

(2013) 05 BOM CK 0034

In the Bombay High Court

Case No : Civil Revision Application No. 286 of 2012

Shri. Rahematulla Haji Abdul Latif Khan

APPELLANT

Vs

Yuvraj and Others

RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 16
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2, Order 6 Rule 4, Order 6 Rule 6,
Order 7 Rule 11, Order 7 Rule 11(a)
Evidence Act, 1872 — Section 115, 86(1)
Representation of the People Act, 1951 — Section 117, 123(5), 81, 82, 83

Citation : (2013) 4 ABR 211 : (2013) 5 ALLMR 60 : (2013) 5 BomCR 467 :
(2013) 4 MhLj 821

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : C.R. Deshpande, for the Appellant; P.B. Pawar, Advocate for Respondent No. 1, Mr. A.T. Kanawade, Advocate holding for Mr. S.T. Shelke, Advocate for Respondent No. 2, Mr. A.R. Sayyed, Advocate holding for Mr. G.R. Syed, Advocate for Respondent No. 3 and Mr. N.N. Desale, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. Heard finally with the consent of the parties. This Civil Revision Application takes exception to the order dated 15th October, 2012 passed by the Civil Judge, Senior Division, Dhule below Exhibit-19 in Election Petition No. 03 of 2008.

2. The revision applicant herein, is the original respondent No. 2 in Election Petition filed by the present respondent No. 1 in the Court of the Civil Judge, Senior Division, Dhule u/s 16 of the Bombay Provincial Municipal Corporation Act, 1949 (for short, "said Act"), challenging the election of the revision applicant herein, from Ward No. 64 of the Municipal Corporation, Dhule. The said election was held in the year 2008.

3. It is the case of the respondent No. 1 herein, in the Election Petition No. 03 of 2008 that, the election for electing the Councilors for Dhule Municipal Corporation was held on 30th November, 2008 and the results were declared on 1st December, 2008. In all 1704 voters exercised their right from Ward No. 64 from which four persons contested the election. One Mr. Patil Yuvraj Chaitram secured 507 votes, Mr. Khan Rahematulla Haji Abdul Latif i.e. revision applicant herein, secured 867 votes, Mr. Fakroddin Ahmed Lohar secured 305 votes and Mr. Sheikh Firaj @ Sheikh Firoz secured 35 votes. It is alleged in the memo of Election Petition that, the revision applicant herein, who has been declared as elected had adopted corrupt practice in the election. It is further contended that, Rahematulla Haji Abdul Latif, the elected candidate is having more than 9 children and some of them are born after 13/09/2000 and as such, he is not competent to contest the election. Therefore, the respondent No. 2 i.e., the Returning Officer, ought to have rejected the nomination form of Rahematulla. There are other corrupt practices are also alleged in the Election Petition, against the revision applicant herein.

4. The respondent No. 1 has filed separate written statement in the Election Petition. Some of other respondents have also filed written statement in the Election Petition. It is the case of the revision applicant that, on 16th January, 2008, the revision applicant herein, filed the application Exhibit-19 in the Election Petition under the provisions of Order 7 Rule 11(a) of the Code of Civil Procedure, praying for dismissal of the plaint and in the alternative, it is prayed to frame preliminary issue and same be tried. It is the contention of the revision applicant that, no particular grounds were pleaded and raised at the time of scrutiny of nominations, cause of action has not been pleaded/made out in the Election Petition, by application of principle of estoppel u/s 115 of the Evidence Act the petition is not maintainable, no any document is placed on record to show the birth of child of the respondent No. 2 Rahematulla after 13-09-2000. It is further case of the revision applicant that, original petitioner has filed say to the said application on 20th December, 2008. On 15th October, 2012, the Civil Judge, Senior Division, Dhule has been pleased to reject the application Exhibit-19.

5. It is the case of the revision applicant that, on 11th January, 2010 vide Exhibit-59 the original petitioner Yuvraj Chaitram filed his affidavit in lieu of examination in chief and the case was adjourned to 17th February, 2010 for cross examination. Thereafter, the proceeding has been adjourned time to time for hearing on Exhibit-20 and for cross examination. On 22nd August, 2012 the lower Court heard the arguments and the case was adjourned to 5th September, 2012 for further arguments. On 5th September, 2012 the case was adjourned to 14th September, 2012. On 14th September, 2012 written argument was filed and the case was adjourned to 1st October, 2012 for orders. Again on 1st October, 2012 the case was adjourned to 15th October, 2012. On 15th October, 2012 the application Exhibit-19 came to be rejected and the case was adjourned to 30th October, 2012. On 30th October, 2012 again the matter was adjourned to 21st

November, 2012.

