
(2014) 07 P&H CK 0846
In the Punjab And Haryana At Chandigarh
Case No : Election Petition No. 8 of 2012

Shiv Lal Doda

APPELLANT

Vs

Sunil Kumar Jakhar

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15, Order 6 Rule 15(4), Order 6 Rule 16, Order 7 Rule 11
Representation of the People Act, 1951 — Section 100(1), 100(1)(a), 100(1)(c), 100(1)(d)(i), 100(1)(d)(iv)

Citation : (2014) 3 RCR(Civil) 695

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : P.S. Khurana, Advocate for the Appellant; Bhoop Singh and Suveer Sheokand, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—Petitioner claims that preparation of ballot paper, in alleged violation of conduct of Election Rules, Regulations and Instructions, thereby putting his name at serial No. 6 of the list of contesting candidates, instead of putting his name at serial No. 12 at the end of the list, has materially affected the result of election of the returned candidate. Facts first

General Election to the Punjab Legislative Assembly was held on 30.1.2012. Instant election petition pertains to 81-Abohar Assembly Constituency. As per election schedule, last date for filing of nomination was 12.1.2012. Scrutiny of nomination was to take place on 13.1.2012. Last date of withdrawal of nomination was 16.1.2012. Date of poll was 30.1.2012 and counting of votes was to take place on 6.3.2012. After withdrawal of nominations on 16.1.2012, 12 contesting candidates remained in the fray. After withdrawal of the nominations, returning officer was to prepare the list of contesting candidates in form 7-A appended to the conduct of Election Rules 1961 ("Election Rules" for short). The list was to be prepared under Rule 10 of the Election Rules and was to be

published as provided u/s 38 of the Representation of the People Act, 1951 ("R.P. Act" for short).

2. As pleaded by the petitioner in para 5 of the election petition, following were the 12 candidates who contested the election from 81- Abohar Assembly Constituency to the Punjab Legislative Assembly (Vidhan Sabha) 2012:-

- i. Sunil Kumar Jakhar
- ii. Kuldeep Singh
- iii. Vijay Laxmi Bhadoo
- iv. Amarjeet Singh
- v. Shiv Charan Doda
- vi. Shiv Lal Doda
- vii. Sunita Doda
- viii. Suresh Kumar Satija
- ix. Gurjant Singh
- x. Dalip Kumar
- xi. Mahavir Kumar
- xii. Rajinder Kumar

3. Name of the petitioner was at serial No. 6, whereas name of respondent-returned candidate was at serial No. 1 of the list of contesting candidates. The case set up by the petitioner is that the ballot paper was required to be prepared in alphabetical order and as per the alphabets of Punjabi, his name ought to have been put at serial No. 12 at the end of the list, because his name starts with Punjabi Gurmukhi alphabet S (Sh). Name of the respondent-returned candidate was at serial No. 1 because his name starts with Punjabi Gurmukhi alphabet s (S). It is the pleaded case of the petitioner that his name was to be put at serial No. 9 of the independent contesting candidates in the following order:-

- i. Amerjeet Singh
- ii. Sunita Doda
- iii. Suresh Kumar Satija
- iv. Gurjant Singh
- v. Dalip Kumar
- vi. Mahavir Kumar
- vii. Rajinder Kumar

viii. Shiv Charan Doda

ix. Shiv Lal Doda

4. It is further pleaded case of the petitioner that, since ballot paper was prepared and published contrary to the Election Rules, by inserting his name at serial No. 3 amongst the independent candidates and at serial No. 6 amongst all 12 contesting candidates, instead of putting his name at the end in the ballot paper, his voters and supporters were misled. It is also pleaded by the petitioner that his voters, when failed to find the name of the petitioner at the end of the ballot paper, especially the illiterate voters, they casted their votes in favour of the person at serial No. 1 under the impression that, firstly it also started with Punjabi Gurmakhi alphabet S(Sh) and secondly that it was the name of the petitioner at serial No. 1 instead of last. Thus, the chances of winning the election by the petitioner were diminished due to wrong publication of the ballot paper, as alleged by the petitioner. With the above-said allegations, petitioner seeks that election of respondent-returned candidate be set aside and be declared as void, from 81-Abohar Constituency.

