

(2016) 05 GAU CK 0050

In the Gauhati High Court

Case No : I.A. No. 685 of 2016 in El.Pet. 1 of 2015

Sri. Neiphrezo Kreditsu

APPELLANT

Vs

Smt. Zeneisiile Ate Loucii

RESPONDENT

Date of Decision : 24-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11 (a)
Representation of the People Act, 1951 — Section 100(1)(b), 123(1), 98(b)

Citation : (2016) AIR(Gauhati) 155

Hon'ble Judges : N. Chaudhury, J.

Bench : Single Bench

Advocate : Mr. S. Bharali, Advocate, for the Petitioner; Mr. P.K. Khataniar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Chaudhury, J.—Pursuant to a notification by the Election Commission of India issued on 12.09.2014, a bye-election was held in No. 11, Northern Angami ? II Legislative Assembly Constituency in the State of Nagaland on 15.10.2014. In the counting held on 19.10.2014, Neiphrezo Kreditsu of the Naga People's Front (NPF) was declared elected on 20.10.2014 by defeating the sole opponent Shri Visasolic Lhoungu of Bharatia Janata Party (BJP) by a comfortable margin of 3045 votes. Although, the defeated candidate has not come forward to challenge the election of the returned candidate but one Zeneisiile Ate Loucii who is a voter of the said constituency has approached this court by filing election petition No. 1/2015 with a prayer for setting aside the election of the returned candidate by declaring his victory to be void under Section 98(b) of the Representation of the People Act, 1951 on the ground stipulated under Section 100(1)(b) of the Representation of the People Act thereby holding that the returned candidate is guilty of corrupt practise and also for cost etc. There is only one respondent in this election petition who is the returned candidate. The defeated candidate has not been made a party.

2. The election petitioner alleged in paragraph 6 of the petition that Nagaland ranks one of the most corrupt states in India where votes selling and buying with hard cash has become an established practise. The petitioner being a social worker felt it necessary to file election petition as according to her, the election of the returned candidate has been vitiated by wide spread commission of corrupt practise of bribery as defined under Section 123(1) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") which, according to the election petitioner, was done by supporter and party workers of the returned candidate with his knowledge and consent and this is why the result of the election is liable to be declared void. It is stated in paragraph 7 of the election petition that Zhadima village consists of 13 clans. One Peter Kuotsu distributed money on 09.10.2014 at the rate of Rs. 3,000/- per vote at his residence between 7-8 P.M. and the money was given to the voters through five members representative of each clan who had assembled in his residence on the aforesaid date and time. Peter Kuotsu distributed money to the voters/electors of the constituency with the knowledge, consent and connivance of the returned candidate. At that time, one Medozhalie Loucii, one Khrielelie Loucii and one Neizolie Loucii received Rs. 3,78,000/- from Peter Kuotsu for 27 voters of Loucii clan. The other persons present there represented 12 clans and received money amounting to Rs. 3,000/- per vote and the entire incident was witnessed by Medozhalie Loucii, Khrielelie Loucii and Neizolie Loucii being present at the time of distribution of money. Thereafter, on 09.10.2014 at night, Medozhalie Loucii called and informed the election petitioner and asked her to take her share of money after having narrated the aforesaid event. On the following morning, one Diezelie Loucii, brother-in-law of the petitioner, came to Kohima and met her to offer Rs. 3,000/- given by Peter Kuotsu and asked her to vote for the returned candidate who also narrated to her about the entire incident of distribution of money by Peter Kuotsu. The petitioner did not receive the money and on 10.10.2014, she informed the incident to the Chief Electoral Officer of Nagaland and the same was received by the Joint Chief Electoral Officer of Nagaland. She also informed the incident to Mr. V.S. Sampath, the Chief Election Commissioner on the same day by e-mail and lodged complaint with the DGP, Nagaland with regard to the incident. She lodged an FIR with Officer-in-Charge of Chiephobozou Police Station on 11.10.2014 in writing. Thereafter, she came to know from a news item published on the Nagaland Post on 14.10.2014 that Income Tax Department was keeping surveillance over movement of cash suspected to be used for bribing the electors and so she lodged a verbal complaint with it about the aforesaid incident. On 14.10.2014, she came to know that supporters of the respondent from Zhadima village were searching for her and so she did not go for casting her vote and being afraid came to Diphu and then to Guwahati.

