

(2010) 04 AP CK 0063

In the Andhra Pradesh High Court

Case No : E.P.MP. No. 818 of 2009 in Election Petition No. 18 of 2009

Lagadapati Raja Gopal

APPELLANT

Vs

Sunkara Krishna Murthy and Others
 Sunkara Krishna
Murthy Vs Lagadapati Raja Gopal and Others

RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 7 Rule 11, 151, 21, 83
Constitution of India, 1950 — Article 99
Criminal Procedure Code, 1973 (CrPC) — Section 125, 175
Hindu Marriage Act, 1955 — Section 11, 16, 5(1), 7
Penal Code, 1860 (IPC) — Section 494
Representation of the People (Amendment) Act, 1974 — Section 100, 100(1), 100(2),
101, 123
Representation of the People Act, 1951 — Section 81

Citation : (2010) 16 ALT 407

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Advocate : Movva. Chandra Shekar Rao, in EPMP No. 818 of 2009 and G. Mohan Rao, in E.P. No. 18 of 2009, for the Appellant; Movva. Chandra Shekar Rao, in E.P. No. 18 of 2009, Sai Gangadhar Chamarthi, in E.P.M.P. No. 818 of 2009, L. Venkateswara Rao, in E.P. No. 18 of 2009, A. Rama Krishna, for Respondent No. 11 in E.P. No. 18 of 2009, V.V.L.M. Sarma, for Respondent No. 17 in E.P. No. 18 of 2009 and G.P. for GAD for Respondent No. 20 and 21 in E.P. No. 18 of 2009, for the Respondent

Final Decision : Allowed

Judgement

K.C. Bhanu, J.—This petition is filed under Order VI Rule 16 r/w Section 21 and 151 of the Code of Civil Procedure, 1908 r/w Section 81 of the Representation of the Peoples Act, 1951 (for short "the R.P. Act") to strike out the pleadings.

2. The petitioner herein is the 1st respondent (returned candidate) and the 1st respondent herein is the election petitioner in the main election petition.

3. The brief facts, that are necessary for disposal of the present petition may be

portrayed as follows:

The petitioner herein filed the present application alleging that the 1st respondent herein filed the main election petition to declare his election held in April, 2009 for Vijayawada Parliamentary Constituency as void and to declare the 1st respondent herein as validly elected. The 1st respondent herein alleged in the election petition that the petitioner herein married one Janaki during the life time of his spouse, L. Padma and begot a son by name Harman and thereby committed an offence of bigamy punishable u/s 494 IPC and 7 of Hindu Marriage Act. He omitted to show the said Janaki as the dependent and not disclosed her assets in the affidavit filed by him along with the nomination paper and thereby committed an offence punishable u/s 125A of the R.P. Act and he intentionally omitted to produce a document before a public servant though he is bound to produce such document to the Returning Officer and thereby committed an offence punishable u/s 175 Cr.P.C. But, the petitioner herein denied the said allegations as vague, not true and not relevant for the purpose of deciding whether the election of the petitioner herein is void. The 1st respondent herein only pleaded that the petitioner herein is liable to be punished under Indian Penal Code. The Election Tribunal has got jurisdiction to decide the validity of his election only on the grounds mentioned in the R.P. Act and it has no jurisdiction to decide whether the petitioner herein committed any offence under Indian Penal Code and to disqualify him.

Petitioner herein stated that in the affidavit filed along with nomination paper, he had shown the assets and liabilities of himself, his spouse L. Padma who is alive and his three dependent sons. The said Janaki is not his wife or dependent. The allegation with regard to incurring excess expenditure is vague, untrue and irrelevant. The allegations that he is the Chairman of Lanco Foundation and spending money to bribe and lure the voters, that after announcing general elections, dated 02-03-2009, he has give huge advertisement to promote his political career and lured the electorate through Lanco Power Plants and he indulged in corrupt practices are vague and false. Lanco Foundations is Trust registered under the Indian Trust Act whereas Lanco Power Plants is registered as a public limited company under the Indian Companies Act and he is not personally responsible and his election cannot be set aside for the alleged acts of the Trust and Company. He is neither Chairman of the Trust or Director of the Company. He seized to be the Chairman of the Trust or Director of the Company w.e.f. 2003 onwards. The 1st respondent herein has not stated the material facts and material particulars like who are the voters that were bribed and lured to strengthen his political career. The allegation that he committed grave irregularities and illegalities and deliberately influenced the voters in his favour in violation of the Conduct of Election Rules and instructions issued by the Election Commission and he is liable to be disqualified are vague and devoid of material facts and material particulars. The 1st respondent herein has not stated which facts are true and he has not stated the material facts and material particulars of corrupt practices.

