

(2000) 04 BOM CK 0033
In the Bombay High Court
Case No : Election Petition No. 12 of 1999

Sri Yelgaonkar Dilip Murlidhar

APPELLANT

Vs

Shri Gudage Mohanrao Pandurang and others

RESPONDENT

Date of Decision : 18-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3, Order 6 Rule 16, Order 6 Rule 17, Order 7 Rule 11, 102
Conduct of Elections Rules, 1961 — Rule 25 , 94A
Representation of the People (Amendment) Act, 1956 — Section 90(5)
Representation of the People Act, 1951 — Section 100(1), 117, 123, 81, 81(1)

Citation : (2000) 3 ALLMR 329 : (2000) 4 BomCR 597 : (2000) 3 BOMLR 780

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

Bench : Single Bench

Advocate : V.P. Sawant and Hitesh Jain, instructed by Udwadia, Udeshi and Berjis, for the Appellant; Rajiv Mohite, for the Respondent

Judgement

S.S. Nijjar, J.—In this election petition, the petitioner seeks setting aside the election of respondent No. 1 u/s 100(1)(b), 100(1)(d)(ii) and 100(1)(d)(iv) of the Representation of the People Act, 1951, hereinafter referred to as "the Act", on the grounds that respondent No. 1 and/or his election agents and/or other persons with consent of respondent No. 1 or his election agent have committed various corrupt practices in the course, of canvassing during the election and at all stages of election in the Khatav Assembly Constituency and outside the constituency. The respondent No. 1, his election agent or other persons or agents with the consent of respondent No. 1 or his election agent have committed corrupt practices as mentioned in section 123(3), (4) and (7) of the Act.

2. In the concise statement of facts it is stated that the petitioner has contested the election on Lotus Symbol from Khatav Constituency as a candidate of Bhartiya Janata Party, hereinafter referred to as "B.J.P.", respondent No. 1 was a candidate of Nationalist Congress Party, hereinafter referred to as "N.C.P." and contested the election on the symbol of clock. The elections were held on 11th

September, 1999. The counting took place on 6th October, 1999 and the results were declared on 7th October, 1999. The total valid votes polled were 106485 and 7703 votes were invalid and rejected accordingly. The first respondent secured 42813 votes and was declared elected. In the night intervening 10th and 11th September, 1999 one Sharad Leve expired due to the injuries cause to him at the tunnel on Satara Sajjangad Road. A complaint was lodged against one Udayanraje Bhosale, who was contesting the elections in Satara constituency as a candidate of B.J.P. involving him in the offence of murder of Sharad Leve. The first respondent, his workers, agents, supporters and Leaders B.J.P. appealed to the voters in diverse manner by asking for votes in his favour. A board was displayed in villages Mayani, Katar Khatav and Vaduj with the intention to create hatred against the petitioner so that the voters shall get influenced with wrong propaganda. The board which was exhibited was written in Marathi script. The translation of the board is as follows :

"Candidate of Bharatiya Janata Party has murdered Councilor. Do not vote for murderer party. Do not vote for a party which fields as candidate who is murderers. Vote for Nationalist Congress Party, symbol : Clock."

In paragraph 4(e) it is stated that the board was displayed at the instance of first respondent and in the presence of his agent. The name of the agent are mentioned. It is stated that one Shri Himmat Govind Mane, Dr. Makarand Ramchandra Toro, Mahendra Basveshwar Gudage, Ramchandra Vishnu Somade and Baburao Narayan Somade has personally seen the agent displaying the board. It is further stated that such boards were displayed in the entire constituency with the full knowledge of the first respondent/his election agent/ and/or other supporters with the full knowledge that the contents were false but sufficient enough to prejudice the prospects of the petitioner's, chances of winning the election. In paragraph 4(f) it is stated that the first respondent, his election agent and/or other supporters also circulated pamphlets in the villages mentioned above. Photo copies of the pamphlets were distributed in the entire Khatav constituency and especially on large scale, in the village Mayani, Katar Khatav and Vaduj. The petitioner has considerable support from these three villages and, therefore, the pamphlets were purposely distributed in large scale in these villages. The pamphlet contain the following content,

"Candidate of Bharatiya Janata party Udayanraje Bhosale has murdered Councilor Appa Leve at about 1.30 a.m. by sword. Murderers assault on Ex-Vice President Shri Chandrakant Jadhav. People of Satara should think over it."

These pamphlets were signed by Abhaysinh Raje Bhosale. The contents of this pamphlets are false and baseless and the same bore the signature of Abhaysinh Raje Bhosale who was contesting the election from Satara constituency as a candidate of N.C.P. Shri Abhaysinh Raje Bhosale is a member of Maharashtra Pradesh Working Committee of N.C.P. Abhaysinh Raje Bhosale had admitted the act of getting the pamphlets circulated amongst the voters and display of board in the press conference held on 13th September, 1999 reported in "Daily Sakal"

on 14th September, 1999. These pamphlets were distributed with the consent and/or direction of first respondent and his agents. The boards were also displayed with the consent and at the instance of first respondent and his agents with the intention to create hatred in the minds of the voters against the party from which the petitioner was contesting the election. In paragraph 4(h) it is stated that although Chandrakant Jadhav has not sustained any injury, the first respondent published in the pamphlet that there was murderous assault on him by the candidate of B.J.P.

