(2004) 1 ILR (P&H) 552 : (2004) 137 PLR 757

High Court Of Punjab And Haryana At Chandigarh

Case No: Election Petition No. 11 of 2002

Harcharan Singh Brar		APPELLANT
	Vs	
Sukhdarshan Singh and Others		RESPONDENT

Date of Decision: July 11, 2003

Acts Referred:

- Conduct of Elections Rules, 1961 - Rule 94A
- Representation of the People Act, 1951 - Section 123(7), 83(1), 86(5)

Citation: (2004) 1 ILR (P&H) 552 : (2004) 137 PLR 757

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

Bench: Single Bench

Advocate: S.P. Jain, M.L. Saggar and Vijay Kumar Choudhary, for the Appellant; S.C. Kapoor, Senior Advocate and Ashish Kapoor, for the Respondent

Final Decision: Dismissed

Judgement

This Judgment has been overruled by **: Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and Others, AIR 2005 SC 22 : (2004) 9 JT 269 : (2005) 139 PLR 394 : (2004) 9 SCALE 105 : (2004) 11 SCC 196 : (2004) AIRSCW 6205 : (2004) 7 Supreme 721**

S.S. Nijjar, J.

The elections to the Punjab Legislative Assembly were held on 7.2.1997. The term of five years was to expire on 14.2.2002. The Election Commission of India announced the Election Programme for the States of Punjab, Uttar Pradesh and Manipur on 25.12.2001. Therefore, the Model Code of Conduct came into effect with effect from 25.12.2001. The Chief Election Officer, Punjab issued the programme for holding elections in all the 117 constituencies of Punjab, including 105 Muktsar Assembly Constituency. The election

programme is reproduced as under:-

(1) Calling of Constituency 16.1.2002
(2) Last date for filing nomination 23.1.2002
(3) Date of Scrutiny of nomination papers 24.1.2002
(4) Last date for withdrawal of candidatures 28.1.2002
(5) Date of Polling 13,2.2002
(6) Hours of Poll 8.00 AM to 5.00 PM
(7) Date of counting of votes 24.2.2002
(8) Date of declaration of result 24.2.2002

2. After withdrawal of nomination papers, 12 candidates remained in the election contest for the Muktsar Assembly Constitutency. The petitioner was a nominee of the Congress Party. Respondent No. 1 contested as independent candidate, having been denied ticket by the Shiromani Akali Dal (Badal). Respondent No. 2 was candidate of Shiromani Akali Dal (Badal). Respondent No. 3 was candidate of B.S.P. Remaining candidates contested as independent candidates. Respondent No. 5, Jaspal Singh filed his nomination paper on 22.1.2002. Respondent No. 1, the returned candidate filed his nomination papers on 23.1.2002. The polling took place on 13.2.2002. Counting of votes took place on 24.2.2002. Respondent No. 1 was declared elected having won by a margin of 200 votes. Candidates obtained the following votes:-

Sr. No.	Name of Candidate	Name of party	Votes polled
1.	S. Harcharan Singh	INC	32265
2.	Harnirpal Singh	SAD	26855
3.	Mandar Singh	BSP	2076
4.	Sukhdarshan Singh (Khokhar)	IND	264
5.	Sukhdarshan Singh (Marar Kalan)	IND	32465
6.	Sukhjinder Singh	IND	279
7.	Sham Lal	IND	140
8.	Jaspal Singh	IND	875
9.	Pardeep Kumar	IND	187
10.	Manjeet Kaur	IND	242
11.	Mukhtiar Singh	IND	470
12.	Ram Kumar	IND	1201

Total No. of electros : 1,39,658
Votes Polled : 97,319
Votes rejected : 39

3. The petitioner has challenged the election of respondent No. 1 by filing this petition under Sections 80, 80A, 81 read with Sections 100 and 101 of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"). After hearing the learned counsel

for the parties, and perusing the pleadings of the parties, the following/issues have been framed on 25.11.2002:-

1. Whether the averments made in the election petition lacks in material facts and do not disclose any cause of action? If, so, its effect? OPR

2. Whether the affidavit filed in support of the election petition is not valid? If so, its effect? OPR

3. Whether respondent No. 1 is guilty of having committed the corrupt practice of obtaining the assistance of a police officer within the meaning of Section 123(7) of the R.P. Act as alleged in the election petition? OPP