6. Being aggrieved by the order dated 15th October, 2012 passed by the Civil Judge, Senior Division, Dhule below Exhibit-19 in Election Petition, this Civil Revision Application is filed by the revision applicant herein i.e., original respondent No. 2.

7. The learned Counsel appearing for the revision applicant submits that, the original respondent No. 2 i.e., revision applicant herein, did place reliance upon the reported judgment of the Apex Court in the case of Samar Singh Vs. Kedar Nath alias K.N. Singh and Others, and in the case of Azhar Hussain Vs. Rajiv Gandhi, and it was submitted that, for failure to incorporate in the petition the material facts and particulars relating to alleged corrupt practice, the Election Petition can be dismissed in view of the provisions of Order 7 Rule 11 of the Code of Civil Procedure. The Court can exercise the powers under the said provisions and dismiss the Election Petition on the ground that, the facts and particulars relating to alleged corrupt practice has not been specifically pleaded in the Election Petition. It is further submitted that, perusal of application Exhibit-19 would reveal that, there is specific contention of the applicant that, as far as acceptance of nominations, no objection was raised at the time of scrutiny of nomination. Thus, the objection raised in the memo of Election Petition is barred by the principle of estoppel u/s 115 of the Evidence Act. It is further submitted that, the allegations about corrupt practices raised in the Election Petition are vague and cryptic. The said allegations does not disclose the cause of action, thus the Election Petition itself is not maintainable. While rejecting the application Exhibit-19, the learned Judge ought to have consider the aforestated legal position. It is submitted that, in the application Exhibit-19, it is specifically contended that, there is no specific pleading as required under Order 6 of the Code of Civil Procedure. The learned Counsel for the revision applicant further submits that, in the Election Petition in Paragraph-5 A to H are the allegations of corrupt practice. Perusal of said clause A to H in Paragraph-5 would reveal that, all the allegations are of vague and general nature such as bogus voting. No any instance of bogus voting has been quoted nor the single name is pointed out that, the person is dead and the voting has been done. It is submitted that, it is alleged in the election petition that, the respondent No. 2 and his associates threatened the voters and prevented them from voting. No name of associate has been disclosed nor any details have been given about the threatening such as the person threatened, the time and place of threatening etc. It is further submitted that, rest of the allegations are also without any proper and specific pleadings. The vague and general allegations made in the petition do not disclose any cause of action for filing the petition. It is submitted that, the learned Judge has construed the term, "cause of action" in a narrow sense and treated it at par with the limitation period. The cause of action, more particularly, in the Election Petition has to be gathered from the facts pleaded and documents produced on record and not on the basis that, the petition has been filed within the prescribed period.

8. The learned Counsel appearing for the revision applicant further submitted that, in the matter of Ram Sukh Vs. Dinesh Aggarwal, , the Apex Court has confirmed the judgment in which view is taken by the High Court that, the allegations of the corrupt practice are entirely superfluous in nature, the concise statement of material facts is completely lacking and in these circumstances, the Election Petition was dismissed by the High Court. It is further submitted that, in the matter of Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar, , the Hon"ble Apex Court observed that, charge of corrupt practice would mean all basic facts constituting the ingredients of the particular practice alleged which the election petitioner is bound to substantiate. The legal position has been crystallized that, all those facts which are essential to clothe the election petitioner with a complete cause of action must be pleaded. The failure to plead even a single material fact would entail, the consequences of dismissal of Election Petition. In the present case, the perusal of the Election Petition did not disclose any specific pleading nor any documents are placed on record to substantiate the corrupt practice. Thus, there is no cause of action pleaded in the election petition and as such the same is liable to be rejected under Order 7 Rule 11(a) of the Code of Civil Procedure.

