Jagdish Nayar Vs Udai Bhan

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 17, 2001

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 6 Rule 2 , Order 6 Rule 4, Order 7 Rule 1, Order 7 Rule 11
Conduct of Elections Rules, 1961 â€" Rule 56(2)
Constitution of India, 1950 â€" Article 173
Representation of the People Act, 1951 â€" Section 100(1), 100(iv), 33, 36(2), 38

Citation: (2001) 3 RCR(Civil) 172

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: Mr. Sukhbir Singh, for the Appellant; Mr. Sat Pal Jain, Senior Advocate, Mr. Ashwani Talwar and Mr. Dhiraj Bali, for the Respondent

Judgement

V.S. Aggarwal, J.
55-Hasanpur is an Assembly Constituency (Reserve). The Election Commission of India had issued the programme for

holding elections in the State of Haryana including the abovesaid assembly constituency. The details of the programme are as under :

Last date fur filing nomination 3.2.200

Scrutiny of nominations 4.2.2000

Last date of withdrawal of nomination 7.2.2000

Date of polling 22.2.2000

Counting of votes 25.2.2000

2. The petitioner as well as respondents No. 1 to 9 filed their nomination papers. After the date of withdrawal, only ten candidates i.e. the

petitioners and the respondents were left in the election fray. The polling was held on 22.2.2000 and after counting respondent No. 1 Udai Bhan

was declared to have been elected with a margin of 4735 votes over and above the petitioner. The votes polled by each of the said candidates are

as under :

Name of contesting candidates Votes polled

1. Jagdish Nayyar """"32535

2. Bachhu Singh 182

3. Ram Ratan 4468

4. ishuar Parshad 736

5. Ami Chand 21

6. Ashnk Kumar 243

7. Udan Bhan 37390

8. Kiaran Singh 666

9. Dccp Chand 230

10. Rajvcer Nayar 42

Rejected votes 1193

3. By virtue of the present election petition, petitioner Jagdish Nayar seeks setting aside of the election of re- spondent No. 1 and for a declaration

that instead the petitioner should be declared to be elected. It is asserted that respondent No. 1 had filed three nomination papers as a candidate of

Indian National Congress on 2.2.2000. He is shown to have taken oath at 1.20 p.m. on that date. On 3.2.2000 respondent No. 1 filed another

nomination paper as an independent candidate. His name is shown to have been proposed by ten persons. His nomination papers purported to

have been filed as a candidate for Indian National Congress were not accepted while his nomination papers as an independent candidate were

accepted. It is alleged that the name of the candidate is liable to be rejected if he has not taken the required oath under Article 173 of the

Constitution of India. Respondent No. I is stated to have not taken the said oath as an independent candidate and, thus, his papers should have

been rejected. He was not entitled to contest the poll. Furthermore, it is the plea of the petitioner that the signatures of the proposers of respondent

No. 1 i.e. Bhajan Lal, Tola Ram, Lajja Ram and Amar Singh apparently have been made by the same person and, thus, his name was not

proposed by ten persons. His name, thus, again was liable to be rejected on this ground.

4. As per petitioner, the name of one Karan Singh had wrongly been accepted. It was a reserved constituency. Karan Singh does not belong to

Schedule Caste. He is a Jat by caste. Details have been given as to how Karan Singh could not contest the poll being a Jat which is not a schedule

caste. Karan Singh is stated to have secured 666 votes and that if he had not contested the election those votes would have been polled in favour

of the petitioner and, thus, it has materially affected the result. Yet another ground taken up is that u/s 38 of the Representation of People Act,

1951 (for short ""the Act""), immediately after the expiry of the period of withdrawal, the Returning Officer has to prepare and publish the list of

contesting candidates. The last date of withdrawal of nomination papers was 7.2.2000 but the list of contesting candidates was not published on

the said date. It was publ ished on 9.2,2000. The Returning Officer had written to the petitioner that symbol will be allotted to all the candidates on