4. Whether the nomination of respondent No. 5 was improperly accepted? IF so, its effect? OPP

5. Whether the petitioner is entitled to the relief of being declared as successful candidate? OPP

6. Relief.

4. Issues No. 1 and 2 being inter-connected are taken up together for consideration and disposal.

5. The petition is supported by an affidavit, dated 8.4.2002. In paragraph a) of the affidavit, it is stated that the facts stated in para No. 5 of the election petition are true to the knowledge of the petitioner. In paragraph b) of the affidavit, it is stated that corrupt practices mentioned in paras No. 6 to 13 of the election petition and Annexures P/1 to P/4 and its true English Translation Annexures P/1/T to P/1/T are true as per information received from the persons mentioned in paras No. 6 to 13 of the election, petition which are believed to be true. The verification of the election petition is as follows:-

"Verification:

Verified that the contents of paras No. 1 to 5, 16, 19 and 20 of the election petition are correct as per my knowledge; contents of paras No. 6 are correct as per the information received from S/Shri Dhiraj Singh son of Shri Buta Singh, Bahal Singh son of Sewa Singh, residents of Village Barkandi, Tehsil and Distt. Muktsar, Paramjit Singh Sidhu son of Shri Gurdayal Singh Sidhu, resident of near Kotkapura Bye-pass, Muktsar and Didar Singh son of Bahal Singh, resident of Wattu, Tehsil and Distt. Muktsar and believed to be true; contents of para No. 7 are correct as per information received from the newspaper "Daily Ajit", dated 25.1.2002 based on the report of his Correspondent, Shri Baldev Singh Bham and believed to be true; contents of paras No. 8 are correct as per information received from Sushil Kumar son of Kapor Chand, resident of Village Bariwala, Teh. and Distt. Muktsar, Guran Ditta Singh, Ex-Sarpanch son of Kapoor Singh, resident of Village

Khokar, Teh., and Distt. Muktsar, Paramjit Singh Sidhu son of Shri Gurdayal Singh Sidhu, resident of near Kotkapura Bye-pass, Muktsar; Didar Singh son of Bahal Singh, resident of Wattu, Teh. & Distt/Muktsar and from official record of FIR No. 36 dated 7.2.2002, PS Sadar Muktsar and are believed to be correct; contents of para No. 9 are correct as per information derived from official record of FIR No. 15 dated 7.2.2002, P.S. City Muktsar: contents of para No. 10 are correct as per information received from Sarvshri Vijay Kumar son of Kishan Chand, Ex-President, Notified Area Committee, Bariwala (Muktsar), Charan Dass, Ex-Sarpanch, Bariwala (Muktsar), Pritpal Singh son of Gurdayal Singh, resident of Jandoka, Teh. and Distt. Muktsar and are believed to be true; contents of para No. 11 are correct as per information received from S/Shri Jalaur Singh son of Inder Singh, Sukhdev Singh son of Hakam Singh, Sohan Singh son of Chanan Singh, Sukhwant Singh son of Gurjant Singh and Major Singh, Ex-Sarpanch, all residents and electros of village Harike Kalan, Distt. Muktsar and believed to be true: contents of para No. 12 are correct as per information received from S/Shri Jaswant Singh son of Ajaib Singh, Chairman, Block Samiti, Muktsar, Gurmit Singh son of Paramjit Singh, Gurjant Singh son of Bhag Singh, all residents and electors of the village Similar, Distt. Muktsar and are believed to be true; contents of para No. 13 are correct as per information received from Sarvshri Shri Ajaypal Singh son of Gurbhagat Singh and Gurjant Singh son of Mukhtiar Singh, resident of Village Marar Kalan, Distt. Muktsar and believed to be true; contents of para No. 14 are correct as per information received from Shri Sukhdarshan Singh Khokhar-respondent No. 8 and are believed to be true; contents of para No. 15 are correct as per information derived from the official record from the office of Registrar, Muktsar under the Hindu Marriage Act, 1955 and are believed to be true; contents of paras No. 17 and 18 are correct as per legal advice received and believed to be true; and the last para is prayer clause. No part of it is false and nothing relevant has been kept concealed therefrom."