5. Having been put to notice, respondent filed his written statement taking more than one preliminary objections. It was alleged that the election petition does not disclose any cause of action and the same was liable to be dismissed under Order 7 Rule 11 of the CPC ("CPC for short). It was further alleged that petitioner has taken unnecessary, frivolous and vexatious averments in paras 10 and 12 of the election petition because of which, paras 10 and 12 of the election petition were liable to be struck off under Order 6 Rule 16 CPC. No material facts, whatsoever, were pleaded by the election petitioner. Returned candidate was declared elected by the margin of 9788 votes. Petitioner nowhere pleaded that more than 9788 voters, who were intending to vote for the petitioner, were misled and voted for the returned candidate. Election petition was lacking in material facts, necessary to raise triable issues. Verification of the election petition was defective, not being in consonance with the requirement of Order 6 Rule 15 CPC. Petitioner was estopped from challenging the election of the respondent on the ground of wrong publication of ballot paper. Petitioner was well aware that his name figured at serial No. 6, alongwith his symbol of water tap, in the list of contesting candidates but he did not raise any objection, whatsoever, at the relevant point of time. He kept on canvassing on the basis that his name appeared at serial No. 6 with the symbol of water tap. Thus, he was estopped from challenging the election because of his own act and conduct. On merits, factual aspect of the matter regarding preparation of ballot paper, putting the name of petitioner at serial No. 6 and name of returned candidate at serial No. 1 of the list of contesting candidates, was not denied. However, preparation of ballot paper was sought to be justified having been prepared rightly, correctly and legally. It was stated that the list of contesting candidates was prepared in view of the provisions of law contained in Section 38 of RP Act, read with Rule 10 and 11 of the Election Rules. Averments taken in paras 8 to 12 of the election petition were

not admitted as pleaded, alleging that the averments taken by the petitioner were baseless, unfounded and based on wrong allegations. Dismissal of the election petition was prayed for.

6. Petitioner filed his replication denying the averments of written statement taken in the preliminary objections as well as on merits, reiterating the averments taken in the election petition.

7. On completion of pleadings of the parties, following issues were framed vide order dated 23.1.2014:-

(i) Whether election petition does not disclose any cause of action, therefore, liable to be dismissed? OPR

(ii) Whether paras 10 and 12 of the election petition do not contain material facts and the same being frivolous and vexatious, are liable to be struck off? OPR

(iii) Whether petitioner is estopped from challenging the election of the returned candidate on the ground of wrong preparation of ballot paper as mentioned in preliminary objection No. 3 of the written statement? OPR

(iv) Whether the ballot paper for the election of Abohar constituency was not prepared in accordance with Rule 10 of the Conduct of Election Rules 1961 and Section 38 of the Representation of Peoples Act, 1951? OPP

(v) If issue No. (iv) is proved, whether it has materially affected the result of the election in question? OPP

(vi) Relief.

8. Out of the above-said issues framed, issues No. 1 and 2 were ordered to be treated as preliminary issues vide order dated 23.1.2014. Learned counsel for the respondent submitted that he does not intend to lead any evidence on issues No. 1 and 2 and he would address his arguments on the preliminary issues without leading any evidence. Accordingly, the case was listed for arguments on preliminary issues.

9. Learned counsel for the petitioner submits that competence of the petitioner to file the election petition and jurisdiction of this Court were not in dispute. He further submits that a combined reading of specific and categorical averments taken by the petitioner clearly discloses the cause of action. Statutory rules stood violated because the ballot paper was illegally prepared in violation of the statutory rules contained in the Election Rules. He next contended that the petitioner was not required to plead material particulars. He was required to plead only the material facts which have been duly pleaded. He further submits that para 10 of the election petition contains the gist of allegations, clearly pointing out the material facts disclosing the cause of action. He also contended that when the contents of election petition, as a whole, with special reference to paras 5 to 12 are read, no room for doubt is left because the election petition contains concise statement of material facts, as required u/s 83 of the RP Act.

Referring to Section 100(1)(d)(iv) of the RP Act, he submits that because of noncompliance of the provisions of Election Rules, result of the election of returned candidate has been materially affected, because of which election of returned candidate-respondent was liable to be set aside and declared void. In support of his contentions, he relies on the following judgments:-

1. Roop Lal Sathi Vs. Nachhattar Singh,
2. Virender Nath Gautam Vs. Satpal Singh and Others,
3. Ram Prakash Gupta Vs. Rajiv Kumar Gupta and Others,
4. Nazakat Khan @ Nazar Khan v. Jaleb Khan, 2012 (2) PLR 515 (P&H)

Finally, learned counsel for the petitioner prays for deciding the preliminary issues in favour of the petitioner, by permitting the parties to lead their respective evidence.

10. Per contra, learned counsel for the respondent submits that as per the requirement of mandatory provisions of law contained in Section 83(1)(a) read with Section 100(1)(d)(iv) of the RP Act, pleadings of the petitioner do not disclose material facts, leading to materially affecting the result of election of the returned candidate. He further submits that in the cases falling u/s 100(1)(a), (b) and (c) election petitioner is not required to plead the material facts to establish that the election result was materially affected. However, in the cases falling in four categories u/s 100(1)(d)(i), (ii), (iii) and (iv), an election petitioner, as in the present case, is under legal obligation to plead the material facts. Learned counsel for the respondent submits that petitioner has not even suggested as to how many voters were allegedly misled because difference of votes between the petitioner and respondent was of 9788 votes.

