

(2018) 09 MAN CK 0005

In the Manipur High Court

Case No : Miscellaneous Cases (Election Petition) No. 35 Of 2017 In Election
Petition No. 9 Of 2017

Nahakpam Indrajit Singh And Others

APPELLANT

Vs

Md. Amin Shah And Others

RESPONDENT

Date of Decision : 17-09-2018

Acts Referred:

Constitution Of India, 1950 — Article 32, 324
Code Of Civil Procedure, 1908 — Order 6 Rule 2, Order 6 Rule 4, Order 6 Rule 4A,
Order 7, Rule 1(e), Order 7 Rule 11, Order 7 Rule 11(a)
Representation People Act, 1951 — Section 8, 33A, 33B, 36, 36(2), 36(4), 80, 81,
81(1), 82, 83, 83(1)(a), 83(1)(b), 84, 100, 100(1), 100(1)(d)(iii), 100(1)(d)(iv), 125A
Indian Penal Code, 1860 — Section 120B, 380 Unlawful Activities (Prevention) Act,
1967 — Section 38, 39, 40

Citation : (2018) 09 MAN CK 0005

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : M. Devananda, Ph Sanajaoba, S. Biswajit Meite

Final Decision : Dismissed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri M. Devananda, learned Advocate assisted by Shri Ph. Sanajaoba, learned counsel appearing for the applicant. Shri S. Biswajit Meitei, learned counsel appearing for the principal respondent.

[2] This is an application filed by the applicant/ respondent No.1 praying for dismissal of the election petition being EP No. 9 of 2017 on the ground that it has been filed in violation of the provisions of Section 100 of the Representation People Act, 1951.

[3] The applicant is the respondent No.1 in the election petition and by this application being MC(EL.PET) No.35 of 2017, the applicant has raised an issue as regards the maintainability of the election petition filed by the principal

respondent to declare him as the returned candidate. According to the applicant, the principal respondent has not approached this Court in compliance with the provisions of Section 100 of the Representation of the People, Act 1951 to ventilate his grievances and rather, he has approached this Court violating the provisions mentioned therein.

[4] A reply has been filed by the principal respondent wherein a preliminary objection has been raised as regards the maintainability of the application itself on the ground that the same has been filed for nothing but to abuse the process of law by wasting the valuable time of this Court. It has been submitted by him that the election petition has been filed under Section 100 of the Representation of People Act, 1951 on the ground of improper acceptance of nomination paper of the applicant by affecting materially the election of the principal respondent. Since the cause of action has been clearly pleaded by the principal respondent, there is no reason at all to reject the election petition. The election petition has been filed in accordance with the provisions of the Representation of the People Act, 1951 as enumerated under Section 100 of the Act.

[5.1] According to the principal respondent, the material facts and particulars have been stated in para 4.5 to 4.9 of the election petition which are relevant for the present and are given as under (without the portion of marking of annexure):

"4.5 That, recently, it is found that one FIR Case being FIR No.77(3) 2013 City PS under section 38, 39, 40 UA (P) Act and 380/120-B IPC is pending against the respondent No.1 in City Police Station, Imphal and in connection with the FIR Case, the respondent No. 1 was arrested by the Police of City Police Station and produced before the Ld. Chief Judicial Magistrate/ Imphal West and remanded to police Custody. The respondent No.1 deliberately concealed the pendency of the FIR Case in the affidavit filed along with nomination paper before the Returning Officer of 4-Kshetrigao Assembly Constituency. The respondent No.1 filled up the affidavit in column No.(1) (a) of para No. 5 as "Not Applicable" and further the respondent No. 1 filled up the column No. (1) (b), (c), (d), (e) and (f) of para No. 5 as "N.A".

The respondent No. 1 has failed to furnish the detail information about the FIR Case being FIR No. 77(3) 2013 City PS under section 38,39, 40 UA(P) Act and 384/120-B IPC but the RO of 4-Kshetrigao AC had accepted the nomination paper of the respondent No.1 improperly. The petitioner has filed an application to the Superintendent of Police, Imphal West District, Manipur for directing the OC/ City PS to issue a certified copy of the said FIR Case. However, the copy of the said FIR Case has not been received by the petitioner till date.