6. Mr. S.C. Kapoor, learned Senior Advocate, has submitted that the election petition deserves to be dismissed at the preliminary stage as the pleadings in the petition even if accepted at face value, would not constitute a complete cause of action. According to the learned counsel, material facts which are necessary for proving corrupt practice as defined u/s 123(7)(d) of the Act, are missing. Further more, the petition does not contain the necessary material particulars of the alleged corrupt practices. According to the learned Sr. Counsel, the election petition deserves to be dismissed as it is not supported by the requisite affidavit as required under Rule 94(a) of the Conduct of Election Rules, 1961, read with Form-25. According to the learned Sr. counsel, the affidavit deserves to be rejected as the necessary sources of information have not been disclosed. The affidavit, according to the learned Sr. counsel, is a mere repetition of the words contained in Form-25. There is no affidavit in support of the petition in substance. According to the learned counsel, the petitioner should have given the details about the coercion and undue influence exerted by the Raj Balwinder Singh, Sub-Inspector, Punjab Police (hereinafter referred to as "the son"). In support of these submissions, learned counsel has relied on a number of judgments of the Supreme Court which are as under:-

1. Rananjaya Singh Vs. Baijnath Singh and Others, .

2. Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, .

3. Shri Jitendra Bahadur Singh Vs. Shri Kirshna Behari and Others, .

4. Azhar Hussain Vs. Rajiv Gandhi, .

5. Chandrakanta Goyal Vs. Sohan Singh Jodh Singh Kohli, .

6. Nihal Singhs case, 1970(3) SCC 239 .

7. Ravinder Singh Vs. Janmeja Singh and Others, .

7. Mr. S.C. Kapoor, learned Senior counsel further submitted that the speeches made by the son on 6th, 7th and 8th of February, 2002, cannot be taken into account as the same were made before respondent became a candidate. In support of this submission, learned Sr. counsel has relied on a judgment of the Supreme Court in the case of Ramakant Mayekar and Others Vs. Smt. Celine D''Selva, .

8. On the other hand, it has been argued by Mr. S.P. Jain, learned Senior Advocate for the petitioner that the petition contains all the material facts. The petitioner is not charging the respondent for any allegations of coercion or undue influence. These facts have been stated only to strengthen the allegations of corrupt practice of taking assistance of a government employee which falls u/s 12(7)(d) of the Act. According to the learned counsel, the pleadings are to be read as a whole and not in parts. When the entire pleadings are read, all the material facts and particulars have been pleaded to constitute a complete cause of action. In support of this submission, learned counsel has relied on a judgment of the Single Bench of this Court in the case of Mahender Pratap v. Krishan Pal 2001 (3) R.C.R. 725; Shri Udhav Singh Vs. Madhav Rao Scindia, ; Mahendra Pal Vs. Ram Dass Malanger and Others, and Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu, .

9. It is further submitted by Mr. S.P. Jain, learned Senior counsel that no evidence has to be pleaded in the petition. Only the facts which are to be proved are to be pleaded. According to the teamed counsel, all material facts and particulars have been pleaded. In support of this submission, learned counsel relied on Mahender Pratap v. Krishan Pal (supra) and Jai Singh Vs. Jai Bhagwan and Others, .

10. Learned Senior Counsel further submitted that for the maintainability of the election petition, averments made in the petition are to be presumed to be true and then it is to be seen as to whether any triable case is made out. In support of this submission, learned Sr. Counsel placed reliance on D. Ramachandran Vs. R.V. Janakiraman and Others, .

11. Learned Sr. Counsel has further submitted that the election petition has to be dismissed in limine only if there is violation of Sections 81, 82 or 117 of the Act. Since there is no allegations of violation of the above said sections of the Act, the election petition cannot be dismissed in limine. In support of this submission, learned counsel has placed reliance on Dr. Vijay Laxmi Sadho v. Jagdish J.T. 2000 (1) SC 382 (Para-9) and T.M. Jacob v. C. Poulose and Ors. 1999 (3) S C C 72.

12. Mr. Jain then submitted that the affidavit filed in support of the petition is perfectly valid. However, even if the affidavit is defective, it is no ground to dismiss the election petition. In such a situation, the affidavit and verification can be permitted to be corrected. Learned counsel further submitted that it has been authoritatively held that endorsement in the verification is not an integral part of the affidavit. For these propositions, learned counsel has relied on Sri T. Phunzathang Vs. Sri Hangkhanlian and Others, and F.A. Sapa Etc., Etc., Vs. Singora and others, .