11. He submits that petitioner was bound to plead that more than 9788 voters were misled because of which election result of the returned candidate was materially affected. However, such material facts were conspicuously missing in the election petition. He also submits that petitioner was bound to plead that those more than 9788 voters, who have been misled, would have voted for the petitioner reducing 9788 votes from the count of returned candidate and those number of 9788 votes would have been included in the count of petitioner. No such facts have been pleaded. He submits that contents of paras 10 and 12 of the election petition were frivolous and vexatious, because of which the same were liable to be struck off from the pleadings, in view of provisions of law contained in Order 6 Rule 16 CPC. Pleadings of the petitioner in para 10 with reference to the illiterate voters were self contradictory. Learned counsel for the respondent submits that Section 83 of the RP Act read with Order 6 Rule 15(4) CPC, makes the verification and affidavit as integral part of contents of the election petition, for the purpose of material facts. Since the verification as well as affidavit were highly defective on the face of it, the election petition does not contain any material facts. Even if any violation of Election Rules was accepted

for the sake of argument, still combined reading of paras 4 to 12 of the election petition makes it clear that it does not disclose any cause of action for want of material facts.

12. He next contended that the averments taken in para 9 to 12 of the election petition were based on imaginations. Literate voters will go with name and symbol, whereas illiterate voters will go with symbol only because they cannot read. It will be immaterial for the voters as to at what serial number was the name of candidate for whom they were intending to vote. Learned counsel for the respondent submits that in first half of para 10 of the election petition, petitioner himself was not sure whether his name starts with s (S) or S (Sh). In fact, name of the petitioner starts with S (Sh), his name being Shiv Lal Doda, whereas name of respondent starts with s (S), his name being Sunil Kumar Jakhar. Referring to averments taken in first half of para 10 of the election petition, learned counsel for the respondent submits that the averments were factually incorrect. He further submits that the averments taken in second half of para 10 of the election petition were also factually incorrect, imaginary and illogical, which do not disclose any cause of action. Had any voters of the petitioner been misled, as claimed by him, he would not have secured 45,825 votes. Petitioner has not given, even any imaginary figure as to how many voters were allegedly misled. Concluding his arguments, learned counsel for the respondent submits that since election petition does not disclose any cause of action and para 10 as well as para 12 of the election petition do not contain any material facts, both the preliminary issues deserve to be decided against the petitioner and in favour of the respondent. In support of his contentions, learned counsel for the respondent places reliance on the following judgments:-

1. Shri Jitendra Bahadur Singh Vs. Shri Kirshna Behari and Others,
2. Azhar Hussain Vs. Rajiv Gandhi,
3. Abhimanyudu Dake Vs. Vivekananda Karupati and Others,
4. Akhand Pratap Singh Yadav Vs. Kunwar Surendra Pratap Singh and others,
5. Pothula Rama Rao Vs. Pendyala Venakata Krishna Rao and Others,
6. Ram Sukh Vs. Dinesh Aggarwal,
7. Aditya Vesh Disciple of Swami Daya Nand Vs. Shri Bhajan Lal and others,

Thus, learned counsel for the respondent prays for dismissal of the election petition.

13. Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the present election petition does not disclose any cause of action. It also lacks material facts because of which, both the preliminary issues deserve to be decided against the petitioner and in favour of the respondent. Election petition is liable to be

dismissed at this very stage and with costs. To say so, reasons are more than one, which are being recorded hereinafter.

14. Section 83(1)(a)(c) and Section 100(1) of the RP Act, are relevant for the decision of above-said preliminary issues. It is appropriate to reproduce them for ready reference and the same 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;

XXX XXX XXX

(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:

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 or any nomination, or

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

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, [the High Court shall declare the election of the returned candidate to be void.]

15. Provisions of law contained in Order 6 Rule 15 and 16 of CPC, which are relevant for deciding the above-said twin preliminary issues, read as under:-

Order 6 Rule 15 and 16 of CPC

15. Verification of pleadings-(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of

the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.)

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

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.

16. For deciding the second preliminary issue first, this Court is called upon to examine, consider and appreciate as to whether contents of paras 10 and 12 of the election petition, when read together, do contain the material facts or the averments taken therein, are frivolous and vexatious. A combined reading of paras 10 and 12 of the election petition makes it abundantly clear that the petitioner has proceeded on a very casual approach, while taking his averments in these two most important paragraphs. Paras 10 and 12 of the election petition have been found lacking in material facts. Averments taken in these two paragraph numbers 10 and 12 of the election petition are based on frivolous and vexatious averments and the same are liable to be struck off.