? The learned Counsel appearing for the revision applicant placed reliance on the judgment of the Hon"ble Apex Court in the case of Azhar Hussain Vs. Rajiv Gandhi, and submitted that, the law laid down by the Apex Court, is that, all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. The omission of a single material fact would lead to an incomplete cause of action and an election petition without the material facts relating to a corrupt practice is not an election petition at all. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charges levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of S. 83(1)(a). An election petition, therefore, can be and must be dismissed if it suffers from any such vice. In support of aforesaid contention, the Counsel appearing for the applicant further placed reliance upon the reported judgment in the case of Hardwari Lal Vs. Kanwal Singh, , Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, , Manubhai Nandlal Amorsey Vs. Popatlal Manilal Joshi and Others, , relied upon.

? It is further submitted that, in the present case, the original petitioner/present respondent No. 1 has not pleaded accrual of the cause of action to the petitioner for filing the election petition. Therefore, the election petition must be dismissed as the same suffers from such defect. The learned Counsel placed reliance upon the judgment of the Supreme Court in the case of Samar Singh Vs. Kedar Nath alias K.N. Singh and Others, and in particular paragraph-5 of the said judgment and submitted that, on reading of the plaint, there is no cause of action and therefore, election petition presented by the respondent No. 1 deserves to be

dismissed.

9. On the other hand, the learned Counsel appearing for the respondents herein, invited my attention to the pleadings in the Election Petition and submitted that, if the pleadings in the petition are read carefully, it is abundantly clear that, the cause of action has been disclosed in the election petition. Therefore, the Civil Judge, Senior Division, Dhule has rightly rejected the application filed by the revision applicant herein, under Order 7 Rule 11 of the Code of Civil Procedure. The learned Counsel appearing for the respondent No. 1 i.e., original petitioner invited my attention to the reasons recorded by the Civil Judge, Senior Division, Dhule while rejecting the application below Exhibit-19 filed by the revision applicant herein. The learned Counsel pressed into service exposition of the Supreme Court in the case of Balwan Singh Vs. Lakshmi Narain and Others, and submitted that, the Hon"ble Supreme Court in the said matter was dealing with the allegations of corrupt practice qua hiring and procuring vehicles for conveying voters to and from Polling Station during election. The Supreme Court held that, merely because failure to set out particulars of the contract of hiring or arrangement of procuring will not render the petition defective. The learned Counsel invited my attention to paragraph Nos. 7 and 9 of the said judgment. It is submitted that, in election petition it is pleaded that, the respondent No. 2 i.e. revision applicant herein, had provided auto rickshaws and other vehicles to the voters for coming to and going from the booths to their respective houses and thereby the respondent No. 2 and his agents had induced the voters to cast vote in favour the original respondent No. 2 i.e. revision applicant herein. Therefore, according to the Counsel for the respondents, there are pleadings in the petition disclosing the cause of action for filing election petition.

10. The learned Counsel appearing for the respondent No. 1 i.e., election petitioner further pressed into service exposition of the Supreme Court in the case of Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and Others, and submitted that, the Supreme Court in the said matter has taken a view that, the defect in the verification and affidavit is a curable defect. What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case. The election petitioner should have been allowed an opportunity of removing the defect by filing a proper affidavit. The learned Counsel further placed reliance on the judgment of the Supreme Court in the case of Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and Others, and submitted that, if the material facts constituting foundation of the case are set up by election petition, in that case the requirement of Section 83 of the Representation of People Act, 1951, i.e. "the petition shall contain a concise statement of material facts" has been satisfied. Therefore, the learned Counsel appearing for the respondents submits that, in the facts of the present case also the respondent No. 1 has laid foundation containing a concise statement of material facts in the election petition.

? The learned Counsel further pressed into service reported judgment of the Supreme Court in the case of V.S. Achuthanandan Vs. P.J. Francis and Another, and submitted that, so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. Therefore, the learned Counsel appearing for the original petitioner, the respondent No. 1 herein, relying upon the pleadings in the petition, reasons assigned by the Civil Judge, Senior Division, Dhule, the provisions of the CPC and the Representation of People Act, 1951 and the judgments of the Supreme Court in the case of V.S. Achuthanandan (supra), Ponnala Lakshmaiah (supra), Sardar Harcharan Singh Brar (supra), and Balwant Singh (supra), would contend that, the Civil Revision Application is devoid of any merits and same may be rejected. It is submitted that, yet the parties have to lead evidence and therefore, at the threshold, the election petition filed by the respondent No. 1 may not be rejected.