13. Mr. Jain further submitted that even if there is lack of material particulars or there is defect in the verification of the affidavit, an opportunity to amend the petition should be given to the petitioner. In support of this proposition, learned counsel has relied on a judgment in the case of Balwan Singh Vs. Lakshmi Narain and Others, ; F.A. Sapa Etc., Etc., Vs. Singora and others, and Mahendra Pal Vs. Ram Dass Malanger and Others, .

14. Lastly, Mr. S.P. Jain has further argued that the conduct of the candidate can be seen even prior to the election. In support of this submission, learned counsel relied on Harbans Singh Jalal, Ex-MLA Vs. Union of India (UOI) and Others, .

15. I am of the considered opinion that it is wholly unnecessary to burden this judgment with any elaborate discussion of the authorities cited by the learned counsel for the parties. The basic propositions decided in these cases may, however, be briefly noticed.

16. In Rananjaya Singh"s case (supra), the Supreme Court was considering the allegation that the appellant together with his son and his father"s sons and other dependents and agents committed various corrupt practices of bribery, exercise of undue influence etc. It was alleged that the appellant had employed for election more persons than authorised by law. The Supreme Court held that the persons who were employed by the father and were paid by the father could not be treated as employees of the appellant. So far they were concerned, they were mere volunteers. This judgment is of no relevance to the issues involved in the present case.

17. In Samant N. Balakrishna"s case (supra), the Supreme Court has held that u/s 83, the Election Petition must contain concise statement of the material facts on which the petition relies. He must also set forth full particulars of any corrupt practice which is alleged. 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 of claim becomes bad. The entire and complete cause of action must be in the

petition in the shape of material facts, the particulars will give the further information to complete the picture. In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the words "material facts" will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be corelated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. It is also held that a petition which does not comply with the mandatory provision of Section 83, can be summarily dismissed, if it does not disclose a complete cause of action. The pleadings in the present petition shall have to be examined on the basis of the aforesaid principles laid down by the Supreme Court.

18. In Jitendra Bahadur Singh''s cane (supra), the Supreme Court has laid down the basic requirements to be satisfied before an Election Tribunal can permit the inspection of ballot papers. This judgment is not relevant for the decision of the preliminary issues raised in the present case.

19. In Chandrakanta Goyal''s case (supra), the Supreme Court has held that as an abstract proposition of law it cannot be held that every speech by a leader of political party, who is not an agent of the candidate set up by the party, is necessarily with the consent of the candidate set up by that party to make it superfluous to plead and prove the candidate''s consent, if that speech otherwise satisfies the remaining constituent parts of a corrupt practice. It has been held that the acts amounting to corrupt practice must be done by the candidate or his agent or by any other person with the consent of candidate or his election agent. It is, therefore, necessary to plead and prove the consent of the candidate or his election agent.

20. In Nihan Singh''s case (supra), the Supreme Court again noticed that there were no details of the oral speeches which were given in support of the candidate which were the basis of the charge of corrupt practices. There was a vague and general statement that at meetings in different villages, speeches were given between 5th and 12th May, 1968. Considering the pleadings in that case, the Supreme Court held that the pleadings were so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses. The pleading, in fact, was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this point. I am of the opinion that the aforesaid observation would be fully applicable in the facts of the present case with regard to the speeches allegedly made by the son on 6th, 7th and 8th of February, 2002.

21. In Ravinder Singh''s case (supra), the Supreme Court has again held as follows:-

"9. Coming now to the charge of corrupt practice falling u/s 123(1) of the Act, for which material facts and particulars have been detailed in paras 28 to 39 of the election petition,

we find that those allegations could not be put to trial either. There is no affidavit filed in support of the allegations of corrupt practice of bribery.

10. Proviso to Section 83(1) of the Act lays down, in mandatory terms that where an election petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit, in the prescribed form, in support of the allegations of such practice and the particulars thereof. The affidavit, which has been filed in support of the election petition, does not at all deal with the charge of bribery falling u/s 123(1) of the Act. Leaving aside the questions that the affidavit is not even in the prescribed Form-25 of the Conduct of Elections Rules, the allegations of corrupt practice made in the election petition are not supported by the otherwise defective affidavit either. All the names of the informants which have been given in the affidavit relate to the corrupt practice u/s 123(4) and the affidavit in this respect is a verbatim reproduction of the verification clause of the election petition concerning corrupt practice u/s 123(4). No name of any informant has been mentioned in respect of the allegations of corrupt practice u/s 123(1) in the affidavit. In the absence of the requisite affidavit filed in support of the allegation of corrupt practice u/s 123(1) of the Act, as detailed in the election petition, no issue could be raised for trial.

11. Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which, the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving inquiry and save the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegations pertaining thereto, could not be put to trial-the effect being of a fatal nature."

22. In Mahender Pratap''s case (supra), the Single Judge of this Court has held that drafting of pleadings cannot be a uniform style of every individual. The guiding factor is whether the election petition discloses a complete cause of action or not. On the basis of the pleadings, this Court had held the petitioner therein had given material facts of the corrupt practice.

23. In the case of Udhav Singh (supra), it was held that the pleadings have to be read as a whole to ascertain its proof in Court. Applying the ratio of the aforesaid judgment, this Court has held that in that election petition, material facts had been pleaded. The proposition of law remains the same that in order to succeed the election petitioner must plead all the material facts to furnish a complete cause of action. In the absence of the material facts, the election petition is liable to be dismissed summarily.

24. In Mahendra Pal''s case (supra), it has been held that the Court has discretion to allow the petitioner to amend the petition to furnish material particulars even after the limitation for filing an election petition has expired. It was held on perusal of the averments made in the election petition that sufficient material facts had been pleaded to provide a cause of action. It was held that pleadings have to be read as a whole to ascertain their true import. It was found that in various sub-paras of paragraph 11 of the election petition, particulars of irregularities have been spelt out. The non-mention of serial numbers of the improperly counted ballot papers could not be a ground to non-suit the election at the threshold. In that case, the petition had been dismissed on the ground that "the pleadings contained in the petition lacked in material particulars as required u/s 83 of the Act". In view of the above, the Supreme Court has observed that "if that was so, material particulars could always be required to be furnished by the election petitioner".

25. In V. Narayanaswamy''s case (supra), it has been held that if the election petition read as a whole does not disclose any cause of action or triable issues, it was liable to be dismissed u/s 83 of the Act read with Order 6 Rule 16 and Order 7 Rule 11 of the CPC.

26. In T.M. Jacob''s case (supra), it has been held that the expression "copy" in Section 81(3) of the Act, means a copy which is substantially so and which does not contain any material or substantial variation of a vital nature as could possibly mislead a reasonable person to understand and meet the charges/allegations made against him in the election petition. It has been held that a copy of the petition which differs from material particulars from the original cannot be treated as a true copy of the original within the meaning of Section 81(3) of the Act. It has further been held that vital defect cannot be permitted to be cured after the expiry of period of limitation. The Supreme Court was dealing with a situation where the name of the Notary was not mentioned on the true copy supplied to the appellant. It was held that mere non-mention of the name of the Notary could not be construed to be an omission or variation of a vital nature attracting the consequences of Section 86(1) of the Act. It was held that the defect was of such a type that can be dealt with under the doctrine of curability on the principles contained in the Code of Civil Procedure. It was held that there was no breach of Section 83(1)(c) of the Act which provided that an election petition shall be signed by the petitioner and verified in the manner laid down in the Civil Procedure Code, 1908 (5 of 1908) for the verification of pleadings. In the present case, there is no objection to the effect that the copy of the election petition supplied to the respondents does not bear the name of the Notary.

27. In the case of T. Phunzathang (supra), the Supreme Court reiterated the law laid down in T.M. Jacob''s case (supra).

28. In F.A. Sapa''s case (supra), the Supreme Court has held that mere defect in the verification of the Election Petition is not fatal to the maintainability of the petition and the petition cannot be thrown out solely on that ground. It is also held that Section 86(5) 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. From the above, it becomes clear that the amendment can be permitted only of a corrupt practice which is already pleaded. In other words, further and better particulars may be given of the material facts already pleaded.

29. In Vijay Laxmi Sadho"s case (supra), the Supreme Court was considering the case where the election petition had been drawn up in Hindi language. The affidavit filed in support of the election petition was also drawn up in Hindi language. An objection was taken to the maintainability of the election petition on the ground that the affidavit filed in support of the election petition was not in the prescribed Form No. 25. Another objection was taken to the effect that since the election petition had been drawn up in Hindi Language and not in English language, it was liable to be dismissed as it had not been drawn up in English language as required by Rule 2(b) of the Madhya Pradesh High Court Rules. Both the applications were dismissed. It was held by the Supreme Court that defect in verification of an affidavit is curable and does not merit dismissal of an election petition in limine u/s 86(1) of the Act. The second objection with regard to the violation of High Court Rules was also rejected as the High Court Rules relating to trial of election petitions were held to be only procedural in nature and do not constitute substantive law.

