

(2003) 12 AP CK 0098
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5735 of 2002

Elchuri Thulisamma

APPELLANT

Vs

Elchuri Samrajyam and Others

RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Andhra Pradesh Gram Panchayats Act, 1964 — Section 14, 14(5), 14(6)
Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads) Rules, 1995 — Rule 3, 5, 94A
Andhra Pradesh Panchayat Raj Act, 1994 — Section 211, 211(7)
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 11, Order 6 Rule 15, Order 6 Rule 16, Order 7 Rule 11, Order 7 Rule 17
Constitution of India, 1950 — Article 227, 243, 243A, 243B, 243C
Representation of the People Act, 1951 — Section 11, 123(7), 123(8), 81, 83

Citation : (2004) 3 ALD 26 : (2004) 2 ALT 586

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for Satyanarayana Nimmagadda, for the Appellant; B. Adinarayana Rao, for the Respondent

Judgement

P.S. Narayana, J.—Elchuri Thulisamma, the Revision petitioner herein is the 1st respondent in I.A.No. 1477/2001 in E.O.P.No. 7/2001 on the file of Election Tribunal/Principal Junior Civil Judge, Addanki and the petitioner in the main Election O.P.No.7/2001. The 1st respondent herein who is the 1st respondent in the E.O.P. aforesaid, Elchuri Samarajyam, filed I.A.No. 1477/2001 and I.A. No. 1478/2001 praying for striking off the pleadings in paras 3 (b) to 3(f) of the Election petition under Order 6 Rule 16 r/w. Section 151 of the Code of Civil Procedure, hereinafter in short referred to as "Code", on the ground that the allegations are vague, untenable and devoid of particulars, and also filed yet another application under Order 7 Rule 17 (section 11) r/w. Section 151 of the Code, read along with Rule 5(ii) of the A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995, hereinafter referred to as "Rules" in short, to reject or dismiss the Election

Petition. The Election Tribunal/learned Principal Junior Civil Judge, Addanki by the order dated 8-10-2002 partly allowed I.A.No. 1477/2001 striking out the following pleadings from the Election Petition:

(a) The counting agent of the 1st respondent is working in Water Works Department at Visakhapatnam and he has got political influence and he came to the village along with his family members at the instance of the 1st respondent and supported the 1st respondent in election process by influencing his caste people to vote in favour of 1st respondent by taking heavy amounts from the 1st respondent as bribe. The appointment of agent by the 1st respondent who is an employee in Government department is opposed to conduct of election rules. (Para 3(c) of the Election petition).

(b) The entire election process was video graphed by one Koti who is working in Ravichandra Video and Photo studio, Matur, at the instance of the Sub-Inspector of Police of Ballikurava P.S. and the said video tape was with him. (Para 3 (d) of the Election petition).

(c) The 1st respondent also brought persons from Addanki who are having votes at Addanki as well as Chennupalli and those voters voted at first instance at Addanki and later came in a jeep arranged by 1st respondent and polled their votes at Chennupalli also. The petitioner is annexing separate list along with this petition with full description..... (Para 3 (f) of the Election petition).

(d) Apart from the above one Kambhampati Sampson of Chennupalli who is a powerful person in the village, came to the counting hall at the behest of the 1st respondent and forcibly snatched four (4) votes from the possession of the 2nd respondent and put marks on the said four votes in favour of the 1st respondent and put them in the ballot box..... (Para 3 (f) of the Election petition).

(e) The 1st respondent also engaged 6 jeeps in number to collect voters from several places by using the name and power of the local M.L.A. and violated the conduct of election rules. (Para 3(f)).

and dismissed the application I.A. No. 1478/2001. The Revision petitioner, aggrieved by the order made in I.A. No. 1477/2001 had preferred the present Revision under Article 227 of the Constitution of India.

2. Sri O. Manohar Reddy, the learned Counsel representing Sri Nimmagadda Satyanarayana, the learned Counsel representing the Revision Petitioner made the following submissions. The learned Counsel would maintain that this application was thought of only with a view to delay or postpone the disposal of the Election O.P. The learned Counsel also had taken this court through the material facts pleaded in Paras 3(c), 3(d) and 3(f) and had contended that the facts pleaded in these paras definitely do answer the test of "material facts". The learned Counsel also submitted that absolutely there is no ambiguity at all in the avernments in these paras and all the evidentiary details need not be narrated at this stage. The Counsel also would maintain that the principles applicable relating

