

(2005) 03 AHC CK 0255
In the Allahabad High Court
Case No : Election Petition No. 2 of 2004

Major S.N. Tripathi

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 6 Rule 2(1), Order 7 Rule 11
Conduct of Elections Rules, 1961 — Rule 10(5), 4, 5, 5(1), 94A
Constitution of India, 1950 — Article 102(1), 13(2), 14, 19(1), 19(4)
Representation of the People Act, 1951 — Section 100, 100(1), 123, 14, 169

Citation : (2005) 3 AWC 3062

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : S.N. Tripathi and K.K. Pal, P.K. Agrawal and R.C. Misra, for the Appellant; K.N. Tripathi, Anita Agrawal, B.P. Awasthi and R.R. Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—This is an election petition filed by the petitioner under the provisions of Section 81 of the Representation of People Act, 1951 (to be hereinafter referred to as the Act), calling in question the election of the returned candidate, respondent No. 4 from 16 Lucknow Parliamentary Constituency Lucknow. Apart from the returned candidate, the petitioner has impleaded the Election Commission of India through Chief Election Commissioner, Union of India through Secretary Ministry of Law and Justice New Delhi, Returning Officer 16 Lucknow Parliamentary Constituency Lucknow, and the B.J.P. (Bhartiya Janta Party), through President, Resident of Ashok Road New Delhi as respondent No. 4.

2. Major S. N. Tripathi (Sheshmani Nath Tripathi), an elector of the said Constituency, has filed the election petition on variety of grounds. Except respondent No. 4 no one has appeared on behalf of the rest of the respondents

to contest the election petition despite notice to them.

3. According to the petitioner the election to the 16 Lucknow Parliamentary Constituency Lucknow, has not been conducted in accordance with law. The law under which the election of the said Constituency has been conducted is no valid law. He has also challenged vires of various provisions of the Constitution as well as the Representation of People Act along with the Rules framed thereunder and the Symbols Order. As per his averment, B.J.P. is an alien for 16 Lucknow Parliamentary Constituency Lucknow. The main ground upon which he has assailed the election of respondent No. 4 has been enumerated in paragraph 13 of the election petition which reads as follows :

"13. That this election in which Sh. Atal Behari Bajpayee contested as a nominee of the aid B.J.P., was inducted according to the terms of the "Symbols Orders" Annexure-3 and his nomination as "Candidate" was accepted in terms of the "Nomination Form 2A", Annexure-2 which are containing provisions which were made by the Election Commission and the Government of India by flagrant "non-adherence" and "non-compliance" of the following provisions :

(a) Constitutional provisions under Articles 13(2), 14, 19(1)(a), 19(4), 21, 81, 84, 102(1)(d) and 324 to 326 ;

(b) Provisions of the Act Sections 2(a), 2(e), 2(f), 4, 14, 30 to 37, 62, 79(d), 123(b) and 169 ;

(c) Provisions of Rule 5 (1) of Rules, 1961.

as a consequence of which the entire election was vitiated and the election of the returned Candidate Sh. Atal Behari Bajpayee got materially affected which falls under Sections 100(1)(d)(iv) and 98 of the Act compelling the petitioner to raise question about the said election in the background of the overall Scheme of the Constitution and the laws settled in this behalf."

4. As per his case the election of the returned candidate deserves to be declared as void on the grounds set out u/s 100(1)(d)(iv) of the Act. According to him on account of the violation of the said provisions by the respondents, the election of respondent No. 4 was got materially affected. The ground of challenge has further been elaborated in paragraph No. 40 of the election petition.

5. Respondent No. 4 apart from filing his written statement has also preferred an application under Order VII, Rule 11 of the CPC read with Section 87(1) of the Act praying therein for rejecting the election petition on the ground that it does not disclose any cause of action.