30. The law has been fully restated with regard to the preliminary issues in the judgment of the Supreme Court in the case of Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu, . In paragraph 24, 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 requirements 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 finds 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 practices 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 inference the pleadings of corrupt practice must fail, where several paragraphs of the election petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn 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."

31. 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.

32. A perusal of the affidavit clearly shows that it does not meet the requirements of Rule 94A of the Conduct of Elections Rules, 1961 (hereinafter referred to as "the Rules"). It does not comply with the Form 25 in substance. Only the words of Form 25 have been reproduced and the blanks have been sought to be filled in by giving totally vague information. Therefore, there is non-compliance of Section 83(1) of the Act. It has been repeatedly held that the affidavit must disclose the source of information when allegations of corrupt practices are made against a candidate. With regard to the importance of

disclosure of the source of information, the law has been restated by the Supreme Court in the case of L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc., . In this case, the Supreme Court noticed and reproduced the relevant passage from a number of cases. These may be reproduced as follows 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 alongwith the election petition. The relevant passage reads thus, (SCC pp. 830 & 831, paras 10, 13-15).

"10. The respondent filed an affidavit alongwith the election petition. The affidavit did not disclose the source of information in respect of these 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 deponent to state which statements are. true to knowledge and 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 decisions is The State of Bombay Vs. Purushottam Jog Naik, where this Court endorsed the decision of the Calcutta High Court in Padambati 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 of 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 of 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 of setting out the sources of information at the time of 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 liable to make any departure from the sources or grounds, if there is any embellishment of the case it will be discovered."

15. 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 insists 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 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."

16A. We have already extracted paras (f) and (g) of the affidavit filed alongwith 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 Election Rules. It is a very serious defect which has been overlooked by the High Court."

33. A perusal of this judgment clearly shows that the non-disclosure of sources of information in the affidavit would lead to dismissal of the petition at the initial stage. I have perused the Election Petition throughtly. A perusal of the entire petition shows that the petitioner has made only wild allegations. In paragraph 5 of the petition, it is stated that son of respondent No. 1 is a Sub Inspector in the Punjab Police. In the month of January 2002, he was posted at Police Lines, Moga. He has also been posted at different important places, namely, Phagwara and Ludhiana in the State of Punjab. Respondent No. 1 having been denied ticket by the Shiromani Akali Dal (Badal) had contested the election as an independent candidate. In order to win the election, respondent No. 1 obtained the assistance of his son for furtherance of prospects of election. The son with the consent of the father absented from duty and started openly campaigning for election of respondent No. 1. He remained absent from 23.1.2002 till 13.2.2002. He also remained absent on 24.2.2002. During the said period, he helped and compaigned for furtherance of election of respondent No. 1. The relevant allegations are that (1) he had arranged proposers polling agents, counting agents for respondent No. 1; (2) he had arranged meetings of elector for respondent No. 1 at different places in 105-Mukatsar Assembly constituency; (3) these meetings were addressed by respondent No. 1; (4) the son had also addressed meeting with the consent of respondent No. 1; (5) the son had managed the election office of respondent No. 1; (6) the son had openly and actively helped respondent No. 1 in his election compaign; (7) respondent No. 1 was taken ill from 20.1.2002 to 22.1.2002 and from 25.1.2002 to 28.1.2002. During this period, with the consent of respondent No. 1, the son managed the election compaign of respondent No. 1; (8) the son visited in different places in 105 Mukatsar Assembly Constituency requesting the electors to vote for respondent No. 1. The aforesaid allegations are said to constitute corrupt practices within the ambit of Section 123(7)(d) of the Act. The aforesaid Section prohibits obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person (with the consent of a candidate or his election agent), any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate''s election, from any person in the service of the Government and belonging to any of the classes, namely;-

(a) - - - - -

(b) - - - - -

(c) - - - - -

(d) members of the police forces;-

(e) - - - - -

34. Merely because the son of respondent No. 1 happens to be a police officer would not render his mere presence in the constituency a corrupt practice under the aforesaid Section. Furthermore, mere presence of son at the venue of speeches would also not amount to corrupt practice under the aforesaid Section. No particulars are given as to what influence was exerted by the son. No specifications are given about any of the events which have allegedly taken place.