3. In paragraph 11 of the election petition, reference has been given of another incident of Gariphema village of the same constituency where 72 voters were paid Rs. 50,000/- on behalf of the returned candidate. They are residents of A.G. Colony, Kohima. At about 5 P.M. on 09.10.2014, they were paid a total of Rs.

36,00,000/- for casting vote in favour of the returned candidate. The money was distributed by one Vibeilietuo Kets in the residence of one Kezha Loha at A.G. Colony, Kohima. Sri Vibeilietuo Kets is the General Secretary of NPF for Northern Angami II Assembly Constituency while Sri Kezha Loha is a business man from Gariphema village having a big building in A.G. Colony where voters had assembled. Sri Vibeilietuo Kets asked the voters to cast vote in favour of the respondent and distributed money to the voters with the knowledge, consent and connivance of the respondent. Such distribution of money was witnessed by one Pastor Riiduozhii of A.G. Road, Christian Revival Church at Kohima and Achiino Yashii, wife of Pastor Riiduozhii, who informed the same to the petitioner. It was further informed that 2/3 days prior to the distribution of money, the returned candidate had attended a feast in the residence of Sri Kezha Lohe where he met the voters of the Gariphema village who were subsequently given money on 09.10.2014. The petitioner having come to know about the same on 12.10.2014, lodged verbal complaint with the Income Tax Department on 14.10.2014. According to the election petitioner, aforesaid two incidents constitute corrupt practise of bribery under Section 123(1)(A)(b) of the Act and so the election of the returned candidate is liable to be declared void setting aside the same.

4. Although notice was issued in this case by order dated 09.02.2015 fixing 23.03.2015 for service report but service could not be made on the returned candidate by the usual process. Accordingly, the election petitioner was permitted to take steps by substituted process by publishing notice in two widely circulated dailies of Nagaland, namely, the Nagaland Post and the Morung Express. The respondent thereafter appeared and filed an application under Order 7, Rule 11 of the Code of Civil Procedure praying for rejecting the election petition for lack of cause of action. This application has been numbered as I.A. No. 684/2016. This court issued notice to the election petitioner on the aforesaid application on 18.02.2016 whereupon the election petitioner has filed an affidavit-in-opposition on 17.03.2016. Accordingly, the matter has been taken up for hearing on 10.05.2016.

5. It is the brief case of the returned candidate that the election petition contains unnecessary, scandalous, frivolous and vexatious statements leading to prejudice, delay and embarrassment. The allegations are bald, baseless and vague which do not disclose any cause of action whatsoever. It lacks material particulars. The election petitioner has withheld the material facts regarding name and/or other details of 13 clans, the number of members of each clan and the number of voters of each clan. The names and address of those voters and their serial number who were allegedly paid bribe were not named. No material facts and particulars have been furnished as to whom Peter Kuotsu had distributed money. The statements, thus, are totally vague, unbelievable and amounts to suppression of material facts. Election petitioner stated in paragraph 7, on one hand, that money was given to the voters through five members representative of each of the 13 clans who had assembled in Peter Kuotsu's residence but the petitioner deliberately withheld the names of clans, names of

the representatives etc. The statements made in the same paragraph that during distribution of money as aforesaid, petitioner's clan was represented by Medozhalie Loucii, Khriellelie Loucii and Neizolie Loucii are directly contrary to the earlier statements where it was alleged that five members represented the clans. The statements made in paragraph 7 do not disclose any cause of action whatsoever and so in the absence of material particulars, there is no cause of action for the election petition which accordingly is liable to be set aside.

6. Similarly, it is alleged in paragraph 30 and 31 of this application under Order 7, Rule 11 of the Code of Civil Procedure that election petitioner miserably failed to mention the date and time of alleged feast, the names and enrolment numbers of voters who had received Rs. 50,000/- and no material fact as to source of knowledge of the election petitioner about alleged consent and knowledge of the applicant has been disclosed. That being the position, the election petition is liable to be rejected under Order 7, Rule 11 of the Code of Civil Procedure.