The 1st respondent herein who claims to belong to the freedom fighters family and practicing as an advocate has secured only 868 votes out of the total votes of 10,88,297 polled and lost the deposit also, whereas the petitioner herein received 4,29,394 votes and declared elected. The intention of the 1st respondent herein is to tarnish his image and reputation in the public out of jealousy and prejudice and with mala fide intention of harassing him. The election petition does not disclose any complete cause of action and hence, he prays to strike out the pleadings and dismiss the election petition.

4. The 1st respondent herein filed counter denying the averments in the affidavit filed in support of the petition and put the petitioner to strict proof of the same. The petitioner herein under frustration and to gain time filed the present petition without having any base. The petitioner is being one among the top five richest persons in the State and politically highly influenced being the member of Parliament and he is trying to influence the 1st respondent under hook or crook by whatever means by gaining time. It is stated in the election petition that Janaki is the second wife of the petitioner herein and she is the mother of petitioner's third son Harman supported by birth certificate issued by GHMC, wherein it is stated that the name of the father as "L. Raja Gopal" and the name of the mother as "L. Janaki". In case Harman mentioned in the election affidavit is different from the Harman mentioned in the birth certificate issued by GHMC, the same can be proved during the trial. The petitioner herein deliberately denying the averments of the main petition and advised the 1st respondent to file criminal cases before the competent courts for bigamy instead of trying main election petition. The High Court Election Tribunal is right forum and the only authority having jurisdiction to decide the falsehood, fraudulent practices, illegalities and malpractices committed during the General Election by any contestant in the general elections and to avoid the present proceedings, the petitioner herein filed the present petition. The details to be given in the affidavit filed along with the election nomination papers is totally falsehood as every contesting candidate has to file complete and true details of all his family members and their assets, including the contesting candidates as the proforma given by the Election Commission in true and accurate nature. The denial of the petitioner that Smt. Janaki wife of L. Rajagopal is an issue to be decided in this competent Election High Court Tribunal. The petitioner herein intentionally and knowingly suppressed the truth before the Election Commission in his nomination papers and got elected based on falsehood declaration, which is sufficient to declare his election as null and void.

The said Janaki filed a petition for dissolution of her marriage with her husband before the Family Judge, City Civil Court, Hyderabad in O.P. No. 997 of 2006. The marriage of the petitioner with Janaki is known to all in Vijayawada and with regard to that marriage, there were several disputes. The said Janaki obtained divorce from the Court on 17-06-2008 from her 2nd husband A. Adinarayana Murthy. The petitioner hails from very respectable family, faced several allegations during the year 2005 and 2009 with regard to his second marriage

with Janaki and to the extra marital life lead with her. The petitioner spent lakhs of rupees during the elections contrary to the model code of conduct issued by the Government. After the party announced the petitioner as contestant for Lok Sabha, he issued full page advertisement on 24-03-2009 in Sakshi Daily newspaper and the expenditure towards said advertisement has not shown in his election expenditure. It is the rule that the election expenditure of a contesting candidate will be accounted from the date of filing of the nominations till the date of declaration of results. The petitioner suppressed huge expenditure spent on newspaper advertisement and created widespread impression among the voters, which attract corrupt practices.

It is further stated that on 06-02-2009 the Vice Chairman of Lanco Foundation donated Rs. 1,00,000/- to the Bezawada Bar Association, Vijayawada to lure the members for votes, which is nothing but an electoral malpractice to attract the members of association and to gain votes. The petitioner being a National Political Party member i.e., Indian National Congress, who elected as Member of Parliament, violated Article 99 of the Indian Constitution. He violated the provisions of Hindu Marriage Act and the provisions of Indian Penal Code and also committed electoral offences. The 1st respondent herein complained against the petitioner by submitting a report to the Chief Election Commissioner about violation of model code of conduct, trespassing the electoral process, highly influenced the officials and suppressing material facts while submitting nomination papers along with the affidavit. The petitioner spent huge expenditure by giving wide publicity through television channels and supplying man paddling rickshaws at free of cost. Therefore, he prays to dismiss the petition.

5. Now the point for determination in this petition is whether there are any grounds to strike out the pleadings and whether the election petition is liable to be rejected as it does not disclose cause of action?