17. Before proceeding further, it is appropriate to refer to the contents of para 10 and 12 of the election petition and the same read as under:-

10. That as the petitioner was made to understand about the rules and regulations that the Ballot Paper would be published as per the alphabets of the name of the contesting candidates. In view of that the name of the petitioner would have been in the last of among the contesting candidates in the Ballot Paper. The petitioner keeping in mind this aspect, conveyed to his supporters and voters that his name will be figured at the end of the Ballot Paper especially in view of the fact that the name of the respondent also started with the alphabet S (Sasha) as well as another candidate namely Shiv Charan Doda. Due to the wrong publication of the Ballot Paper, the election of the petitioner has been materially effected as his voters and supporters when failed to find the name of the petitioner in the end of the Ballot Paper (especially the illiterate) casted their vote in favour of the person at Serial No. 1 on the pretext that firstly it also started with Punjabi Gurmukhi Alphabet S (Sasha) and secondly, with this impression that it is the name of the petitioner being at serial number 1 instead of last. Thus the petitioner chances of winning the election had been diminished

due to wrong publication of the Ballot Paper. And consequently the petitioner has lost the election by a small margin of about 9000 votes. It is the petitioner who had score substantial number of votes more than 45000 and due to facts stated herein above, the election of the petitioner has been materially jeopardised, hence the election of the respondent as member of Legislative Assembly of 81-Abohar Assembly Constituency in Punjab Legislative Assembly Constituency (Vidhan Sabha) 2012, is liable to be set aside by this Hon"ble Court.

XXX XXX XXX

12. That the election of the returned candidate has been materially effected due to the wrongful publication of the Ballot Paper. The election of the respondent/returned is liable to be set aside from 81 - Abohar Assembly Constituency.

18. Learned counsel for the respondent was right in contending that in view of the provisions contained in Section 83 of the RP Act read with Order 6 Rule 15(4) CPC, verification and affidavit in support of election petition are integral part of the contents of election petition for the purpose of material facts. In the present case, verification of the contents of the election petition, as well as relevant para 2 of the affidavit in support thereof, makes an interesting reading and the same read as under:-

Veriflcation:-

"Verified that the contents of paras 1 to 4 are true and correct of my personal knowledge. The contents of paras 5 to 6 are true and correct to my knowledge as per information received from official record and believed to be true. The contents of paras 7 to 17 and the legal submissions made in various paras are based on legal advise sought and believed to be true. No part of it is false and nothing material has been concealed therein."

Para 2 of the Affidavit

XXX XXX XXX

"That the contents of paras 1 to 4 are true and correct of my personal knowledge. The contents of paras 5 to 6 are true and correct to my knowledge as per information received from official record and believed to be true. The contents of paras 7 to 17 and the legal submissions made in various paras are based on legal advise sought and believed to be true. No part of it is false and nothing material has been concealed therein."

19. No doubt, the defective verification itself cannot be a ground for dismissing the election petition, the defect being curable. It is also the cardinal principle of interpretation that pleading has to be read as a whole, so as to ascertain its true import. It is not permissible in law to cull out a sentence or a passage, out of the pleadings, with a view to read it out of the context in isolation. Further, it is the substance and not merely the form that has to be looked into. The pleading is required to be construed as it stands without adding anything thereto or

subtracting anything therefrom.

20. Thus, proceeding on the above-said settled principle of interpretation, paras 10 and 12 of the election petition are to be read together as a whole and not any sentence or phrase in isolation. When both these paragraphs No. 10 and 12 are put together and carefully perused, there remains no scope for doubt that averments taken in these two paras 10 and 12 are based on imaginations, which are not only factually incorrect but the same are self contradictory as well and does not appeal to reason at all. In first half of para 10, petitioner has pleaded that he conveyed to his supporters and voters that his name will be figuring at the end of the ballot paper, especially in view of the fact that name of respondent also started with the alphabet S (Sh) as well as another candidate namely Shiv Charan Doda. This averment is on the face of it factually incorrect and vexatious, to say the least.

21. Name of returned candidate, as a matter of fact, does not start with the same alphabet with which name of Shiv Charan Doda starts. On the other hand, name of the petitioner as well as Shiv Charan Doda start with the same alphabet i.e. S (Sh) and not by s (S) as suggested by the petitioner, because the name of respondent starts with alphabet s (S), being Sunil Kumar Jakhar. Similarly, in second part of para 10 of the election petition, petitioner alleged that the result of election has been materially affected, due to wrong publication of ballot paper, as his voters and supporters were misled. He alleged that when failed to find the name of the petitioner at the end of the ballot paper, especially the illiterate voters, they casted their votes in favour of the person at serial No. 1 under the wrong impression that, firstly it also started with Punjabi Gurmakhi alphabet S (Sh) and secondly, under this impression that it is the name of the petitioner at serial No. 1 instead of being at the end of the ballot paper.