7. By filing an affidavit-in-opposition, the returned candidate has refuted all the allegations levelled about lack of material particulars etc. According to the election petitioner, the provisions of Order 7, Rule 11 of the Code of Civil Procedure do not apply to the present case as full material facts disclosing distinct cause of action capable of giving rise to distinct triable issues have been stated in the body of the election petition. The correctness or otherwise of the allegations levelled in the election petition can be decided only at the conclusion of the trial. With these averments, the application under Order 7, Rule 11 of the Code of Civil Procedure has been described to be not maintainable and liable to be rejected.

8. I have heard Mr. P.K. Khataniar, learned counsel for the returned candidate and Mr. S. Bharali, learned counsel for the election petitioner in this case. I have perused and considered various judgments relied on by the learned counsel for the parties, I have gone through the election petition, the application filed under Order 7, Rule 11 of the Code of Civil Procedure and the affidavit-in-opposition filed there-against.

9. Before proceeding to decide this application for rejection of election petition, it is necessary to look at the legal requirements for so doing. Order 7, Rule 11 of the Code of Civil Procedure vests power on Court to reject a plaint on the grounds mentioned in the said provision. Clause (a) of Order 7, Rule 11 of the Code of Civil Procedure provides that a plaint can be rejected if it does not disclose a cause of action. A cause of action is the bunch of facts establishing a triable case. The same provision is applicable to election petition as well. So, the preponderant judicial pronouncements involving provisions of Order 7, Rule 11 particularly in case of election petition are required to be noticed at the threshold.

10. In the case of Virendra Kumar Saklecha v. Jagjiwan and others reported in (1972) 1 SCC 826, the Hon''ble Supreme Court held in paragraph 15 that non-

disclosure of grounds or source of information in an election petition has to be scrutinised from two points of view. On the one hand, it would indicate that election petitioner did not come forward with the sources of information at the first opportunity which is required to be furnished in the election petition so as to give notice to the other side of the contemporaneous evidence on which election petition is based. On the other hand, by furnishing the source of information at the threshold, the election petitioner will not be able to make departure from the source or grounds if there is any embellishment of the case it would be discovered. Reference was given to Section 83 of the Act which provides that an election petition shall be verified in the manner laid down in the Code and the verification has to be made in regard to source of information. The prescribed affidavit is modelled on the provisions contained in Order XIX of the Code of Civil Procedure and so it is necessary to disclose the grounds or sources of information in the election petition itself.

11. In paragraph 17 and 18 of the case of Gajanan Krishnaji Bapat and another v. Dattaji Raghobaji Meghe and others (AIR 1995 SC 2284), it was held by the Hon"ble Supreme Court that concise statements of material facts and full particulars of corrupt practise are required to be furnished in the body of the application as far as possible. This is required to bind the election petitioner and also to prevent a roving and fishing enquiry. In the absence of concise statement of material facts on which the election petition is based, no cause of action can be disclosed and so election petition would be liable to be rejected under Order 7, Rule 11 of the Code of Civil Procedure.

12. In the case of P.A. Mohammed Riyas v. M.K. Raghavan and others reported in (2012) 5 SCC 511, the requirement of disclosing sources of information in case of allegation of corrupt practise again came up for consideration. In paragraph 47 of the aforesaid judgment, the Hon"ble Supreme Court held that in the absence of proper verification, the provision of section 81 cannot be fulfilled. If the election petitioner even after getting the opportunity to cure such defect chooses not to do so, the election petition would be liable to be rejected.

13. In the case of Joseph M. Puthussery v. T.S. John and others reported in (2011) 1 SCC 503, the Hon"ble Supreme Court held that to prove that the corrupt practise of a third person is attributable to a candidate under section 123 of the Act, it must be shown that the candidate consented to the commission of such act. The finding that the candidate knew of a publication because benefit of such distribution could only enure to him but he kept silent despite knowledge of such publication, is an unwarranted inference and a surmise on the part of the court. The Hon"ble Supreme Court also did not approve the stand taken by the High Court that a returned candidate would be liable for penalty under section 99 of the Act for the acts of his agents without conviction of such agents. This judgment was pressed into service to argue that the names of the person who had taken bribe were not disclosed in the election petition to facilitate the court to take action against them and so it amounted to lack of cause of action.