6. Learned Counsel appearing for the petitioner herein contended that the pleading of grounds for charge as required u/s 81 of the R.P. Act does not disclose any one or more grounds as specified u/s 100 of the R.P. Act, that the requirements under Sections 81 and 100 of the R.P. Act are not satisfied, that it is obligatory on the part of the 1st respondent herein to give requisite material facts and particulars to declare the election as void and even if the allegations in the election petition are taken as true and correct, they are so vague and general, that the averments in the election petition are unnecessary and hence, he prays to strike out the pleadings and consequently reject the election petition as it does not disclose cause of action.

7. On the other hand, learned Counsel appearing for the 1st respondent herein contended that the allegations in the election petition coupled with the documents would clearly go to show that the returned candidate filed a false affidavit known to be false, that the assets of the second wife has not been shown, that he indulged in corrupt practices by publishing in the paper to lure

the voters, that he gave huge advertisements to promote his political career, that he has committed offences punishable under Indian Penal Code and Hindu Marriage Act, that by filing false affidavit suppressing the fact, he has committed the offence of bigamy, that he suppressed the assets of his second wife, that he lured the voters by issuing bank cheques and amounts in the name of Lanco Foundation, that at this stage, if the allegations are taken as true and correct, they made out a prima facie case u/s 100 of the R.P. Act and hence, he prays to dismiss the petition.

8. Under Order VII Rule 11 CPC, the plaint can be rejected on any of the grounds as mentioned in the said Rule. One such ground is that where plaint does not disclose cause of action. There cannot be any dispute that though the provisions of the CPC in their entirety do not apply to the Election Petitions, but Order VII Rule 11 CPC applies to such petitions. The High Court has, therefore, jurisdiction to reject an election petition, if it does not disclose a cause of action. The question whether the election petition disclose any cause of action or not should be determined on the basis of averments made in the petition and annexures thereon and nothing else. In other words, the power to reject the election petition on the ground of non disclosure of cause of action can be exercised by this Court only when it comes to the conclusion that even if all the allegations set out in the election petition are established, the petitioner would not be entitled to any relief. The Court must apply its mind for finding out a cause of action. For the said purpose, the election petition should be read as a whole. Such reading should be meaningful and not formal. With regard to cause of action, it is pertinent to refer to a decision reported in *Om Prakash Srivastava Vs. Union of India (UOI)* and *Another*, wherein it is held thus: (para 12)

The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary, to prove each fact, comprises in "cause of action".

9. There is no dispute that the proof required to be established in the election petition is the proof required to be established with regard to the charge in a criminal case. In a criminal case, it is settled law that the prosecution has to prove its case beyond all reasonable doubt. On this aspect, it is pertinent to refer to a decision reported in *Baldev Singh Mann Vs. Surjit Singh Dhiman*, wherein it is held thus:

The law is now well settled that charge of a corrupt practice in an election petition should not be proved almost like the criminal charge. The standard of

proof is high and the burden of proof is on the election petitioner. Mere preponderance of probabilities are not enough, as may be the case in a civil dispute. Allegations of corrupt practices should be clear and precise and the charge should be proved to the hilt as in a criminal trial by clear, cogent and credible evidence.

The test beyond reasonable doubt is really the estimate which a prudent man makes the probabilities, having regard to what must be his duty as a result of his estimate in a criminal case where the proof of the case for the prosecution. It is the estimate of probabilities arrived from the practical stand point by a prudent man. The Court has to be watchful and ensure that conjectures or suspicions do not take the place of legal proof, but at the time of framing charge in a criminal case, what is required to be seen is whether the charge sheet and the documents relied upon including the FIR and the statement of witnesses, if accepted as true at that stage would constitute a prima facie case. Prima facie evidence means, on the face of it, there is a ground for proceeding. It is not the same thing as proof which comes later that the Court has to find whether the accused is guilty. It signifies that on first examination the matter appears to be self evident from the facts. In common law jurisprudence, prima facie case denotes evidence which (unless rebutted) would be sufficient to prove a particular proposition or fact. Therefore, at this stage in the election petition, it has to be seen whether the allegations if accepted as true and correct, constitute a charge against the returned candidate for proceeding further. The correctness or otherwise of the allegations cannot be tested or weighed at this stage.

10. Sections 80 and 81 of the R.P. Act lay down the only method prescribed by law in which the validity of the election can be impugned which is by an Election Petition before this Court.

Under Section 81 of the R.P. Act, 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 45 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.