4.6 That, in the affidavit along with nomination paper filed by the respondent No. 1 before the RO of 4-Kshetrigao AC for the election of 11th Manipur Legislative Assembly Election, 2017, the respondent No.1 had mentioned in the column No. (3), (4) (5) (Dependent) of para No. 4 as "NA". Whereas, the respondent No.1 has 3(three) children-2(two) daughters and 1(one) son born through his wife

namely Nahakpam (O) Rekha Devi and as such he failed to furnish the detail information in the affidavit along with nomination paper filed before RO of 4-Kshetrigao AC.

The respondent no. 1 had filled up in column No.(iv) of para No. 5 in respect of dependent No. 1,2 and 3 for payment of LIC policy and in respect of dependant No. 3 it was mentioned as "NIL" in the affidavit paper for the election to 10th Manipur Legislative Assembly 2012 from 9-Thangmeiband(Gen) AC filed by the respondent No. 1 before the R.O of 9-Thangmeiband(Gen) AC.

4.7. That, the respondent no. 1 had left the column no. 2 of para no. 7 in respect of the column of dependents as blank in the affidavit filed by him along with the nomination paper before the R.O. of the 4-Kshetrigao.

Further, the respondent no.1 had not filled up the area (total measurement in sq. feet) and also built up area (total measurement in sq. feet) and simply mentioned the same as "N.A" in respect of his column which is not appropriate. The respondent no. 1 had also left the columns viz; date of purchase in case of self acquired property, cost of land (in case of purchase) at the time of purchase and any investment on the land by way of development, construction etc. as blank in respect of his column in column no. (IV) of para no. 7B in the affidavit filed along with nomination paper.

In the affidavit filed by the candidate along with his nomination paper, the candidate is required to fill up all columns therein and no column can be left blank. Therefore, at the time of filing affidavit, the returning officer has to check whether all column of the affidavit filed with nomination paper are filled up. If not, the Returning Officer shall give the reminder to the candidate to furnish information against blank columns. If there is no information to be furnished against any item, appropriate remarks such as "NIL" or "Not Applicable" or "Not Known" as may applicable shall be indicated in such column. The candidate should not leave any column blank. If a candidate fails to fill the blanks even after reminder, the nomination paper will be liable to be rejected by the Returning Officer at the time of Scrutiny of nomination papers.

The R.O of 4-Kshetrigao A.C has accepted the said affidavit filed along with the nomination paper improperly.

4.8 That, the respondent no.1 had filled up the value of jewellery, bullion and valuable thing in respect of him and his spouse in column no. (VII) of para no.7 of part-A of the affidavit along with nomination paper filed by him before the R.O of 4-Kshetrigao A.C. However, the value of the one gold chain, 4 rings (40 sans) belonging to the respondent no 1 which mentioned as Rs.3,20,000/- and another one gold chain, one pair of ear ring and 4 rings (40 Sans) filled up in the column of the spouse which also mentioned as Rs.1,20,00/- are found different at the variation of Rs.2,00,000/- thereby creating a confusion upon the mind of innocent voters.

4.9. That, it is submitted that if the R.O. of 4-Kshetrigao A.C. had not accepted the nomination of the Respondent No. 1, the petitioner would have been declared as the Returned Candidate from 4-Kshetrigao A.C. The R.O. of 4-Kshetrigao A.C. improperly accepted the nomination of the Respondent no.1 in as much the respondent no.1 had suppressed or concealed the material facts in his Affidavit under Form 26 in that he failed to disclose his Criminal /FIR Case being FIR No. 77(3)2013 City P.S under Section 38,39,40 UPA Act. 384/120- B IPC in column No. 5(1) (a) of his affidavit dated 13-02-2017 under Form 26, Rule 4 A filed along with his nomination. Not only is that in para No.4 of part A of the same affidavit in column No.3, 4 and 5 the name of dependents also not disclosed. Again, in part A i.e. the details of assets, in column No. (vii) of para no. 7 of the same affidavit, the quantity of gold is mentioned but the value of the same is/ are not mentioned. As such, the respondent no.1 has suppressed the material facts in his affidavit dated 13-02-2017 which are required under the law."

[5.2] In response thereto, the applicant, in his written statement, has stated as under:

"7. That, with reference to para No. 4.5, the deponent denies the allegation and averment made therein.