3. In paragraph 4(j) of the petition it is stated that the first respondent himself or through his agents/representatives had delivered various speeches and referred the B.J.P. as a communal party and tried to create hatred in the minds of the voters of Khatav Assembly Constituency in particular and people of Satara in general, which has influenced the voters to vote against the petitioner. It was, however, stated during the course of arguments that this ground of corrupt practice is not being pressed. In paragraph 4(k) it is stated that the first respondent had been actively aided and assisted by one R.N. Chavan who is a Government servant. He was initially appointed as Presiding Officer of one of the polling booths but later on removed from the said duty. He actively campaigned for the first respondent. He being a Block Education Officer threatened the primary school teachers who were the voters of Khatav constituency to hand over their ballot papers to him. In paragraph 4(1) it is stated that the first respondent and the leaders of his party were always referring the petitioner as "Gunda" "communal" and creating terror amongst the public with a view to create hatred against the petitioner amongst the voters of Khatav Assembly constituency. It is stated that the first respondent and other party leaders of the first respondent always uttered these false statements during the election propaganda and meetings addressed by them. By making such false statements, the voters of Khatav Constituency were influenced and their opinion went against the petitioner. One such meeting was addressed by Sharad Pawar, leader and President of N.C.P., first respondent and S.P. Deshmukh on 6th September, 1999 at Vaduj. In paragraph 4 (m) it is stated that the ballot papers for both the elections i.e. Assembly and Parliament were given separately in villages Mayani, Kaledhen, Mhasurane whereas the ballot papers of Assembly and Parliament were given at one time in villages viz., Pusegaon, Khatav and Pusesavali. The voters being uneducated were confused. However, at the time of arguments this ground has not been pressed.

4. Paragraph 5 contains the particulars of the corrupt practices, most of which is repetition of what is stated in paragraph 4 with slight amplification. Therefore, the same need not be recapitulated except the allegations with regard to the assistance rendered by R.N. Chavan. In paragraph 5(k) it is stated that earlier Chavan was employed in an education institution viz. Mayani Bhag Shikshan Prasarak Mandal as a teacher for nearly about 7 to 8 years. The first respondent is the president of the institution. Therefore, he was under the influence of first respondent. Chavan misused his influence being the Block Education Officer and

collected the ballot papers of the teachers. These teachers were given election duty at places other than their place of residence. Therefore, they were to cast their votes with postal ballot. Round about 400 postal ballots were collected on behalf of first respondent during the period 12th September, 1999 to 5th October, 1999. These postal ballots were supposed to be posted to the Returning Officer. But instead of posting them, the ballot papers were put in the ballot box which was kept in the office of Returning Officer, Khatav constituency, at Vaduj. These ballot papers were not received by post but were put in the box by R.N. Chavan. A complaint was lodged by the petitioner with the Election Commission and Returning Officer on 12th September, 1999. A complaint was also given to the Presiding Officer on 6th October, 1999 at the time of counting. R.N. Chavan has worked for the first respondent at his instance and as per the directions given by him. One Nazir Khan Babalal Jamadar, primary teacher of Satara Zilla Parishad is one of the teachers who was serving at Dambhewadi, who was given election duty was asked to hand over his ballot papers to R.N. Chavan, under threat but he refused to hand over the same to R.N. Chavan. Nazir Jamadar has so stated in an affidavit which has been attached to the petition at Exhibit-k.

5. The verification of the petition is as follows :

VERIFICATION

I, Shri Yelgaonkar Murlidhar Yelgaonkar, Age-45 years, occupation: Medical Practitioner, Residing at---At and post Mayani, Taluka---Khatav, District---Satara, at present in Bombay, do hereby solemnly declare and verify that contents of paragraph 1, 2, 4a and 4b are true and correct according to my personal knowledge, and contents of paragraph 3, 4c to 4i, 5a, 5b,5c, 5c.i, 5c.ii. 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 5m, and 6 are true and correct as to my knowledge and information and paragraph 7 to 11 is stated by way of legal submission and I believe the same to be true. In witness whereof I have signed this petition on this 20th day of November, 1999 at Mumbai,

Sd/- Petitioner. (Solemnly declared at Mumbai) (this day of 20th November, 1999) Sd/- Before me. Sd/- 20-11-99 (Smt. G.P. Pradhan) Associate, High Court, Bombay. Sd/- Advocate for petitioners."

The petition is accompanied by an affidavit which is at page 129 of the petition. The whole affidavit may be reproduced for facility of reference.

"I, Shri Yelgaonkar Dilip Murlidhar, age-45 years, occupation: Medical Practitioner, Residing at---At and post Mayani, Taluka---Khatav, District---Satara, the petitioner at present in Bombay, in the accompanying election petition calling in question the election of Shri Gudage Mohanrao Pandurang (respondent No. 1 in the said petition) make solemn affirmation and

(a) I say that the statement made in paragraphs 4-7 of the accompanying election petition about the commission of the corrupt practice of making statements which are false and which the respondent No. 1 or his election agent

believed to be false or did not believe to be true in relation to the personal character or conduct of the petitioner or in relation to the candidature of the petitioner being statements reasonably calculated to prejudice the prospects of the petitioner's election and of making appeal on the ground of religion or prejudicially affecting the election of the petitioner and obtaining or providing or abetting the assistance from a person in the service of the Government and the particulars of such corrupt practice mentioned in paragraphs 5-6 of the same petition, paragraph 4a and 4b are true and correct to my knowledge and paragraph 4c to 4l, 5a, 5b, 5c, 5ci, 5cii, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 5m and 6 are true and correct to my knowledge and information and I believe the same to be true.