to the material facts and the pleadings under the Representation of the People Act, 1951 cannot be as such extended to Election Petitions under the A.P. Panchayat Raj Act, 1994, hereinafter in short referred to as "Act", and the Rules framed thereunder and the Election Tribunals while dealing with an application of this nature should have seen whether Rule 3(ii) of the Rules had been complied with or not and nothing more and nothing beyond. The learned Counsel also maintained that the evidentiary details to be adduced in relation to the Government servant and further allegations made as against the acts of such Government servant appointed as counting agent definitely cannot be decided at the threshold since it would amount to touching the merits of the matter which ultimately may have to be decided while deciding the main Election O.P. The learned Counsel also had explained the provisions of the present Act and the corresponding provisions under the A.P. Gram Panchayats Act, 1964 and the difference of language employed in the relevant provisions. The learned Counsel would submit that at any rate these are aspects to be ultimately adjudicated at the time of final disposal of the Election O.P. and not at the threshold. The learned Counsel concluded that the power to be exercised by the Election Tribunal under Order 6 Rule 16 of the Code being discretionary, the concerned Election Tribunal definitely had totally erred in striking out the pleadings instead of directing the parties to further proceed with the matter by adducing necessary evidence to substantiate the respective contentions.

3. Per contra, Sri B. Adinarayana Rao, the learned Counsel representing the 1st respondent would maintain that in the light of the Constitutional provisions under Part IX of the Constitution of India dealing with Panchayats -- Articles 243 to 243-O, the elections relating to these Panchayats, the local bodies, also may have to be treated on par with the elections governed by the Representation of the People Act, 1951. The learned Counsel in all fairness submitted that no doubt there is some difference in the language of Rule 3(ii) of the Rules when compared with Section 83 of the Representation of the People Act, 1951. The learned Counsel would maintain that what is to be seen is whether the allegations made in paras which had been struck off conform to Rule 3(ii) of the Rules. The learned Counsel further made elaborate submissions relating to the material facts and material particulars and also had drawn the attention of this court to Section 11 of the present Act and Section 14 of the A.P. Gram Panchayats Act, 1964. The learned Counsel also had explained the language employed in Section 211(7) of the Act and further contended that since the facts pleaded are not in conformity with Section 211 of the Act r/w. Rule 3(ii) of the Rules, the Election Tribunal is well justified in striking out the portions of the pleadings. The learned Counsel also had pointed out that certain allegations are just vague allegations and totally devoid of any particulars or details and hence definitely such allegations cannot answer the test of "material facts". Reliance was placed on certain decisions to substantiate his contentions.

4. The dispute is in relation to the election of Sarpanch of Chennupalli Gram Panchayat held on 14-8-2001. The 1st respondent herein, the successful

candidate, filed an application under Order 6 Rule 16 r/w. Section 151 of the Code to strike out the pleadings in paras 3(b) to 3(f) of the Election Petition on the ground that the allegations are vague, untenable and devoid of particulars. The 1st respondent as petitioner filed O.P.No.7/2001 on the file of Election Tribunal/Principal Junior Civil Judge, Addanki, alleging corrupt practices and other allegations. It was pleaded that the 1st respondent/successful candidate bribed voters by offering and making payments to voters Rs. 1000/- per vote, hired and secured votes from several places, got bogus voters and got such votes polled in her favour and had not allowed the voters to exercise their electoral franchise exercising undue influence on voters and engaged the services of one Veeraiah, a Government employee working in Water Works Department in Visakhapatnam. Allegation had been made against the Election Officer in respect of counting votes. Allegation also had been made against one Khambampati Samson coming to the counting hall at the behest of the successful candidate and snatching of four votes from the Election Officer and putting marks on the said four votes in favour of the successful candidate and putting them in ballot box and the same being witnessed by several members including Ward members and in spite of protest by agent, the Election Officer not taking any action in view of the influence the successful candidate was commanding by virtue of the support of the local M.L.A., apart from several such allegations.

5. The 1st respondent herein/successful candidate, denied all the allegations and respondents 2 to 5 had not filed any counter.

6. Part IX and IX-A of the Constitution of India deal with Panchayats and Municipalities respectively. Pleadings in the Election Petitions no doubt may stand slightly on a different footing when compared to pleadings in the ordinary civil proceedings. It is no doubt true that the pleadings in the Election Petition should be in conformity with the provisions of the relevant Act and the Rules framed thereunder. However, the general Rules relating to pleadings also cannot be totally ignored even while dealing with striking off the pleadings in the Election Petitions. Too a technical approach may not be justifiable and too a liberal approach also no doubt is impermissible in law. A balance may have to be maintained in between the two while dealing with striking off the pleadings in the Election Petitions. Order 6 Rule 16 of the Code reads:

Striking out pleadings:--

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading --

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the court.