11. I have given careful consideration to the submissions of the learned Counsel appearing for the revision applicant and the respondents herein. I have carefully perused the averments in the application, annexures thereto, pleadings in the election petition, judgment and order impugned in the Civil Revision Application, provisions of the CPC and the Representation of People Act, 1951 and also the judgments of the Hon"ble Supreme Court cited across the bar by the Counsel for the revision applicant and the respondent No. 1. Upon careful perusal of the impugned judgment and order, it appears that, the Civil Judge, Senior Division, Dhule has properly recorded the submissions of the parties and has also considered the various judgments of the Hon"ble Supreme Court in paragraph Nos. 5 to 9. In paragraph-10 the trial Court has considered the scope of the provisions of Order 6 Rule 2 and 4 of the CPC and reached to the conclusion that, according to Rule 2 of Order 6 every pleading shall contain only a statement in a concise form of the material facts on which the party pleadings relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. After considering the rival contentions and material placed on record, the Civil Judge, Senior Division, Dhule has rejected the application filed by the revision applicant under Order 7 Rule 11 of the Code of Civil Procedure.

? At this juncture, it would be apposite to reproduce paragraph-11 from the judgment of the Civil Judge, Senior Division, Dhule, which reads thus:

11. Reverting to the factual score of the present petition, application being under Order 7 Rule 11(c) of the CPC and failure of the petitioner to give the particulars of the corrupt practice, hence it is necessary to peruse the plaint minutely. Petitioner in para. 3 has specifically contended that how many votes secured by the petitioner and respondent. In para. 5 petitioner alleged that respondent no. 2 adopted several corrupt practices and has given specious of the corrupt practice adopted by respondent no. 2 as A to H. I have carefully perused the same. Petitioner has contended in these paragraphs that there was a bogus voting in favour of respondent no. 2 on large scale, the votes were cast in the name of

dead persons who were not available in the ward on the date of voting. The respondent no. 2 and his associates had threatened the voters and pretended them from voting in favour of petitioner. The respondent no. 2 has not disclosed true information and also not filed the true declaration. Petitioner has also pleaded that respondent no. 2 provided auto rickshaw and other vehicles to the voters for coming to the booth for casting votes and also paid amount to the voters. The respondent no. 2 was also canvassing after the prescribed time. It is further specifically pleaded that respondent no. 2 has more than 9 children and some of them were born after 13/9/2000 and thus respondent no. 2 is not competent to contest the election. Lastly petitioner verified the plaint and he contended that all the contentions in the petition is true and correct to his best knowledge and belief. Thus from the above instances I find that petitioner has specifically pleaded that the corrupt practice adopted by respondent no. 2. Now it is for the petitioner to prove the same by adducing evidence on record. Thus it cannot be said that petitioner did not give particulars of corrupt practice as alleged by him in the petition. Petition is verified by the petitioner. Petitioner has also filed his affidavit in support of the petitioner at Exh. 1-A. Thus it cannot be said that there is failure on the part of petitioner to give the particulars of the corrupt practice. However in para. 5-A to H he has specifically pleaded that respondent no. 2 adopted such and such corrupt practice.

? On careful perusal of paragraph-11 of the judgment from the trial Court as reproduced herein above, it is abundantly clear that, the trial Court has considered the pleadings in the petition and the contentions of the respondents and reached to the conclusion that, the election petition discloses the cause of action to try the election petition.

12. I have carefully perused the pleadings in the election petition and entire material placed on record by the parties. In my opinion, the view taken by the Civil Judge, Senior Division, Dhule needs no interference in view of the fact that, the respondent No. 1 herein, i.e. original petitioner has laid foundation stating material facts constituting foundation of the case thereby requirement has been satisfied. Upon careful perusal of paragraph-5 of the election petition, the original petitioner has stated corrupt practices adopted by the original respondent No. 2 i.e. revision applicant herein. In paragraph-5(d) of the election petition, it is alleged by the petitioner that, the respondent No. 2 i.e. revision applicant herein, has provided auto rickshaws and other vehicles to the voters for coming to and going from the booths to their respective houses and thereby the respondent No. 2 and his agents had induced the voters to cast vote in favour of respondent No. 2 and as observed by the trial Court, the revision applicant will have to prove the same by adducing evidence on record during the trial.