Solemnly affirmed at Mumbai) Petitioner this 20th day of November, 1999 Sd// Before me, sd/- (Smt. G.A. Pradhan) Associate, High Court, Bombay, Sd/- Partner, Udadia, Udeshi & Berjis, Advocates for the petitioners."

6. Written statement to the petition was filed on 14th February, 2000. A number of preliminary objections were raised. The following issues have been framed.

1. Whether the election petition is liable to be summarily dismissed u/s 86 of the Representation of People Act, 1951, for breach of section 81(3) of the said Act.

2. Whether the election petition is liable to be summarily dismissed, under Order 7, Rule 11 of the Code of Civil Procedure, 1908, read with section 83 of the Representation of People Act, 1951, for want of cause of action relating to any ground on which the election of respondent No. 1 can be set aside under the provisions of the Act.

3. Does the petitioner prove that the respondent No. 1 and/or his agent and/or other persons with the consent of the respondent and/or his election agent have created and/or tried to create hatred in the minds of the voters on the ground of religion which has influenced the voters to vote against the petitioner.

4. Whether the petitioner and/or his agent have obtained or procured or abetted assistance (other than for giving vote) for the furtherance of the prospects of the respondent's election from a person in the service of the Government.

5. Whether the petitioner proves that respondent and/or his election agent and/or any other person with the consent of the respondent and/or his election agent have published a statement of fact which is false and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct or in relation to the candidature of the respondent, being a statement calculated to prejudice the prospects of that candidate's election as alleged in para 5 of the petition.

6. Whether the petitioner proves that result of the election in so far as it concerns the respondent has been materially affected by noncompliance with the provisions of the Constitution and/or the Representation of People Act and/or the Rules or Order made under the Representation of People Act.

7. Mr. Mohite, learned Counsel appearing on behalf of the first respondent has cited a large number of judgments in support of his submissions. In my view, the law has been fully restated with regard to the preliminary issues in the judgment of the Supreme Court in Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu, the Supreme Court observed as follows.

"24. It will be thus seen that an election petition is based on the rights which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the Court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the Court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the Court find non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e. Clause (a) of sub-section-(1) of section 83. Then under Clause (b) of sub-section (1) of section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practice were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the Court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unverified under the verification clause as well as the affidavit, the unverified allegations could have no legal existence and the Court could not take cognizance thereof. Charge of corrupt practice being quasi criminal in nature the Court must always insist on strict compliance with the provisions of law. In such a case, it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the

type provided in section 83 of the Act on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of section 83 may lead to dismissal of the petition if the matter falls within the scope of the Order 6, Rule 16 and Order 7, Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings, it is no part of duty of the Court suo motu even to direct furnishing of better particulars when objection is raised by other side. Where the petition does not disclose any cause of action it has to be rejected. Court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. Petition has to be considered as a whole. There cannot be a partial rejection of the petition."

From a perusal of the statement of law as quoted above, it becomes apparent that for the purposes of preliminary objections as to the maintainability of the election petition the averments in the petition should be assumed to be true. The Court has to find out whether the averments disclose a cause of action or a triable issue as such. u/s 86 of the Act, the Court is duty bound to dismiss the petition in case there is a non-compliance with section 81 which deals with the presentation of petitions. For the purpose of deciding issue No. 1 in this case, section 81(3) is relevant. The said sub-section is reproduced below.

"81. Presentation of petitions :-

(1).....

(2) Omitted.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

A perusal of this sub-section shows that the copies of the election petition shall be attested by the petitioner under his own signature to be a true copy of the petition. Mr. Mohite had argued that the signatures contained on the copies that the true copies do not contain the full signature of the petitioner. They only contain initials of the petitioner. I do not find much substance in the aforesaid objection as each page of the petition admittedly contains the full signature of the petitioner on the top of the page. Merely because a shorter version of the signature is appended below the endorsement "True copy" would not make it to be not attested to be a true copy.

8. The second objection raised by Mr. Mohite is with regard to the verification as well as the affidavit in Form No. 25. It is submitted that the verification is not in accordance with law as the substance of the affidavit is not in conformity with the requirements of law as laid down by the Supreme Court. He submitted that the verification is defective as the petition as well as the affidavit do not set out the sources of information with regard to the paragraphs which are verified on information. Therefore, the verification of the petition as well as the affirmation in the affidavit are not in conformity with Rule 94 read with Form No. 25. The second submission is that the affirmation of the affidavit in any event is not in the prescribed Form 25 as the name of the person making the affirmation is not mentioned.

9. Mr. Sawant, learned Counsel appearing for the petitioner, in reply has, however submitted that the defective verification can always be set right. It is not fatal to the petition. It is curable. He has also submitted that the affirmation has to be looked at as a whole. The affidavit ought not to be looked at on the basis of the final endorsement where affirmation is made before the appropriate authority. He has strongly relied on the case of F.A. Sapa Etc., Etc., Vs. Singora and others, .

10. I have given anxious thought to the arguments of the learned Counsel. The Supreme Court in Narayanaswamy's case (supra) has categorically held that sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the Court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. Now looking at the affirmation of the affidavit it becomes apparent that the same is not strictly in conformity with Form No. 25. The name of the petitioner is not mentioned in the affirmation at all. That being so, the affidavit would have to be rejected on this ground alone. Therefore, this issue would have to be decided against the petitioner on this short ground.