9.2,2000 at 4.00 p.m. In this process, the petitioner got two days less time for canvassing. Due to this delay in allotment of symbols, the petitioner

could not approach his voters at the earlier and about 5000 voters promised respondent No. 1 to vote for him as the petitioner could not reach

them on 7th or 8th February, 2000. Lastly, it is contended that during the counting on all the booths and during all the rounds, there were about

10,000 votes which were marked by the instrument not prescribed by the Election Commission, The said votes were accepted. Out of them 7,000

votes were accepted in favour of respondent No. 1. 112 votes at booth No. 127 were rejected being marked by instrument other than provided

by the Election Commission. After the counting and declaration of result, the counting agents of the petitioner told him that about 10,000 votes

having the impression of similar instrument which is not provided by the Election Commission were wrongly accepted. These votes were liable to

be rejected and has materially affected the result.

5. The contest as such has been offered by respondent No. 1 asserting that the petition does not disclose any cause of action. Necessary material

facts have not been pleaded. The averments made are vague, uncertain and cryptic. It is asserted that the petitioner himself pleaded that out of

10,000 votes wrongly accepted, 7,000 had gone in favour of respondent No. 1 and the petitioner himself got 3000 votes. The difference comes to

4000 votes. Even if those 4,000 votes are deleted, still respondent No. 1 would be the winner because the difference in the votes is 4,855

between the petitioner and respondent No. 1. Plea has been raised that the petition has not been properly signed and verified.

6. On merits, it has been contended that there is no violation of Article 173 of the Constitution of India. He had subscribed to the oath before the

competent authority. The law requires a person to take oath only once: It is asserted that the nomination form of respondent No. 1 as an

independent candidate was signed by 10 persons and it bears their signatures. The allegations levelled in this regard are stated to be vague. It is

further denied that Karan Singh was not competent to contest or that it has materially affected the result because as per respondent No. 1, he only

secured 666 votes while the margin of votes was much more between the petitioner and respondent No. 1, The other contention that 10,000 votes

were illegally counted at the time of the counting was also denied. The breakup of the votes is stated to have not been given. It is pleaded that there

were 12counling tables. Thecoimt-ing was completed in 15 rounds. The petitioner and his counting agents were present. They signed the

satisfaction sheet/certificate. All the candidates or their election agents used to sign their satisfaction sheet/certificate. No protest was raised. The

petitioner was a Minister of State in the Council of Ministers and such a thing could not have been done by the counting staff.

7. The petitioner filed rejoinder reiterating his averments of the petition.

8. On November 20, 2000 following issues were framed :-

(1) Whether the petitioner has no cause of action to file the present election petition and thus the same is not maintainable ? OPR

(2) Whether the petitioner has not pleaded all the material facts and thus the election petition is liable to be dismissed being an incomplete petition ?

OPR-1

(3) Whether the copy of the Election Petition was supplied to the answering respondent is not a true copy of the petition ? OPR-1

(4) Whether the petition has not been properly verified ? OPR-1

(5) Whether the nomination papers of Sh. Karan Singh were improperly accepted ? If yes, whether it has materially affected the result of

respondent No. 1 ? OPP

(6) Whether the answering respondent was not eligible to contest the Election ? OPP

(7) Whether the nomination paper of the respondent were not signed by the 10 electors ? OPP

(8) Whether the result of the election has been materially affected by the late allotment of symbol to the petitioner ? OPP

(9) Whether the R.O. improperly accepted and improperly rejected certain votes at the time of counting ? OPP

(10) Whether the Election result has been materially affected by the alleged irregularities as per issue Nos. 7 and 9 ? OPP

(11) Whether the petitioner is entitled to be declared elected in place of the returned candidate ? OPP

Issues No. 1 to4were treated as preliminary issues and arguments were heard on these issues.

9. During the course of submissions, there were no arguments addressed by respondent No. i with respect to issues No. 3 and 4. the arguments

were basically confined to the controversy raised pertaining to Issues No. 1 and 2.