In view of the provisions, the court may have to exercise the power of striking out the pleadings with due care and caution. Apart from it, this power is

discretionary. The learned Principal Junior Civil Judge/Election Tribunal, Addanki, at para -53 had observed:

"After considering the entire material on record and after discussing the various averments elaborately, I am of the view that the following averments in the election petition are not either material facts or does not contain material particulars and are to be struck out under Order 6 Rule 16 C.P.C."

The learned Judge was of the view that the averments in paras 3(c), 3(d) and 3(f) of the Election Petition are to be struck off under Order 6 Rule 16 of the Code on the ground that these averments do not satisfy the test of "material facts" or "material particulars". The expressions "material facts" and "material particulars" are not defined either under the Act or under the Rules framed thereunder. It may be appropriate to have a look at the relevant paras -- para 3(c), 3(d) and 3(f), in the Election Petition and these paras read as hereunder:

3(c) The 2nd respondent herein is the Presiding Officer appointed by the Election Officer. The polling was held in the premises of Upper Primary School, Chennupalli and also Teachers' Training Class Centre, abutting to the U.P. School of Chennupalli. The total No. of votes for Chennupalli gram panchayat is 1366. Votes polled is 1188. Out of them 15 votes are bogus votes got polled by the 1st respondent by securing them from Visakhapatnam, Addanki and Piduguralla. A separate list is herewith appended with respect to the bogus votes mentioned above and it may be kindly read as part of this petition. Even at the time of voting also the 1st respondent and her men entered into polling booths and openly canvassed in their favour against the rules. After casting process of votes are over by 1.00 p.m. on 14-8-2001 the election personnel availed lunch from 1 to 3 p.m. and the counting of votes started at about 3.30 p.m. The petitioner appointed on Elchuri Ravindra Babu son of Venkateswarlu as her counting agent and one Kunchala Veeraiah son of Ankamma was appointed as counting agent by the 1st respondent. The counting agent of the 1st respondent is working in Water Works Department at Visakhapatnam and he has got political influence and he came to the village along with his family members at the instance of the 1st respondent and supported the 1st respondent in election process by influencing his caste people to vote in favour of 1st respondent by taking heavy amounts from the 1st respondent as bribe. The appointment of agent by the 1st respondent who is an employee in Government department is opposed to conduct of election rules.

3(d) The second respondent while counting votes separated the invalid votes 29 in number. But he invalid votes are only 26. The other 3 votes declared as invalid are valid votes which are casted in favour of the petitioner to inspect the votes before its invalidation. The counting of votes for the surpanch post was started at 6 p.m. The entire election process was video graphed by one Koti who is working in Ravichandra Video and Photo studio, Martur, at the instance of the Sub-Inspector of Police of Ballikurava P.S. and the said video tape was with him (S.I. of Police). At the time of counting of votes the power supply was cut. One

petromax light was arranged which is not even sufficient to give sufficient lighting. Only one table was arranged and the polling personnel six (6) in number sat in the chairs around the table. The votes were counted by bundling them in the first instance and after wards opening the bundles under the supervision of the 2nd respondent. The counting was completed by 8 p.m. After completion of the counting of votes the 2nd respondent was formally announced that the petitioner has won for the post of sarpanch. Immediately after the announcement, the 1st respondent and her agent intervened, picked up quarrel with the 2nd respondent and in that connection severe tension prevailed in the counting hall. The 2nd respondent having afraid of her life in the hands of 1st respondent was forced to put one doubtful vote in the box in favour of the 1st respondent and declared that both the petitioner and the 1st respondent got equal votes. The said declaration of the 1st respondent is contrary to her announcement in the first instance and the second respondent acted adversely to the conduct of election rules at the behest of 1st respondent and her counting agent. The 2nd respondent has not followed the procedure contemplated under the Act and rules by putting a doubtful vote voluntarily in the box and declaring both the petitioner and the 1st respondent got equal votes. Questioning the acts of the 2nd respondent the counting agent of the petitioner gave a written application to the second respondent for recounting with an assertion that the petitioner alone won in the election and requested the 2nd respondent to order "recounting". The copy of the written application is herewith filed and the same may kindly be read as part of the petition. It is the duty of the presiding officer to order recounting when there is a request by the contesting party when the difference of votes in counting were equal. But the 2nd respondent instead of ordering recounting at the polling station represented that it is not possible for her to have the recount of votes at the polling station in view of the tension prevailed in the area and also felt that there is every likelihood of breach of peace if the recounting took place at the polling station it will lead to breach of peace as rioting and the police people also advised the 2nd respondent that there is no sufficient police protection to avert breach of peace. The 2nd respondent also stated that there is no sufficient lighting and requested both to the petitioner and the 1st respondent in the presence of their agents and also in the presence of the elected Ward Members that the recounting will be held in R.D.Os. office Ongole by 11 a.m. on 15-8-01 and put up seals on the box (ballot box) and allowed the agents also to put their seals and both the agents also put their seals on the ballot box and requested both the candidates and agents to be present at R.D.O. office, Ongole by 11 a.m. on 15-8-2001 at the time of recounting. On behalf of the petitioner her agents accepted the same and the polling personnel left the village along with ballot boxes.