Under Section 83 of the R.P. Act, an Election Petition -(a) shall contain a concise statement of the material facts on which the petitioner relies; (b) shall set forth all 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 and 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 verification of the pleadings. Clauses (1) and (2) of Section 83 make it mandatory on the petitioner to furnish a concise statement not only material facts necessary to constitute cause of action but also the particulars necessary to put the returned candidate in notice of the details of the charge he is calling upon to meet. If bald or vague

statements are made, they do not specify the requirements of the Section.

11. Section 123 of the R.P. Act deals with corrupt practices. All the sub-sections of Section 123 of the R.P. Act refer to the acts of a "candidate" or his election agent or any other person with the consent of the candidate or his election agent. In order to establish any of the grounds contained in Section 100 of the R.P. Act, every fact requisite for satisfying the elements would be a material fact and must be set out in the election petition. The requisite pleadings of all constituents of corrupt practices must be alleged in the election petition. On this aspect, it is pertinent to refer to a decision reported in *Samant N. Balkrishna and Another Vs. V. George Fernandez and Others*, it is held thus:

From our examination of all the cases that were cited before us we are satisfied that an election petition must set out a ground or charge. In other words, the kind of corrupt practice which was perpetrated together with material facts on which a charge can be made out must be stated, It is obvious that merely repeating the words of the statute does not amount to a proper statement of facts and the S. requires that material facts of corrupt practices must be stated. If the material facts of the corrupt practice are stated more or better particulars of the charge may be given later, but where the material facts themselves are missing it is impossible to think that the charge has been made or can be later amplified. This is tantamount to the making of a fresh petition.

From the above decision, it is clear that the material facts necessary to formulate a complete cause of action must be stated in the election petition and omission of any single material fact would lead to incomplete cause of action.

12. In another decision reported in *Kamalnath Vs. Sudesh Verma*, it is held thus:

After taking note of all the earlier decisions, the Court held that to plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected and it cannot be left to time, chance or conjecture for the Court to draw inference by adopting an involved process of reasoning.

13. On the aspect of incurring expenditure between two relevant dates as required u/s 77 of the R.P. Act, it is pertinent to refer to a decision reported in *Manohar Joshi Vs. Nitin Bhaurao Patil and Another*, wherein it is held thus:

Assuming the contents of the video cassettes amount to the kind of speech or act which is a corrupt practice under Sub-section (3) or Sub-section (3a) of Section 123, in order to constitute that corrupt practice it must further be shown that the act was done during the election campaign between 8-2-1990 when the returned candidate became a candidate" and 27-2-1990 the date of poll, and that it was the act of the candidate or his agent or any other person with his consent. Unless all the constituent parts of the corrupt practice are pleaded to constitute the cause of action raising a triable issue and are then proved by

evidence, the corrupt practice cannot be held to be pleaded and proved

14. Similarly on the same aspect, it is apt to refer to a decision reported in Jeet Mohinder Singh Vs. Harminder Singh Jassi, wherein it is held thus:

Here itself, we may state that as per the affidavit filed in support of the election petition the averments made in sub-paras (a), (b) and (e) of para 10 are stated to be true to the personal knowledge of the appellant while the contents of sub-paras (c), (d), (f) and (g) are stated to be based on information received from Pratipal Singh Bhindal and believed by the appellant to be true. The infirmity with which the averments made in the election petition suffer from is that the dates between which the poster's are alleged to have been distributed and pasted in the constituency are not mentioned in the election petition. From the averments made in the petition it cannot be deduced that the expenditure on account of the posters even if incurred by the respondent, was so incurred between the date of nomination and the date of declaration of result of the election. In the absence of the appellant having made a positive allegation of the alleged expenses having been incurred between the date of nomination of the respondent and the date of declaration of the result the applicability of Sub-section (3) of Section 77 would not be attractive.

Therefore, in view of the above decisions, it is clear that election expenditure incurred should be from the date on which a candidate is nominated till the date of declaration of result, which should not exceed the limit prescribed.

15. In another decision reported in Dharti Pakar Madan Lal Agarwal Vs. Rajiv Gandhi, it is held thus:

In Shri Kanwar Lal Gupta Vs. Amar Nath Chawla and Others, this Court held that what Section 77(1) prescribed was not only the incurring but also the authorizing of excessive expenditure and that such authorization may be implied or express. The Court held that when a political party sponsoring a candidate incurs expenditure in connection with his election as distinguished from expenditure on a general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or consents to it or acquiesces to it, it would be reasonable to infer that he impliedly authorized the political party to incur such expenditure and he could not escape the rigour of the ceiling by saying that he had not incurred the expenditure and the political party had done so. The result of the judgment was that the expenditure incurred by the political party in connection with the general party propaganda was deemed to have been incurred by the candidate himself. The Parliament amended Section 77 of the Representative of the People (Amendment) Act, 1974 by adding two explanations to the section. Explanation I lays down that any expenditure incurred or authorized in connection with the election of a candidate by a political party or by any association or body of persons or by any individual other than the candidate or his election agent, shall not be deemed to be incurred or authorized by the candidate or his election agent. The validity of the Amending Act was upheld by a