7.1 The said FIR case being FIR No. 77(3) 2013 City PS under Section 38, 39, 40 UA (P) Act and 384/120-B IPC case had been closed vide an order dated 19.04.2014 passed in Cril Misc, Case No. 234 of 2014 by the Hon'ble Chief Judicial Magistrate, Imphal West, Manipur. Accordingly, the deponent had already been discharged from the said case and have nothing to do with the same at the time of filing his nomination in connection with the election. The allegation made by the petitioner against the deponent is misconceived, unfounded with wild allegation and he is liable to strict proof of the allegation made therein. As such, the petition is liable to be dismissed as not maintainable and defective.

8. That, with reference to para No. 4.6, the deponent denies the allegation and averment made therein. It is pertinent to mention here that, para No. 2 of the affidavit filed by the deponent in the 10th of the Manipur Legislative Assembly Election, 2012 from 9-Thangmeiband General Assembly Constituency, the said para No. 2 contents of details of PAN and status of filing of Income Tax return, in the said para No.2 of the affidavit the deponent mention his dependents No. 1 to 3 is hereby reflected as NIL in the column of Permanent Account Number, the financial year for which the last Income Tax Return has been filed, total income shown in the Income Tax Return(in Rupees).Whereas, in para no. 4 of the affidavit filed by the deponent in the 11th Manipur Legislative Assembly Election, 2017 from 4-Kshetrigao Assembly Constituency the said para no. 4 is hereby reproduced as "Details of Permanent Account Number (PAN) and status of filing of Income Tax return". In the said para No. 4 the deponent has written as N.A (Not Applicable) for all his 3 (three) dependents in the column of Permanent Account Number (PAN), the financial year for which the last Income Tax Return has been filed, and total shown in Income Tax Return (in Rupees). Hence, there

is no difference in the respective affidavit of the 10th Manipur Legislative Assembly Election, 2012 from 9- Thangmeiband Assembly Constituency and in the 11th Manipur Legislative Assembly Election, 2017 from 4-Kshetrigao Assembly Constituency in connection with the information sought for Permanent Account Number (PAN), the financial year for which the last Income Tax Return has been filed, and total income shown in Income Tax Return (In Rupees) for his 3 (three) dependents. Hence, the allegation made by the petitioner has no basis and is liable to be dismissed.

9. That, with reference to para No. 4.7, the deponent denies the allegation and averment made therein.

9.1 The deponent begs to submit that he could not find the column no. 2 of para No. 7 in the purported affidavit filed by him along with the nomination paper before the Returning Officer of the 4-Kshetrigao. The question of blank left by the deponent in the column of his dependents would not serve any purpose for cancelling the deponent as the return candidate of the 11th Manipur Legislative Assembly Election, 2017 from 4-Kshetrigao Assembly Constituency.

9.2 That, with reference to the column No. (iv) of para No. 7 B in the affidavit along with nomination paper, the deponent submit the said immovable property is a joint property jointly owned with his spouse. As such, the deponent in order to avoid repetition and confusion furnished the requisite details in the column of his spouse. The column which seems to leave blank appearing at page No. 56 of the petition is the continuation of the column No. (iv) of para No. 7 B appearing at page No. 55 of the petition.

9.3 The omission left in the column in the nomination paper will not serve any purpose for cancelling the return candidate in any manner of the 11th Manipur Legislative Assembly Election, 2017 from 4-Kshetrigao Assembly Constituency. Whereas, the R.O of 4-Kshetrigao Assembly Constituency has accepted the nomination paper of all the candidates in presence of the petitioner along with the other contesting candidates, and the petitioner has not raised any objection during the process of the nomination paper till scrutiny which as held on 16.02.2017. Hence, the allegation made by the petitioner against the deponent after losing the election has no tenable in the eyes of law.

10. That, with reference to para No. 4.8 of the Election Petition, the deponent denies the allegation and averment made therein. The deponent further submit that the different value of gold filed by the deponent in his affidavit is depend upon the quality and the year purchase by the parties. Hence, there is no question of confusion upon the minds of innocent voters.