3(f) The petitioner also submits that the 1st respondent secured bogus voters from various places from Visakhapatnam, Piduguralla and got polled the votes by way of impersonation. The 1st respondent also brought persons from Addanki who are having votes at Addanki as well as Chennupalli and those voters voted

at first instance of Addanki and later came in a jeep arranged by 1st respondent and polled their votes at Chennupalli also. The petitioner is annexing separate list along with this petition with full description of the bogus votes polled and the votes polled in two polling stations i.e., Addanki and Chennupalli and they may kindly be read as part of this petition. The petitioner is also reserving her right to file a separate application before this Hon''ble court for recounting. Apart from the above one Kambhampati Sampson of Chennupalli who is a powerful person in the village, came to the counting hall at the behest of the 1st respondent and forcibly snatched four (4) votes from the possession of the 2nd respondent and put marks on the said four votes in favour of the 1st respondent and put them in the ballot box. The said fact was witnessed by several persons including the ward members. In spite of protest by the agent, the 2nd respondent has not taken any action. The 1st respondent also engaged 6 jeeps in number to collect voters from several places by using the name and power of the local M.L.A. and violated the conduct of election rules. There are several irregularities in conducting the election and also counting by the election personnel. The 1st respondent dishonestly by all means of corrupt practices like giving gratification to the voters, inducing the votes by caste wise, forcibly refraining real voters from voting, getting bogus votes polled, interfering with the free exercise of electoral rights of voters, procuring voters by making payments, bringing vehicles against the rules for collection of voters, purchasing of votes at the rate of Rs. 1,000/- each, incurring high expenditure in controvention of the limit of authorizing expenditure and she herself is made liable to setting aside her election as sarpanch of Chennupalli village Gram Panchayat."

It is pleaded in para 3(c) that a separate list is herewith appended with respect to the bogus votes. Likewise, in para 3(f) also it is pleaded that the petitioner is annexing separate list along with the petition with full description of bogus votes polled in two polling stations i.e., Addanki and Chennupalli and they may kindly be read as part of the petition. Placing reliance on the decisions in *Koduri Pichiraju v. SK. Mahaboob Basha and Anr.*, and *Pavaluri Rajya Lakshmi v. Alaparthi Venkata Subbamma and another*, an argument is built up that since voting by the same voters at two Panchayats is not prohibited, these allegations need no longer be enquired into in the present Election Petition. In this context, both the counsel had drawn the attention of this court to the language employed in Section 11 of the present Act in general and Sub-section (5) and Sub-section (6) in particular and also the language in Section 14 of the A.P. Gram Panchayats Act, 1964.

7. While deciding an application under Order 6 Rule 16 of the Code, the Election Tribunal may have to go into, *prima facie*, whether the Act or the Rules are satisfied or not, but however cannot virtually decide those questions entering upon the merits of the matter at the threshold itself. While deciding such applications, the Election Tribunals are expected to act with due care and caution and the evidentiary details, as far as possible, are to be left untouched at that stage. Not only the form, the substance of the pleading also may have to be

looked into. The averments cannot be read in isolation and they are to be read as a whole so as to satisfy whether it is a fit matter to exercise discretion of striking out the pleadings and permit the party to adduce evidence. The Election Tribunals, unless they are clearly satisfied that the pleadings or portions of the pleadings are to be struck off due to non-conformity with the test of material facts, normally should permit the parties to prove the facts pleaded by adducing necessary evidence. It may not be possible to set out all the evidentiary details since they may be numerous and the Election Tribunals may have to see whether furnishing of material facts, in substance, had been complied with. In *Amar Nath v. Janardan Prasac*, while dealing with striking out pleadings under the Representation of the People Act, 1951 it was held that where in the application filed by respondent in election petition for striking out pleadings, or in the affidavit filed in support of the application there is no allegation to the effect that the allegations in the petition or for that matter in any para thereof were either unnecessary, scandalous, frivolous or vexatious or tended to prejudice, embarrass or delay fair trial of election petition or constitute abuse of process of court, no part of election petition can be directed to be struck off. Rule 3 (ii) of the Rules reads:

"The petition shall contain a statement in concise form, the material facts on which the petitioner relies and the particulars of any corrupt practices which he alleges and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908".

Section 83 of the Representation of the People Act, 1951 reads as hereunder:

(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, 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.

Rule 3(ii) of the Rules specifies inter alia ".....shall contain a statement in concise form, the material facts on which the petitioner relies." Section 83(1)(a)

of the Representation of the People Act, 1951 says that an election petition shall contain a concise statement of the material facts on which the petitioner relies. Rule 3(ii) of the Rules further specifies: "..... particulars of any corrupt practice which he alleges". Whereas Section 83(1)(b) of the Representation of the People Act, 1951 specifies:

"An election petition 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."

Rule 3(ii) further specifies:"..... shall, where necessary, be divided into paragraphs." A careful examination of the language employed in Rule 3(ii) of the Rules and Section 83 of the Representation of the People Act, 1951 would clearly disclose some difference and hence though upto some extent the expressions are similar, they are not exactly in pari materia. Hence, the rigor of Section 83 of the Representation of the People Act, 1951 as such cannot be imported into the Election Petitions under the Act though the principles laid down in the Representation of the People Act, 1951 in this regard cannot be totally ignored. At any rate, this is a significant deviation.

8. In *S.B. Noronah v. Prem Kumari* while dealing with pleadings, in the context of Delhi Rent Control Act, 1958, the Apex Court observed at para 6 as hereunder:

"Pleadings are not statutes and legalism is not verbalism. Common sense should not be kept in cold storage when pleadings are construed. It is too plain for words that the petition for eviction referred to the lease between the parties which undoubtedly was in writing. The application, read as a whole, did imply that and we are clear that law should not be stultified by courts by sanctifying little omissions as fatal flaws. The application for vacant possession suffered from no verbal lacunae and there was no need to amend at all. Parties win or lose on substantial questions, not "technical tortures" and courts cannot be "abettors"."

In *Raj Krushna v. Binod*, Justice S.R. Das, J, delivering the Judgment on behalf of Mahajan -- Chief Justice, Mukherjee, J, and Ghulam Hasan, J, held at paras 17 to 19 as hereunder:

"We wish to record our disapproval of the way in which this Tribunal shirked its work and tried to take a short cut. It is essential that these tribunals should do their work in full. They are "ad hoc" bodies to which remands cannot easily be made as in ordinary courts of law. Their duty u/s 99 is,

"Where any charge is made in the petition of any corrupt or illegal practice having been committed at the election"

to record

"a finding whether any corrupt or illegal practice has or has not been proved to have been committed..... and the nature of that corrupt or illegal practice."

also,

"to give the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice and the nature of that practice."

Their duty does not end by declaring an election to be void or not because Section 99 provides that in addition to that

"at the time of making an order u/s 98 the Tribunal shall "also" make an order etc....."

A number of allegations were made in the petition about corruption and illegal practices, undue influence and bribery. It was the duty of the Tribunal not only to enquire into those allegations, as it did, but also to complete the enquiry by recording findings about those allegations and either condemn or clear the candidate of the charges made."

Bose, J, while agreeing on all Points expressed some doubt about the reason given based on the definition of "candidate" in the Representation of the People Act, 1951 and preferred not to express any opinion on the said point. In *Dhartipakar v. Rajiv Gandhi*, the Apex Court held:

"On a combined reading of Section 81, 83, 86 and 87 of the Act, it is apparent that those paras of an election petition which do not disclose any cause of action, are liable to be struck off under Order VI Rule 15, CPC as the court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, Rule 15 itself empowers the court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VI, Rule 11."