Constitution Bench of this Court in Dr. P. Nalla Thampy Terah Vs. Union of India (UOI) and Others, After the amendment of Section 77(1) any expenditure at the election by a political party, sympathizers or friends cannot be held to have been incurred by the candidate or his election agent unless it is shown that the money which they spent belonged to the candidate or his election agent or that he reimbursed the same. It is thus evident that unless the allegations are specific that the candidate or his election agent authorized the expenses before the money was actually spent and that the candidate or his election agent reimbursed or undertook to reimburse the same the necessary ingredient of corrupt practice would not be complete and it would provide no cause of action to plead corrupt practice. In the instant case paragraph 50 and its various subparagraphs contain mere assertion of facts relating to expenditure but there is no allegation that the expenditure was incurred or authorized by Rajiv Gandhi or that he undertook to reimburse the same. The appellant made an attempt to jumble up various allegations regarding incurring of expenditure by the returned candidate and his workers. The allegations contained therein do not make out any case of corrupt practice and the High Court was justified in striking out the same.

From the above decision, it is clear that the allegations with regard to corrupt practice of incurring expenditure excess of the ceiling limit prescribed under the rules must be specific, unambiguous, clear and cogent and they should not be vague. A mere vague and general statement of the candidate spent money in election in excess of the permissible ceiling would not be sufficient to constitute corrupt practice.

16. In another decision reported in Bhikaji Keshao Joshi and Another Vs. Brijlal Nandlal Biyani and Others, it is held thus:

Section 83(2) requires not only what may reasonably be considered "full particulars" having regard to the nature of each allegation, but enjoins in terms that the following particulars should also be given.

(1) Names of the parties alleged to have committed the corrupt or illegal practice. (2) The date of the commission of each such corrupt or illegal practice. (3) The place of commission of each such corrupt or illegal practice. There can be no reasonable doubt that the requirement of "full particulars" is one that has got to be complied with sufficient fullness and clarification so as to enable the opposite party fairly to meet them and that they must be such as not to turn the enquiry before the Tribunal into a rambling and roving inquisition.

17. In another decision reported in Raj Narain Vs. Indira Nehru Gandhi and Another, it is held thus:

From these decisions, it follows that facts stated in the petition relating to any corrupt practice must be sufficient to constitute a cause of action. In other words the facts must bring out all the ingredients of the corrupt practice alleged. If the facts stated fail to satisfy that requirement then they do not give rise to a triable

issue. Such a defect cannot be cured by any amendment after the period of limitation for filing the election petition. But even if all the material facts are stated in the election petition, for a proper trial better particulars may still be required. If those particulars are not set out in the election petition, they may be incorporated into the election petition with the permission of the court even after the period of limitation

18. In another decision reported in H.D. Revanna Vs. G. Puttaswamy and Others, it is held thus:

The test in all cases of preliminary objection is to see whether any of the reliefs prayed for could be granted to the petitioner if the averments made in the petition are proved to be true. If the answer to the question is in the affirmative, the maintainability of the petition has to be upheld.

19. In another decision reported in Balwan Singh Vs. Lakshmi Narain and Others, it is held thus:

An election petition is not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged in the petition, are not set out. Where an objection is raised by the respondent that a petition is defective because full particulars of an alleged corrupt practice are not set out, the Tribunal is bound to decide whether the objection is well-founded. If the Tribunal upholds the objection, it should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged; and in the event of non-compliance with that order the Tribunal may strike out the charges which remain vague. Insistence upon full particulars of corrupt practices is undoubtedly of paramount importance in the trial of an election petition, but if the parties go to trial despite the absence of full particulars of the corrupt practice alleged, and evidence of the contesting parties is led on the plea raised by the petition, the petition cannot thereafter be dismissed for want of particulars, because the defect is one of procedure and not one of jurisdiction of the Tribunal to adjudicate upon the plea in the absence of particulars. The appellate court may be justified in setting aside the judgment of the Tribunal if it is satisfied that by reason of the absence of full particulars, material prejudice has resulted; and in considering whether material prejudice has resulted failure to raise and press the objection about the absence of particulars before going to trial must be given due weight.