[6] Before adverting to the rival contentions, this court deems it appropriate to examine the relevant provisions of the Representation of People Act, 1951. Section 80 provides that no election shall be called in question except by an election petition presented in accordance with the provisions of the Act. The jurisdiction is conferred upon the High Court to try an election petition. When the

election petition may be presented and who may present the election petition is provided in Section 81 of the Act. The persons to be joined as parties to the petition are specified in Section 82 of the Act and except those persons specified therein, there is no provision to get other persons including the Returning Officer, the ECI etc., joined as parties to the petition. Section 83 provides that an election petition shall contain a concise statement of the material facts on which the petitioner relies and in respect of any corrupt practice alleged to have been committed, full particulars thereof be given in the petition. The relief that may be claimed by the petitioner is provided in Section 84 of the Act. The grounds on which the election can be sought to be declared as void, are enumerated in Section 100 of the Act. In other words, an election can be called in question on the basis of any one of the grounds mentioned in sub-section (1) of Section 100 of the Act. In the present case, the election petition has been presented on the ground mentioned in sub-section (1)(d)(iii) & (iv) of Section 100 of the Act. Section 83 and 100 of the Act read 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.

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

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution [or this Act or the Government of Union Territories Act, 1963 (20 of 1963)]; or

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

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

(d) that the result of the election, in so far as it concerns a returned candidate,

has been materially affected -

(i) by the improper acceptance 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.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied -

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court] may decide that the election of the returned candidate is not void."

[7] The election petition filed under the provisions of Section 80 of the Act can be broadly categorised into two- one, an election petition filed on the ground of corrupt practice and two, an election petition filed on the ground that the result of the election has been materially affected by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act. Section 83(1)(a) which mandates that an election petition shall contain a concise statement of material facts, is common to both the categories of election petitions. So far as the first category is concerned, Section 83(1)(b) provides that the election petition shall set out full particulars of corrupt practice. Many of the cases in which election petitions have been filed, fall under the first category and the allegations are mainly against the returned candidate. That is the reason as to why the concise statement of material facts has become inevitable so that the returned candidate can understand the charge levelled against him and meet the same in his/ her defence. The requirement of setting out full particulars of corrupt practice is not there in respect of the second category for the simple reason that the corrupt practice is not the ground on which the election petition has been filed. As regards the second category, there are two aspects which need to be taken into consideration by the court while deciding the election petition. The first aspect relates to a situation where the allegations are not made against the returned candidate but against the officials who are involved in

the conduct of election. It may be noted that Section 82 of the Act talks about the persons to be joined as respondents but neither the officials who are involved in the conduct of election nor the ECI can be made as parties in the petition, as is evident from the various decisions rendered by the Hon'ble Supreme Court. The point that may arise for consideration by the court, relates to how the returned candidate will defend himself in respect of the allegations made against the officials. The second aspect relates to a situation where the officials or for that matter, the ECI are alleged to have not complied with the provisions of the Constitution or of this Act or of any rules or orders made under the Act while conducting the election but no one had raised any objection thereto, during the course of the election, with the result that the result of the election had been declared. This aspect is very important from a different perspective because the election can be declared as void for no fault of the returned candidate but of the officials of the ECI and in that event, it may tantamount to penalising the returned candidate with no remedy. So far as the instant election is concerned, it falls in the second category.

[8] The question that arises for consideration by this court, is as to whether the paragraphs of the election petition as detailed in para 5 hereinabove, disclose material facts so as to constitute a complete cause of action. If the answer is in the negative, the election petition is liable to be dismissed and if the answer is in the affirmative, the further question is as to whether the disclosure of the facts has materially affected the election result. It has been submitted by Shri M. Devananda, the learned counsel appearing for the applicant that the election petition does not contain material facts and consequently, it does not conform to the requirement of Section 100 of the Act. In order to support his contention, he has placed reliance on various decisions rendered by the Hon'ble Supreme Court. Firstly, in *Hari Shakar Jain Vs. Sonia Gandhi*, (2001) 8 SCC 233, the Hon'ble Supreme Court has held that it is clear from the conspectus of the provisions of the Act that jurisdiction to try an election petition has been conferred on the High Court. The ground for declaring an election to be void must conform to the requirement of Section 100 of the Act. In *Mangani Lal Mandal Vs. Bishnu Deo Bhandari*, (2012) 3 SCC 314, the Hon'ble Supreme Court held:

"11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has

been materially affected. The view that we have taken finds support from the three decisions of this Court in: (1) Jabar Singh v. Genda Lal; (2) L.R. Shivaramagowda v. T.M. Chandrashekar; and (3) Uma Ballav Rath v. Maheshwar Mohanty.