In *V. Narayanaswamy v. C.P.Thirunavukkarasu*, a three Judge Bench of the Apex Court while dealing with allegations of corrupt practice in an Election Petition under the Representation of the People Act, 1951 and the rejection thereof at the threshold held:

"An election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the

court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in 7. . the election petition, i.e., Clause (a) of Subsection (1) of Section 83. The under Clause (b) of Sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition leveling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practice were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the Court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition challenging practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices

cannot be inquired and tried at all. In such a case petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of duty of the Court suo motu even to direct furnishing of better particulars when objection is raised by other side. Where the petition does not disclose any cause of action it has to be rejected. Court however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. Petition has to be considered as a whole. There cannot be a partial rejection of the petition."

In *Hardwari Lal v. Kanwal Singh*, while dealing with the aspect of seeking assistance of Government servants for furthering election prospects of a candidate under the Representation of the People Act, 1951, the Apex Court held:

"An election petition which merely alleges corrupt practice against successful candidate "of obtaining and procuring or attempting to obtain and procure the assistance of certain named Government servants for the furtherance of the prospects of his election" by writing letters under his own signature without giving the material facts and the necessary particulars as to the nature of the assistance, the time and place where it was sought from each of the persons mentioned, does not furnish any cause of action and it is no election petition in the eye of law. As such it is not maintainable. 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."

While explaining the distinction between material facts and material particulars in *S.N. Balakrishna v. Fernandez*, it was held by the Apex Court:

"Section 83 is mandatory and requires the election petition to contain first a concise statement of material facts and then requires the fullest possible particulars. 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. There may be some overlapping between material facts and particulars but the two are quite distinct. The material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the words "material facts" will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. An election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to

disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information."

In *Satya Dev Bushahri v. Padam Dev*, a three Judge Bench of the Apex Court while dealing with the aspect of Government servants subscribing nomination paper as proposer and seconder and the effect thereof under the Representation of the People Act, 1951 held:

"The appointment of a Government servant as a polling agent does not per se contravene Section 123(8). So long as the polling agent confines himself to his work as such agent of merely identifying the voters, it cannot be said that Section 123(8) has in any manner been infringed. If it is made out that the candidate or his agent has abused the right to appoint a Government servant as polling agent by exploiting the situation for furthering his election prospects, then the matter can be dealt with as an infringement of Section 123(8)."

9. As already referred to supra, I have pointed out the difference of language employed in Section 83 of the Representation of the People Act, 1951 and Rule 3(ii) of the Rules under the Act and in the light of the substantial difference of language relating to full particulars, the principle relating to the striking of the pleadings in toto as such under the Representation of the People Act, 1951 cannot be made applicable in its rigor to the fullest extent to election petitions to be tried under the Act and the Rules. It is suffice to state that though the Election Tribunals take into consideration the underlying principle, the striking off the pleadings in case of election petitions under the Act and the Rules may have to be examined carefully and cautiously in the light of the language of Rule 3(ii) of the Rules and the provisions of the Act only though the principles relating thereto under the Representation of the People Act, 1951 may be taken as guiding factors. On a careful reading of the paras which had been specified supra, it is clear that the learned Principal Junior Civil Judge/Election Tribunal, Addanki, virtually had gone into the merits to be decided ultimately while disposing of the main Election O.P. and had arrived at conclusion that those allegations are to be struck off. In my considered opinion, this approach adopted by the learned Principal Junior Civil Judge/Election Tribunal, Addanki is not in accordance with law. Having carefully gone through the allegations made, I am of the opinion that as far as the allegation in para 3(f) which is to the following effect:

"The 1st respondent also engaged 6 jeeps in number to collect voters from several places by using the name and power of the local M.L.A. and violated the conduct of election rules",

is no doubt a vague allegation because no particulars relating to the same had been furnished. Hence, definitely it can be said that this allegation is devoid of the material facts and hence it does not answer the test specified in Rule 3(ii) of the Rules. Except this allegation, as far as other allegations are concerned, they

are matters to be decided after the evidence is let in or questions to be decided at the time of the final disposal of the Election O.P. Hence, striking out such pleadings at the threshold would be definitely non-suited to the party who approached the court without enquiring into the allegations, which is impermissible in law. Hence, the impugned order, so far as it relates to the striking off the allegation:

"The 1st respondent also engaged 6 jeeps in number to collect voters from several places by using the name and power of the local M.L.A. and violated the conduct of election rules"

is hereby confirmed. Inasmuch as the striking off the rest of the portions of the paras cannot be sustained, the impugned order, to the said extent, is accordingly set aside.

10. The Civil Revision Petition is partly allowed to the extent indicated above. No costs.