20. In another decision reported in Udhav Singh v. Madhav Rao Scindia AIR 1976 SC 74 it is held thus:

We are afraid, this ingenious method of construction after compartmentalisation, dissection, segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal canon of interpretation, according to which, a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context, in isolation. Although it is the substance and not merely the form

that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole.

21. In another decision reported in Ram Sukh Vs. Dinesh Aggarwal, it is held thus:

The issue was again dealt with by this Court in Azhar Hussain v. Rajiv Gandhi. Referring to earlier pronouncements of this Court in Samant N. Balakrishna and Udhav Singh v. Madhav Rao Scindia wherein it was observed that the omission of a single material fact would leave to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in Azhar Hussain case held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.

From the above decisions, it is clear that material facts which constitute a cause of action shall be pleaded. If the material facts are not pleaded, then it goes to the root of the case and the election petition is liable to be rejected on that ground. Whereas if the election petition is lacking with material particulars, then it is a curable defect and this Court can direct the election petitioner (1st respondent herein) to furnish the material particulars or he can come forward with an application to amend the pleadings by giving the material particulars. Now it has to be seen whether the allegations in the election petition along with the annexures filed therein constitute corrupt practice of incurring expenditure over and above the prescribed ceiling limit fixed under the law.

22. Bearing the above principles in mind, it has to be seen whether the allegations in the election petition made out a prima facie case so as to proceed further. At this stage, it is not desirable to test or weigh the allegations in the election petition as correct or not. Even if the allegations without testing as true and correct, if accepted, made out a prima facie charge to proceed further, the question of striking out the pleadings does not arise. There Cannot any dispute that the Election Laws should be construed strictly. Therefore, the allegations must specific, clear and unambiguous. As seen from the election petition and arguments advanced by both the counsel, the 1st respondent herein sought to declare the election of the returned candidate by improper acceptance of nomination or non compliance of the provisions under the R.P. Act or any rules or order made under the Act. The High Court shall declare the election of the returned candidate as void u/s 100(1) of the R.P. Act, which reads thus:

100. Grounds for declaring election to be void: 1. Subject to the provisions of Sub-section (2) if the High Court is of opinion

(a)....

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

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, insofar as it concerns a returned candidate has been materially affected-

(i) by improper acceptance of any nomination, or

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

What is corrupt practice is defined u/s 123 of the R.P. Act. Though Section 123 of the R.P. Act is quoted for declaring the election of the returned candidate as void, it is not specifically stated that which clause or sub-clause of Section 123 of the R.P. Act would attract because as seen from the allegations in the election petition, the petitioner herein has not given a clear affidavit with regard to addresses of his family members and their credence of the relationship at the time when he was elected to the house of the people of 29th Vijayawada Parliamentary Constituency. The 1st respondent herein stated in his affidavit that the petitioner herein is having two sons, whereas in his nomination papers that was filed in the 15th General elections to parliament in the year 2009, he mentioned that he is having three sons. Therefore, the first contention is that the petitioner herein committed an offence by not mentioning the relevant contents of annexure 7. Annexure 7 is birth certificate of their son born on 07-09-2007. Child's name is noted as L. Harman and mother's name is shown as L. Janaki. But he has not shown the name of L. Janaki as dependent in the affidavit furnished along with the nomination papers. Because the name of the second wife, L. Janaki was not shown in Annexure 1, according to the 1st respondent herein, it is a false affidavit. Therefore, it is violative u/s 33A(1) and (2) of the R.P. Act, which reads thus:

33A Right to information

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

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

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

(2) The candidate or his proposer, as the case may be, shall at the time of delivering to the returning officer the nomination paper under Sub-section (1) of

Section 33 also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in Sub-section (1).

Section 33A has no application to the present facts of the case because there is no allegation that the petitioner herein was an accused of an offence punishable with imprisonment for two years or that a charge has been framed against him. Similarly, it is not the case of the 1st respondent herein that the petitioner herein was convicted for an offence and sentenced to undergo imprisonment for one year or more.