In Kalyan Singh Chouhan Vs. C.P Joshi, (2011) 11 SCC 786, the Hon'ble Supreme Court held that the party must plead the material fact and adduce evidence to substantiate the same so that the court may proceed to adjudicate upon that issue. In Shambhu Prasad Sharma Vs. Charandas Mahant, (2012) 11 SCC 390, the Hon'ble Supreme Court held:

"16. The directions issued by this Court, and those issued by the Election Commission make the filing of an affidavit an essential part of the nomination papers, so that absence of an affidavit may itself render a nomination paper non est in the eye of the law. But where an affidavit has filed by the candidate and what is pointed out is only a defect in the format of the affidavit or the like, the question of acceptance or rejection of the paper shall have to be view in the light of sub-section (4) of Section 36 of the Act which reads:

36.(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

In Ram Sukh Vs. Dinesh Aggarwal, (2009) 10 SCC 541, the Hon'ble Supreme Court held:

"20. 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. Balkrishna and Udhav Singh v. Madhav Rao Scindia wherein it was observed that the omission of a single material fact would lead 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."

In L.R Shivaramagowda & ors Vs. T.M Chandrashekar (dead) by LRs, (1999) 1 SCC 666, the Hon'ble Supreme Court has held that in order to declare an election to be void under Section 100(1)(d)(iv), it is absolutely necessary for the election petitioner to plead that the result of the election in so far as the returned candidate had been materially affected by the alleged non-compliance with the provisions of the Act or of the rules.

[9] On the other hand, Shri S. Biswajit Meitei, the learned counsel appearing for the principal respondent has submitted that materials facts have been stated in the election petition and that non-compliance with the provisions of the Act, in the sense that the acceptance of the nomination paper by the Returning Officer with the columns in the accompanying affidavit being left blank. He has relied

upon various decisions of the Hon'ble Supreme Court. The first being the one rendered in *Mohan Rawale Vs. Damodar Tatyaba & ors*, (1994) 2 SCC 392 wherein the Hon'ble Supreme Court held:

"10. We may take up the last facet first. As Chitty, J. observed, 'There is some difficulty in affixing a precise meaning to' the expression 'discloses no reasonable cause of action or defence'. He said: 'In point of law ... every cause of action is a reasonable one.' (See *Republic of Peru v. Peruvian Guano Co.*) A reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. But so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are quite often more known than clearly understood. It does introduce another special demurrer in a new shape. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. The distinctions among the ideas of the 'grounds' in Section 81(1); of 'material facts' in Section 83(1)(a) and of 'full particulars' in Section 83(1)(b) are obvious. The provisions of Section 83(1)(a) and (b) are in the familiar pattern of Order VI, Rules 2 and 4 and Order 7, Rule 1(e) Code of Civil Procedure. There is a distinction amongst the 'grounds' in Section 81(1); the 'material facts' in Section 83(1)(a) and 'full particulars' in Section 83(1)(b).

In *Kuldeep Singh Pathania Vs. Bikram Singh Jaryal*, (2017) 5 SCC 345, the Hon'ble Supreme Court held:

"11. In *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express*, this Court has dealt with a similar issue. To the extent relevant, para 12 reads as follows: (SCC p. 115)

"12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint."

In *Ashraf Kokkur Vs. K.V Abdul Khader*, (2015) 1 SCC 129, the Hon'ble Supreme Court held:

"22. After all, the inquiry under Order 7 Rule 11(a) CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression "material facts" plainly means facts pertaining to the subject-matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial [see *Philipps v. Philipps* (QBD p. 133); *Mohan Rawale v. Damodar Tatyaba* (SCC p. 399, para 16)].

"24. In *V.S. Achuthanandan v. P.J. Francis*, a three-Judge Bench of this Court has taken the view that only because full particulars are not given, an election petitioner is not to be thrown out at the threshold. To quote para 15: (SCC p. 747)

"15. ... An election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon, and in the light of the special circumstances of the case."

Again at para 16 of *V.S. Achuthanandan* case, it was held that: (SCC p. 748)

"16. ... So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood. ... the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars."