10. In the first instance, it has been urged by the petitioner that respondent No. 1 had not taken the necessary oath and, therefore, his nomination

papers should have been rejected. Reliance was placed on Section 36 of the Representation of the People Act, 1951 and Article 173 of the

Constitution of India to urge that the oath should have been taken after submitting the nomination papers. That has not been done.

11. To appreciate the said contention, reference can well be made to Article 173 of the Constitution of India which reads as under :-

173. Qualification for membership of the State Legislature. - A person shall not be qualified to be chosen to fill a seat in the Legislature of a State

unless he -

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission, an oath or affirmation

according to the form set out for the purpose in the third Schedule;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and in the case of a seat in the Legislative Council,

not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament,

12. Some of the admitted facts in this regard for the purpose of the present petition can conveniently be listed. Admittedly, on 2.2.2000 the

petitioner submitted three nomination forms as a candidate of Indian National Congress. On the next date, he submitted another form as an

independent candidate. He has taken the necessary oath at 1.20 p.m. on 2.2.2000 before Sub Divisional Magistrate (Civil), Hodal. The obvious

question, therefore, that comes up for consideration is as to whether it is necessary to take a fresh oath or not.

13. The attention of the Court has been drawn towards the decision of the Allahabad High Court in the case of Om Parkash v. Sri Santosh and

others AIR 1988 All 331. In the cited case, certificate of oath or affirmation was filed at 1.15 p.m. The nomination papers had been filed at 1.17

p.m. On the basis of these circumstances, it was alleged that, according to law, the returned candidate should have taken the oath only after

presenting his nomination papers and not later than the date preceding fixed for the scrutiny. The person filing the election petition has no personal

knowledge. The contention that the nomination papers in this regard should have been rejected was repelled.

14. The Supreme Court in the case of J.H. Patel Vs. Subhan Khan, had also consid-ered''a similar controversy. The answer was provided in

paragraph 7 of the judgment wherein it was held as under :-

7. There is hardly any scope for controversy about the validity of the oath taken at 10.55 a.m. on 3.11.1994 which was the date of scrutiny. This

Court in its earlier judgments in the case of Pashupati Nath Singn v. Harihar Prasad Singh and in the case of Khaji Khanavar Khadirkhan Hussain

Khan v. Siddavanballi Nijalingappa has categorically held that the oath required by Article 173 of the Constitution of India has to be taken prior to

the date of scrutiny of the nomination paper and not on the same day, minutes before the scrutiny. The Court took note of the provisions of Section

36(2) of the Representation of the People Act, 1951 and made the following observation :-

It seems to us that the expression ''on the date fixed for scrutiny'' in section 36(2)(a) means ''on the whole of the day on which the scrutiny of

nomination has io take place''. In other words, the qualification must exist from the earliest moment of the day of scrutiny. It will be noticed that on

this date the Returning Officer has to decide the objections and the objections have to be made by the other candidate after examining the

nomination papers and in the light of Section 36(2) of the Act and other provisions. On the date of the scrutiny the other candidates should be in a

position to raise all possible objections before the scrutiny of a particular nomination paper starts.

The conclusion thereafter was drawn further in paragraph 9 of the judgment in the following words :-

9. There was not much controversy at the Bar that the oath to be taken under Article 173 of the Constitution of India once taken for anv

constituency would be valid for the election to the Assembly concerned.....

15. This Court in the case of Sarabjit Singh v. Mantar Singh, 1998(4) RCR 87 (P&H) : ILR 1999 (P&H) 46 also went into the same controversy.