23. It is contended that u/s 125A of the R.P. Act, the affidavit filed by the petitioner herein is false as he committed offence by not mentioning the contents of annexure 7. Section 125A of the Act is nothing to do with the present facts of the case because it prescribes penalty for filing false affidavit. Now, it has to be seen whether the petitioner has given any false affidavit by not showing the assets of the second wife in annexure 1 before the returning officer, which is the nomination affidavit submitted to the Election Commission of India on 04-04-2009. In this affidavit, he has shown details of the movable and immovable assets of the returned candidate and his wife L. Padma and three sons by name, L. Pranay, L. Ashrit and L. Harman. It is contended that since the petitioner herein was having a second wife by name, Janaki, her name has to be shown in the affidavit. In the affidavit the assets of the spouse of the returned candidate have to be shown, but not the spouses. According to the counsel for the 1st respondent herein, the name of the second wife, L. Janaki was not shown. Therefore, it is a false affidavit. The counsel for the 1st respondent herein has not brought to the notice of this Court any provision or rule or notification issued under the R.P. Act to show that assets of the spouses have to be shown in the affidavit to be submitted by any candidate contesting the election to the Election Commission of India. Even assuming for a moment at this stage that L. Janaki is the second wife, she does not come within the meaning of spouse because her marriage with the petitioner in the election petition is void ab initio because u/s 11 of the Hindu Marriage Act, 1955 any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto (against the other party) be so declared by a decree of nullity if it contravenes any one of the condition specified in Clauses (i), (iv) and (v) of Section 5. u/s 16 of the Hindu Marriage Act, notwithstanding that a marriage is null and void u/s 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976) and whether or not a decree of nullity is granted in respect of that marriage under the Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

24. The word "spouse" has been understood to connote a husband or wife, which term itself postulates subsisting marriage. Therefore, the word "spouse" in Sub-section (1) of Section 5 of Hindu Marriage Act cannot be interpreted to mean a

latter spouse when a second marriage is contracted if the former spouse is living. On this aspect, learned Counsel for the petitioner herein relied upon a decision reported in *Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another*, wherein while interpreting the wife within the meaning of Section 125 Cr.P.C., it is held thus:

The marriages covered by Section 11 are void ipso jure, that is, void from very inception, and have to be ignored as not existing in law at all if and when such a question arises.

25. He also relied on a decision reported in *Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another*, wherein it is held thus:

If the marriage is not a valid marriage, it is no marriage in the eye of law. The bare fact of a man and a woman living as husband and wife does not, at any rate, normally, give them the status of husband and wife even though they may hold themselves out before society as husband and wife and the society treats them as husband and wife.

From the above decision, it is clear that wife can be said to be a spouse only when her marriage is performed in accordance with law. Even if the returned candidate contracted second marriage with one Janaki, such marriage is void ipso jure and she cannot come within the meaning of spouse in view of the fact that her marriage with the petitioner herein is void as the first marriage of the returned candidate is subsisting. Therefore, the column where the affidavit to be furnished by the returned candidate, the word "spouse" is only mean a legally wedded wife. Admittedly, the petitioner herein has given the particulars required in the nomination affidavit about the details of his wife. Therefore, for not showing the assets of the second wife L. Janaki, it cannot be said that the petitioner herein gave false affidavit. The allegation that not furnishing the assets of the second wife cannot be said to be false affidavit under anyone of the provisions under the R.P. Act or under the constitution or under any other law from the time being in force. It is not the case of the 1st respondent herein that details of immovable properties, movable assets, loans and liabilities are shown to be false. Therefore, the nature of false information said to have been given in the affidavit by the petitioner herein has not been specifically stated.

26. Learned Counsel for the petitioner herein relied on a decision reported in *Ram Sukh Vs. Dinesh Aggarwal*, wherein it is held thus:

Before examining the merits of the issues raised on behalf of the election petitioner with reference to the relevant statutory provisions, it would be appropriate to bear in mind the observations of this Court in *Jagan Nath v. Jaswant Singh*. Speaking for the Constitution Bench, Mehr Chand Mahajan, C.J. had said that the statutory requirement of election law must be strictly observed and that the election contest is not an action at law or a suit in equity, but I purely a statutory proceeding unknown to the common law and that the Court possesses no common law power. It is also well settled 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. Nevertheless, it is also to be borne in mind that one of the essentials of the election law is to safeguard the purity of the election process and, therefore, the court must zealously ensure that people do not get elected by flagrant breaches of that law or by indulging in corrupt practice, as enumerated in the Act.

In dealing with the election petition, strict compliance of law has to be followed so as to safeguard the purity of election process.

27. The other contention is that in the year 2004, the petitioner herein had shown the names of his two sons, whereas in the year 2009, the name of Harman has been shown. Even according to the case of the petitioner herein, Harman is the son born on 07-09-2007. Though he is the son of second wife, he can be treated as legitimate son in pursuance of Section 16 of Hindu Marriage Act. This is not shown to be false information.