11. In my opinion, the first respondent is on even stronger ground with regard to non-disclosure of sources of information either in the petition or the affidavit. A perusal of the petition and the affidavit shows that sources of information have not been disclosed with regard to large portions of the matters which have been stated in para 4. Mr. Sawant had submitted that if there are any particulars lacking then the same can be cured by way of amendment. The learned Counsel at the outset submitted that the petitioner is prepared to amend the particulars. This oral submission was repeated on a number of occasions. It will be considered a little later. With regard to the importance of disclosure of the source of information, the law has been restated in Narayanaswamy's case. Mr. Mohite had invited this Court's attention to the following cases in which the importance of disclosing the source of information had been considered. They are (i) Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, , (ii) L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc., , (iii) Jeet Mohinder Singh Vs. Harminder Singh Jassi, (iv) Shivajirao B. Patil Kawekar v. Vilasrao D.

Deshmukh, A.I.R.1999 S.C.W. 4468 and (v) Narayanaswamy's case (supra). In view of the restatement of law in Narayanaswamy's case, it is not necessary to recapitulate the law as stated in different judgments. It may, however, be worth noticing that in Shivaramagowda's case the Supreme Court noticed and reproduced relevant passages from a number of cases. These may be reproduced for ready reference.

"12A In Virendra Kumar Saklecha Vs. Jagjiwan and Others, this Court stressed the importance of disclosure of sources of information in the affidavit filed along with the election petition. The relevant passage reads thus :

"10. The respondent filed an affidavit along with the election petition. The affidavit did not disclose the source of information in respect of the speeches alleged to have been made by the appellant. Section 83 of the Act requires an affidavit in the prescribed form in support of allegations of corrupt practice. Rule 94-A of the Conduct of Election Rules, 1961, requires an affidavit to be in Form No. 25. Form No. 25 requires the dependent to state which statements are true to information. u/s 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the CPC to the trial of suits. u/s 102 of the Code the High Court may make rules regulating their own procedure and the procedure of the civil courts subject to their supervision and may by such rules vary, alter or add to any of the rules in the First Schedule to the Code.

13. The importance of setting out the sources of information in affidavits came up for consideration before this Court from time to time. One of the earliest decision is The State of Bombay Vs. Purushottam Jog Naik, where this Court endorsed the decision of the Calcutta High Court in Padmabati Dasi v. Rasik Lal Dhar, ILR 1909 Cal. 259 and held that the sources of information should be clearly disclosed. Again, in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, this Court deprecated slipshod verifications in an affidavit and reiterated the ruling of this Court in Bombay case that verification should invariably be modelled on the lines of Order 19, Rule 3 of the Code. Whether the Code applies in terms or not. Again in A.K.K. Nambiar Vs. Union of India (UOI) and Another, this Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations.

14. Counsel on behalf of the appellant contended that non-disclosure of the sources of information in the affidavit was a fatal defect and the petition should not have been entertained. It is not necessary to express any opinion on that contention in view of the fact that the matter was heard for several months in the High Court and thereafter the appeal was heard by this Court. The grounds or sources of information are to be set out in an affidavit in an election petition. Counsel on behalf of the respondent submitted that the decisions of this Court were not on election petitions. The rulings of this Court are consistent. The grounds or sources of information are to be set out in the affidavit whether the

Code applies or not. Section 83 of the Act states that an election petition shall be verified in the manner laid down in the Code. The verification is as to information received. The affidavit is to be modelled on the provisions contained in Order 19 of the Code. Therefore, the grounds or sources of information are required to be stated.

15. The non-disclosure of grounds or sources of information in an election petition which is to be filed within forty-five days from the date of election of the returned candidate, will have to be scrutinised from two points of view. The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election petitioner will not be able to make any departure from the sources or grounds, if there is any embellishment of the case it will be discovered."

15A. In *Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others*, a Division Bench of which one of us (Anand, J. as he then was) was a member dealt with this aspect of the matter in extenso and held that allegations of corrupt practice must be properly alleged and both material facts and particulars should be provided in the petition itself so as to disclose the complete cause of action. The relevant passage in the judgment reads thus (S.C.C. pp. 361-62, paras 16-18)

"16. The election law insist that to unseat a returned candidate, the corrupt practice must be specifically alleged and strictly proved to have been committed by the returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or by his election agent. Suspicion, however strong, cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence. Since pleadings play an important role in an election petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts and particulars provided in the petition itself so as to disclose a complete cause of action.

17. Section 83 of the Act provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must set forth full particulars of the corrupt practice that he alleges including as full a statement as possible of the name of the parties alleged to have committed such corrupt practices and the date and place of the commission of each of such corrupt practice. This section has been held to be mandatory and requires first a concise statement of material facts and then the full particulars of the alleged corrupt practice, so as to present a full picture of the cause of action.

18. A petition levelling a charge of corrupt practice is required, by law, to be

supported by an affidavit and the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise."

16-A. We have already extracted paras (f) and (g) of the affidavit filed along with the election petition. It does not disclose the source of information. Nor does it set out which part of the election petition was personally known to the petitioner and which part came to be known by him on information. Significantly, paras (a) to (e) of the affidavit state that the averments therein are true to his information. Para (f) is silent on this aspect of the matter. Para (g) refers to all the 42 paragraphs in the petition. The affidavit is not in conformity with the prescribed Form No. 25. Thus there is a failure to comply with Rule 94-A of the conduct of Elections Rules, it is a very serious defect which has been overlooked by the High Court."