A similar argument, as is being addressed on behalf of the petitioner, was repelled holding as under :-

The Constitution makes it mandatory for the candidate to subscribe to the oath. It has to be in the prescribed form. It must conform to the form as

given in Schedule III. However, once the candidate has subscribed to the oath in the prescribed form, it cannot be said that the requirement of

Article 173(a) has not been complied with. Admittedly, the respondent has taken the oath in the prescribed form. This document was with the

Returning Officer. Having taken the oath, the respondent had submitted the second nomination paper. According to the rule laid down by the Apex

Court in J.H. Patel Vs. Subhan Khan, an oath taken in the prescribed form in one constituency amounts to sufficient compliance even in respect of

another constituency. In the present case, the respondent had taken the oath before the Returning Officer who was accepting his nomination paper.

It is clear that the action was in conformity with the provisions of Article 173 of the Constitution.

Mr. Mattewal contended that the candidate has to taken oath alongwith the submission of the nomination paper. He placed reliance on the decision

of their Lordships of the Supreme Court in Pashupati Nath Singh Vs. Harihar Prasad Singh, In this case, it was noticed by their Lordships in

paragraph 11 that ''''no oath or affirmation was attached to the nomination paper or was filed before the date fixed for the scrutiny. It was in view of

this factual position that the contention raised on behalf of Pashupati Nath that the oath could have been taken before the objection was considered

by the Returning Officer, was rejected. It was held that the oath has to be taken before the date fixed for scrutiny.'''' In the present case, the

respondent had admittedly taken and. subscribed to the oath before the date of scrutiny. Indeed, the validity of the nomination paper has to be

judged on the date of the scrutiny. If on that date, the nomination paper conforms to the requirements of law, the Returning Officer is entitled to

accept it. The date of scrutiny as interpreted in Patel''s case (supra) means the whole day. Thereafter, the provisions of law must be complied with

before the beginning of the date of the scrutiny. It is the admitted position that in the present case, the respondent had complied with the provisions

of Article 173(a) before the date of scrutiny. Thus, no infirmity can be found with the action of the Returning Officer in accepting the respondent''s

nomination paper.

16. It is abundantly clear from what has been recorded above that oath has to be taken under Article 173 of the Constitution of India only once. It

could be for the constituency and, therefore, if respondent No. 1 had taken the oath and submitted a subsequent nomination paper, necessarily it

cannot be held that it would become invalid. A fresh oath need not be taken or appended along with every nomination paper or form. Thus, it must

be held that the necessary provisions were complied with. The said contention of the petitioner must fail.

17. The learned Counsel for the petitioner further highlighted the fact that during the counting 10,000 votes were marked by the instrument not

prescribed by the Election Commission. They were counted and 7000 such votes went in favour of respondent No, 1. The assertion of the

petitioner in this regard reads as under:

That during the counting on all the booths and during all the rounds, there are about 10,000 votes which were marked by the instrument not

prescribed by the Election Commission of India were accepted and out of 7,000 of such votes were accepted in favour of the respondent No. 1.

Similar 112 votes at booth No. 127 of village Pen-galtu were rejected being marked by instrument other than provided by Election Commission of

India. After the counting and declaration of result the counting agents of the petitioner told that about 10,000 votes having the impression of similar

instrument which is not provided by the Election Commission were wrongly accepted. These votes were liable to be rejected under Rule 56(2)(g)

of the Conduct of Election Rules, 1961 read with instructions issued by Election Commission of India.

Thus the wrong acceptance of ballot appears in favour of the respondent No. Udai Bhan has materially effected the election, so far as the returned

candidate is concerned.

18. The objection and rightly so taken is that there are no serial numbers of ballot papers that are 1 forthcoming and secrecy of the votes in this

regard cannot be disturbed.