6. According to respondent No. 4 the election petition is completely bereft of material facts and does not disclose any cause of action and, thus, does not raise any triable issue. Even necessary material facts and ingredients in respect of the grounds and allegations have also not been alleged in the election petition. Thus, through the said application dismissal of the election petition at the threshold is

sought, firstly because the election petition does not disclose the material facts necessary to constitute a cause of action for filing the petition, secondly it does not raise an issue triable under the Representation of People Act and thirdly the trial of the present election petition will be an abuse of the process of the Court.

7. As the question raised goes to the root of the matter, therefore, the application preferred by respondent No. 4 under Order VII, Rule 11, C.P.C. read with Section 87(1) of the Act, is being taken up for decision before proceeding with the trial of the election petition.

8. Shri Kesari Nath Tripathi, learned senior advocate for the respondent No. 4 urged that Section 83 of the Act contemplates that an election petition shall contain a concise statement of material facts on which the petitioner relies. According to him the allegations made by the petitioner in the election petition do not amount to any statement of material fact, which if proved will materially affect the result of the returned candidate. He further submits that omission of a single material fact would lead to an incomplete cause of action and an election petition without material fact is not an election petition, at all under the provisions of the Act. As per his submission the allegations made in the entire election petition, do not mount to any statement of material fact which materially affects the result of the returned candidate. Thus, according to him an election petition, which does not disclose a cause of action is liable to be rejected in limine. He further submits that even if the allegations made in the election petition, are taken to be true, still it does not disclose a cause of action and as such does not raise a triable issue.

9. The petitioner who has appeared in person and has conducted the case himself, has also filed written arguments. He vehemently argued that the election petition, cannot be dismissed at the initial stage. His argument is that the Court must proceed with the trial, frame issues and record evidence and only after the trial of the election petition is concluded that powers under the CPC should be exercised. The contention is that even if the election petition is liable to be dismissed, it should be so dismissed after framing of issues and after recording of evidence. His argument further is that the election petition does raise triable issues.

10. As per his version since the entire election of 16 Lucknow Parliamentary Constituency, Lucknow, has been conducted in utter violation and flagrant disregard to various constitutional provisions as well as the provisions of the Act as indicated by him in para 13, it cannot be said that the election petition is bereft of material facts. He further argues that the provisions of the CPC would not apply, therefore, the application preferred by respondent No. 4 for dismissal of the election petition at the outset is totally misconceived and is not maintainable and thus deserves to be rejected. According to the petitioner the election petition cannot be thrown out at the threshold.

11. In support of his arguments he placed reliance upon the following cases :

- (a) State of Orissa Vs. Klockner and Company and Others, ;
- (b) M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property, ;
- (c) Suraj Ratan Thirani and Others Vs. The Azamabad Tea Co. and Others, ;
- (d) The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others, ;
- (e) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , and
- (f) His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, .

12. Section 81 of the Act prescribes the procedure for presentation of an election petition, which reads as follows :

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

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

(2) (Omitted).

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

13. Section 83 of the Act prescribes as to what should an election petition contain. It postulates that an election petition shall contain a concise statement of material facts. The said section runs as under :

83. Contents of petition.--(1) An election petition :

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

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

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

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

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

14. The grounds upon which an election of a candidate can be declared as void are enumerated u/s 100. Section 100(1)(d)(iv) upon which the election of respondent No. 4 has been assailed, reads as follows :

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

(a)

(b)

(c)

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected :

(i) by the 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, or

(iii) by the improper reception, refusal or

rejection of any vote or the reception of any vote which is void, or

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

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

15. Section 87 of the Act prescribes the procedure before the High Court to be followed for trial of an election petition. According to the said section every election petition shall be tried by the High Court, in accordance with the procedure applicable under the CPC to the trial of the suits.

16. Thus, what is clearly decipherable from the perusal of the aforesaid provisions is that an election petition should contain a concise statement of material facts on which the petitioner relies and the said material facts are such that the result of the election, in so far as it concerns a returned candidate, is materially affected and it should be tried in accordance with the procedure applicable under the CPC with regard to the trial of the suits.