A perusal of this judgment clearly shows that the non-disclosure of grounds or sources of information in an election petition will have to be scrutinised from two points of view. The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. It is also held that the real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. This is required so that an opportunity is given to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election petitioner will not be able to make any departure from the sources or grounds, if there is any embellishment of the case it will be discovered. The whole of the petition in the present case proceeds on the basis that the Board has been displayed with the consent of the petitioner. Yet, there is not a whisper throughout the petition or in the affidavit as to how this consent was obtained, when it was obtained, where was it obtained. A bald statement is made to the effect that the boards have been displayed with the consent of the first respondent/his agents/his workers. Thus the first respondent would not know at all as to whose consent is being pleaded. Is it the consent only of the first respondent or is it the consent of the first respondent along with the election agent or is it the consent of the first respondent, his election agent as well as his party workers. This in my view totally fails the test which has been laid down by the Supreme Court in Narayanaswamy's case as also in Shivaramagowda's case. It has been categorically held in Shivaramagowda's case that suspicion, however strong, cannot take the place of proof. Since the pleadings play an important role in an election petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts and particulars provided in the petition itself so as to disclose a complete cause of action. The Supreme Court reiterates time and again that a petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the

election petitioner is also obliged to disclose the sources of information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise. The averments in the petition and the affidavit with regard to the board and the pamphlet have been made to establish the commission of corrupt practices u/s 123(3) and (3A). These sub-sections are as under :

"123. Corrupt, practices.---(3) The appeal by a candidate on his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate."

(3-A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate."

A perusal of the above shows that the petitioner was required to set out in the petition facts with regard to the printing of the board. It was necessary to state that the printing had been done at the instance of the first respondent. It was necessary to give the sources of information as to where the Boards were printed and when the Boards were printed. It is not sufficient merely to state that some persons had seen some party workers or election agent of the first respondent displaying the Board. It has been held by the Supreme Court that charges of corrupt practices are quasi criminal in nature. They can lead to drastic consequences if the charges are proved. Thus the proof required is in the nature of criminal standard of proof. In other words, for the petitioner to succeed, he would have to prove beyond reasonable doubt, that the corrupt practices were committed as enumerated in section 123 of the Act. It is also held by the Supreme Court that whilst alleging corrupt practices it is not sufficient merely to reproduce the provisions of the Act. The corrupt practices must be specifically alleged. The aforesaid facts have to be taken or read in conjunction with the verification of the petition and the affirmation of the affidavit.

12. The second substantial complaint is about the publication of the pamphlet which has been noticed above. The averments with relation to the pamphlets are contained in paragraphs 4f, g, h, and i. A perusal of paragraphs 5(c), (i), (ii), (d), (e), (f), (g), (h), (i) shows that the petitioner is relying on a press conference in which Abhaysinh Raje Bhosale is said to have admitted that he had taken out the print outs of the pamphlets. Abhaysinh Raje Bhosale was the candidate for Satara. He is neither the agent nor the campaigner of the petitioner. His

admission cannot be treated to be an admission by the first respondent. This admission by Abhaysinh Raje Bhosale cannot be equated to the consent of the petitioner. Only vague allegations are made to the effect that the pamphlets were distributed with the consent and as per the directions of the first respondent. No name of any particular party worker is given nor any details are given as to how and when the distribution was done. In accordance with the law laid down by the Supreme Court, the verification of the petition has to be seen along with the affirmation of the affidavit. The verification which has been reproduced above clearly shows that the petitioner states that paragraphs 1, 2 4a and 4b are true and correct according to his personal knowledge. All the allegations about corrupt practices which are contained in paragraphs 4 and 5 running into several sub-paragraphs and covering material facts as well as particulars are said to be based on information. Thus the verification does not clearly indicate which fact or particular is to the knowledge of the petitioner nor does it clearly state which fact or particular is based on information. Apart from this, the verification cannot possibly be in the format prescribed as in the body of the petition the sources of information have not been disclosed. It has, therefore, to be held that the verification is not in accordance with the requirements of Rule 94-A. Similarly the whole affidavit proceeds on the basis of the averments made in the petition. Therefore, the affirmation of the affidavit also cannot be held to be in conformity with Rule 94-A and Form 25. Further, in para 9 of the petition, it is stated that the petitioner has deposited a sum of Rs. 2,000/- as required by section 117 of the Act read with Rule 25 of the Rules of the High Court. This paragraph is verified on the basis of legal submission. This in my view renders the verification to be not in conformity with section 83 read with Rule 94-A of the Rules. Mr. Sawant has, however, laid a great deal of stress on the observations of the Supreme Court in F.A. Sapa's case wherein it is held that the non-disclosure of sources of information and the facts is not fatal and are curable. In my view, those observations are of no avail to the petitioner in view of the subsequent pronouncement of the Supreme Court in the cases of Narayanaswamy and Shivaramagowda. In fact, in Sapa's case (supra) and in Shivaramagowda's case the Supreme Court had relied on an earlier judgment in the case of The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, . It is to be observed that the aforesaid judgment is given by a Constitution Bench. In paragraph 57 of the judgment the Supreme Court has categorically stated that the slipshod verification of affidavit might lead to their rejection, they should be modelled on the lines of Order XIX, Rule 3 of the Civil Procedure Code. In my view, the verification of the petition in the present case has been made in a slipshod manner. The Supreme Court also observed that wherever the averments are not made on personal knowledge but are on the basis of information then the deponent has to disclose his source of information so that other side gets a fair chance to verify it and make an effective answer. The judgments in Narayanaswamy and Shivaramagowda being later in time, and of co-equal Benches have to be followed, especially since the judgments have been given after noticing the earlier judgment in Sapa's case.