35. In paragraphs 6 to 13 of the election petition, some more allegations have been made. In paragraph 6 it is stated that respondent No. 1 submitted the nomination papers to the Returning Officer on 23.1.2001 at 1.45 p.m. The proposers were arranged by the son. The son asked the proposers and his supporters to vote for respondent No. 1 and to support him in the election. The presence of the son at the time when the nomination papers were filed by respondent No. 1 is said to have been witnessed by the individuals whose names are mentioned in this paragraph. These averments by themselves would not constitute the corrupt practice as envisaged u/s 123(7)(d) of the Act. In paragraph 7 it is stated that a number of news-items were published in the newspapers showing that the son was actively assisting respondent No. 1. The names of these newspaper items are given in paragraph 7 as "Election Titbits", "The sons and grandsons of the candidates jump into the fray", "Inspector actively participates to send his father to Assembly". Then there is a statement to the effect that this news item was published in the Daily Ajit dated 25.1.2002. These averments are liable to be struck out being wholly vague, frivolous and scandalous. This apart, it is a settled proposition of law that judicial notice cannot be taken of the newspaper reports. A news item without any further proof of what had" actually happened through witnesses, is of no evidentary value. It is at best a second hand and secondary evidence. This view of mine finds support from the judgment of the Supreme Court in the case of Samant N. Balakrishna etc. v. George Fernandez and Ors. etc., AIR 1969 Supreme Court 1201. In the aforesaid case, the Supreme Court observed as under;-

"47..... A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well know that reporters collect information and pass it on the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible. ..."

36. In view of the above, the averments made in this paragraph have to be rejected.

In paragraphs 8, 9, 10, 11, 12 and 13 the earlier allegations are reiterated. The additions may, however, be noticed. In paragraph 8, it is stated that the son has been reported to be using coercion, pressure and is threatening the congress workers to abstain from using their voting rights. The petitioner is said to have made a written complaint dated 1.2.2002 stating that the son is openly canvassing and providing other services to respondent No. 1. In paragraph 9, it is stated that the son has brought the outsiders and anti-social elements who threaten the supporters of opposite candidates. In paragraph 10, the son had told the electors present at a meeting on 6.2.2002 at about 11.30 a.m. that since he was Sub Inspector in Punjab Police he would help them in the Punjab Police Department if they voted for his father. In paragraph 11, it is reiterated that the son arranged and addressed a meeting on 7.2.2002 at 2.00 p.m. at Harike Kalan. On both occasions, it is stated that about 400 voters were present. In paragraph 12, it is stated that he also addressed a meeting on 8.2.2002 when about 300 voters were present. In paragraph 13, it is stated that the son had threatened a voter not to vote for the independent -candidate, respondent No. 8, otherwise he will face the consequences. All the averments taken at face value would not amount to inducement of voters as required under the Act to constitute corrupt practice. The averments are wholly vague. They cannot be said to be material particulars of the primary facts pleaded in the petition. No details are given as to what coercion or pressure was exerted by the son. No details are given as to which congress worker was threatened. There are no details of the exact threat that was given to the congress workers. There are no details as to the date, time exact location of the threats. Similarly, the written complaint dated 1.2.2002 merely states that the son was openly canvassing and providing other services to respondent No. 1. The details about the other services and the open canvassing are conspicuous by their absence. With regard to the pleading in paragraph 9, no details are given as to which outsiders and anti-social elements have been brought by the son. Furthermore, no details are given of any threats which are alleged to have been given to the supporters of the opposite candidates. Since there are 12 candidates, it would have been necessary to specify the candidates whose supporters have been threatened. Similarly, with regard to the election meetings arranged and addressed by the son, the details are completely missing. It is rather strange that the petitioner knows the exact number of voters who were present at the meeting. He stated that in two of the meetings, 400 voters were present and in one meeting 300 voters were present. No details are given as to how these voters were counted for making the averment in the election petition. No details are also given of the threats which were given to a voter not to support respondent No. 8. It is also not stated as to what consequence would follow if the dictat of the son was not obeyed. Such being the state of pleadings, it would be wholly inappropriate to put the election petition to trial. This view of mine finds support from the judgment of the Supreme Court in the case of Azhar Hussain (supra) wherein it has been clearly held as under;

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

10. There is thus no substance in this point which is already concluded against the appellant in Hardwari Lal Vs. Kanwal Singh, wherein this Court has in terms negatived this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A.N. Ray, 3, who spoke for the three Judge Bench.

