

(2005) 02 AP CK 0003

In the Andhra Pradesh High Court

Case No : Appl. No's. 1064 and 1065 of 2004 in EP No. 2 of 2004 and Election Petition No. 2 of 2004

Pendyala Venkata Krishna Rao

APPELLANT

Vs

Pothula Rama Rao and Others

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 11(1), Order 6 Rule 16, Order 6 Rule 17, Order 6 Rule 2, Order 7 Rule 11(1)
Representation of the People Act, 1950 — Section 16, 17, 18
Representation of the People Act, 1951 — Section 1, 100, 100(1), 169, 199(1)

Citation : (2005) 3 ALD 47

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : G. Sudha, for the Election Petitioner and Respondent No. 1 and M.V. Durga Prasad, for Respondent No. 1, for the appearing parties; Government Pleader for General Administration for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

V. Eshwaraiah, J.—The Election Petition No. 2 of 2004 has been filed by the petitioner Pothula Rama Rao, who is an elector in Kovvur Legislative Assembly Constituency. He is the sympathizer and supporter of Indian National Congress, a registered and recognized political party. The first respondent Pendya Venkata Krishna Rao is the elected candidate from No. 72 Kovvur Assembly Constituency of Andhra Pradesh State Legislative Assembly, set up by the Telugu Desam Party (in short TDP). The second respondent is the Returning Officer of the said Constituency. The third respondent is the District Election Officer. The parties herein are referred to as they are arrayed in the Election Petition.

2. The first respondent filed Application No. 1064 of 2004 under Order VI Rule 17 of CPC to strike off all the proceedings of Paras 8 to 11 in the Election Petition. Application No. 1065 of 2004 is filed under Order VII, Rule 11(1)(a) of Civil

Procedure Code, read with Section 83 of Representation of Peoples Act, 1951 to reject the Election Petition.

3. As per the averments in the Election Petition; the elections for the aforesaid constituency to the Legislative Assembly of the State of Andhra Pradesh were held on 26-4-2004 and seven candidates contested for the membership of the Assembly from the said constituency. They are: (1) Govinda Rao (Korni), (2) S. Rao (Geddam), (3) Veerraju (Gelam), (4) Venkata Krishna Rao (Pendyala), (5) Venkata Ramanaiah (Jelly), (6) Venkateswara Rao (Kommireddy) and (7) Veshnu Murthy (Veeram Setty). The first, third, sixth and seventh candidates contested the election as independents. The second candidate was set up by the Indian National Congress. The fourth candidate was set up by the TDP, a registered and recognized State Party. The fifth candidate was set up by the Bahujana Samaj Party, a registered and unrecognized party in Andhra Pradesh State.

4. Govinda Rao polled 895 votes, S. Rao polled 63,988 votes, Veerraju polled 758 votes, Venkata Krishna Rao polled 65,329 votes, Venkata Ramaiah polled 2822 votes, Venkateswara Rao polled 1010 votes and Vishnu Murthy polled 566 votes. On 11-5-2004 Venkata Krishna Rao was declared to have been elected, having secured a majority of 1331 votes over the Congress candidate.

5. The grounds on which the Election Petition is filed to declare the election of the first respondent as void are mentioned in Paras 8 to 11 only, which are extracted below:

"8. It is submitted that one Sri Atchuta Ramaiah (Pendyala) submitted a nomination paper to the 2nd respondent herein within the time fixed for making nominations i.e., 7-4-2004, having been fixed as the last date for making nominations. His nomination has been improperly rejected by the 2nd respondent on 8-4-2004, on the untenable ground that he was a dummy or substitute candidate set up by the Telugu Desam Party and that the nomination of the main candidate Venkata Krishna Rao was accepted. The 2nd respondent ought to have accepted the nomination of Atchuta Ramaiah. The concept of dummy candidate is not provided in the Representation of People Act, 1951. The ground on which the candidature of Sri Atchuta Ramaiah was rejected is not one of the grounds stipulated under the Representation of Peoples Act including those specified u/s 36 of Representation of Peoples Act, 1951. No power of subordinate legislation was conferred by the Central Government u/s 169 of Representation of Peoples Act, 1951 to make Rules in regard to additional ground for rejection of nomination paper. 1951 Act did not empower the Government or the Election Commission of India to issue either a general order or special order prescribing any additional ground for rejection of nomination paper. In any event there is no valid law empowering such ground for exclusion. For this improper rejection alone, the election of 1st respondent is liable to be declared as null and void u/s 100(1)(c) of 1951 Act, the election not having conducted according to law.

9. It is submitted that Section 18 of the Representation of Peoples Act, 1950

mandates that no person shall be entitled to be registered in the electoral roll for any constituency, more than once. First respondent was registered in the general election roll for No. 72, Kovvur Assembly Constituency at Sl.No. 797 of Part No. 50 bearing Identity Card No. A.P.080720171487 and also at Sl.No. 802 of the same Part bearing Identity Card No. CKJ 2421014. In the nomination paper delivered by the 1st respondent u/s 33 of 1951 Act, the fact that he had two electoral roll numbers was suppressed. u/s 33(4) of the same Act, the 2nd respondent has to be satisfied that the name and electoral roll number of the candidate as entered in the nomination paper are the same as those entered in the electoral roll. u/s 36(2)(b) of the Act, the 2nd respondent ought not to have accepted the nomination paper of 1st respondent for having not been completed in the prescribed form giving all the details. The 2nd respondent ought to have rejected the nomination paper of 1st respondent. As the non-compliance with the provisions of Section 36(2)(b) read with Section 33 of 1951 Act, the result of the election insofar as it concerns the 1st respondent has been materially affected within the meaning of Section 199(1)(d)(iv) read with Section 100(1)(d)(i) of 1951 Act.