13. For the aforesaid reasons I hold that the verification in the petition and the affidavit attached to the petition are not in conformity with Rule 94-A of the Rules and Form 25. Thus the Court has no option except to uphold the preliminary objection and to dismiss the petition, Issue No. 1 is, therefore, decided in the affirmative.

ISSUE NO. 2

14. In my opinion, the reasons given in support of Issue No. 1 on source of information and the verification of the petition and also the affirmation of the affidavit would be applicable equally to the present issue. Apart from this, Mr. Mohite had submitted that even if it is accepted that the Board has been printed and published at the instance of the first respondent and the pamphlet has been also printed and published at the instance of the first respondent, the petition fails to disclose a cause of action. According to the learned Counsel, the petition deserves to be dismissed because it does not disclose material facts. Furthermore, a number of pleadings are liable to be struck out under Order 6, Rule 16 being frivolous and vexatious. Mr. Sawant in reply has reiterated the earlier submission that all these are curable defects and an opportunity ought to be given to the petitioner to make the necessary amendments. Now let me see first what is pleaded with regard to the Board. Does it constitutes a corrupt practice u/s 123(4) of the Act? The ingredient of this sub-section would be satisfied if there is a publication by a candidate or his agent or any other person with the consent of a candidate or his election agent of any statement of fact which is false. The statement has to be false or believed to be false by the person making the statement. The statement must be in relation to the personal character or conduct of the candidate or in relation to the candidature of the person and this statement must be reasonably calculated to prejudice the prospects of the candidate's election. Reading even the accepted translation of the Board, it cannot even remotely be held that it pertains to the character of the petitioner. In fact the Board is totally silent as to the candidate which is being referred to. The only manner in which it can possibly relate to the petitioner is if one is to infer by a process of reasoning that since it is displayed in the constituency it must relate to the candidate. Such kind of an innuendo has to be specifically pleaded. Thus, this innuendo also cannot be proved. In my opinion, Mr. Mohite is quite correct in relying on the judgment of M.J. Zakharia Sait Vs. T.M. Mohammed and Others, . In that case in paragraph 14 it is categorically held as follows :

"14. It will be apparent from these averments in the petition that although the first respondent has stated in his petition that the pamphlet was printed and distributed with a view to create a false impression among the electorate that he was a murderer, he has not stated as to why it will create such an impression among the electorate. It was necessary for him to state so in the petition because admittedly the pamphlet nowhere names him as a murderer of the said four victims."

These observations are squarely applicable to the case pleaded by the petitioner. Even if one reads the Board along with the pamphlet no attack on the character of the petitioner can be spelled out. In the pamphlet the allegation of murder is against a total stranger to the constituency. He was contesting the elections from Satara Constituency. The pamphlet in fact mentions the name of Bhosale. Thus it becomes crystal clear that the reference, if any, was not to the personal character or conduct of the petitioner. At best it could be read to mean that an appeal was made to the effect that since he belongs to a murderer party, therefore, the voters ought to think about it. Even this would not mean that an appeal has been made to the voters to refrain from voting for the petitioner. The plain meaning of the pamphlet is that the people of Satara have been asked to think over what is stated in the pamphlet. No appeal is addressed to voters of Khataav. This is the conjoint meaning of the Board as also the pamphlet. I, therefore, find substance in the submission of Mr. Mohite to the effect that the petition deserves to be dismissed on the short ground that it does not disclose the complete cause of action, Udayanraje Bhosale has actually been arrested and is still in custody. Admittedly an unlawful killing has taken place but that killing has not taken place in the constituency of the petitioner. Therefore, attack, if any, would be against Udayanraje Bhosale and cannot be said to be even remotely related to the character or conduct of the petitioner. This leads us to the third submission that in any case giving publicity to such an event would create hatred in the minds of the voters against the first respondent. This would have reference to the corrupt practice mentioned in section 123(3-A). In fact, this ground is not pleaded in the petition. But since the allegations leading to corrupt practice u/s 123(3-A) have been made, I think it would be proper to deal with the same. A mere perusal of sub-section (3-A) shows that the corrupt practice is with respect to promoting or creating feelings of enmity or hatred between different classes of the citizens of India. Further, this hatred must be sought to be created on the grounds of religion, race, caste, community or language. The appeal in the present case, even if accepted at its face value, is to refrain from voting in favour of the petitioner on the ground that he belongs to B.J.P. This matter is also squarely covered by the aforesaid judgment in the case of M.J. Zakharia (*supra*). In that case the whole of Marxist Party has been dubbed as a party of murderers. It was held that the impression conveyed by the document that the Marxists or communists were murderers and, therefore, the electorate should not vote for them and hence it was unfavourable to the respondent, was not an impression about his personal character or conduct. It was an impression at best about his political character or conduct. In my view, there are no facts pleaded to make out the ground of corrupt practice u/s 123(3-A).