? The Bench consisting of five Hon"ble Judges of the Supreme Court in the case of Balwant Singh (supra) while dealing with provisions of Section 83(1)(b) r/w Section 123(5) of the Representation of People Act, 1951 and allegation of corrupt practice qua hiring and procuring vehicles for conveying voters to and

from Polling Station during election in paragraph Nos. 7 and 9 held;

7. Neither in the petition as originally filed nor as amended, the date and place of hiring the tractor which was alleged to have been used for conveying the voters, and the names of the persons between whom the contract of hiring was settled, were set out. The question which then falls to be determined is: Whether the election petition was liable to be rejected because it did not set forth particulars of the date and place of hiring the vehicle alleged to have been used in conveying voters? In the opinion of the High Court the corrupt practice described in s. 123(5) being the hiring or procuring of a vehicle for conveying voters to the polling station, in the absence of a detailed statement as to the time and place of the hiring, the petition was defective. In so opining, the High Court relied upon an earlier decision of that Court, *Madan Lal v. Syed Zargham Haider and others* (1). In that case, Bhargava, J., delivering the judgment of the Court, observed: "..... under s. 123(5) of the Representation of the People Act, a corrupt practice consists in the act of hiring or procuring certain types of vehicles by a candidate or his agent or by any other person for the conveyance of any elector to or from any polling station. A corrupt, practice is, therefore, committed not by conveying the voter but by the act of hiring or procuring the conveyance. In clause (b) of section 83(1), an election petitioner is required to set forth full particulars of the corrupt practice including as full a statement as possible of the 1 names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The language used in this provision of law requires the setting forth of the full particulars of the corrupt practice and specially mentions at least three particulars which must be given. These are the names of the parties alleged to have committed the corrupt practice, the date when the corrupt practice was committed and the place of the commission of the corrupt practice." Not the contract of hiring but the fact of hiring for conveying voters to and from the polling station is declared by s. 123(5) a corrupt practice. A petition which sets forth the particulars about the use of a vehicle for conveying voters to and from the polling station, with details as to the time and place coupled with as full a statement as possible in support of the plea that the vehicle was hired or procured by the candidate or his agent or another person substantially complies with the requirement of s. 83(1)(b). In considering whether a corrupt practice described in s. 123(5) is committed, conveying of electors cannot be dissociated from the hiring of a vehicle. The corrupt practice being the hiring or procuring of a vehicle for the conveyance of the electors, if full particulars of conveying by a vehicle of electors to or from any polling station are given, s. 83 is duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring, are not given. Normally, the arrangement for hiring or procuring a vehicle, is within the special knowledge of the parties to that agreement and it is difficult to assume that it was intended to require the petitioner in an election dispute to set out the particulars of facts within the special knowledge of the other party, and expose the petition to a penalty of dismissal if those particulars could not be given. If

particulars in support of the plea of the vehicle being hired or procured by the candidate or his agent or by another person was used for conveying voters to or from the polling station are set out, failure to set out particulars of the contract of hiring or arrangement of procuring will not render the petition defective.

9. Assuming that in the case before us, the petition was defective because particulars as to the persons between whom the contract of hiring was entered into, and the date and place thereof, have not been set out, the High Court, was right in holding that no material prejudice was occasioned thereby. In the written statement to the petition as originally filed, it was not expressly contended that because of the absence of particulars as to the names of the persons between whom the contract of hiring took place, and the date and place of the contract, the appellant was unable to meet the charges made against him. Even after the petition was amended, no such objection was raised by the appellant. Before the Tribunal, at the hearing of the argument, a plea that the petition was defective, because of lack of particulars relating to the names of the persons who entered into the contract of hiring, and the time and place thereof was apparently raised. But all the evidence relating to the hiring and the time and place thereof, was without objection admitted on the record. It is not even suggested that because of the absence of the particulars, the appellant was embarrassed in making his defence, or that he could not lead evidence relevant to the plea of corrupt practice set up by the first respondent. We are therefore unable to hold that any material prejudice was occasioned because of the absence of those particulars in the petition.

13. Upon careful perusal of the observations of the Supreme Court in paragraph Nos. 7 and 9 reproduced herein above in the case of Balwant Singh (*supra*), it is observed that, if particulars in support of the plea of the vehicle being hired or procured by the candidate or his agent or by another person was used for conveying voters to or from the polling station are set out, failure to set out particulars of the contract of hiring or arrangement of procuring will not render the petition defective.