10. It is submitted that Venkata Ramanaiah (Jelly) was set up by Bahujan Samaj Party, a political party not recognized in the State of Andhra Pradesh. The election is also vitiated by the wrong acceptance of his nomination. His nomination paper was subscribed by only one proposer. The said nomination paper ought to have been subscribed by ten proposers being the electors of the constituency as enjoined by the first proviso to Section 31(1) of 1951 Act. The 2nd respondent ought to have rejected the said nomination paper but he accepted the same. The said Venkata Ramanaiah belongs to a Scheduled Caste. A total number of 2822 voters belonging to Scheduled Caste to which the said Ramanaiah belonged voted for him. In his absence, those voters would have voted for the Congress Candidate Sri G.S. Rao. Thus and in any event, the non-compliance with the provisions of Section 33 read with Section 36 materially affected the result of the elections insofar as it concerned 1st respondent within the meaning of Section 199(1)(d)(iv) read with Section 100(1)(d)(i) of 1951 Act. First respondent would have got less votes than the votes of the Congress candidate.

11. It is submitted that the act of preparing the list of contesting candidates containing the names, in exercise of the jurisdiction vested in 2nd respondent by Section 38(1) of 1951 Act, in any other order than the Alphabetical Order is an illegal practice committed by the 2nd respondent with the intention of injuring other candidates and giving an electronic advantage to the 1st respondent and also making the names of the 1st respondent and Venkata Ramanaiah (who unofficially retired from contest in favour of the 1st respondent) to appear conspicuous in the ballot paper. The list of contesting candidates published by 2nd respondent u/s 38(1) of 1951 Act is in the following order.

(a) Venkata Ramanaiah (b) Venkata Krishna Rao (c) S. Rao, (d) Govinda Rao (e)

Vishnu Murthy (f) Veerraju (g) Venkateswara Rao, whereas the Alphabetical Order is (a) Govinda Rao (b) S. Rao (c) Veerraju (d) Venkata Krishna Rao (e) Venkata Ramanaiah (f) Venkateswara Rao (g) Vishnu Murthy. This misprinting of the names of the candidates in wrong compartments of the ballot paper amounts to non-compliance with the provisions of law, within the meaning of Section 1(d) (iv) of 1951 Act which materially affected the result of the election insofar as it concerns the 1st respondent. The Congress candidate would have secured a majority over the Telugu Desam Candidate".

6. These two applications are filed while denying the allegations made in the Election Petition having been absolutely false and untenable and the said allegations are too vague, bald and devoid of material particulars and hence incapable of being answered. The election petition does not disclose any cause of action and hence liable to be rejected without prejudice to the rights of the elected candidate and while reserving his right to file a separate counter in the election petition if necessary after disposal of these petitions.

7. The said election petition is filed assailing the election of the first respondent under Sections 100(1)(c), 100(1)(d)(i) and 100(1)(d)(iv) of the Representation of Peoples Act, 1951 (herein after referred to as the Act, 1951). In Para 8 of the election petition it is alleged that the nomination paper of Pendyala Atchuta Ramaiah was improperly rejected by the second respondent on the ground that he was a dummy or substitute candidate set up by TDP and the nomination of the main candidate Venkata Krishna Rao (first respondent) was accepted. The concept of the dummy candidate is not provided in the Act, 1951. The ground on which the candidature of Atchuta Ramaiah was rejected is not one of the grounds stipulated under the Act, 1951 including those specified u/s 36 of the Act, 1951.

8. It is stated by the elected candidate that the said Para 8 of the election petition does not disclose full particulars as to which are how the situations contemplated by Section 36 of the Act, 1951 are applicable to this election petition and the allegations are vague, evasive and inadequate in material particulars and the said Pendyala Atchuta Ramaiah himself is not impleaded as one of the party as respondent to the election petition and no document is filed to show that the rejection was on the ground as alleged by the petitioner in Para 8.

9. On the other hand, the election petitioner by way of a counter to the said petitions stated that the rejection of the nomination paper of Pendyala Atchuta Ramaiah by the Election Officer is quite extraneous to the provisions of Section 36 of the Act 1951 and therefore, the question of election petitioner not disclosing full particulars as to how the grounds contemplated by Section 36 of the Act were applicable to the election petition does not arise. The order of rejection is endorsed by the Returning Officer on the nomination paper, which forms part of the election record, which is in possession of the Returning Officer. Hence, the Returning Officer has to produce the election records and deliver it to the Court and as the certified copies will not be furnished to the election

petitioner, the said document was not filed and the said document does not come under Order VII Rule 14(1) of Civil Procedure Code. It comes under the purview of Order VII Rule 14(2) of the Civil Procedure Code. Non-joinder of Atchuta Ramaiah as a party to the proceedings does not amount to nondisclosure of one of the facts that constitute cause of action. In the instant case, the petitioner is only claiming to declare the election of the returned candidate as void and there is no further declaration sought for that defeated Congress candidate has been duly elected and therefore, the contesting candidates are not necessary parties as per Section 82(a) of the Act, 1951. Further, Atchuta Ramaiah is not all a contesting candidate as per the list of the contesting candidates prepared u/s 38 of the Act, 1951 and therefore, he is not a necessary party to the election petition.