22. The abovesaid averment taken by the petitioner is on the face of it absurd, again factually incorrect, frivolous and vexatious. It is so said, because if the literate voters would not have found the name of the petitioner at the end of the ballot paper, they would have no difficulty in reading the name of the petitioner at serial No. 6, while reading the names of all the contesting candidates on the ballot paper. If some voters were illiterate, it would be immaterial for them as to at what serial number the name of the petitioner figured. An illiterate voter would cast his vote not after reading the name, because he cannot read but he would cast his vote as per the symbol of the candidate. Thus, this averment is self contradictory also. Again, petitioner has taken the same factually incorrect and misleading averment in second half of para 10 saying that name of respondent also started with the Punjabi Gurmukhi alphabet S (Sh) which was not the correct position. The true factual position was that name of the respondent does not start with letter S (Sh) but it starts with letter s (S).

23. Further, the petitioner kept conveniently silent for the reasons best known to him, as to when he conveyed and to how many of his supporters and voters that his name will be figured at the end of ballot paper. Another material fact is

conspicuously missing as to how many voters of the petitioner were, as a matter of fact, misled. It is a matter of record and not in dispute that petitioner has lost the election not by a small margin of about 9000 votes, as stated by the petitioner in para 10 of the election petition, but by a margin of 9788 votes. As per the true spirit and import of Section 83 of the RP Act, the concise statement of material facts, made by the petitioner, must have contained that it were more than 9788 voters, intending to vote for the petitioner, who were misled and they voted for the respondent, thereby materially affecting the result of election of the returned candidate-respondent. Further, had the voters of the petitioner been actually misled in the manner suggested by the petitioner, in that eventuality, petitioner would not have secured 45,825 votes.

24. In view of what has been discussed hereinabove, it can be safely concluded that the averments taken by the petitioner in paras 10 and 12 of the election petition were not only based on his imaginations, but the averments were self contradictory, factually incorrect, misleading, frivolous and vexatious also. Petitioner has miserably failed to plead material facts because of which both these paragraph numbers 10 and 12 of the election petition are liable to be struck off.

25. Surprisingly, as per verification as well as para 2 of the affidavit, petitioner has verified the contents of paras 7 to 17 based on legal advice sought and believed to be true. In this regard, the relevant sentence in verification as well as para 2 of the affidavit are verbatim the same that "the contents of paras 7 to 17 and the legal submissions made in various paras are based on legal advice sought and believed to be true." It clearly shows that the contents of paras 7 to 17 of the election petition were not based on the knowledge of the petitioner. As pointed out above, verification as well as affidavit are being referred only for the purpose that the same are integral part of contents of the election petition, for the purpose of disclosing the material facts. Having said that, this Court feels no hesitation to conclude that paras 10 and 12 of the election petition have not been found containing the material facts. On the other hand, averments taken in both these paras 10 and 12 of the election petition are factually incorrect, frivolous and vexatious, thus, are liable to be struck off.

26. What constitutes material facts? It is no more res integra. This issue fell for consideration of the Hon''ble Supreme Court way back in the year 1970 in the case of Jitender Bhadur Singh's case (supra). The relevant observations made by the Hon''ble Supreme Court in para 8 of the judgment, read as under:-

"The trial court was of the opinion that if an election petitioner in his election petition gives some figures as to the rejection of valid votes and acceptance of invalid votes, the same must not be considered as an adequate statement of material facts. In the instant case apart from giving certain figures whether true or imaginary, the petitioner has not disclosed in the petition the basis on which he arrived at those figures. His bald assertion that he got those figures from the counting agents of the congress nominee cannot afford the necessary basis. He

did not say in the petition who those workers were and what is the basis of their information. It is not his case that they maintained any notes or that he examined their notes, if there were any. 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 to afford a basis for the allegations made in the petition. The facts stated in paragraph 13 and 14 of the election petition and in Schedule "E" are mere allegations and are not material facts supporting those allegations. This Court in insisting that the election petitioner should state in the petition the material facts was referring to a point of substance and not of mere form. Unfortunately the trial court has mistaken the form for the substance. The material facts disclosed by the petitioner must afford an adequate basis for the allegations made.

