground that he does not belong to Scheduled Castes community and is Gaderia/Pal/Baghel which is recognised as Other Backward Caste in State of U.P.

6. The material statement of facts made in election petition are as under:-

“1. That, the petitioner is a Member of Tundla Constituency No.95 (who is reserved for Scheduled Caste) and Shri Prem Pal Singh Dhangar (respondent no.1), who was declared elected from a Bhartiya Janta Party candidate. That the polling of the said assembly Constituency No.95 was held on 20.02.2022 and counting took place on 10.03.2022. In this regard, a true copy of the Final Result dated 10.03.2022 is being enclosed herewith and marked as Annexure No.1 to this petition.

2. That, the detailed scheme of 2022 General Elections are as following:-

Date of Nomination- 25.01.2022

Last Date of Making Nominations-01.02.2022

Scrutiny of Nominations-02.01.2022

Withdrawal of candidature -04.02.2022

Date of Poll -20.02.2022

Date of Counting-10.03.2022

Date of declaration of Result-10.03.2022

3. That, on the last mentioned date 10.03.2022, the Result of the said election was declared by the Returning Officer and the respondent no.1 was declared to be elected with a lead of 47631 votes to the Legislative Assembly from Tundla Constituency No.95 (reserved for Scheduled Caste).

4. That, it is pertinent to mention here that the Tundla Constituency No.95 is reserved for the Scheduled Castes; and the respondent no.1 who admittedly belongs to Gaderia/Pal/Baghel, which is recognized as Other Backward Caste in the State of U.P.

5. That, being member of Other Backward Castes, the candidature of respondent no.1 for Tundla Constituency No.95 (reserved for Scheduled

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Caste) was ab-initio null and void.

6. That, the election of respondent no.1-Mr. Prem Pal Singh Dhangar is void and liable to be set-aside by this Hon'ble Court, because the Tundla Constituency No.95 is reserved for the Scheduled Caste only, inter alia, on the following grounds:-

7. After the material facts the petitioner had raised grounds for filing election petition. It was during the pendency of the election petition that an amendment application was moved along with an affidavit for amending the election petition and prayer was made for adding material facts. The amendment application was dismissed on 03.03.2025 on the ground that there was no disclosure in the amendment application as to the amendment sought by petitioner, while the entire narration of the facts was in the affidavit accompanying the amendment application.

8. The petitioner has preferred the second amendment application for amending the election petition and adding paragraph nos. 5/1 to 5/8 after paragraph no. 5, which are as under:-

“5/1. That the respondent no.1 admittedly belongs to Gaderia (गड़ेरिया) caste, as he is claiming that his caste is Gaderia Dhangar (गड़ेरिया धनगर); but no caste namely Gaderia Dhangar (गड़ेरिया धनगर) is included in the Presidential List, 1950 given in the Constitution Scheduled Caste Order, 1950.

5/2. That the respondent no.1 belongs to Gaderia (गड़ेरिया) caste, which has included in the list of Other Backward Caste in the Schedules I and Sl. No. 19 of U.P.Public Service (Reservation of SC/ST and OBC Classes) Act, 1994.

5/3. That the Gazette of India published on 23.11.1997 in the regards of the case, wherein the English Version Dhangar and Hindi Version (धंगड़) is mentioned at Sl. No.27.

5/4. That on 25.03.2019, the Chief Secretary, Social Welfare Department, U.P. at Lucknow issued a Notification in question of other than SC/ST Community as Dhangar, Gaderia, Pal and Hindu Julaha, Koli, Kabeerpanthi Bunker for issuing the caste certificate, wherein it has specifically been stated that there is no any Caste as Dhanger (धनगर), it is correct name as Dhangar (धंगड़)

5/5. That the petitioner moved a R.T.I. before the Government of India in question of the caste of Dhanger (धनगर) and Dhangar (धंगड़), then a Reply was given by the Government of India, National Commission of Scheduled Caste on 20.09.2017, wherein it has specifically been

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mentioned that the Government of Uttar Pradesh to follow the Government of India's Order i.e. Presidential Order, 1950 and Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 on Dhangar (धंगड़) caste at Serial No.27 as issued in Hindi & English version of the notification of Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976.

5/6. That this Hon'ble Court in a Public Interest Litigation No. 400 of 2019, passed an order on 19.4.2019, staying all impugned Government Orders dated 24.10.2013, 16.12.2016 and 26.03.2018.