10. The election of the first respondent was sought to be declared as null and void on the grounds mentioned in Para 8 u/s 100(1)(c) of the Act on the ground that the election has not been conducted according to law. The relevant grounds mentioned u/s 100 of the Representation of the Peoples Act, 1951 for declaration of the election to be void, which are relevant to the present election petition are extracted below:

"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) 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 the improper acceptance or any nomination, or

(ii)

(iii)

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

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

11. If any nomination has been improperly rejected, then it will be a ground u/s 100(1)(c) for declaring the election to be void. Therefore, the question that has to be considered as to whether the nomination of Pendyala Atchuta Ramaiah was improperly rejected. It is not stated as to how the nomination papers filed by Pendyala Atchuta Ramaiah were valid. No material particulars have been furnished as regards the validity of the nomination papers filed by Pendyala Atchuta Ramaiah. Even according to the averments in Para 8, the first

respondent is the main candidate set up by the TDP whose nomination was accepted as the candidate set up by the TDP. It is not stated whether the candidature of Pendyala Atchuta Ramaiah was set up by the TDP. If the candidature of Pendyala Atchuta Ramaiah is not set up by any recognized political party, it shall not be deemed to be duly nominated for election from the constituency unless the nomination paper is subscribed by 10 proposers being electors of the constituency as per the proviso to Section 33(1) of the Act, 1951.

12. The Returning Officer and the District Election Officer filed a counter in the election petition as regards to the rejection of the candidature of Pendyala Atchuta Ramaiah, stating that, Pendyala Atchuta Ramaiah filed his nomination subscribed by a single proposer, stating himself to be a candidate set up by the TDP. But, the TDP issued "B" form in favour of the first respondent in the election petition as its official candidate and mentioned the name of Pendyala Atchuta Ramaiah as a substitute to step into the place of approved candidate in case the nomination of the approved candidate being rejected on scrutiny. Once the candidature of the approved candidate is accepted on scrutiny, the substitute candidate cannot be considered as a candidate set up by the TDP and his nomination deserves to be rejected on the ground of it not being subscribed by 10 proposers to remain in the fray as an independent. Hence, it is stated that the Returning Officer acted correctly, duly rejecting the nomination of Pendyala Atchuta Ramaiah.

13. Therefore, the question that arises as to whether the nomination of Pendyala Atchuta Ramaiah has been improperly rejected is only a pure question of law which can be decided without there being any issue and without any evidence to be adduced, based on the material facts averred in the election petition.

14. The only averment made in the election petition is that the nomination of Pendyala Atchuta Ramaiah was improperly rejected by the second respondent. Nothing has been stated about the validity of the nomination of Pendyala Atchuta Ramaiah. No material particulars have been furnished to decide the question as to how the nomination of Pendyala Atchuta Ramaiah is valid. The only averment that has been made is that the nomination of Pendyala Atchuta Ramaiah was rejected on the concept that he was a dummy candidate which is not provided in the Act, 1951 and the said rejection is not one of the grounds stipulated under the Act, including u/s 36 of the Act, 1951.

15. It is not the case of the petitioner that the nomination of Pendyala Atchuta Ramaiah was set up by the TDP and that his nomination was subscribed by 10 proposers. In the absence of these averments, it cannot be said that how the nomination of Pendyala Atchuta Ramaiah is valid nomination. u/s 33(1) of the Act, 1951, a candidate either in person or by his proposer is entitled to file the nomination before the Returning Officer in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. If the candidate is not set up by a recognized political party, it shall not be deemed to be duly nominated for election, unless the said nomination is subscribed by 10 proposers

being electors of the constituency.

16. In the absence of any specific averment in Para 8 that Pendyala Atchuta Ramaiah is a candidate set up by the TDP, his nomination paper has to be subscribed by 10 proposers being electors of the constituency as per proviso 33 of the Act, 1951. Admittedly, there was no objection on the date of scrutiny of the nominations u/s 36 of the Act, 1951. The nomination of Pendyala Atchuta Ramaiah along with others were taken up for scrutiny on his own motion by the Returning Officer and rejected the nomination of Pendyala Atchuta Ramaiah on the ground that the said nomination was not subscribed by 10 proposers being electors of the constituency to remain in the fray as an independent candidate.

17. The TDP set up the candidature of the first respondent as its official candidate and mentioned the name of Pendyala Atchuta Ramaiah as a substitute to step into the place of approved candidate in case the nomination of the approved candidate being rejected on scrutiny. Once the candidature of the approved candidate is accepted on scrutiny, the substitute candidate cannot be considered as candidate set up by TDP and therefore, the candidature of Pendyala Atchuta Ramaiah was rightly treated as an independent and it was not subscribed by 10 proposers, the said nomination was properly rejected. Therefore, I am of the opinion that Para 8 of the election petition does not disclose the cause of action to decide the issue as to how the nomination of Pendyala Atchuta Ramaiah was improperly rejected in the absence of any specific material facts.