17. Question as to whether or not an election petition can be dismissed at the threshold, in the event it does not state material facts and as such lead to no cause of action, came to be considered by the Hon''ble Supreme Court in the

case in Azhar Hussain Vs. Rajiv Gandhi, . The Apex Court in para 11 held as follows :

"11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the CPC can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, , has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Shri Udhav Singh Vs. Madhav Rao Scindia, , the law has been enunciated that all the primary facts which must be proved by a party to establish cause of action or his defence are material facts. In the contest of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed, if it suffers from any such vice. The first ground of challenge must therefore fail."

18. The Courts in exercise of powers under the Code of Civil Procedure, can also treat and take up any point and can dismiss the suit without proceeding to record evidence if the Court is satisfied that the action would terminate in view of the merits of a preliminary objection.

19. In Bhagwati Prasad Dixit "Ghorewala" Vs. Rajeev Gandhi, , the Hon"ble Supreme Court observed as follows :

"4. It is now well-settled that in election petitions pleadings have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action it is liable to be rejected in limine."

"16. On going through all the grounds mentioned in the petition we feel that they are so frivolous and vexatious that the only order to be passed on the petition is the one which has been made by the High Court."

"17. The allegations in the election petition even if they are taken as true, do not disclose any cause of action. The High Court was, therefore, right in dismissing the petition on the ground that it does not disclose a cause of action."

20. The expression "cause of action" as per the Law Lexicon refer to the entire

set of facts that give rise to an enforceable claim or everything which, if not proved, give defendant an immediate right to judgment, every fact which is material to be proved to entitle the plaintiff to succeed, every fact which the defendant had a right to traverse.

21. As per Black's Law Dictionary "cause of action" means the fact or facts which give a person a right to judicial redress or relief against another. The legal effect of an occurrence in terms of redress to a party to the occurrence. A situation or state of facts which would entitle party to sustain action and give him right to seek a judicial remedy in his behalf, fact, or a state of facts, to which law sought to be enforced against a person or thing applies. Facts which give rise to one or more relations of right out between two or more persons. Failure to perform legal obligation to do or refrain from performance of some act. Matter for which again may be maintained. Unlawful violation or invasion of right, a right which a party has to institute a judicial proceeding.

22. Thus, as would appear the words "cause of action" denotes that those bundle of facts if traversed, would entitle the petitioner to the relief claimed.

23. In Commissioner of Income Tax, Bareilly Vs. Kisan Sehkari Chini Mill Ltd., , the Hon"ble Supreme Court in para 23 held as follows :

"It will be thus seen that an election petition is based on the rights, which are purely the creature of a 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 and 83(1)(c), 86 read with Rule 94A 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 the election petition, i.e., Clause (a) of Sub-section (1) of Section 83. Then 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 levelling 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

practices 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 alleging corrupt 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 VI, Rule 16 and Order VII, Rule 11 of the Code of Civil Procedure. Where neither the verifications 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 the 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 the 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 the duty of the Court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Where the petition does not disclose any cause of action it has to be rejected. The Court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition."

24. In Jaipal Singh Vs. Smt. Sumitra Mahajan and Another, , the Hon"ble Supreme Court in paragraph 7 observed as follows :

"7. Section 83 deals with contents of petition. It states that an election petition shall contain a concise statement of material facts, on which the petitioner relies and shall state full particulars of any corrupt practices which the petitioner alleges and which shall be signed by him and verified in the manner laid down in the Code of Civil Procedure. In the case of Sopan Sukhdeo Sable v. Assistant Charity Commr, it has been held that Order VI, Rule 2 (1) C.P.C. deals with basic rule of pleadings and declares that the pleading has to state material facts and not the evidence ; that there is a distinction between "material facts" and "particulars" and the words "material fact" show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and consequently, the plaint becomes bad. The distinction between "material facts" and "particulars" was

brought by Scott, L.J. in *Brace v. Odhams Press Ltd.* in the following passage : (All ER p. 294).

"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action" and if any one "material" statement is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology and in the new is liable to be "struck out" under RSC Order XXV, Rule 4 (see *Philipps v. Philipps*) ; or "a further and better statement of claim" may be ordered under Rule 7.