19. The assertions in this regard are vague. When such vague assertions on imaginative figures are forthcoming, it cannot be taken as there was an

averment that votes which went in favour of respondent No. 1 should have been rejected under Rule 56(2)(g) of the Conduct of Election Rules,

1961 read with instructions issued by the Election Commission of India. Supreme Court in the case of Shri Jitendra Bahadur Singh Vs. Shri

Kirshna Behari and Others, was considering a similar controversy in the petition. It had not been disclosed as to on what basis the petitioner states

that such figures were arrived at. In paragraph 8 of the judgment, Supreme Court held as un-der:-

The trial Court was of the opinion that if an election petitioner in his election petition gives some figures as to the rejection of valid votes and

acceptance of invalid votes, the same must not be considered as an adequate statement of materials facts. In the instant case apart from giving

certain figures whether true or imaginary, the petitioner has no! disclosed in the petition the basis on which he arrived at those figures. His bald

assertion that he got those figures from the counting agents of the Congress nominee cannot afford the necessary basis. He did not say in the

petition who those workers were and what is the basis of their information. It is not his case that they maintained any notes or that he examined

their notes, if there were any. The material facts required to be stated are those facts which can be considered as materials supporting the

allegations made, in other words they must be such facts as to afford a basis for the allegations made in the petition. The facts stated in paragraphs

13 and 14 of the election petition and in schedule ""E"" are mere allegations and are not material facts supporting those allegations. This Court in

insisting that the election petitioner should state in the petition the material facts was referring to a point of substance and not of mere form.

Unfortunately the trial Court has mistaken the form for the substance. The material facts disclosed by the petitioner must afford an adequate basis

for the allegations made.

Thereafter the contention as is being raised in the present petition has been rejected holding as under :-

.....The election petition is silent as to the inspection of the ballot papers or whether the counting agents had noted down the serial numbers of

those ballot papers; if so who those agents are and what are the serial numbers of the ballot papers to which each one of them advanced their

objections. These again are the material facts required to be stated.

19. In a subsequent decision of the Supreme Court in the case of Satyanarain Dudhani Vs. Uday Kumar Singh and Others, the plea raised in the

election petition was that 339 valid votes in favour of the petitioner were neither counted nor rejected by the Counting Supervisor. 35 valid votes in

favour of the petitioner were not counted in his favour on the false plea that the ballots were missing. No details were given. The Supreme Court

rejected the plea holding as under :-

It is thus obvious that neither during the counting nor on the completion of the counting there was any valid ground available for the recount of the

ballot papers. A cryptic application claiming recount was made by the petitioner-respondent before the Returning Officer. No details of any kind

were given in the said application. Not even a single instance showing any irregularity or illegality in the counting was brought to the notice of the

Returning Officer. We are of the view when there was no contemporaneous evidence to show any irregularity or illegality in the counting. Ordinary,

it would be proper to order recount on the basis of bare allegations in the election petition. We have been taken through the pleadings in the

election petition. We are satisfied that the grounds urged in the election petition do not jus-tify for ordering recount and allowing inspection of the

ballot papers. It is settled proposition of law that the secrecy of the ballot papers cannot be permitted to be tinkered lightly. An order of recount

cannot be granted as a matter of course. The secrecy of the ballot papers has to be maintained and only when the High Court is satisfied on the

basis of material facts pleaded in the petition and supported by the contemporaneous evidence that the recount can be ordered.

20. Identical is the position herein. There is nothing to indicate, because there is no plea, that at the relevant time there was any protest from the

petitioner or his agent when those votes were counted. There is also nothing to indicate that any request was made for recounting. Imaginary

figures nave been mentioned without knowing as to how the same have been arrived at. The necessary consequence would be that merely on such

assertion it cannot be held that it calls for any interference. The said contention must fail.

21. Yet another plea taken by the petitioner has been that one Karan Singh, respondent No. 7, was allowed to contest and his nomination paper

accepted as if he was a member of the Scheduled Caste while, in fact, he was a Jat by caste. It is asserted that he got 666 votes and this fact

alongwith other facts materially affected the election result. At the outset, it must be mentioned that this a question pertaining to a dispute regarding

which ordinarily evidence would be recorded. But Section 100(1)(d) of the Representation of the People Act, 1951 reads as under:-

100. Grounds for declaring election to be void - (1) Subject to the provisions of sub-section (2) if the High Court is of opinion -

(a) to (c) xx xx xx

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

(i) by the improper acceptance or any nomination; or

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

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

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

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

22. Since it is not alleged that respondent No. 1, the winning candidate, is guilty of corrupt practices, on this count the petitioner could only

succeed if it is shown that the result of the election was materially affected. As pointed out above, respondent Karan Singh only secured 666 votes.