14. The Supreme Court in the case of Sardar Harcharan Singh Brar (*supra*) held that, if the Court feels that the particulars as given in the petition are deficient in any manner the petitioner can be directed to supply the particulars and make the deficiency good. In any case, deficiency in particulars could not have been a ground for dismissing the petition at the threshold. It is only the non-supply of particulars though ordered by the Court which could have led to either striking off of the pleadings or refusal to try the related instances of alleged corrupt practice. An election petition is liable to be dismissed in limine u/s 86(1) of the Representation of People Act, 1951 if the election petition does not comply with either the provisions of Section 81 or Section 82 or Section 117 of the Representation of People Act, 1951.

15. In the facts of the present case, the revision applicant herein, after filing the Election Petition immediately filed an application under Order 7 Rule 11 of the

Code of Civil Procedure. In the facts of the present case, it can safely be stated that, if at all the Court before whom the Election Petition is pending feels that, the particulars as given in the petition are deficient in any manner, the petitioner can be directed to supply the particulars and make the deficiency good. The petitioner will have to lead evidence during the trial to make the good, the allegations of corrupt practice pleaded in the election petition.

16. The Supreme Court in the case of Ponnala Lakshmaiah (supra) while interpreting the provisions of Sections 81, 82, 83 and 117 of the Representation of People Act, 1951 in paragraph Nos. 12 and 16 held;

12. The High Court has, in the present case, held that the material facts constituting the foundation of the case set up by the election petition have been stated in the election petition. That being so, the requirement of Section 83 of the Act viz. that "the petition shall contain a concise statement of material facts" has been satisfied. The question of dismissing the petition on that ground also therefore did not arise. The High Court in our opinion committed no wrong in coming to that conclusion. We need only emphasise that the burden which lies on an election petitioner to prove the allegations made by him in the election petition whether the same relate to commission of any corrupt practice or proof of any other ground urged in support of the petition has to be discharged by him at the trial. There is no dilution of that obligation when the court refuses to dismiss a petition at the threshold. All that the refusal to dismiss the petition implies is that the appellant has made out a case for the matter to be put to trial. Whether or not the petitioner will succeed at the trial remains to be seen till the trial is concluded. Even so on a somewhat erroneous understanding of the law settled by this Court, the successful candidates charged with commission of corrupt practice or other illegalities and irregularities that constitute grounds for setting aside their elections seek dismissal of the petitions in limine on grounds that are more often than not specious, in an attempt to achieve a two fold objective. First, it takes a chance of getting the election petition dismissed on the ground of it being deficient, whether the deficiency be in terms of non-compliance with the provisions of Sections 81, 82 & 117 of the Act or on the ground that it does not disclose a cause of action. The second and the more predominant objective is that the trial of the election gets delayed which in itself sub-serve the interests of the successful candidate. Dilatory tactics including long drawn arguments on whether the petition discloses a cause of action or/and whether other formalities in the filing of the petition have been complied with are adopted with a view to prevent or at least delay a trial of the petition within a reasonable time frame. While a successful candidate is entitled to defend his election and seek dismissal of the petition on ground legally available to him, the prolongation of proceedings by prevarication is not conducive to ends of justice that can be served only by an early and speedy disposal of the proceedings. The Courts have, therefore, to guard against such attempts made by parties who often succeed in dragging the proceedings beyond the term for which they have been elected. The Courts need to be cautious in dealing with requests for

dismissal of the petitions at the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed. Beyond that note of caution, we do not wish to say anything at this stage for it is neither necessary nor proper for us to do so.