18. It is not in dispute that the Order VII Rule 11 of CPC is applicable to the election petitions and failure to disclose the cause of action to decide the issue about the improper rejection of the nomination of Pendyala Atchuta Ramaiah, the Court is empowered to struck out the unnecessary, frivolous and vexatious pleadings under Order VI Rule 16 of the Civil Procedure Code. No doubt, any elector is entitled to file the election petition, calling in question any election of the elected candidate declaring his election to be void u/s 100(1)(c) if there is any improper rejection of any nomination. Though the petitioner has not made Pendyala Atchuta Ramaiah as a party to the election petition, he is entitled to file the election petition for declaration of the election of the first respondent to be void, if he pleads and proves that the nomination of Pendyala Atchuta Ramaiah is improperly rejected.

19. u/s 83 of the Act, 1951, an election petition shall contain a concise statement of the material facts on which the petitioner relies. The material facts required to be stated are those facts, which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the CPC as decided by the Apex Court in the case of Hari Shankar Jain Vs. Sonia Gandhi, .

20. For the aforesaid reasons, I am of the opinion that Para 8 of the election

petition does not contain the concise statement of the material facts to decide the question as to how the nomination of Pendyala Atchuta Ramaiah was improperly rejected and therefore, the said averment made in Para 8 of the election petition does not disclose the cause of action and the averment made in Para 8 of the election petition is nothing but a frivolous and fictitious one accordingly, Para 8 of the election petition is liable to be struck off.

21. The other grounds on which the petitioner questioned the election of the first respondent to declare his election to be void in Paras 9, 10 and 11 are under Sections 100(1)(d)(i) and 100(1)(d)(iv) of the Act i.e., for improper acceptance of the nomination of the first respondent and for non-compliance of the provisions of the Act and the orders made thereunder. In Para 10 of the election petition, the ground is the improper acceptance of Venkata Ramanaiah's nomination set up by the Bahujana Samaj Party on the ground that the said political party is not a recognized party in the State of Andhra Pradesh. The last but not the least ground that was averred in Para 11 of the election petition is that the preparation of the list of contesting candidates was not made in accordance with Section 38(1) of the Act, 1951.

22. The ground on which the election of the first respondent is sought to be declared as void u/s 100(1)(d)(i) and 100(1)(d)(iv) even if they are proved, they must lead that the result of the election of the elected candidate has been materially effected. Mere improper acceptance of nomination will not give rise to declare the election of the returned candidate as void unless the election of the returned candidate has been materially effected by reason of improper acceptance of any nomination. Similarly, by mere non-compliance of any of the provisions of the Constitution of India or the Representation of Peoples Act or the Rules or Orders made under the Act will not give rise to declare the election of the returned candidate by reasons of such non-compliance, unless the election of the returned candidate has been materially effected. Therefore, it is just and necessary for the election petitioner to furnish the material facts, how the said improper acceptance of any nomination or the non-compliance of the provisions u/s 100(1)(d)(iv) materially effected the result of the returned candidate.

23. In Para 9 it is stated that u/s 18 of the Act, 1950 no person shall be entitled to be registered in the electoral roll for any constituency more than once. The first respondent was registered in the general election roll for No. 72 Kovvur Assembly Constituency at Sl.No. 797 of Part No. 50 bearing Identity Card No. A.P.080720171487 and also at Sl.No. 802 of the same Part bearing Identity Card No. CKJ 2421014. In the nomination paper delivered by the first respondent u/s 33 of the Act, 1951 the fact that he had two electoral roll numbers was suppressed. u/s 33(4) of the Act, 1951, the second respondent has to satisfy that the name and electoral roll number of the candidate as entered in the nomination paper are the same as those mentioned in the electoral roll. u/s 36(2) (b) of the Act, 1951, the second respondent ought not to have accepted the nomination paper of the first respondent for having not been completed in the

prescribed form giving all the details. The second respondent ought to have rejected the nomination of the first respondent and therefore for non-compliance of the provisions of Section 36(2)(b) read with Section 33 of the Act, 1951, the result of the election of the first respondent has been materially effected within the meaning of Section 100(1)(d)(iv) and 100(1)(d)(i) of the Act, 1951.

24. There is no dispute that the name of the first respondent was entered in the list of the electoral roll at Part No. 50 of No. 72 Kovvur Assembly Constituency at Sl.Nos. 797 and 802 and the nomination paper of the first respondent was accepted by the second respondent. The question that arises as to whether there is any improper acceptance of the nomination of the first respondent and whether such acceptance has been materially effected the result of the election.

25. u/s 16 of the Representation of the Peoples Act, 1950, a person shall be disqualified for registration in an electoral roll if he is not a citizen of India and if he is of unsound mind and if he is disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections. u/s 17 of the Act, 1950, no persons shall be entitled to be registered in the electoral roll for more than one constituency. u/s 18 of the Act, 1950, no person shall be entitled to be registered in the electoral roll for any constituency more than once.