14. In the case of Hari Shanker Jain v. Sonia Gandhi reported in (2001) 8 SCC 233, the Hon"ble Supreme Court held in paragraph 23 and 32 that omission to state a single material fact can make a cause of action incomplete and the statement of claims becomes bad. Paragraph 23 and 32 of the judgment are quoted below for ready reference:-

"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 the Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present 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. (See Samant N. Balakrishna v. George Fernandez reported in (1969) 3 SCC 238, Jitender Bahadur Singh v. Krishna Behari reported in (1969) 2 SCC 433). 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. In V.S. Achuthanandan v. P.J. Francis reported in (1999) 3 SCC 737, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filling the election petition.

32. In both the election petitions there are averments made touching the contents of respondent's application filed for grant of certificate of citizenship so as to point out alleged infirmities in the application and the proceedings taken thereon but without disclosing any basis for making such averments. None of the petitioners states to have inspected or seen the file nor discloses the source of knowledge for making such averments. Clearly such allegations are bald, vague and baseless and cannot be put to trial."

15. In the case of Jitu Patnaik v. Sanatan Mohakud and others reported in (2012) 4 SCC 194, the requirement of stating material facts in an election petition came up for consideration. Considering the earlier judgments it was held by the Hon"ble Supreme Court that omission of even a single material fact leads to an incomplete cause of action and statement of claims become bad. Paragraph 54 of the aforesaid judgment is quoted below for ready reference:-

"54. In *Samant N. Balakrishna and Anr. v. George Fernandez* reported in (1969) 3 SCC 238 while dealing with the requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure, this Court, inter alia, expounded the legal position that omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad."

16. In the case of *Ajay Maken v. Adesh Kumar Gupta and another* reported in (2013) 3 SCC 489, the Hon'ble Supreme Court considered the necessity of disclosing the names of those persons who participated in commission of corrupt practise. Referring to the provision of section 83(1)(b) of the Act it was held that election petition must set forth as full as possible of the names of the parties alleged to have committed such corrupt practise. The question of proof of a commission of corrupt practise arises only if there is an appropriate pleading in that regard in the election petition and so in the absence of full particulars of the names of the parties alleged to have committed a corrupt practise, the mandate of section 83(1)(b) would not be complete.

17. In the case of *Udhav Singh v. Madhav Rao Scindia* reported in (1977) 1 SCC 511, it was held that the pleading has to be read as a whole to ascertain true import but even thereafter if a petition is found to be based solely on allegations and devoid of material facts, such election petition is liable to be summarily rejected for want of cause of action. This, however, is not true about material particulars which can be furnished even after expiry of the period of limitation. The Hon'ble Supreme Court thereafter considered as to what are material facts and what are material particulars and thereupon highlighted that failure to state material facts though fatal, the same in regard to material particulars is not so. Such discussion has been made in paragraph 42, 43 and 44 of the aforesaid case which are quoted below for ready reference:-

"42. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practise "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practise alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

43. "Particulars", on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of Clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance

with the requirements of Clause (a). "Particulars" serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.

44. The distinction between "material facts" and "material particulars" was pointed out by this Court in several cases, three of which have been cited at the bar. It is not necessary to refer to all of them. It will be sufficient to close the discussion by extracting what A.N. Ray J. (as he then was) said on this point in *Hardwari Lal's* case (*supra*):

"It is therefore vital that the corrupt practise charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other than the giving of vote. It was said by counsel for the respondent that because the statute did not render the giving of vote a corrupt practise the words "any assistance" were full statement of material fact. The submission is fallacious for the simple reason that the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared, could the court have given a verdict in favour of the election petitioner? The answer is in the negative because the allegations in the petition did not disclose any cause of action".

18. *Mohan Rawale v. Damodar Tatyaba alias Dadasahed and others* reported in (1994) 2 SCC 392 is yet another judgment where commission of corrupt practise was alleged. It was held in that case that a reasonable cause of action is sufficient to maintain an election petition and the argument that case is weak and not likely to succeed, cannot be a ground for striking out the allegations. The Hon''ble Supreme Court reiterated the distinction between material facts and full particulars in that case again and found that it was only a distinction of degree but the lines of distinction are not sharp. Material facts are those which a party relies upon and which if he does not prove, he fails at the same time.