16. Even otherwise the question whether non-compliance of the proviso to Section 83(1) of the Act is fatal to the election petition is no longer res-integra in the light of a three-Judge Bench decision of this Court in *Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and Others*, . In that case a plea based on a defective affidavit was raised before the High Court resulting in the dismissal of the election petition. In appeal against the said order, this Court held that non-compliance with the proviso to Section 83 of the Act did not attract an order of dismissal of an election petition in terms of Section 86 thereof. Section 86 of the Act does not provide for dismissal of an election petition on the ground that the same does not comply with the provisions of Section 83 of the Act. It sanctions dismissal of an election petition for non-compliance of Sections 81, 82 and 117 of the Act only. Such being the position, the defect if any in the verification of the affidavit filed in support of the petition was not fatal, no matter the proviso to Section 83(1) was couched in a mandatory form. This Court observed:

14. So is the case with the defect pointed out by the High Court in the affidavit filed in support of the election petition alleging corrupt practice by the winning candidate. The proviso enacted to Sub-section (1) of Section 83 of the Act is couched in a mandatory form inasmuch as it provides that a petition alleging corrupt practice shall be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice and the particulars thereof. The form is prescribed by Rule 94-A. But at the same time, it cannot be lost sight of that failure to comply with the requirement as to filing of an affidavit cannot be a ground for dismissal of an election petition in limine under Sub-section (1) of Section 86 of the Act. The point is no more res integra and is covered by several decisions of this Court. Suffice it to refer to two recent decisions namely *G. Mallikarjunappa and Anr. v. Shamanur Shivashankarappa and Ors.* and *Dr. Vijay Laxmi Sadho v. Jagdish*, both three-Judges Bench decisions, wherein the learned Chief Justice has spoken for the Benches. It has been held that an election petition is liable to be dismissed in limine u/s 86(1) of the Act if the election petition does not comply with either the provisions of "Section 81 or Section 82 or Section 117 of the RP Act". The requirement of filing an affidavit along with an election petition, in the prescribed form, in support of allegations of corrupt practice is contained in Section 83(1) of the Act. Non-compliance with the provisions of Section 83 of the Act, however, does not attract the consequences envisaged by Section 86(1) of the Act. Therefore, an election petition is not liable to be dismissed in limine u/s 86 of the Act, for alleged non-compliance with provisions of Section 83(1) or (2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the

Act in terms cannot be attracted to such a case.

17. Therefore, it follows from the authoritative pronouncement of the Supreme Court in the case of Ponnala Lakshmaiah (supra), merely because a corrupt practice has to be strictly proved does not mean that a pleading in an election petition must be strictly construed.

18. Yet in another authoritative pronouncement in case of V.S. Achuthanandan (supra), the bench of Hon"ble three Judges of the Supreme Court has taken a view that, plaint/petition making allegation of corrupt practice against elected candidate, could not have been dismissed on the ground that, full particulars were not supplied. In such a case, opportunity should be given to the petitioner to supply such particulars. Without giving such opportunity to the petitioner to supply such particulars, dismissal of the petition in such circumstances was not proper. It is further held that, so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. It is further held that, failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars.

19. In the facts of the present case, one of the corrupt practice adopted by the original respondent No. 2 i.e., revision applicant herein, has been stated in the petition that, he is having more than 9 children and some of them are born after 13/09/2000, as such, original respondent No. 2 was not competent to contest the election. Therefore, the petitioner will have to make the good said allegation by adducing evidence during the trial. If at threshold the election petition is dismissed, in that case such dismissal of the petition will amount to denying the opportunity to the petitioner to adduce evidence and also to make deficiency good. The Counsel appearing for the revision applicant has placed reliance upon various judgments of the Supreme Court, however, if the facts of those cases are closely scrutinized, the principles laid down in the said judgments may not apply to the facts of the present case. Moreover, as rightly concluded by the Hon"ble Supreme Court in the case of V.S. Achuthanandan (supra), the failure of pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. In the present case, on reading the plaint in its entirety, the cause of action has been disclosed in the election petition. Therefore, as rightly held by the Hon"ble Supreme Court that, the cause of action is distinct from the absence of full particulars, the judgments relied upon by the Counsel for the revision applicant mostly considers the cases of absence of full particulars in the election petition. On the other hand, the judgments relied upon by the Counsel for the respondent No. 1 i.e., original petitioner, deals with whether the election petition discloses cause of action or not. Therefore, this Court is of the opinion that, the view taken by the Civil Judge, Senior Division, Dhule while rejecting the application below Exhibit-19 in Election Petition NO. 03 of 2008 needs no interference. The view taken is in consonance with the material placed on record and the provisions of CPC and Representation of People Act, 1951 and the

judgments of the Supreme Court on subject. The Civil Revision Application is devoid of any merits and same stands rejected. Rule stands discharged.