26. Admittedly, the name of the first respondent was registered in the electoral roll of the said constituency more than once. As per Section 5(c) of the Act, 1951, an "elector" of any Assembly Constituency is qualified to be chosen as a member of Legislative Assembly. "Elector" is defined u/s 2(e) of the Act, 1951 as follows:-

"elector" in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and whose is not subject to any of the disqualifications mentioned in Section 16 of the Representation of the People Act, 1950".

Therefore, the disqualifications to be treated as an elector are only mentioned u/s 16 of the Act 1950. Admittedly, the first respondent do not incur any disqualifications as per Section 16 of the Act, 1950. The only averment of the petitioner is that the first respondent is not entitled to be registered in the electoral roll of the same constituency more than once and therefore, there is a prohibition in getting registered in the electoral roll more than once and it is a disqualification. Merely because an elector registered his name at more than one place in the same constituency contrary to Section 18 of the Act, 1950, it cannot be a disqualification to treat him as an elector u/s 2(e) of the Act, 1951. If that be so, whether the Returning Officer improperly received the nomination of the first respondent for violation of Section 100(1)(d)(i) of the Act, 1951.

27. u/s 33(4) of the Act, 1951, the Returning Officer shall satisfy himself that the names in the electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. As

per the proviso to subsection (4) of Section 33 of the Act, 1951, no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall effect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood and the Returning Officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be over looked.

28. u/s 36(2) of the Act, 1951, the Returning Officer shall examine the nomination papers and shall decide all the objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the grounds that if the said candidate is not qualified or disqualified for being chosen to fill the seat under the provisions of Articles 84, 102, 173 and 191 or there has been a failure to comply with any of the provisions of Section 33 or Section 34 or that the signature of the candidate or the proposer on the nomination paper is not genuine.

29. The contention of the petitioner is that there is a failure to comply with the provisions of Section 33(4) of the Act, 1951. Mere registration of the name of the first respondent in the electoral roll at more than one place itself is not a disqualification to be treated him as an elector. Therefore, it cannot be said that the first respondent is not an elector, entitling him to qualify for the membership of the Legislative Assembly and to file his nomination u/s 33 of the Act, 1951. Similar question arose in the case of Baburao Vs. Manikrao and Another, , wherein the name of a candidate was entered in two Assembly Constituencies contrary to the provisions of Section 17 of the Act, 1950. The Apex Court while considering the fact of registering the electoral roll more than once either in one constituency or more than one constituency, held that it is not one of the disqualifications u/s 16 of the Act, 1950 and as per the definition of "elector" u/s 2(e) of the Act, only the disqualifications are as per Section 16 of the Act and if his name is entered in the electoral roll of any constituency, he will be an elector. The qualifications are mentioned u/s 5 of the Act, 1951 and as per Section 5(c) of the Act, an elector of any Assembly Constituency, he is qualified for membership of the Legislative Assembly of the State. u/s 32 of the Act, 1951 any person qualified to be chosen is entitled to file nomination to his election.

30. There are no averments against the first respondent that he has incurred any other disqualifications except those stated in Para 9. While considering the similar contentions, the Apex Court rejected the contention that such entry in the

electoral roll more than once is not a disqualification and held in Paras 14 and 15 as follows:

"14. On a careful perusal of the relevant provisions, as extracted above, we are of the view that the High Court was right in rejecting the contention of the appellant that the first respondent was disqualified to contest the Nilanga Constituency as his name was found in two constituencies. We generally agree with the conclusions arrived at by the High Court. However, we are not in agreement with the view taken by the High Court that Sections 17 and 18 of the 1950 Act are not mandatory. For the purpose of the 1950 Act they are mandatory. For example, to object to the inclusion of the name in the electoral roll.

15. There is nothing to suggest in Section 16 of the 1950 Act that if a person's name finds a place in more than one constituency that would automatically entail disqualification from contesting in any one of the constituencies. It is relevant to note that Section 2(1)(E) of the 1951 Act refers to disqualification u/s 16 of the 1950 Act alone while interpreting the word "elector" and has not mentioned any contravention of Section 17 as disqualification. No doubt, Section 17 of the 1950 Act expressly states that no person shall be entitled to be registered in the electoral roll for more than one constituency. But if a person's name finds a place in more than one constituency, does it automatically entail the disqualification u/s 16? We do not think so. Objection u/s 17 could have been successfully raised to prevent Respondent 1's name from being included in the Nilanga Constituency".

From the reading of the above paras, it is clear that the Apex Court held that Section 2(1)(e) of the Act, 1951 refers disqualification u/s 16 of the Act, 1950 alone while interpreting the word "elector" is not mentioned in contravention of Section 17 as disqualification. Sections 17 and 18 of the Act, 1950 are similar and there is no difference in the language. Section 17 deals with the registration in the electoral roll for more than one constituency and Section 18 deals with registration in the electoral roll for any constituency more than once i.e., no person is entitled to register in the electoral roll for more than one constituency and no person is entitled to be registered in the electoral roll for any constituency more than once, that means, a person is entitled to be registered in the electoral roll only at one place in any of the constituencies. Therefore, the Apex Court held that no doubt Section 17 of the 1950 Act expressly states that no person shall be entitled to be registered in the electoral roll for more than one constituency, but if a person's name finds a place in more than one constituencies, it does not automatically entail the disqualification u/s 16. I am of the opinion that the said judgment squarely applies to the instant case for negating the contention of the election petitioner in Para 9 that the first respondent is not disqualified to be treated as an elector and therefore, it cannot be said that his nomination has been improperly accepted. Accordingly, I am of the opinion that there is no any non-compliance of provisions of Section 36(2)(b) or Section 33 of the Act, 1951

and the result of the elected candidate was not materially effected on any of the grounds mentioned in Para 9 and therefore, Para 9 is also liable to strike off as it is not stated in what manner the acceptance of the nomination of the first respondent was materially effected the result of the election as contemplated u/s 100(1)(d)(i) read with Section 100(1)(d)(iv) of the Act, 1951.