As pointed out above, the margin of the vote was 4735 between respondent No. 1 and the petitioner and, therefore, even if the assertion of the

petitioner is taken at its best, still it would not materially affect the result of the election. Regarding the other co-related facts, as would be noticed

hereinafter, the petitioner, indeed, did not plead the necessary facts to permit the Court to proceed further.

23. Two other facts on the basis of which the petitioner seeks setting aside of the election of respondent No. 1 are that, as per petitioner, the

signatures of proposers of respondent No. 1 i.e. BhajanLal, Iota Ram, Lajja Ram and Amar Singh apparently have been made by the same

person. In other words, it is contended that being an independent candidate his name was not proposed by 10 persons. It is also asserted that

7.2.2000 was the last date for withdrawal of the nomination papers. The list of the contenting candidates was not published on the said date. The

same was published on 9.2.2000. The symbol was allotted to the petitioner after two days and due to this delay in allotment of symbol, the

petitioner could not approach this voters in the constituency. Due to this reason, about 10,000 voters had promised to vote for respondent No. 1

as the petitioner could not approach the voters on 7th or 8th February. The precise pleadings in this regard can be noticed from paragraph 16 with

respect to the first contention and paragraph 26 after stating the bask facts, which read as under :-

16. That from nomination papers Annexure P-2, it is apparent that the signatures of proposers of re-spondent No. 1 i.e. Bhajan Lal having

Sr.No.299 Part-161, Tola Ram having SR. No. 310, Part No. 161 and Sh. Lajja Ram having Sr. No. 363 Part No. 161 and Amar Singh having

Sr. No. 369 part No. 161 was made by the same person. Thus the respondent Udai Bhan has not been proposed by 10 proposers of the

constituency. As such the respondent Udai Bhan is ineligible to contest the election as the same is in violation of provision of Section 33 of me Act

and are liable to the dismissed.

26. That due to non-issuance of Election symbol to the petitioner, he got two days less time for canvassing than prescribed. Due to this delay in

allotment of symbols, the petitioner cold not approach his votes in the constituency at the earlier and due to this reason his about 5000 voters

promised to Sh. Udai Bhan to vote for him and the voters could not vote the answering respondent as the petitioner could not approach them at

the earliest i.e. on 7th or 8th February, 2000 and the voters committed themselves to vote for respondent No. 1 Udai Bhan. Thus non-display and

allotment of symbol to the petitioner on 7.2.2000 and the display of symbols and allotment on 9.2.2000 is violative of provisions of Section 38 of

the Representation of the People Act and this ground covers u/s 100(d)(iv) of the Act and materially effect the election so far as the returned

candidate is concerned.

24. In the first instance it was urged that in the replication certain explanations have been given and more details are forthcoming. It must be

mentioned at this stage itself that there is a difference between the petition and the pleadings. A petition, written statement and rejoinder would be

part of the pleadings. But to see if necessary cause of action is disclosed, only the petition has to be seen. No attempt has been made to amend the

same. In this regard, only the assertions made in the petition are being looked into.

25. Learned counsel for the petitioner urged that in any case necessary particulars have been pleaded and it has materially affected the result of the

election. He also contested that he would show that nomination papers of respondent No. 1 were not genuinely signed by Bhajan Lal and others

mentioned above.

26. Reference with advantage can well be made to the decision of the Supreme Court in the case of Roop Lal Sathi v. Nachhattar Singh, AIR

1982 S.C. 1559. In the cited case, the Supreme Court drew a clear distinction between the material facts and particulars. It is for the reason that

u/s 83 of the Representation of the People Act, 1951 an election petition has to contain a concise statement of the material facts on which the

petitioner relies. Sub-section (1) to Section 83 of the Representation of the People Act, 1951 reads as under ;

83. Contents of petition. - (1) An election petition -

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleged including as full a statement as possible of the names of the

parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of

pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in

support of the allegation of such corrupt practice and the particulars thereof.