27. Similarly, the Hon'ble Supreme Court in the case of Akhand Pratap Singh Yadav's case (supra), observed in para 8 of the judgment, as under:-

"The learned counsel for the appellant, no doubt elaborately argued on the question concerning the failure on the part of the Election authorities in not adding the surname of the appellant in the voters' list and in the ballot papers. The learned Judge has also dealt with this aspect elaborately by referring to the evidence of the appellant PW 2 and one Subhash Chandra Suri, Grade "I" Clerk in the Collectorate, Tikamgarh (PW1) who was on Election duty in the Election Office during February, 1990 Assembly elections. Except the oral assertion of the appellant as PW 2 that he made the application under Rule 8 requesting the Returning Officer to correct his name in the list of nominated candidates by adding his surname "Yadav" against his name "Akhand Pratap Singh" shown in the voter list, no other documentary evidence was produced before the High Court. Further from the evidence of PW1, it was found that the appellant neither filed any application for suffixing his surname "Yadav" to his name, nor was there any order of the Returning Officer including the surname, as asserted by the appellant, in the records. It was also further brought out in the oral evidence of the appellant as PW 2 that he had contested Lok Sabha elections without the surname "Yadav" that he always used to sign as "Akhand Pratap Singh" only and in the present Election Petition he has only signed as "Akhand Pratap Singh" without suffixing his surname "Yadav". The contention that he was popularly known as "Yadav and he canvassed through-out the constituency giving prominence to his full name" Akhand Pratap Singh Yadav" and failure to add his surname in the ballot papers created confusion in the minds of voters especially amongst the rural uneducated voters cannot be accepted; for the simple reason that the rural and uneducated voters go by the symbol allotted to the candidates and not by the name of the candidates. For all these and other well-founded reasons, the learned Judge has rejected the contention and we are in agreement with that conclusion.

28. Dealing with somewhat similar situation in the case of Abhimanyudu Dake's case (supra), the Hon'ble Supreme Court in para 3 of the judgment, observed as

under:-

"...Regarding the similarity between the two symbols "Aeroplane" and "Boat" also has no significance because the symbols are distinct and at any rate the number of votes polled by the appellant and the third respondent would show that the electorate did not commit any such mistake.

29. This Court, in Aditya Vesh's case (supra), had an occasion to consider the identical issue on material facts, in a similar fact situation. The law laid down in this regard in paras 6 to 10 of the judgment, which can be gainfully followed in the present case, read as under:-

"It is now well settled that the provisions of S. 83 of the Act are mandatory and as explained by Hidayatullah, C.J. in Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, this S. 83 requires first a concise statement of material facts and then the fullest possible particulars. Material facts being facts necessary to formulate a complete cause of action and omissions of a single material fact, it was observed, leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars, on the other hand, is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. It was pointed out that there may be some overlapping between material facts and particulars, but these two were quite distinct. Further, it was observed that a petition which merely cites the section cannot be said to disclose a cause of action.

7. Seen in this light, there can be no escape from the conclusion that the petition falls far short of meeting the requirements of S. 83 of the Act.

8. There is no mention in the petition of where the petitioner canvassed or held meetings during the two days before his symbol was changed. The number of persons that he canvassed with and the date and time of any such meetings. Even the number of meetings has not been disclosed. In other words, there is no mention of the number of voters approached by the petitioner with the old symbol before it was changed nor of the figure of those who, according to him, could not vote for him due to the change of symbol. There is also no plea of how many persons would have voted for him, but for the change of symbol, of course, backed up by the basis of any such statement.

9. Such vague averments, as have been made in the petition here, clearly violate the mandate of the well established law of pleadings, namely; that they should be precise, specific and unambiguous. Mere hope of votes to be polled cannot be equated with material facts pertaining to cause of action to be founded thereon.

10. Another important and equally significant requirement in order to impeach the election of the returned candidate is that it must be shown to have been materially affected by the ground on which the election is sought to be set aside. In this context, it would indeed be pertinent to note that while the total number

of votes polled by the retained candidate were 406436 and those of his main rival - Khurshid Ahmed 273419, all that the petitioner could get was 623 votes. The wide disparity in the number of votes cast in favour of the petitioner, as compared to those for the returned candidate and his principal rival, clearly detracts from any inference of the election of the returned candidate having in any manner been materially affected by the change in the symbol allotted to the petitioner.

30. So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, the same have not been found to be of any help to the petitioner, being distinguishable on facts. In Nazakat Khan @ Nazar Khan's case (supra), this Court was dealing with a matter regarding improper rejection of nomination paper, which would fall u/s 100(1)(c). Present one is not a case of improper rejection of nomination. So far as the judgment of the Hon'ble Supreme Court in Virender Nath Gautam's case (supra) is concerned, the ratio of the judgment goes against the petitioner. The observations made by the Hon'ble Supreme Court in paras 28 and 29 and 45 of the judgment, read as under:-

"All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". (Burton's Legal Thesaurus, (Third edn.); p.349). The phrase "material facts", therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. 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. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party...."