[10] Although India is considered to be the largest democratic country in the world, a need to review the provisions of the Act so as to make the electoral process more fair, transparent and equitable, was felt at one time and accordingly, the Law Commission of India was requested to undertake a comprehensive study. The Law Commission of India submitted its report but no action was taken by the successive governments which prompted the Assn. for Democratic Reforms to approach the High Court of Delhi for directions to implement the recommendation. The Hon'ble High Court while disposing of the writ petition, issued certain directions and when the matter came up before the Hon'ble Supreme Court, two issues arose for consideration- one, whether the Election Commission of India is empowered to issue directions as ordered by the

High Court and two, whether a voter has a right to get information, such as assets, qualification and involvement in offence etc. of the candidates. In *Union of India Vs.*

Association for Democratic Reforms 7 anr., (2002) 5 SCC 294, both the issues were decided in the affirmative with the result that the Election Commission of India was directed to call for information by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidates seeking election to Parliament or State Legislature as a necessary part of nomination paper. Subsequently, the Act was amended whereby Section 33-A and 33-B came to be inserted therein. This decision has been reiterated in *Peoples Union for Civil Liberties & anr. Vs. Union of India & anr.*, (2003) 4 SCC 399. In *Resurgence India Vs. Election Commission of India*, (2014) 14 SCC 189, the Hon'ble Supreme Court held:

"18. It is clear that the Returning Officers derive the power to reject the nomination papers on the ground that the contents to be filled in the affidavits are essential to effectuate the intent of the provisions of the RP Act and as a consequence, leaving the affidavit blank will in fact make it impossible for the Returning Officer to verify whether the candidate is qualified or disqualified which indeed will frustrate the object behind filing the same. In concise, this Court in *Shaligram* evaluated the purpose behind filing the proforma for advancing latitude to the Returning Officers to reject the nomination papers.

In *Krishnamoorthy Vs. Sivakumar & ors*, (2015) 3 SCC 467, the Hon'ble Supreme Court held:

"94. In view of the above, we would like to sum up our conclusions:

94.1. Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

94.2. When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

94.3. Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act. In *Kisan Shankar Kothare Vs. Arun Dattatray Sawant & ors.*, (2014) 14 SCC 162, the Hon'ble Supreme Court held:

"5. The meaning and scope of these Guidelines came up for discussion before this Court in *Resurgence India v. Election Commission of India*. That judgment was rendered in a writ petition filed under Article 32 of the Constitution of India for issuance of specific directions to effectuate meaningful implementation of the judgments in *Assn. for Democratic Reforms, People's Union for Civil Liberties* and also to direct the Election Commission to make it compulsory for the Returning Officer to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blank particulars. This petition, thus was filed taking note of the practice which had started prevailing, namely, many candidates were leaving some of the columns blank in their affidavits, thereby omitting to provide the required information. As per the petitioner in that case, in such an eventuality the Returning Officer should reject the nomination whereas the Union of India pleaded that it should be treated on a par with filing false affidavits and the candidate filing such an affidavit should be prosecuted under Section 125-A of the Act. The Court took note of the provisions of Sections 33-A, 36 and 125-A of the Act and thereafter referred to the earlier three-Judge Bench judgment of this Court in *Shaligram Shrivastava v. Naresh Singh Patel*, wherein the Court had discussed the power of rejecting the nomination paper by the Returning Officer of a candidate filing the affidavit with particulars left blank. The relevant discussion in this behalf is in paras 17 and 18 of the said judgment, which read as under: (*Resurgence India case*, SCC p. 198)

"17. Although, the grounds of contention may not be exactly similar to the case on hand but the reasoning rendered in that verdict will come in aid for arriving at a decision in the given case. In order to arrive at a conclusion in that case, this Court traversed through the objective behind filing the proforma. The proforma mandated in that case was required to be filed as to the necessary and relevant information with regard to the candidate in the light of Section 8 of the RP Act. This Court further held that at the time of scrutiny, the Returning Officer is entitled to satisfy himself whether the candidate is qualified and not disqualified, hence, the Returning Officer was authorised to seek such information to be furnished at the time or before scrutiny. It was further held that if the candidate fails to furnish such information and also absents himself at the time of the scrutiny of the nomination papers, then he is obviously avoiding a statutory inquiry being conducted by the Returning Officer under Section 36(2) of the RP Act relating to his being not qualified or disqualified in the light of Section 8 of the RP Act. It is bound to result in defect of a substantial character in the nomination. This Court further held as under: (*Shaligram case*, SCC p. 188, para 17)

?17. In the case in hand the candidate had failed to furnish such information as sought on the proforma given to him and had also failed to be present personally or through his representative at the time of scrutiny. The statutory duty/ power of Returning Officer for holding proper scrutiny of nomination paper was rendered nugatory. No scrutiny of the nomination paper could be made under Section 36(2) of the Act in the light of Section 8 of the Act. It certainly rendered

the nomination paper suffering from defect of substantial character and the Returning Officer was within his rights in rejecting the same.'