5/7 That respondent no. 1 is permanent resident of Village-Badariya Mazra Rarpatti, Tehsil-Sadar, District-Etah and he got his basic education from Primary School Badariya and his name reflected at serial no.328 and sub-caste showing as Baghel and thereafter respondent no.1 got education from Avinashi Sahai Arya Inter College, Etah from the year 1985-87 in Class-11 and 12, in records showing the sub-caste as Gadariya.

5/8 That in family register of respondent no.1 his sub-caste mentioned as Gadariya and all other blood relatives of respondent no.1 also belongs to Baghel and Gadariya/Baghel belongs to Other Backward Caste (OBC) and thus respondent no.1 who is Dhangar (धनगर) is not belongs to Scheduled Caste and he belongs to OBC.”

9. This application has been opposed by respondent on the ground that this will change the nature of the election petition and no material facts can be added after the election petition has been filed and only material particulars could be added.

10. An application being Paper No. A-28 has been preferred by respondent no. 1 under Order VII Rule 11 CPC for dismissing the election petition on the ground that incomplete material facts have been stated, thus, no cause of action has been made out and election petition should be dismissed. It is further averred that election petition does not contain of concise statement of material fact on which petitioner is relying upon for establishing cause of action and the same deserves to be dismissed in view of Clause (a) of Rule 11 of Order VII CPC.

11. Sri Virendra Singh, learned counsel for the election petitioner submitted that by proposed amendment, no new fact is being added and already in the grounds of election petition, the facts which are being brought on record have already been stated. By amending the election

petition, the nature of election petition would not change and it is a curable defect, more so non compliance of requirement of Section 83(1) (a) of the Act of 1951 is not fatal. Further, Section 86(1) provides that an election petition can be dismissed for non compliance of Section 81, 82 or 117. Defect in an election petition that constitutes non compliance with Section 83 has been held to be a curable defect.

12. Reliance has been placed upon decision of Apex Court rendered in case of **T. Phungzathang vs. Hangkhanlian, (2001) 8 SCC 358; Umesh Challyill vs. K.P. Rajendran, (2008) 11 SCC 740; Ponnala Lakshmaiah vs. Kommuri Pratap Reddy, (2012) 7 SCC 788** and **A. Manju vs. Prajwal Revanna, (2022) 3 SCC 269**. Reliance has also been placed upon decision rendered in case of **Raj Narain vs. Smt. Indira Nehru Gandhi, AIR 1972 SC 1302**.

13. Sri A.P. Tewari, learned counsel appearing for respondent no. 1 submitted that there is a difference between “material facts” and “material particulars”. In an election petition, there must be a concise statement of material facts. Non disclosure of material fact is fatal to the election petition and defect cannot be cured. According to him, if in the election petition material fact has not been disclosed, the petition is liable to be dismissed.

14. He has relied upon the decision of this Court rendered in case of **Anita Devi Chaurasiya vs. State of U.P., Writ-C No. 22128 of 2023**, decided on 17.01.2024; judgment of Hon’ble Supreme Court in case of **Ram Sewak Yadav vs. Hussain Kamil Kidwai, AIR 1964 SC 1249** and **Kanimozhi Karunanidhi vs. A. Santhana Kumar 2023 LiveLaw (SC) 398**.

15. I have heard respective counsel for the parties on the amendment application as well as the application under Order VII Rule 11 CPC.

16. Before adverting to decide the applications moved by respective

parties, a cursory glance of some of the provisions of the Act of 1951 is necessary for adjudicating the matter.

17. Chapter II of Part VI of the Act of 1951 deals with presentation of election petitions to High Court. Section 80 provides that no election shall be called in question except by an election petition. Section 80A provides for High Court to try election petitions. Section 81 provides for presentation of election petition on one or more grounds specified in sub-section (1) of Section 100 and Section 101 by any candidate at such election or any elector within 45 days from the date of election of returned candidate. Relevant Section 81 is extracted hereasunder:-

*“81. **Presentation of petitions.**—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in [sub-section (1)] of section 100 and section 101 to the [High Court] by any candidate at such election or any elector [within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates].*

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

[* * * *]*

*[(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.]”*

18. Section 82 provides for person to be joined as parties in the election petition. The aforesaid section is extracted hereasunder:-

*“[82. **Parties to the petition.**—A petitioner shall join as respondents to his petition—*

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

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

19. Section 83 provides for contents of election petition and enumerates what material facts and particulars have to be disclosed in the petition questioning an election. Relevant Section 83 is extracted hereasunder:-

“[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].”