15. I am also of the considered opinion that the material facts as required with regard to consent and source of information have not been set out as required by the Judgments of the Supreme Court. The law with regard to the pleadings has also been settled in the case of Azhar Hussain Vs. Rajiv Gandhi, . In this case very serious allegations had been made. The Supreme Court held that 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. Mr. Sawant has, however, submitted that an opportunity ought to be given even at this stage to provide the necessary particulars. The learned Counsel agrees that if the Court comes to the conclusion that material facts are missing then the same now cannot be amended. In my view, the matter is again squarely covered by the judgment in Narayanaswamy's case. In paragraph 28 of the judgment, the Supreme Court considered a similar submission made by the learned Counsel. The Supreme Court observes that till the date of the judgment the appellant had persisted that the petition did not have material particulars and that the verification was in accordance with the Code and the affidavit in support of the corrupt practice in the form prescribed. Therefore it was not open to the petitioner to state that the Court ought to have given an opportunity to amend the petition. It was observed that it is no part of the duty of the Court to suo motu request the petitioner to make amendments. In the present case, no doubt, verbally Mr. Sawant had stated on a number of occasions that if required the petition will be amended and the Court ought to give an opportunity for amendment. Mr. Sawant has placed strong reliance on Sapa's case (supra) to submit that the Court should give an opportunity to cure the defects in the pleadings, the verification and the affirmation of the affidavit. In that case the returned candidates had moved for striking off the pleadings under Order VI, Rule 16 of the C.P.C. Thereupon the original petitioners applied for amendment of their election petitions. The High Court partly allowed the application under Order VI, Rule 16. On perusal of the pleadings the High Court directed the modification or deletion of certain paragraphs, the averments wherein were vague or bereft of necessary particulars. The application for dismissal of the petition on the ground that it did not disclose a cause of action was rejected. The Supreme Court examined the relevant provisions of the Act and the Code and observed as follows in paragraphs 18 and 27.

"18. Before the amendment of the R.P. Act by Act 27 of 1956, section 83(3) provided for an amendment of an election petition insofar as particulars of corrupt practice were concerned. By the 1956 amendment this provision was replaced by section 90(5) which in turn came to be deleted and transferred as sub-section (5) of section 86 by the Amendment Act 47 of 1966. Section 86(5) as it presently stands empowers the High Court to allow the particulars of any corrupt practice alleged in the petition to be amended or amplified provided the amendment does not have the effect of widening the scope of the election petition by introducing particulars in regard to a corrupt practice not previously alleged or pleaded within the period of limitation in the election petition. In other words the amendment of amplification must relate to particulars of a corrupt practice already pleaded and must not be an effort to expand the scope of the inquiry by introducing particulars regarding a different corrupt practice not earlier

pleaded. Only the particulars of that corrupt practice of which the germ exists in the election petition can be amended or amplified and there can be no question of introducing a new corrupt practice. It is significant to note that section 86(5) permits particulars of any corrupt practice alleged in the petition to be amended or amplified and not the material facts. It is, therefore, clear from the trinity of clauses (a) and (b) of section 83 and sub-section (5) of section 86 that there is a distinction between material facts referred to in Clause (a) and particulars referred to in Clause (b) and what section 86(5) permits is the amendment/amplification of the latter and not the former. Thus the power of amendment granted by section 86(5) is relatable to Clause (b) of section 83(1) and is coupled with a prohibition, namely, the amendment will not relate to a corrupt practice not already pleaded in the election petition. The power is not relatable to Clause (a) of section 83(1) as the plain language of section 86(5) confines itself to the amendments of particulars of any corrupt practice alleged in the petition and does not extend to material facts. This becomes crystal clear on the plain words of the closely connected trinity of sections 81(1)(a), 83(1)(b) and 85(5) and is also supported by authority. See *Samant N. Balkrishna and Another Vs. V. George Fernandez and Others*, and *D.P. Mishra Vs. Kamal Narayan Sharma and Another*, . In *Balwan Singh Vs. Lakshmi Narain and Others*, this Court held that if full particulars of an alleged corrupt practice are not supplied, the proper course would be to give an opportunity to the petitioner to cure the defect and if he fails to avail of that opportunity that part of the charge may be struck down. We may, however, hasten to add that once the amendment sought falls within the purview of section 86(5), the High Court should be liberal in allowing the same unless, in the facts and circumstances of the case, the Court finds it unjust and prejudicial to the opposite party to allow the same, such prejudice must, however, be distinguished from mere inconvenience, vide *Raj Narain Vs. Indira Nehru Gandhi and Another*, . This much for the provisions of section 83(1)(a) and (b) and section 86(5) of the R.P. Act."

"27. From the text of the relevant provisions of the R.P. Act, Rule 94A and Form 25 as well as Order 6, Rule 15 and Order 19, Rule 3 of the Code and the resume of the case law discussed above, it clearly emerges (i) a defect in the verification, if any, can be cured, (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true, (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same, and (iv) the defect in the affidavit in the prescribed form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, u/s 81(3) as indicated earlier. Similarly the Court would have to decide in each individual case whether the schedule or annexure referred to in section 83(2) constitutes an integral part of the election petition or not : different

considerations will follow in the case of the former as compared to those in the case of the latter."