31. The other grounds raised in Paras 10 and 11 on which the election of the first respondent is sought to be declared as void are that Jelli Venkata Ramanaiah was set up by Bahujana Samaj Party (BSP), a political party not recognized in the State of Andhra Pradesh. Therefore the election is vitiated by reason of wrong acceptance of his nomination as it was only subscribed by one proposer, and the said nomination paper ought to have been subscribed by 10 proposers being electors as enjoined by the first proviso to Section 31(1) of the Act, 1951. The second respondent ought to have rejected the said nomination paper, but accepted the same. The said Venkata Ramanaiah belongs to Scheduled Caste and he was polled total number of 2,822 votes of Schedule Caste voters. In his absence, those voters would have polled for the Congress candidate namely G.S. Rao. The election of the first respondent was materially effected by non-compliance of the provisions of Section 33 read with Section 36 of the Act, 1951, which is a ground to declare the action of the first respondent as void u/s 100(1)(d)(iv) read with Section 100(1)(d)(i) of the Act, 1951.

32. In Para 11 it is stated that the act of preparing the list of contesting candidates containing the names, by the second respondent must be in accordance with Section 38(1) of the Act, 1951 by arranging the names of contesting candidates in alphabetical order, but the names of the contesting candidates were not arranged in the alphabetical order. By reasons of misprinting the names of the candidates in wrong compartments of the ballot paper amounts to non-compliance of the provisions of law within the meaning of Section 100(1)(d)(iv) of the Act, 1951, which materially effected the result of the election of first respondent. It is further stated that the said Jelly Venkata Ramanaiah unofficially retired from contest in favour of the first respondent. The contention of the learned Counsel for the petitioner is that Bahujana Samaj Party is not a political party recognized in the State of Andhra Pradesh, and therefore the acceptance of the nomination of Jelly Venkata Ramaiah, subscribed by only one proposer is improper.

33. Therefore, the question that arises for consideration is whether Bahujana Samaj Party is a recognized or unrecognized political party. There are no other material averments as to how the Bahujana Samaj Party is not a recognized political party in the State of Andhra Pradesh. No material facts have been stated in support of the contention of the election petitioner. In the absence of any specific pleadings, it may not be possible for the respondents to answer the vague averments in the election petition.

34. However, in the counter filed by the Respondents 2 and 3 it is stated that the Election Commission of India recognized the Bahujana Samaj Party as a national

party and published in A.P., Gazette No. 8, extraordinary Part V on 24-3-2004 standing at Sl.No. 1 in Table No. 1 as per Notification No. 56/2004 JUD-III, dated 22-3-2004. Jelli Venkata Ramaiah was set up by the Bahujana Samaj Party, which is a National recognized party and the Returning Officer allowed the nomination of Jelli Venkata Ramaiah. The contention of the petitioner that the Bahujana Samaj Party is not a political party in the State of Andhra Pradesh is repudiated. No doubt, the difference margin of votes among the returned candidate the first respondent and G.S. Rao Indian National Congress is 1,331 votes, but, there are no any other material facts or particulars to show that all the 2,822 votes casted in favour of Venkata Ramanaiah belongs to Scheduled Caste voters. There are also no other material particulars to show that all those 2,822 votes belongs to Schedule Caste voters or not. However, if the contention of the petitioner that the B.S.P., is not a recognized political party is not correct, the question of going into the other aspect that the votes polled in favour of Jelli Venkata Ramanaiah would have been polled in favour of the Congress Party by reason of his rejection of the nomination paper does not arise. There is no averment in the election petition or stated any basis to state as to how the Bahujana Samaj Party is not a recognized political party.

35. The Returning Officer and the District Election Officer filed their counter stating that Bahujana Samaj Party is a recognized National party and therefore, as per Section 38 of the Act, 1951, candidates of three recognized National parties were arranged in alphabetical order and the remaining four names of the independent candidates were also arranged in the alphabetical order after the candidates of the recognized National parties.

36. Political Party is defined u/s 2(1)(f) of the Act, 1951. "Political party" means an association or a body of individual citizens of India registered with the Election Commission as a political party u/s 29A. Section 29A deals with method and manner of registration of political parties with the Election Commission".

37. The Returning Officer filed a counter stating that the Election Commission of India recognized the Bahujana Samaj Party as a National party as per the aforesaid publication. The recognized political parties are entitled for the reservation of election symbols. Conditions for recognition as a National party are enumerated in Order No. 6-A of the Election Symbols (Reservation) and Allotment Order, 1968. As per Order 6-A of the said Order, a political party shall be treated as a recognized National party if and only if:

"(i) the candidates set up by it, in any four or more States, at the last general election to the House of the People, or to the Legislative Assembly of the State concerned, have secured not less than six per cent of the total valid votes polled in their respective States at that general election; and (ii) in addition, it has returned at least four members to the House of the People at the aforesaid last general election from any State or States".