20. Chapter III of Part VI of the Act of 1951 deals with trial of election petition. After the election petition is filed the procedure is laid down in Chapter III for the trial of such election petition.

21. Section 86 provides for trial of election petition. Sub-section (1) provides for dismissal of an election petition which does not comply with provisions of Section 81 or Section 82 or Section 117. Sub-section (5) provides that 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. Relevant parts of Section 86 are extracted hereasunder:-

“[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) ***

(3) ***

(4) ***

(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)***

(7)***”

22. Section 87 provides for procedure before the Court. It lays down that subject to the provisions of the Act and rules made thereunder, every election petition shall be tried by the Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits, meaning thereby that provisions of CPC are applicable to trial of election petition.

23. From the reading of Chapter II and Chapter III of Part VI of the Act of 1951, it clearly culls out that an election petition questioned by any candidate or any elector has to be presented under Section 81 on the grounds enumerated under Section 100 and 101. Section 82 relates to the parties to be joined in the election petition by petitioner therein.

24. Section 83 is of great importance as it clearly lays down the contents of an election petition. Sub-section (1)(a) is a mandatory provision which envisages that an election petition shall contain a concise statement of material facts on which petitioner relies. While sub-section (1)(b) provides for setting forth full particulars of any corrupt practice that the petitioner alleges, including full statement as possible of the names of the parties alleged to have committed such corrupt practice.

25. Thus, Section 83 is divided into two parts consisting of material facts to be disclosed in election petition under sub-section (1)(a) while the material particulars to be disclosed under sub-section (1)(b). There is a

distinction between the two words “material facts” and “material particulars”.

26. In **Udhav Singh vs. Madhav Rao Scindia, (1977) 1 SCC 511**, the Hon’ble Apex Court while dealing with the distinction between the two words held as under:-

“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.

44. The distinction between “material facts” and “material particulars” was pointed out by this Court in several cases, three of which have been cited at the Bar. It is not necessary to refer to all of them. It will be sufficient to close the discussion by extracting what A.N. Ray, J. (as he then was) said on this point in Hardwari Lal case: [SCC p. 220, para 20]

“It is therefore vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other than the giving of vote. It was said by Counsel for the respondent that because the statute did not render the giving of vote a corrupt practice the words ‘any assistance’ were full

statement of material fact. The submission is fallacious for the simple reason that the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared, could the court have given a verdict in favour of the election petitioner. The answer is in the negative because the allegations in the petition did not disclose any cause of action.”

27. In L.R. Shivaramagowda vs. T.M. Chandrashekar, (1999) 1 SCC 666, the Supreme Court again reiterated that election petitioner has to plead that result of election insofar as it concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the Act and Rules. The Court also stressed importance of pleading in an election petition and distinction between “material facts” and “material particulars”. Relevant paragraph 10 and 11 are extracted hereasunder:-

“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.

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. In Balwan Singh v. Lakshmi Narain [AIR 1960 SC 770 : (1960) 3 SCR 91] the Constitution Bench held that an election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. On the facts of the case, the Court found that the alleged corrupt practice of hiring a vehicle for the

conveyance of the voters to the polling station was sufficiently set out in the pleading. The Court pointed out that the corrupt practice being hiring or procuring of the vehicle for the conveyance of the electors, if full particulars of conveying by a vehicle of electors to or from any polling stations were given, Section 83 was duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring were not given.”

28. In H.D. Revanna vs. G. Puttaswamy Gowda, (1999) 2 SCC 217, the Apex Court pointed out the distinction between the “material facts” and “particulars”. Relevant paragraph 23 is extracted hereasunder:-

“23. This Court has repeatedly pointed out the distinction between “material facts” and “particulars”. Insofar as “material facts” are concerned, this Court has held that they should be fully set out in the election petition and if any fact is not set out, the petitioner cannot be permitted to adduce the evidence relating thereto later; nor will he be permitted to amend the petition after expiry of the period of limitation prescribed for an election petition. As regards particulars, the consistent view expressed by this Court is that the petition cannot be dismissed in limine for want of particulars and if the court finds that particulars are necessary, an opportunity should be given to the petitioner to amend the petition and include the particulars. The Constitution Bench in Balwan Singh v. Lakshmi Narain [AIR 1960 SC 770 : (1960) 3 SCR 91] held that an election petition was not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged were not set out. It was observed that if an objection was taken and the tribunal was of the view that particulars had not been set out, the petitioner had to be given an opportunity to amend or amplify the particulars and that it was only in the event of non-compliance with the order to supply the particulars, the charge could be struck out.”