"The allegations in paragraph 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to which kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravemen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestions to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action.

Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasized that Section 83 did not find place in Section 86. 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 application under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed.

11. In view of this pronouncement, there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the CPC can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Shri Udhav Singh Vs. Madhav Rao Scindia, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge for corrupt practice it would mean the basic facts which constitute the ingredients of the particular currupt practice alleged by the petitioner must be specified in order to succeed

on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition, therefore, can be and must be dismissed if it suffers from any such vice. The first ground of challenge must, therefore, fail."

37. These observations were made by the Supreme Court while considering the submission which was as following.;-

"5. xxx xxx xxx xxx

A- Since the Act does not provide for dismissal of an election petition on the ground that material particulars necessary to be supplied in the election petition as enjoined by Section 83 of the Act are not incorporated in the election petition in as much as Section 86 of the Act which provides for summary dismissal of the petition does not advert to Section 83 of the Act there is no power in the Court trying election petitions to dismiss under the Code of Civil Procedure.

B- Even if the Court has the power to dismiss an election petition summarily otherwise than u/s 86 of the Representation of the People Act, the power cannot be exercised at the threshold."

38. I am of the opinion that the matter is squarely covered by the judgments of the Supreme Court in the aforesaid case. The averments made in the petition even if taken at the face value, would not constitute corrupt practice within the ambit of definition of Section 123(7)(d) of the Act.

39. As noticed earlier, Mr. Kapoor had argued that the speeches made by the son on the 6th, 7th and 8th of February, 2002 cannot be taken notice of, as they had been made before respondent No. 1 had become a candidate. There is no merit in the submission made by the learned Sr. Counsel. In this case, the last date for filling Nomination Papers was 23.1.2002. The last date for scrutiny of Nomination Papers was 24.1.2002. The last date for withdrawal of candidates was 28.1.2002. Section 79(b) of the Act !s as under;-

"79. Definitions: In this part and in (Part VII) unless the context otherwise requires -

a) - - - - - - - -

b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election."

40. A bare perusal of the aforesaid sub-section shows that respondent No. 1 would be a candidate at election from 23.1.2002. His candidature was accepted on 24.1.2002 as his

nomination papers were not rejected on scrutiny. Respondent No. 1 did not withdraw his candidature which he could have done till 28.1.2002. Therefore, obviously with effect from 23.1.2002 he was a candidate of election. The son had allegedly made speeches in favour of respondent No. 1 on 6th, 7th and 8th of February, 2002. Therefore, the speeches had been clearly made after respondent No. 1 had become a candidate. The judgment of the Supreme Court in Ramakant Mayekar (supra) would not be applicable in the facts and circumstance of this case. In the aforesaid case, the Supreme Court had noticed that the speeches had been allegedly made on 29.1.1990, prior to the date on which Ramakant Mayekar became a candidate at the election as defined u/s 79(b) of the Act. Mr. Jain has rightly contended that the conduct of the candidate prior to his becoming a candidate can also be taken note of for deciding the issue as to whether he is guilty of the offence under the Election Law. The aforesaid proposition has been accepted by a Division Bench of this Court in Harbans Singh Jalal''s (supra). The Division Bench, however, also reiterates that one becomes a candidate only on filing the nomination pursuant to the Notification. As noticed earlier, the speeches had been made by the son after respondent No. 1 had filed his nomination papers on 23.1.2002. However, the aforesaid finding would not affect the case of respondent No. 1 as the election petition is liable to be dismissed on the ground that it is Jacking in material facts with regard to the averments made for proving corrupt practices as required u/s 123(7)(d) of the Act.

41. In view of the above, issues No. 1 and 2 are decided against the petitioner had in favour of the respondent No. 1. It is held that the averments made in the election petition do not disclose material facts to constitute a complete cause of action. On issue No. 2, it is held that the affidavit filed in support of the Election Petition is not valid. Therefore, the election petition is hereby dismissed. No costs.