XXX XXX XXX

45. There is distinction between *facta probanda* (the facts required to be proved, i.e. material facts) and *facta probantia* (the facts by means of which they are proved, i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in

the pleadings. But the facts or facts by means of which facts probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.

31. Similarly, Roop Lal Sathi's case (supra) was based on entirely different set of facts. In Ram Parkash Gupta's case (supra), the Hon''ble Supreme Court was again called upon to answer an entirely different issue based on different set of facts. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judge made law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon''ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, The relevant observations made by the Hon''ble Supreme Court in para 9 of the judgment, read as under:-

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered the judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board*, 1972 (2) WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

32. In view of the discussion hereinabove, coupled with the peculiar fact situation of the present case, it is unhesitatingly held that paras 10 and 12 of the election petition do not contain the material facts. The averments taken in these two paras 10 and 12 of the election petition have been found vague, factually incorrect, frivolous, vexatious, imaginary and baseless, therefore, answer to the second preliminary issue is and has to be in favour of the respondent and against the petitioner. Paras 10 and 12 of the election petition are liable to be struck off and the same are hereby ordered to be struck off.

33. Now, coming to the first preliminary issue on the cause of action, it is to be seen as to whether after careful perusal of the election petition as a whole, does it disclose any cause of action or not. It is trite law that not any particular plea or any particular sentence or any particular passage is to be considered, rather the whole election petition is to be read, to arrive at a conclusion whether it discloses any cause of action or not. It is equally true that there cannot be any compartmentalization, dissection, segregation and inversions of the language of various paras in the election petition. It is so said, because if such a course is adopted, it will run counter to the cardinal canon of interpretation, according to which, a plea has to be read as a whole to ascertain its true import.

34. However, in the present case, after careful perusal of the election petition as

a whole, it cannot be said by any stretch of imagination that the election petition discloses any cause of action. What is the complete cause of action? This pivotal issue has been frequently falling for consideration of the courts. A conjoint reading of Section 83(1)(a), (c) read with Section 100(1)(d)(iv) of the RP Act would make it abundantly clear that since the present case falls within the ambit of Section 100(1)(d)(iv), it was obligatory on the part of the petitioner to plead material facts in the election petition so as to disclose a complete cause of action. Petitioner, in the present case, has failed to do so. Once paras 10 and 12, which contain the gist of election petition, have been ordered to be struck off, hardly any other relevant averments are left in the election petition, which can be said to be sufficient to constitute a complete cause of action.

35. As noticed hereinabove, petitioner proceeded on a very casual approach and did not plead the material facts. The best averments of petitioner are found in paras 10 and 12 of the election petition but the same have been found not only vague but factually incorrect, misleading, frivolous, vexatious, imaginary and baseless also, leaving not even any remotest scope of disclosing a cause of action. Thus, failure to plead "material facts" and non-disclosure of a "complete cause of action," have proved fatal to the present election petition. A thorough reading and careful examination of all the contents of the election petition, leads only to this unassailable conclusion that the election petition does not disclose any cause of action, therefore, the same is liable to be rejected under Order 7 Rule 11 of CPC, at this very stage.

36. The above-said view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in Azhar Hussain's case 2007 (4) RCR Civil 5 (supra), Pothula Ram Rao's case (supra) and Ram Sukh's case (supra). Relevant para 4 in Pothula Ram Rao's case (supra), containing the relevant observations made by the Hon'ble Supreme Court, read as under:-

"...In Hari Shankar Jain Vs. Sonia Gandhi, this Court held as follows: (SCC pp. 251-52, paras 23-24)

23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that 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 Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of 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 as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.... Merely quoting the words of the section like

chanting of a mantra 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.... Failure to plead "material facts" is fatal to the election petition...

24. 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 a plaint on the ground that it does not disclose a cause of action, it should look at the plaint 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.

(emphasis in original)"

37. The law laid down by the Hon"ble Supreme Court in paras 9, 11, 12 and 14 of its judgment in Azhar Hussain's case (supra), aptly applies to the facts of present case and the relevant part thereof reads as under:-

The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.

XXX XXX XXX

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

12...The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as

to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matters pertaining to ordinary Civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections. So long as the sword of Damocles of the election petition remains hanging an elected member of the Legislature would not feel sufficiently free to devote his wholehearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in a campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to win the vote of the people but also to win the vote of the Court in a long drawn out litigation before he can whole-heartedly engage himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as a hindrance if he be entrusted with some public office in his elected capacity. He may even have occasions to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stem metal, the constraint introduced by the pendency of an election petition may have some impact on his subconscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the Nation, the controversy is set at rest at the earliest if the facts of the case and the law so warrant. Since the Court has the power to act at the threshold the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such power is warranted under the relevant provisions of law. To wind up the dialogue, to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as nonexistent. The Court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in

this behalf must therefore be firmly repelled.

xxx xxx xxx

Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression "material facts and particulars, which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act.