A persual of the above shows that an opportunity should be given to amend if the application is made on the preliminary objection being raised by the returned candidate. In that case the petitioners had immediately made application for amendment. They did not simply make an oral statement that they will amend and then continue the arguments on preliminary objections. The Supreme Court has emphatically laid down that it is the discretion of the High Court whether to allow the amendment. This discretion has to be exercised keeping in view the provision contained in section 86(5) of the Act. This sub-section provides that the High Court may allow the particulars of any corrupt practice alleged in the petition to be amended or amplified. The Court must form an opinion as to the amendment being necessary for the fair trial of the petition. The observations of the Supreme Court in paragraph 18 reproduced above cannot be stretched to mean that the Court has to suo motu, request or direct the petition to amend. The Supreme Court rather observes that once the amendment falls within the purview of section 86(5) the Court should be liberal in allowing the amendment unless, in facts and circumstances of the case, the Court finds it unjust and prejudicial to the opposite part to allow the same. Thus it becomes clear that no duty is cast on the High Court to request the petition to amend. Once the preliminary objection is raised it is the duty of the petitioner to take out the necessary application for amendment. But it is a matter of fact that no application for amendment has been made in writing as required under the C.P.C. till today. It has been noticed above that the pleadings in election petitions have to be very strict, as they can lead to drastic consequences. Therefore, necessarily the application for amendment would have to be accompanied by draft amendment to enable the Court to see as to whether or not the applicant is now trying to introduce some new material facts which have not been earlier pleaded. It is also observed by this Court in the case of Pannalal S.S. Vs. Hitendra Vishnu Thakur, that the Court is not to wait indefinitely for the amendment application. If the amendment application is not filed before the issues are framed, then the matter has to proceed to trial Court. In this case written statement was filed on 14-2-2000. Number of preliminary objections are taken, seeking dismissal of the petition at the threshold. No application for amendment was filed, even after service of the written statement. Thereafter issues were framed on 28-2-2000. Issue Nos. 1 and 2 were treated as preliminary issues. Even at this stage no application for amendment was filed. Thereafter the matter has been argued on preliminary issues on a number of occasions i.e. on 10th, 23rd, 24th and 29th March, 2000. Yet no application for amendment is filed. Only the oral statement of the learned Counsel that the petitioner is willing to amend is reiterated. Such being the factual position, it would not be possible now to accept the submission of Mr. Sawant that the necessary amendment can be permitted even at this stage. I fail to see what other opportunity the Court is required to give. Surely it is not required that the Court should guide or persuade the petitioner to make an

application for amendment. This kind of submission has been emphatically rejected by the Supreme Court in para 28 of the Narayanaswamy's case (supra). Considering a similar situation the Supreme Court has observed that there is no duty cast on the High Court to suo motu direct the necessary amendment. This view is reiterated by this Court in the case of Pannalal (supra). In my opinion the petition does not disclose a complete cause of action. In view of the above Issue No. 2 is also decided in the affirmative.

ISSUE NOS. 3 AND 6

16. Issue Nos. 3 and 6 are not being pressed by the petitioner. The same may, therefore, be treated as having been withdrawn.

ISSUE NO. 4

17. The pleadings with regard to this issue are contained in paragraph 4(k) and 5(k). These pleadings are also bound to fail in view of the fact that sources of information with regard to consent have not been given. Furthermore, even if these averments are accepted to be correct it would not amount to any corrupt practice as R.N. Chavan has merely acted as a Postman. All that he has done is to collect the postal ballots from the teachers and deposit them in the ballot box. The affidavit which is filed by one of the teachers will also be of no assistance to the petitioner. It is not duly attested or verified as required under the C.P.C. In this affidavit totally vague allegations are made on the pressure exerted on other teachers by Chavan. No names, dates are given. Affidavit simply speaks that Chavan got collected postal ballot papers from a number of teachers by bringing pressure on them to vote for M.L.A. Gudage. Thus it can be seen that the affidavit speaks of matters which can be of personal knowledge to the deponent and also matters which can only be on the basis of information. In the affirmation, nothing is mentioned as to which of the matters are on the basis of the personal knowledge of the deponent and which are the matters which are of information. On the basis of the test laid down in Barium Chemical's case (supra) it has to be held that this is no affidavit in the eye of law. Even otherwise these pleadings have to be rejected on the ground that they are open to two equally possible inferences. It would not be out of place to notice that not a single voter has filed an affidavit to the effect that he had cast his vote on instructions of Chavan. Thus even the necessary material facts to constitute the ground of corrupt practice u/s 123(7) are missing. Similar matter came up before the Supreme Court in the case of Azar Husain (supra). Therein the matter of setting up the complete details about the names, places and the manner in which the corrupt practice is to be pleaded has been set out. The Supreme Court has observed as follows :---

"14. 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.

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded.

(a) mode of assistance;

(b) measure of assistance; and

(c) all various forms of facts pertaining to the assistance.

(3) In the context of an allegation as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of government servants in election it is absolutely essential to plead the following :

(a) kind or form of assistance obtained or procured;

(b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for promoting the prospects of his election.

(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured.

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered.

(6) The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars."

In my view, the aforesaid statement of law is fully applicable to the facts and circumstances of this case. In view of the above, Issue No. 4 has, therefore, also to be decided in the negative.

18. In view of what is stated above, the petition is dismissed with costs. Costs Rs. 2,000/-

Certified copy expedited.

19. Petition dismissed.