27. The Supreme Court in this regard drew the distinction between the material facts and particulars and in Roop Lal Sathi"s case (supra)

recorded as under :-

There is distinction between ""material facts"" and ""particulars"". The word ""material facts"" shows that the facts necessary to formulate a complete

cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes

bad.....

It has been further elucidated as under :-

Thus the word ""material"" in material facts u/s 83 of the Act means facts necessary for the purpose of formulating a complete cause of action; and if

any one ""material"" fact is omitted, the statement or plaint is bad; it is liable to be struck out. The function of ""particulars"" is quite different, the use of

particulars is intended to meet a further and quite separate requirement of pleadings imposed in fairness and justice to the returned candidate. Their

function is to fill in the picture of the election petitioner"s cause of action with information sufficiently detailed to put the returned candidate on his

guard as to the case he has to meet and to enable him to prepare for trial in a case where his election is challenged on the ground of any corrupt

practice.

28. Similarly, in the case of Mohan Rawale v. Damo-dar Tatyaba alias Dadasaheb and others, 1994(2) Supreme Court Cases 392, a similar

question again came up for consideration. Supreme Court referred to Rule 11 of Order 7 of the CPC and concluded that an election petition can

be rejected if it does not disclose a cause of action. In the facts of that case, the Supreme Court held that triable issues were drawn and a

reasonable cause of action means a cause of action with some chances of success when only the allegations in the pleadings are considered.

29. This Court in the case of Mehant Ram Parkash Das v. Ramesh Chander, 1997(3) RCR 243 held that if on considering cumulatively the

allegations on concise statement of material facts in the election petition and documents in support thereof, the petition discloses a cause of action

and triable questions, then it cannot be dismissed at the threshold. The court has to adopt a procedure which would meet the ends of justice. It was

on the facts of that particular case that this court concluded that a request had been made to the Returning Officer which was illegally rejected and

on perusal ofthe petition it could not be said that concise statement of material facts was missing.

30. Supreme Court in the case of Aad Lal Vs. Kanshi Ram, was concerned with an election petition where the losing candidate challenged the

election of the winning candidate and pleaded that the winning candidate had committed corrupt practices. It was held that mere allegation would

not make a case or amount to interference or attempt to interfere with free exercise of electoral right. This Court would hasten to add that this was

a case pertaining to corrupt practices and consequently has little bearing on the facts ofthe present case.

31. However, at this stage one cannot avoid to notice the subsequent decision of the Supreme Court in the case of Ashwani Kumar Sharma Vs.

Yaduvansh Singh and Others, In the cited case, the Supreme Court was concerned with the language of Section 83 of the Representation of the

People Act and noted it to be similar to Order VI Rule 2 of the Code of Civil Procedure. It was further held that the election petition deals with the

counting of ballot papers and explains as to why such counting was unfair, improper and not in accordance with law. In paragraph 15 of that

election petition, the petitioner had alleged that on counting tables No. 11 and 12, ballot papers marked on Hand symbol were mixed with those of

other party candidates. It was in these circumstances that it was held that the election petition could not have been rejected at the preliminary stage

on the ground that it does not contain concise statement of material facts.

32. More recently in the case of H.D. Revanna Vs. G. Puttaswamy and Others, the Supreme Court had drawn the conclusion that if the relief

claimed could be granted on averment made, then the petition should nol be dismissed at threshold. In paragraph 27 of the judgment, it was held as

under :-

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.,,,..

33. In the case of V.S. Achuthanandan Vs. P.J. Francis and Another, , Supreme Court held that the cause of action cannot be equated with proof

and had laid down the following guide- lines ;-

This court in Mohan Rawale Vs. Damodar Tatyaba alias Dadasaheb and Others, held that a reasonable cause of action is said to mean a cause of

action with some chances of success when only the allegations in the pleadings are considered. So long as the claim discloses some cause of action

or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out.