28. The other ground on which the election of the returned candidate was sought to be void is that he is working as Chairman of Lanco Foundation, under which he is spending money to bribe the voters. On 24-03-2009 the Telugu Daily newspaper by name Sakshi, the 3rd page (main edition) it is published that he is the Chairman for Lanco Foundation. In the capacity of Chairman for Lanco foundation, he lured the voters by advancing huge amounts to strengthen his political career and to win the elections. Thus his acts after the announcing of 15th General elections schedule which was announced on 02-03-2009, he has given huge advertisements to promote his political career and lured the Electorate, that through his Lanco Power Plants, brain child of the Lanco Foundation has announced huge sops to various cross sections of the people. The news paper advertisements has created widespread impression among the voters that a particular candidate that is the petitioner herein is rich enough to tide over any crisis of the electorate as per the contents of the advertisement. Which is nothing but unaccounted expenditure which was incurred through back doors, which comes under the Electoral Corrupt Practices, the Returning officer and Election Commission of India neither properly scrutinized the nomination papers nor accounted for expenditure on 16-05-2009, the 20th respondent herein announced the results of the elections in which the petitioner herein was declared elected. This allegation is very vague and ambiguous because corrupt practices of incurring expenditure should be from the date of nomination till the date of declaration of results. u/s 77(1) of the R.P. Act 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 authorized 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 days inclusive. Even if the allegations are taken as true and correct that paper publication was made on 24-03-2009, whereas the returned candidate filed the

nomination on 04-04-2009, that cannot be taken as expenditure incurred by the candidate from the date of nomination till the date of declaration of results.

29. Learned Counsel for the petitioner herein further relied on a decision reported in Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, wherein it is held thus:

Section 77 requires a candidate to keep a separate and correct account of all expenditure "in connection with the election incurred or authorized by him or by his election agent" between the date of his nomination and the date of declaration of the result of the election. The candidate is required to maintain account of only that expenditure which he or his election agent may have authorized before the expenditure was actually incurred, which would imply that the candidate or his election agent undertook to reimburse the expenses which may have been authorized by him or his election agent to be spent at the election. In order to constitute a corrupt practice as contemplated by Sections 77 and 123(6) it is necessary to plead requisite, facts showing authorization, or undertaking of reimbursement by the candidate or his election agent. A mere vague and general statement that the candidate and his workers with his consent spent money in election in excess of the permissible ceiling would not be sufficient to constitute corrupt practice.

30. He also relied on a decision reported in Azhar Hussain Vs. Rajiv Gandhi, wherein it is held thus:

In this case also; no time, date and" place of the speeches delivered by the respondent have been mentioned. No exact extracts from the speeches are quoted. Nor have the material facts showing that such statements imputed to the respondent were indeed made been stated. No allegation is made to the effect, that it was in order to prejudice the election of any candidate or in order to further the prospects of the election of the respondent. The essential ingredients of the alleged corrupt practice have thus not been Spelled out. So far as the meeting is concerned, the principle laid down in Nihal Singh case (1970) (3) SCC 2391 (supra) discussed in the context of the charge contained in ground II (i) is attracted. The view taken by the High Court is therefore unexceptionable.

31. He also relied on a decision reported in Jyoti Basu and Others Vs. Debi Ghosal and Others, wherein it is held thus:

An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, Is what the statute lays down. In the trial of election disputes, Court is put in a straight

jacket

Under Section 100 of the R.P. Act, election can be declared as void on the ground of commission of a corrupt practice under two different circumstances. First circumstance is covered by Sub-section (1), Clause (b). In such a case, it is enough for the election petitioner to plead specifically that corrupt practice has been committed in the interest of returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such a candidate or election agent. Section 100(d)(ii) of the R.P. Act requires that in addition to proof of commission of corrupt practices, election petitioner must also allege that result of election has been materially effected by commission of corrupt practice. Therefore, even if the entire allegations in the election petition are taken as true and correct, at this stage, they do not disclose any cause of action to declare the election of the returned candidate as void on anyone of the grounds u/s 100 of the R.P. Act so as to proceed further. The allegations in election petition are very vague, ambiguous as no case is made out. Hence, it is a fit case to strike out the pleadings as unnecessary. Therefore, the petition filed by the petitioner herein (returned candidate) has to be allowed.

32. Accordingly, E.P.M.P. No. 818 of 2009 is allowed and consequently E.P. No. 18 of 2009 filed by the 1st respondent herein is dismissed as it does not disclose cause of action.