29. In Virender Nath Gautam vs. Satpal Singh, (2007) 3 SCC 617, the Apex Court again had the occasion to consider the difference between “material facts” and “particulars”. The Hon’ble Court further held that election petition is liable to be dismissed on the ground as the case is covered by clause (a) of sub-section (1) of Section 83 of the Act of 1951 read with clause (a) of Rule 11 of Order VII CPC. Relevant paragraphs 30, 31, 34 and 35 are extracted hereasunder:-

“30. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

31. 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 his claim or defence. In other words, “material facts” are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be “material facts” would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

34. 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.

35. 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.”

30. In Jitu Patnaik vs. Sanatan Mohakud and others, (2012) 4 SCC 194, the Apex Court again had the occasion to consider the merit of Section 83(1) and 100(1)(d) of the Act of 1951 and relying upon its earlier decision rendered in case of **Samant N. Balkrishna vs. George Fernandez, (1969) 3 SCC 238** held that matter of non disclosure of material facts in the election petition would lead to an incomplete cause of action and statement of claim becomes bad.

31. In Kanimozhi Karunanidhi (supra), the Hon’ble Apex Court again had the occasion to consider the distinction between “material facts” and “particulars” and the Court relying upon its earlier decision enunciated the legal position and summed up the case and held as under:-

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

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

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

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

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

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

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

32. This Court in case of **Anita Devi Chaurasiya (supra)** had also relying upon the earlier decision of Apex Court had held that there was a difference between “material facts” and “material particulars”. Omission to the said material fact was fatal to the election petition.

33. Now, turning to order VI of CPC which is pleadings generally. Rule 1 of Order VI defines “pleading” which means plaint or written statement. Rule 2 provides for pleading to state material facts and not evidence. Thus, every pleading either it is a plaint or a written statement has to disclose material facts on which the party pleading relies for his claim or defence, as the cases may be, but not evidence by which they are proved.

Rule 2 is extracted hereasunder:-

“2. Pleading to state material facts and not evidence.—(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.]”

34. Similarly, Rule 4 provides that in all cases in which party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as they are exemplified in the forms aforesaid, particulars will be stated in the pleading. Rule 4 is extracted hereasunder:-

“4. Particulars to be given where necessary.—In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

35. Thus, from the reading of Rule 2 and Rule 4 of Order VI, it is clear that there is a distinction between “material facts” and “particulars”. On the one hand words “material facts” show that the facts necessary to formulate a complete cause of action must be stated, and any omission of a single material fact would lead to an incomplete cause of action or plaint becomes bad.

36. On the contrary, particular 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. In **Sopan Sukhdeo Sable vs. Asstt. Charity Commr., (2004) 3 SCC 137**, the Hon’ble Apex Court while dealing with Order VI Rule 2(1) laid distinction between “material facts” and “material particulars” and held as under:-

“19. Order 6 Rule 2(1) of the Code states the basic and cardinal rule of pleadings and declares that the pleading has to state material facts and

not the evidence. It mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

20. *There is distinction between “material facts” and “particulars”. The words “material facts” show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between “material facts” and “particulars” was brought by Scott, L.J. in Bruce v. Odhams Press Ltd. [(1936) 1 KB 697 : (1936) 1 All ER 287 (CA)] in the following passage : (All ER p. 294)*

“The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word ‘material’ means necessary for the purpose of formulating a complete cause of action; and if any one ‘material’ statement is omitted, the statement of claim is bad; it is ‘demurrable’ in the old phraseology, and in the new is liable to be ‘struck out’ under R.S.C. Order 25 Rule 4 (see Philipps v. Philipps [(1878) 4 QBD 127]); or ‘a further and better statement of claim’ may be ordered under Rule 7.

The function of ‘particulars’ under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim — gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff’s cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff’s cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial.”