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

25. In *Samant N. Balkrishna and Another Vs. V. George Fernandez and Others*, , the Hon"ble Supreme Court observed that 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 and a petition which merely cites the sections cannot be said to disclose a cause of action. In para 29 it held as follows :

"29. Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of People Act. Here we have to consider Sections 81, 83 and 86 of the Act. The first provides the procedure for the presentation of the election petition. The proviso to sub-section alone is material here. It provides that an election petition may be presented at one or more of the grounds specified in Sub-section (1) of Sections 100 and 101. That as we have shown above creates the substantive right. Section 83 then provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also 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. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material fact and 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 cause he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus, the material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus 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 that the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also 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. From the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. This distinction is brought out by the provisions of Section 86 although the penalty of dismissal is taken away. Sub-section (5) of that section provides :

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

26. In *Lata Devi (Mali) Vs. Haru Rajwar*, , the Apex Court in paras 18 and 21 observed as follows :

"18. In *Inayatullah Khan v. Diwan Chand Mahajan* (1958) ELR (MP) 219 , where a nominated candidate was found to have been disqualified u/s 7(a) of the Act the question arose as to what had happened to the election as a result. It was contended that the margin of votes was small and that the result of the election

must be taken to have been materially affected because Nandlal, a disqualified candidate, got 8000 odd votes, which in the event of his not contesting would have gone to Mahajan. Evidence was led to show how the votes which went to Nandlal would have been divided and both sides claimed that if Nandlal had not contested the election, the votes would have gone to them. The Madhya Pradesh High Court observed that the evidence on this part of the case was exceedingly general and apart from the statement by the witnesses who came forward as to their opinion, there was nothing definite about it. All the evidence which had been brought to Court's notice was not decisive of the matter u/s 100 of the in view of the test laid down in Vashit Narain Sharma Vs. Dev Chandra and Others, . It can, therefore, be taken as settled that the party who wishes herein to get an election declared void has to establish by satisfactory evidence that the result of the poll had in fact been materially affected by the violation of Rule 10 (5) of the Rules. For doing this, it has to be demonstrated that the votes would have been diverted in such a way that the returned candidate would have been unsuccessful. In the instant case there was no evidence to demonstrate the returned candidate having derived any benefit from the change of symbol of the election petitioner. Murura Dasi, to whom the "bow and arrow" symbol was later allotted, was not the successful candidate. The election petitioner was required to show that such number of votes had gone in favour of the successful candidate instead of in favour of the petitioner, simply because of the change of symbol as would, without that number of votes, make the successful candidate unsuccessful. The petitioner, besides making bare statement, had not produced any other satisfactory evidence in support of such a proposition.

21. As was reiterated in Shiv Charan Singh Vs. Chandra Bhan Singh and Ors, , in the absence of any proof the result of an election cannot be held to be materially affected ; and it is not permissible in law to set aside the election of the returned candidate on mere surmises and conjectures. A decision in election petition can be given only on positive and affirmative evidence and not on mere speculation and suspicions, however strong they are. Indeed, in the instant case there is no such positive and affirmative evidence. Mere assertions by the election petitioner were not enough, nothing was alleged and proved against the successful candidate. There could be no proposition or contention that a candidate with a particular symbol would always be successful at the hustings or that a particular voter or a number of voters would always vote for a symbol irrespective of the candidature to whom it is allotted."

27. Whenever a petition is based on the grounds as set out u/s 100(i)(d)(iv) of the Act declaring the election to be void, there must be a clear and unambiguous allegation that the result of the election has been materially affected and in addition thereto, the petitioner should further show that it has been materially affected by the non-compliance with the provisions of Representation of People Act or Rules framed thereunder. Where the allegation is that the election has been conducted in violation of any provision of Constitution or the Act, it is necessary to state as to in what manner such violation has materially affected

the election of the returned candidate.

28. Throughout the entire fabric of the election petition, there is not even a single averment as to how and in what manner the election of the returned candidate is materially affected. Mere statement with regard to non-compliance of any provision of the Act or the Constitution does not automatically give an inference that the result has been materially affected.