(1) What are material facts and particulars? Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition."

38. Similarly, in Ram Sukh's case (supra), the Hon''ble Supreme Court had an occasion to deal with a fact situation which was closer to the facts in hand, that is a case falling within the ambit of Section 100(1)(d)(iv) of the RP Act. The law down by the Hon''ble Supreme Court in paras 19 to 21 of the judgment, which shall squarely apply to the peculiar fact situation of the present case, read as under:-

"19. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of nondisclosure of material facts as stipulated in Section 83(1)(a) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(d)(iv). For the sake of ready reference, the said provision is 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-

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

(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."

20. It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected. As already stated, in the present case, the allegation of the election petitioner is that the Returning Officer failed

to circulate the attested signatures of his election agent to various polling stations and, therefore, failed to comply with para 12 of Chapter VII of the Handbook for Returning Officers. The pleadings in the election petition, in relation to grounds (i) and (ii), extracted in para 2 above, were as under:

"11. That due to aforesaid inaction of the Returning Officer the polling agent of the petitioner was not permitted to function till 3.00 P.M. by which time more than 80% polling was over. This inaction on the part of Returning Officer materially affected the election as almost all other polling agents of the petitioner working in other polling stations got confused and supporters of the petitioner either returned back or voted for Congress candidate.

12. That the Returning Officer was duty bound to send required Prarbop of the petitioner and his agent's signature one day before the day of election which he did not do. Due to his inaction of the Returning Officer the election of 13 Laxman Chowk Legislative Assembly Constituency was materially affected."

21. There is no quarrel with the proposition that the instructions contained in the Handbook for the Returning Officers are issued by the Election Commission in exercise of its statutory functions and are, therefore, binding on the Returning Officers. They are obliged to follow them in letter and spirit. But the question for consideration is whether the afore-extracted paragraphs of the election petition disclose material facts so as to constitute a complete cause of action. In other words, the question is whether the alleged omission on the part of the Returning Officer ipso facto "materially affected" the election result. It goes without saying that the averments in the said two paragraphs are to be read in conjunction with the preceding paragraphs in the election petition. What is stated in the preceding paragraphs, as can be noticed from grounds (i) and (ii) reproduced above, is that by the time specimen signature of the polling agent were circulated 80% of the polling was over and because of the absence of the polling agent the voters got confused and voted in favour of the first respondent. In our opinion, to say the least, the pleading is vague and does not spell out as to how the election results were materially affected because of these two factors. These facts fall short of being "material facts" as contemplated in Section 83(1)(a) of the Act to constitute a complete cause of action in relation to allegation u/s 100(1)(d)(iv) of the Act. It is not the v. the election petitioner that in the absence of his election agent there was some malpractice at the polling stations during the polling. It needs little reiteration that for purpose of Section 100(1)(d)(iv), it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the first respondent, was materially affected due to the said omission on the part of the Returning Officer. Unfortunately, such averment is missing in the election petition. In our judgment, therefore, the Election Tribunal/High Court was justified in coming to the conclusion that statement of material facts in the election petition was completely lacking and the petition was liable to be rejected at the threshold on that ground. We have, therefore, no hesitation in upholding the view taken by the High Court.

39. Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon''ble Supreme Court in the cases referred to hereinabove, this Court has no hesitation to conclude that the present election petition does not disclose any cause of action and the same is liable to be dismissed. At the risk of repetition, the verification of election petition as well as para 2 of the affidavit filed in support thereof, can also be referred in this regard. Thus, answer to the first preliminary issue, is against the petitioner and in favour of the respondent. It is decided, accordingly. As observed by the Hon''ble Supreme Court in Azhar Hussain's case (supra), the election petition must be summarily dismissed, if it does not furnish the cause of action and does not fulfill the mandatory requirement enjoined by Section 83 of the RP Act. When a pointed question was put to the learned counsel for the petitioner as to how this election petition fulfills the mandatory requirement of Section 83(1)(a), (c) read with Section 100(1)(d)(iv) of the RP Act, he failed to substantiate any of his argument. Since the present election petition does not disclose any cause of action, it is liable to be dismissed at this very stage.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since both the above-said preliminary issues have been decided against the petitioner, the election petition cannot sustain any further.

Consequently, the instant election petition, having been found based on wholly frivolous and vexatious averments, is liable to be dismissed with costs which are quantified at Rs. 50,000/-.

Resultantly, the present election petition stands dismissed with costs.