The dictum of Scott, L.J. in Bruce case [(1936) 1 KB 697 : (1936) 1 All ER 287 (CA)] has been quoted with approval by this Court in Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238] and the distinction between “material facts” and “particulars” was brought out in the following terms : (SCC p. 250, para 29)

“The word ‘material’ shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars 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.”

Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in

rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.”

37. Thus, Rule 2 and 4 of Order VI of CPC provide a clear distinction between the “material facts” and “particulars”. Order VII Rule 11(a) provides for rejection of plaint where it does not disclose a cause of action. Provisions of Section 83(1)(a) of the Act of 1951 has to be read along with Rule 2 and 4 of Order VI and Order VII Rule 11(a) CPC.

38. Section 87(1) mandates that subject to provisions of the Act of 1951 and rules thereunder, provisions of CPC would apply as applicable to trial of suits, meaning thereby that while considering Section 83(1)(a), provisions of Order VI and Order VII Rule 11(a) have to be considered for fair appreciation of the issue raised therein.

39. In the instant case, it is an admitted position that election petition was filed making certain disclosure of statement of material facts. The first amendment application moved by petitioner was dismissed as it did not disclose the amendment to be made in the petition. Thereafter, the second amendment application was filed without leave of the Court for adding material facts to the election petition. It is well settled that in an election petition, material facts have to be set out in the petition under Section 83(1)(a) and no amendment can be carried out. The same applies with the pleading of a suit where the material fact has to be disclosed in view of Rule 2 of Order VI in the pleading by a party relying for his claim or defence.

40. The provision of providing particulars in an election petition is provided under Section 83(1)(b) which is *para materia* to Rule 4 of Order VI where the particulars are to be given where necessary. It is well settled that there is a major distinction between “material facts” and “particulars”. Material facts are essential to the pleading on which the entire claim of the party rests. Non disclosure of material fact is fatal to

the proceeding while such is not in the case of a particular.

41. Order VII Rule 11(a) clearly provides for rejection of a plaint in case of non disclosure of cause of action. Similarly, in an election petition, if the petitioner does not disclose the material fact, it leads to an inevitable conclusion that an incomplete cause of action has been set up and the petition become bad and liable to be dismissed. The defect is not curable as it leads to the root of the case, while it is not the same in case of non disclosure of entire material particulars.

42. Thus, looking from this angle, the amendment application moved by petitioner cannot be allowed as it introduces totally a new case. The argument advanced by petitioner's counsel that Section 86(1) does not envisage a case of dismissal as only non compliance of Section 81, 82 or 117 would lead to dismissal of an election petition is totally misconceived. Non disclosure of material fact is an incurable defect which leads to an inevitable conclusion that an election petition is not maintainable.

43. The Hon'ble Supreme Court in above cited cases had already made distinction between "material facts" and "material particulars" and had already held that omission of a single material fact leads to dismissal of an election petition and defect cannot be rectified in subsequent amendment proceedings.

44. Reliance placed upon the decision of **Raj Narain (supra)** is distinguishable in the present set of case as the issue before the Hon'ble Apex Court was in regard to opportunity to supply particulars as envisaged under Section 86(5), which the Apex Court allowed.

45. The present case is not for bringing on record material particulars which have been left while filing the election petition, but through proposed amendment, material facts are being brought on record which goes to the root of the case and cannot be allowed at this stage.

46. Section 81 prescribes the time limit of 45 days for presentation of an election petition from the date of declaring of result. The amendment has been sought during the pendency of election petition which cannot be granted as material facts which need to have been pleaded in the election petition under Section 83(1)(a) were left and lacuna cannot be filled subsequently.

47. In view of said fact, the amendment application Paper No. A-34 moved by petitioner for amending the election petition stands dismissed.

48. As the petitioner has not disclosed the material facts in his election petition and had tried to subsequently get the election petition amended, the application moved by respondent no. 1 under Order VII Rule 11(a) CPC being Paper No. A-28 for dismissing the election petition for non disclosure of cause of action stands allowed.

49. As the application under Order VII Rule 11(a) CPC has been allowed, the election petition fails and stands dismissed for non disclosure of cause of action.

50. Let the substance of this decision be intimated to the Election Commission and the Speaker of the Uttar Pradesh Legislative Assembly. A certified copy of this decision be sent to the Election Commission of India forthwith.

Order Date :- 30.05.2025
V.S.Singh