19. In *Mayar (H.K.) Ltd. And others v. Owners & Parties, Vessel M.V. Fortune Express and others* reported in (2006) 3 SCC 100, law of Order 7, Rule 11 of the Code came up for consideration before the Hon''ble Supreme Court. Referring to earlier judgment in *T. Arivandandam v. T.V. Satyapal* reported in (1977) 4 SCC 467, the Hon''ble Supreme Court held that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the court should exercise its power under Order 7, Rule 11 of the Code taking care to see that the ground mentioned therein is

fulfilled. Paragraph 12 of this judgment is quoted below for ready reference:-

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

20. In the case of Virender Nath Gautam v. Satpal Singh and others reported in (2007) 3 SCC 617, the requirement as to disclosure of material facts in an election petition has been discussed. In paragraph 29, 30, 31 and 35 of the aforesaid judgment, it has been held that in the absence of such disclosure an election petition can be rejected under Order 7, Rule 11 of the Code of Civil Procedure. Paragraph 29, 30, 31 and 35 of the aforesaid judgment are quoted below for ready reference:-

"29. From the relevant provisions of the Act reproduced herein above, it is clear that an election petition must contain a concise statement of "material facts" on which the petitioner relies. It should also contain "full particulars" of any corrupt practise that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practise and the date and place of commission of such practise. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practise and particulars thereof.

30. 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 Order 7 of the Code.

31. 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.

35. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

21. In the case of H.D. Revanna v. G. Puttaswamy Gowda and others reported in (1999) 2 SCC 217, defect of verification in petition and form of affidavit came up for consideration before the Hon"ble Supreme Court. It was held that even where neither the verification of the election petition nor the supporting affidavit was in the prescribed form and the petitioner did not specify as to which of the allegations were true to knowledge and which were true to information the election petition could not be ipso facto dismissed. Paragraph 14, 23 and 27 of the aforesaid judgment are instructive for the purpose of the present case and accordingly they are quoted herein below:-

"14. The argument is no doubt attractive. But, the relevant provisions in the Act are very specific. Section 86 provides for dismissal of election petition in limine for non-compliance of Sections 81, 82 and 117. Section 81 relates to presentation of election petition. It is not the case of the appellant before us that the requirements of Section 81 were not complied with though in the High Court as contention was urged that a true copy of the election petition was not served on the appellant and thus the provisions of Section. 81 were not complied. Section 82 and 117 are not relevant in this case. Significantly Section 86 does not refer to Section 83 and non-compliance of Section 83 does not lead to dismissal under Section 86. This Court has laid down that non-compliance of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6, Rule 16 or Order 7, Rule 11 C.P.C. Defect in verification of the election petition or the affidavit accompanying election petition has been held to be curable and not fatal.

23. This Court has repeatedly pointed out the distinction between "material facts" and "particulars". In so far as "material facts" are concerned, this Court has held that they should be fully set out in the Election Petition and if any fact is not set out, the petitioner cannot be permitted to adduce the evidence relating thereto later; nor will he be permitted to amend the petition after expiry of the period of limitation prescribed for an Election Petition. As regards particulars, the consistent view expressed by this Court, is that the petition cannot be dismissed in limine for want of particulars and if the Court finds that particulars are necessary, an opportunity should be given to the petitioner to amend the petition and include the particulars. The Constitution Bench in *Shri Balwan Singh v. Shri Lakshmi Narain and Ors.* [1960] 3 SCR 91 held that an election petition was not liable to be dismissed in limine merely because full particular of a corrupt practise alleged were not set out. It was observed that if an objection was taken and the Tribunal was of the view that particulars had not been set out, the petitioner had to be given an opportunity to amend or amplify the particulars and that it was only in the event of non-compliance with the order to supply the particulars, the charge could be struck out.

27. The test in all cases of preliminary objection is to see whether any of the reliefs prayed for could be granted to the petitioner if the averments made in the petition are proved to be true. If the answer to the question is in the affirmative, the maintainability of the petition has to be upheld. In the present case we have no doubt that if the allegations contained in the election petition are proved to be true by the petitioner therein, he will be entitled to get the relief set out in the prayer portion. Hence, we do not find any merit in the appeals and they are hereby dismissed with costs. Counsel's fee Rs. 5,000 (one set)."