The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more

known than clearly understood. It further held that the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence

of full particulars. The distinction among the ideas of the ""grounds"" in Section 81(1), of ""material facts"" in Section 83(1)(a) and of ""full particulars"" in

Section 83(1)(b) are obvious. The provisions of Section 83(1)(a) and (b) are in the familiar pattern of Order VI, Rules 2 and 4 and Order 7, Rule

1(e) Code of Civil Procedure. There is a distinction amongst the ''grounds'' in Section 81(1): [he ""material facts"" in Section 83(1)(a) and ""full

particulars"" in Section 83(1)(b). The Court approved the observations of Jacob in ""The Present Importance of Pleadings"" (1960) Current Legal

Problems at pp. 175-176 :-

Pleadings do not only define the issues between the parties for the final decision of the Court at the trial, they manifest and exert their importance

throughout the whole process of the litigation..... They show on their face whether a reasonable cause of action or defence is disclosed. They

provided a guide for the proper mode of trial and particularly for the trial of preliminary issues of law or fact. They demonstrate upon which party

the burden of proof lies, and who has the right to open the case. They act as a measure for comparing the evidence of a party with the case which

he has pleaded. They determine the range of the admissible evidence which the parties should be prepared to adduce at the trial. They delimit the

relief which the Court can award.,,..

34. Lastly, the attention of the Court has further been drawn towards the decision of the Supreme Court in the case of Mahendra Pal Vs. Ram

Dass Malanger and Others, In the cited case, the Supreme Court held that whether any election petition is to be dismissed in limine or not is to be

seen on the facts of each case. It has to be seen if material facts had been pleaded or not.

35. From the aforesaid, the conclusion can conveniently be drawn. In orderto see if the petition discloses a cause of action or not, the allegations

made in the petition have to be seen. In terms of section 33 of the Representation of the People Act, 1951, the material question is whether it

contains a concise statement of material facts or not. If it contains a concise statement of material facts and on the basis of that if there is room to

proceed further, necessarily petition should not be dismissed at its threshold. It depends upon the facts and circumstances as alleged in each case.

The evidence to be produced need not be pleaded. Failure to plead even a single fact can lead to incomplete cause of action and can lead to

rejection of the election petition.

36. Reverting back to the facts of the present case, in paragraph 16 of the petition, which has been reproduced above, the petitioner simply stated

that the nomination paper of respondent No. 1 apparently does not bear the signatures of four proposers. They have been made by the same

person.

37. To state that they are forged signatures is one thing but it is another thing to allege that they are apparently those of one person. The expression

apparently"" is far less than an allegation of signatures of a third person having been forged. The petitioner in the petition is reluctant to allege a

particular fact and consequently it cannot be taken to be an averment that, in fact, the nomination paper was not proposed by ten persons who had

signed the same.

38. Similar is the position with respect to the second allegation that because the petitioner got two days less for canvassing, certain persons had

promised and voted forrespondentNo. 1, Once again, it has to be remembered that not only the names are not forthcoming, it is not clear as to

which was that place where the petitioner could not go and voters had promised otherwise. Imaginary figures which are vague have been

recorded.

39. Once a petitioner makes allegations which are imaginary and imaginary figures of votes are pleaded, it leads only room for imagination. The

facts are not clear. A roving enquiry cannot be permitted to take place. Even if the assertions of the petitioner on the face of it were taken, still the

court would not know as to if the nomination paper was bearing the forged signatures and regarding the second plea who were those 5000 voters

who promised to vote for respondent No. 1. Therefore, it must be stated that the election petition on this count cannot be said to be disclosing a

cause of action.

For all these reasons given above, findings on Issues No. 1 and 2 are recorded in favour of respondent No. 1 and against the petitioner. The

election petition consequently is dismissed leaving the parties to bear their own costs.

40. Petition dismissed.