29. In paragraph 28 of the election petition it has been averred that all the candidates who had filed their nominations and contested the election were qualified and the allotment of symbols had been made in accordance with the symbols order. There is no averment in the election petition that because respondent No. 4 was allotted symbol "Lotus" therefore the election was materially affected, or if any other candidate wanted Lotus symbol to be allotted to him but for want of which, the election of opposite party No. 4 has been materially affected. It has further not been demonstrated anywhere in the election petition, that as to how and in what manner the violation of the provisions as set out in paragraph 13 have materially affected the election of the returned candidate. Only a bald averment has been made in the said paragraph that there has been a flagrant, non-adherence and non-compliance of the constitutional provisions under Articles 13(2), 14, 19(1)(a), 19(4), 21, 81, 84, 102(1)(d) and 324 to 326 ; Sections 2(a), 2(e), 2(f), 4, 14, 30 to 37, 62, 79(d), 123(b) and 169 of the Representation of People Act and Rule 5 (1) of Rules, 1961. Mere citing of sections of a statute and Articles of the Constitution cannot be said to disclose a cause of action.

30. Article 13(2) lays down that the State shall not make any law which takes away or abridges the fundamental rights ; Article 14 prescribes the principle of equality; Article 19(1)(a) contemplates the right to freedom of speech and expression; Article 21 provides for protection of life and personal liberty ; Article 81 is in respect of composition of House of People and Article 84 is with regard to qualification for membership of Parliament while Article 102(1)(d) speaks about the disqualification for membership and Articles 324 to 326 pertain to election to the Parliament and Legislative Assembly.

31. It has not been stated or disclosed anywhere in the petition as to what is the violation and even if the said provisions have been violated, in what manner the said violation has materially affected the result of the election of the returned candidate.

32. Rule 5 of the Conduct of Election Rules, 1961 lays down the procedure by the Election Commission to be followed with regard to specification of symbols that may be chosen by the candidates at elections in Parliamentary or Assembly Constituencies.

33. Section 2(a), 2(e) and 2(f) of the Act defines "Elector" and "Political Party" ; Section 4 prescribes qualification of membership of the House of People" ; Section 14 talks about the notification for general election ; Sections 30 to 37

speaks about the nomination of candidates ; Section 62 lays down as to who has a right to vote; Section 79(d) talks about the electoral rights; Section 123(b) relates to corrupt practice and Section 169 confers the right to make Rules.

34. Again there is not a single averment in the election petition, as to with regard to violation of the aforesaid statutory provisions of the Act and if violated in what manner the same has materially affected the election of the returned candidate.

35. Thus, as would appear there is no statement of material fact which can be said to lead to a cause of action which can be tried by this Court in the present petition. From the cases referred to hereinabove and the discussion made the principle laid down by the Apex Court is that all the facts which are essential to clothe the petition with complete cause of action must be pleaded. Failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and thus will lead to rejection of the petition at the threshold. A petition which merely cites various sections of a Statute and Articles of the Constitution cannot be said to disclose a cause of action. Where the petition does not disclose any cause of action it has to be rejected.

36. I have also gone through the cases relied upon by the petitioner in support of his case and am of the view that they have no application insofar as the facts and circumstances of the case at hand are concerned.

37. Having regard to the pleadings made by the petitioner and also upon reading of the petition, as a whole, this Court is of the considered opinion that the election petition is completely bereft of material facts so as to disclose a cause of action. In such a situation the petition has to be rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings.

38. Thus, in view of propositions laid down by the Hon'ble Supreme Court on the subject and also in view of what has been discussed hereinabove, the application under Order VII, Rule 11 of the CPC read with Section 87(1) of the Representation of People Act, 1951 deserves to be allowed.

39. As a result, the application under Order VII, Rule 11 of the CPC read with Section 87(1) of the Representation of People Act, 1951 is hereby allowed. The election petition consequent thereto is dismissed.