22. In the case of *Mahendra Pal v. Ram Dass Malanger and others* reported in (2000) 1 SCC 261, the distinction between material facts and particulars came up for consideration and it was held in paragraph 7 of this judgment that whereas it may be permissible for a party to furnish particulars even after the period of limitation for filing an election petition has expired, no material fact unless already pleaded can be permitted to be introduced after the expiry of the period of limitation. Paragraph 7 of the aforesaid judgment is quoted below for ready reference:-

"7. Section 83(1)(a) of the Act mandates that in order to constitute a cause of action, all material facts, that is, the basic and preliminary facts which the petitioner is bound under the law to substantiate in order to succeed, have to be pleaded in an election petition. Whether in an election petition, a particular fact is material or not and as such required to be pleaded is a question which depends upon the nature of the charge levelled and the facts and circumstances of each case. The distinction between "material facts" and "particulars" has been explained by this Court in a large number of cases and we need not refer to all those decided cases. Facts which are essential to disclose a complete cause of action are material facts and are essentially required to be pleaded. On the other

hand "particulars" are details of the case set up by the party and are such pleas which are necessary to amplify, refine or explain material facts. The function of particulars is, thus, to present a full picture of the cause of action to make the opposite party understand the case that has been set up against him and which he is required to meet. The distinction between "material facts" and "material particulars" is indeed important because different consequences follow from a deficiency of such facts or particulars in the pleadings. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, CPC. In the case of a petition suffering from deficiency of material particulars the Court has the discretion to allow the petitioner to supply the required particulars even after the expiry of limitation. Thus, whereas it may be permissible for a party to furnish particulars even after the period of limitation for filing an election petition has expired, with permission of the Court, no material fact unless already pleaded, can be permitted to be introduced, after the expiry of the period of limitation."

23. A mechanical approach in rejecting an election petition involving allegation of corrupt practise came up for adjudication in the case of K.K. Ramachandran Master v. M.V. Sreyamakumar and others reported in (2010) 7 SCC 428 wherein the Hon'ble Supreme Court held that merely because an election petition has been clumsily drafted, cannot be a ground for rejecting an election petition involving corrupt practise which is no doubt a very serious charge and court should consider whether petitioner should be refused an opportunity to prove the allegations levelled by him. Paragraph 10, 13 and 33 of this judgment are relevant for the purpose of the present case and the same are accordingly quoted below for ready reference:-

"10. The court also observed that a charge of corrupt practise is no doubt a very serious charge but the court has to consider whether the petitioner should be refused an opportunity to prove the allegations made by him merely because the petition was drafted clumsily. The following passages from the decision in Raj Narain's case (supra) are apposite in this regard:

"16. While a corrupt practise has got to be strictly proved but from that it does not follow that a pleading in an election proceeding should receive a strict construction. This Court has held that even a defective charge does not vitiate a criminal trial unless it is proved that the same has prejudiced the accused. If a pleading on a reasonable construction could sustain the action, the court should accept that construction. The courts are reluctant to frustrate an action on technical grounds. The charge of corrupt practise in an election is a very serious charge. Purity of election is the very essence of real democracy. The charge in question has been denied by the respondent. It has yet to be proved. It may or may not be proved. The allegations made by the appellant may ultimately be proved to be wholly devoid of truth. But the question is whether the appellant should be refused an opportunity to prove his allegations? Should the court

refuse to enquire into those allegations merely because the appellant or someone who prepared his brief did not know the language of the law. We have no hesitation in answering those questions in the negative.

* * *

18. If the allegations made regarding a corrupt practise do not disclose the constituent parts of the corrupt practise alleged, the same will not be allowed to be proved and further those allegations cannot be amended after the period of limitation for filing an election petition; but the court may allow particulars of any corrupt practise alleged in the petition to be amended or amplified.

* * *

19. Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it".