There is no averment in the election petition as to whether the Bahujana Samaj

Party was not fulfilling the conditions required to be complied under Order 6-A to recognize the Bahujana Samaj Party as a National party and the notification of the Election Commission of India recognizing Bahujana Samaj party as a National party, as published is also not questioned. Therefore, in the absence of any material facts showing the basis as to how the Bahujana Samaj party is not a National party, it cannot be said that Bahujana Samaj Party is not a National party.

38. Para 10 of the Election Petition does not disclose any cause of action as to how the result of the election on the aforesaid averment is materially effected the election of the returned candidate. The allegations are vague and does not contain a concise statement of the material facts on which the petitioner relies.

39. Insofar as Para No. 11 of the election petition is concerned, it is to be stated that there are three recognized political parties i.e., Indian National Congress, Bahujana Samaj Party and Telugu Desam Party and the candidates of the said recognized political parties are admittedly arranged in the alphabetical order and the other independent names of the four candidates were also arranged among themselves in the alphabetical order as per Sub-sections (2) and (3) of Section 38 of the Act, 1951. Section 38(2) of the Act, 1951 clearly shows that for the purpose of listing the names under Sub-section (1) of Section 38 of the Act, 1951, the candidates shall be classified into three categories, namely:- (i) candidates of recognized political parties, (ii) candidates of registered political parties other than those mentioned in Clause (i), (iii) other candidates. The names of candidates of the registered political parties were listed in the order as mentioned in Section 38(2) only. Under Sub-section (3) of Section 38, the categories mentioned in Sub-section (2) were arranged in the order specified therein and the names of candidates in each category shall be arranged in alphabetical order. It is not stated in Para 11, in which category those seven candidates fall and how the arrangement is contrary to Sub-section (3) to Section 38 of the Act, 1951. It is also not disclosed as to how the said arrangement materially affected the result insofar as the returned candidate is concerned. The said allegations in Paras 10 and 11 are vague, evasive in material particulars. None of the allegations in the election petition disclose any cause of action and the petitioner has not averred any such ground that gives rise to a triable issue. There is no averment in the election petition that the petitioner or any other candidate has filed any complaint or raised any objection at any stage of the conducting of elections either to the Returning Officers regarding the process of conducting elections or to the Election Observers. The election petition does not disclose any cause of action and therefore is liable to be rejected under Order VI Rule 11(1)(a) of CPC and the pleadings are liable to be struck down as devoid of any material facts. As such, I am of the opinion that the election petition is frivolous and vexatious one.

40. Section 83(1)(a) of the Act, 1951 mandates that the election petition shall contain a concise statement of material facts on which the petitioner relies. In

Harishanker Jain v. Sonia Gandhi (supra), the Apex Court held that the expression "cause of action" has been compendiously defined to mean every fact which would be necessary for the petitioner to prove, if traversed, in order to support his right to the judgment of the Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present a full picture of cause of action with such further information in detail so as to make the opposite party to understand the case he will have to meet. (See Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, , Shri Jitendra Bahadur Singh Vs. Shri Kirshna Behari and Others, . Mere quoting the words of Section like chanting mantras does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan Vs. P.J. Francis and Another, , the Supreme Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts, which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the Election Petition and no amendment of the pleadings is permissible to introduce such material facts after the time limit prescribed for filing the Election Petition. The said Harishankar Jain case is decided by a Bench comprising of three Hon"ble Judges of the Apex Court. In the said case it is further held that it is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a Court to reject the Election Petition on the ground that it does not disclose a cause of action, it should look at the petition averments and nothing else. Courts have always frowned upon vague pleadings, which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings. Under Order VI, Rule 2 of the Code of Civil Procedure, every pleading shall contain a statement in concise form of the material facts relied on by a party but not the evidence nor the law of which the Court may take judicial notice.

41. In the instant case also, the election petition filed by the petitioner suffers from virus not satisfied with the mandatory requirement of the pleading material facts as required u/s 83(1)(a) of the Act, 1951. The election petition is vague, bald in the allegations made and most of which could not possibly be within the personal knowledge of the election petitioner, but still verified the facts that the averments made in Paras 8 to 12 constitute the grounds u/s 100 of the Act, 1951 and the alleged particulars of the said paras are true to his information. It is not stated on what information and on what basis the said material facts have been stated. The pleadings in the election petition would not amount to disclosing of any cause of action and they are required to be rejected under Order VI, Rule 11(a) of Civil Procedure Code. The petition shall contain a statement in concise form the material facts on which the petitioner relies challenging the election of the first respondent herein, such election petition containing concise form furnishing the material facts on which the petitioner relies shall lead to arrive at an opinion of this Court that the result of the returned candidate has been

materially effected by non-compliance of the provisions of Section 100(1)(d) and 100(1)(d)(iv) of the Act, 1951. But there are no such material facts.