18. It is clear that the Returning Officers derive the power to reject the nomination papers on the ground that the contents to be filled in the affidavits are essential to effectuate the intent of the provisions of the RP Act and as a consequence, leaving the affidavit blank will in fact make it impossible for the Returning Officer to verify whether the candidate is qualified or disqualified which indeed will frustrate the object behind filing the same. In concise, this Court in Shaligram evaluated the purpose behind filing the pro forma for advancing latitude to the Returning Officers to reject the nomination papers."

[11] As has been held by the Hon^{ble} Supreme Court in a catena of decisions including those referred to hereinabove, what particulars could be said to be material facts, would depend upon the facts of each case and no rule of universal application can be laid down. Therefore, the nature and content of material facts would differ from one case to another and in other words, the material facts to be stated in respect of an election petition filed on the ground of corrupt practice, would be different from that of the election petition filed on any other grounds. In the present case, the election petition has been filed on the grounds mentioned in Section 100 (1) (d) (i) & (iv) of the Act. This petition being filed not on the ground of corrupt practice, it does not require to state anything about the conduct of the returned candidate but it must definitely state as to how the nomination of the returned candidate has been improperly accepted contrary to the provisions of the Constitution, of the Act and the rules made thereunder. In terms of the law laid down by the Hon^{ble} Supreme Court, the election petition as a whole is to be read to find out if it contains a concise statement of material facts disclosing a cause of action. According to the principal respondent, the materials facts have been stated in para 4.5 to 4.9 of the petition, the gist of which are inter-alia that that the applicant, in his affidavit filed along with the nomination paper, has failed to furnish the information as regards the case under FIR No.77(3)2013 City P.S under Section 38, 39, 40 UA(P) Act Section 384/120-B IPC; that he has failed to furnish information in respect of the columns 3, 4 & 5 of para 4; the column (iv) of para 5 and the column 2 of para 7 and that he has left the column (iv) of para 7 B blank. In the affidavit filed with the nomination paper, every candidate is required to fill up all the columns which shall not be left blank. Accordingly, it has been submitted that the Returning Officer has accepted improperly the nomination paper of the applicant with the affidavit wherein details as alleged by the principal respondent, have not been furnished and had the nomination paper not been accepted by the Returning Officer, the principal respondent ought to have been declared as the returning candidate. On the other hand, it has been submitted by the learned counsel appearing for the applicant that the said criminal case was not pending at the time of filing the nomination and therefore, the details thereof were not required to be mentioned in the affidavit. As regards various columns, the details have been provided in the respective columns and so far as the columns being left blank are concerned, it

has been submitted that there are no information to be provided therein, as the same have already been provided in the other relevant columns. After going through the averments made in the election petition as a whole, it cannot be said that the petition does not contain a concise statement of material facts. In fact, it does disclose a cause of action. So long as the petition discloses some cause of action or raises some questions fit to be decided by the court, the mere fact that the case is weak and is not likely to succeed, is no ground for dismissing it. The submission of the learned counsel appearing for the applicant, made hereinabove, may have been correct but it will be known only after the trial because the fact remains that admittedly certain columns have been left blank in the affidavit. Therefore, the trial can continue on merits and it is a different matter if the material facts as stated in the petition, are not sufficient to prove the allegations. Whether or not the principal respondent is able to prove the allegations, is a matter of evidence which can be considered only at the stage of trial, as has been held by the Hon?ble Supreme Court. In view of the above, this court is of the view that there is substantial compliance with the provisions of Section 83(1)(a) of the Act and that the election petition cannot be thrown out at this stage. Thus, the application is devoid of any merit and accordingly, the same is liable to be dismissed by this court.

[12] For the reasons stated hereinabove, the instant application is dismissed.