"13. To the same effect is the decision of this Court in Umesh Chaliyil v. K.P. Rajendran : (2008) 11 SCC 740 where the Court held that even if the respondents raised an objection in his counter affidavit and the appellant had despite the opportunity to cure the defect pointed out by the respondent did not do so yet an election petition cannot be dismissed on the ground that the petitioner had not cured any such defects. The petitioner was entitled to bona fide believe that the petition is in all respects complete and if the High Court found it otherwise it would give an opportunity to him to amend or cure the defect. This Court also held that while dealing with election petitions the Court should not adopt a technical approach only to dismiss the election petitions on the threshold."

"33. We do not consider it necessary to refer in further details to the specific averments made by the appellant in support of the charge that respondent No. 1 had committed corrupt practices within the meaning of Section 123(4) of the Representation of People Act. All that we need to say is that the averments made in the election petition sufficiently disclose a cause of action. The averments set out the material facts & give sufficient particulars that would justify the grant of an opportunity to the appellant to prove his allegations. In as much as the High Court found otherwise, it in our opinion, committed a mistake. At any rate if there was any deficiency in the particulars required to be furnished in terms of Section 83(b) of the Act the High Court could and indeed ought to have directed the petitioner to disclose and provide the same with a view to preventing any miscarriage of justice on account of non-disclosure of the same. So long the material facts had been stated, which were stated in the present case, the absence of particulars, if any, could not justify dismissal of the petition by the High Court."

24. Having noticed, the law laid down by the Hon'ble Supreme Court in regard to rejection of an election petition under Order 7, Rule 11 of the Code of Civil Procedure, it is to be seen as to whether the case in hand is a fit one for exercising such jurisdiction. While it is the case of the petitioner in I.A. No. 684/2016 that required material facts and particulars have not been furnished by the election petitioner in paragraph 7 and 11 of the election petition, the alleged cause of action is incomplete and so the election petition is liable to be rejected, it is the case of the election petitioner, on the other hand, that required material facts have been furnished and what is required is only to furnish further material particulars which can be brought on record in course of evidence. Material facts are those essential facts which are required to be proved for getting the desired result as prayed for in the petition and material particulars are those details which constitute the material facts. In the case in hand, the election petitioner has come forward with two incidents in specific. One such incident has been described in paragraph 7 of the election petition wherein it is stated that on 09.10.2014, one Peter Kuotsu distributed money to five persons at his residence as a consideration for securing all the 27 votes of the 13 clans in Zhadima village. It was stated that the money was given to the voters through five named persons who assembled in Peter Kuotsu's residence that day. At the same time, the following statement was also made in the aforesaid paragraph:-

"Peter Kuotsu asked the representative of various clans to cast their votes in favour of the respondent and they were also asked by Peter Kuotsu to ensure that all clan members cast their votes in favour of the respondent. Peter Kuotsu distributed money to voters/electors of the constituency with knowledge, consent and connivance of the respondent. At the time of distribution of money, petitioner's clan was represented by Medozhalie Loucii, Khriellelie Loucii and Neizolie Loucii."

25. From the aforesaid averments made in paragraph 7, it would appear that payment was made to five named persons not only for securing votes of their clan members but also for casting their own votes and so the five named persons are also recipients of alleged bribe. It has been alleged that such distribution has been made by Peter Kuotsu with the knowledge, consent and connivance of the respondent. It is also mentioned in the same paragraph that one of these five persons informed about the whole episode to the election petitioner and pursuant thereto her proposed share of Rs. 3,000/- was also forwarded to her through one Diezelie Loucii. Payment made to these five persons by Peter Kuotsu on 09.10.2014 at about 7-8 P.M. in Zhadima village, therefore, is a complete incident forming material fact. Whether or not, such facts can be established by adducing evidence by the election petitioner is altogether a different question. Fact remains that specific date, time and place of distribution of money by a particular person to specified persons have been made. The source of information has also been disclosed. The returned candidate in his application for rejection of election petition might have denied the correctness of the statements but his denial cannot be taken into consideration while deciding applicability of

the provision of Order 7, Rule 11 of the Code of Civil Procedure. The allegations levelled in paragraph 7 of the election petition if taken at face value whether a triable case has been made out, is to be considered at this stage. Explanation given by the returned candidate is not relevant at this stage. Judged from such angle it cannot be said, in my considered opinion, that a triable case has not been made out by the averments made in the election petition.