42. The learned Counsel appearing for the petitioner relied on the judgments of the Apex Court in the case of Mahendra Pal Vs. Ram Dass Malanger and Others, , wherein the Apex Court held that 8 votes were counted more than actually taken out from the ballot boxes and that cannot happen in any circumstances unless there is irregularity in the counting and the said difference of votes clearly shows that the counting was not properly done and has materially affected the election of the petitioner therein. Therefore, the said judgment has no application as there was a distinction between the material facts and the material particulars. In the said case itself, the Apex Court held that failure to plead a single material fact leads to an incomplete cause of action and incomplete allegation of such charges are liable to be struck off under Order VI, Rule 16 of Civil Procedure Code. In the case of petitioner suffering from deficiency of material particulars, the Court has the discretion to allow the petitioner to supply the required material particulars even after the expiration of limitation. But no material facts unless already pleaded can be permitted to be introduced after the expiration of limitation.

43. The Apex Court in the case of Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu, , also held that failure to plead material facts is fatal to the election petition. The absence of material facts 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. Material facts and material particulars certainly connote two different things. Material facts are those facts, which constitute the cause of action. In the instant case, the election petition lacks material facts.

44. There is no dispute as regards to the contention for declaring the election to be void under the grounds mentioned u/s 100(1)(d)(i) to (iv), if the election of the returned candidate was materially effected based on the material facts averred in the election petition. Wherever the material facts are not furnished, the Apex Court in catena of decisions held that the relevant paras of the election petition are liable to be struck off for want of proper cause of action.

45. The learned Counsel appearing for the petitioner relied on the judgment of the Apex Court in the case of Bidesh Singh v. Madhu Singh and Anr. 2003 (7) Supreme 453. In the said case, the margin of votes between the declared candidate and the next candidate was only 37 and the election petition was filed challenging the election of the returned candidate on the ground that after inspection and scrutiny of 258 illegally rejected ballot papers in respect of Booth No. 35 were made. It is stated that 258 ballot papers have been rejected on the third round of counting in Booth No. 35. But the Election Tribunal dismissed the election petition on the ground that the election petition lacks material facts. The Apex Court while considering the facts of that case, held that the question as to whether the election petitioner was estopped and precluded from raising the

contention in his election petition as regards to the validity or otherwise of 258 ballot papers was a matter which could have been gone into only at the trial and the election petition could not have been dismissed u/s 98(1)(a) of the Act, 1951. As already stated that the margin of the votes was only 37 as against the contention that 258 ballot papers were illegally rejected. Therefore, I am of the opinion that no material facts have been furnished in this case as to how the election of the returned candidate has been materially effected on the aforesaid averments made in the election petition.

46. The Apex Court in the case of *Dipak Chandra Ruhidas Vs. Chandan Kumar Sarkar*, , held that Section 86 deals with trial of election petitions and as per explanation to Section 86, the trial of election petition shall be deemed to commence on the date fixed for the respondents appearance before the High Court and answer the claims in the petition and therefore, it is not necessary that the trial must be a full dressed or a jury trial or a trial which concludes only after taking evidence of the parties in support of their cases. Therefore, an order passed under Sub-section (1) of Section 86 is also a final order appealable u/s 116-A of the Act, 1951.

47. In the case of *Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi*, , the Apex Court held that every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of the suits under the Code of Civil Procedure, 1908. Since provisions of CPC will apply to the trial of the election petition, Order VI Rule 16 and Order VI Rule 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under Order VI, Rule 16 as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defect. If the Court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings, which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceeding, the Court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the Court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VI Rule 11.

48. The Supreme Court in the case of *Samar Singh Vs. Kedar Nath alias K.N.*

Singh and Others, , categorically held that Order VI Rule 6 shall apply to the election petition and the High Court has jurisdiction to reject an election petition which does not disclose any cause of action. It would be in the interest of the parties to the petition and to the constituency and in public interest to dispose preliminary objection and to reject the election petition if it does not disclose any cause of action.

49. For the aforesaid reasons, I am of the opinion that the nomination of Pendyala Atchuta Ramaiah, which was not set up by any political party was rightly rejected, treating his candidature as an independent candidate and Para 8 does not disclose any material facts as to how the candidature of Pendyala Atchuta Ramaiah was improperly rejected and therefore, the pleadings in Para 8 of the election petition is struck down.

50. As already stated, the allegations of Para 9 that the acceptance of the nomination of the first respondent was not illegal, merely because his name was registered as "elector"¹ in the same constituency more than once, as held by the Apex Court. However, there are no specific pleadings as to how the nomination of the first respondent was illegally accepted and that the acceptance of the said nomination materially affected his declaration of the result and accordingly, Para 9 is also struck down.

51. In Paras 10 and 11 of the election petition, no material facts were furnished as to how the Bahujana Samaj Party is not a recognized political party. No material facts have been furnished as to how the names of the recognized political parties were not arranged in the alphabetical order and the other names of the candidates were admittedly arranged in the alphabetical order and therefore, Paras 10 and 11 also do not disclose any cause of action. Accordingly, they are also struck down. There are no other averments made in the election petition other than those mentioned in Paras 8 to 11 to declare the election of the returned candidate as void and therefore, there are no other pleadings for the triable issues.

52. Accordingly, both the Application Nos. 1064 of 2004 and 1065 of 2004 are allowed and the election petition is rejected. The Election Petition is accordingly dismissed with costs.