26. Similarly, in paragraph 11 of the election petition the allegation is made that one Vibeilietuo Kets distributed money to voters/electors of Gariphema village in the residence of Kezha Loha at 5 P.M. on 09.10.2014. This was witnessed by Pastor Riidozhii Yashii and his wife. These two persons informed the election petition that such distribution of money was held at the place and time aforementioned and it was to the knowledge, consent and connivance of the returned candidate. To buttress the allegation of consent, Pastor Riidozhii Yashii further informed the petitioner that few days prior to the aforesaid distribution of money, the returned candidate had attended a feast in the residence of Kezha Loha where he met the people of Gariphema village. The distribution of money was made thereafter on 09.10.2014 asking for votes in favour of the returned candidate. Prima facie, date, time and place of alleged distribution of money and allegation of consent of the returned candidate has been made in paragraph 11 of the election petition. It is true that the names of voters who were present there have not been disclosed but at the same time it has been stated that 72 voters were present at the aforesaid date and time in the house of Kezha Lohe to receive money at the rate of Rs. 50,000/- per head for casting vote in favour of the returned candidate. When an assembly of 72 persons was allegedly witnessed by Pastor Riidozhii Yashii and his wife and he disclosed this information to the election petitioner, and it has also been specifically stated that aforesaid Kezha Lohe is originally a resident of Gariphema village, the allegation does not appear to be that bald, vague or unnecessary warranting an inference that they do not give rise to material facts. The number of villagers of a particular village has been mentioned. The place where they had assembled on which date and time have been mentioned and the amount of money received by each of them is also specified and all these things have been allegedly informed to the election petition by an eye witness. If in course of trial of the election petition, the petitioner examines Pastor Riidozhii Yashii, he being the person who had witnessed the alleged fact shall definitely be a competent witness to prove such fact and so it is possible on the basis of the averments made in paragraph 11 of the election petition to make out a prima facie case of bribery within the meaning of section 123(1)(A)(b) of the Act. The question as to how the knowledge and consent of the returned candidate could be inferred by Pastor Riidozhii Yashii may, at best, be a subject of cross examination provided he steps inside the witness box. Situated thus, I am not inclined to hold that allegation levelled in paragraph 11 of the election petition do not make out a cause of action for going into trial.

27. Once it is held that allegations made in paragraph 7 and 11 of the election

petition have given rise to cause of action for trial of an election petition on corrupt practise, it would be improper to throw away the election petition at this stage merely for improper verification in the concerned affidavits. The affidavits are apparently in terms of the prescribed form under the Act. Being aware as to the observations made by the Hon''ble Supreme Court in the case of K.K. Ramachandran Master (supra), this court cannot scuttle the election petition at the preliminary stage when allegations of corrupt practise have been levelled. The Hon''ble Supreme Court held that defective verification of affidavit is curable. Such view was expressed by the Hon''ble Supreme Court in the case of F.A. Sapa v. Singora reported in (1991) 3 SCC 375 and in Sardar Harcharan Singh Brar v. Sukh Darshan Singh reported in (2004) 11 SCC 196. A charge of corrupt practise is really a serious one. It cuts at the very root of sanctity of an election. It vitiates the election process not only for the concerned election but also disentitles an offender to be candidate for a further period. This is why even after expiry of the term of election, an election petition involving corrupt practise does not become infructuous. Considering the serious nature of the charge of corrupt practise, the Hon''ble Supreme Court held in paragraph 10 of the case of K.K. Ramachandran Master (supra) that petitioner should not be refused an opportunity to prove the allegations made by him although petition might be clumsily drafted and improperly verified. This court cannot lose sight of the observation made by the Hon''ble Supreme Court in the case of K.K. Ramachandran Master (supra) and so the objection raised in regard to verification of the election petition cannot be based so as to reject the election petition at the threshold without giving a scope to the election petitioner to make amend for the curable defect. Thus, all the points raised by the learned counsel on behalf of the returned candidate in support of his prayer for rejection of election petition under Order 7, Rule 11 of the Code of Civil Procedure are found to be not acceptable and accordingly, this application is devoid of any merit. The application stands dismissed.

28. No order as to costs.