

Saingura Vs F.Sapa

Court: Gauhati High Court

Date of Decision: Sept. 1, 1990

Acts Referred: Civil Procedure Code, 1908 " Order 6 Rule 17, Order 7 Rule 16

Civil Procedure Code, 1908 (CPC) " Order 6 Rule 17, Order 7 Rule 16

Conduct of Elections Rules, 1961 " Rule 94A, 94A

Gauhati High Court Services (Appointment, Conditions of Service and Conduct) Rules, 1967 " Chapter 8A Rule 1, Chapter 8A Rule 1

Representation of the People Act, 1951 " Section 81(3), 81(3), 81(3)(c), 81(3)(c), 83, 83

Citation: (1991) 1 GLJ 343

Hon'ble Judges: B.P.Saraf, J

Bench: Single Bench

Advocate: K.P.Pathak, S.S.Dey, N.Saikia, M.Nath, M.Ahmed, B.L.Vedehra, A.M.Majumdar, M.K.Sharma, Advocates appearing for Parties

Judgement

1. At the last general election held on 21.1.1989, the petitioner Shri Saingura contested the election as a candidate of Mizo National Front,

hereinafter "MNF", from 8 Lunglei South Constituency of the Mizoram Legislative Assembly. He lost the election and Shri F. Sapa, a candidate of

Congress (1) party, got elected. The petitioner filed an election petition challenging the election of Shri F. Sapa on charge of corrupt practice. The

returned candidate is impleaded as respondent No. 1. The other candidates, who contested the election are also respondents in the election

petition. The election petition was filed by the petitioner personally before the stamp reporter of this Court on 9.3.89 which was assigned to me by

the Hon'ble Chief Justice for trial. Notices were issued to all the respondents. The returned candidate, respondent No. 1, entered appearance and

filed a petition raising certain preliminary objections. Another petition was filed by him for striking off some of the pleadings. On the basis of the

pleadings in the first petition, two preliminary issues were framed. In the meantime, the petitioner also filed an application for amendment of his

election petition. Respondent No. 1 objected to the petition for amendment and filed a counter stating his objections. The other respondents did

not enter appearance. The three matters, namely, preliminary objections, petition for striking off pleadings, and petition for amendment of the

election petition were all taken up together for hearing as agreed by the learned counsel for the parties.

2. I shall first deal with the preliminary objections raised by respondent No. 1. The following two preliminary issues were framed :

1. ""Whether the election petition filed by the petitioner in the Guwahati High Court is in accordance with and in compliance to sections 81 and 85 of

the Representation of the People Act, 1951 and rules framed by the Gauhati High Court thereunder.

2. Whether Rule 1 read with rules and notes appended thereto of the special provisions framed by the High Court under its Rules enabling filing of

the election petition to the Stamp Reporter is not ultra vires and violative of Article 329 and section 169 read with sections 80, 80A and 81 of the

Representation of the People Act, 1951.

3. The relevant facts in this case are not in dispute. The petitioner personally presented the election petition before the stamp reporter of this Court

on 9.3. 1989. A report of the stamp reporter to this effect is also on record. It has also been noted by the stamp reporter that three copies of the

petition duly attested by the petitioner with one extra copy and 10 annexures with verifications were received by him along with the petition. The

objection of respondent No. 1 mainly is that the presentation of the election petition before the stamp reporter does not amount to presentation to

the High Court. The validity of Rule 1 of the Rules framed by the High Court contained in Chapter VIII A of the Gauhati High Court Rules,

namely, ""Special provisions relating to procedure in election petitions under the Representation of the People Act, 1951 as amended by Act No.

XLVII of 1966"", hereinafter ""the High Court Rules"", which provide for presentation of an election petition before the stamp reporter, has also been

challenged as being ultra vires Article 329 of the Constitution of India and sections 80, 80A and 81 of the Representation of the People Act, 1951,

hereinafter, ""the Act"".

4. The other objections, briefly, are that the election petition being a photo copy cannot be treated as the original petition ; the copy of the petition

served on respondent No. 1 was not attested to be true copy of the original as required under section 81 (3) of the Act; the copy served on him

along with the annexures, was not the true copy of the original ; the election petition had not been signed and verified in the manner laid down in the

Code of Civil Procedure hereinafter ""the C.P.C. inasmuch as the source of information had not been given in the verification ; the affidavit annexed

with the election petition is not in conformity with Form No. 25 as required by Rule 94A ; annexures to the election petition have not been signed

and attested to be true copies of the originals ; no schedule of material particulars of corrupt practice has been annexed to the affidavit in Form 25.

These are the grounds on which the two preliminary issues are sought to be sustained by the respondent No. 1.

[Paragraphs 5, 6 and 7 ****]

8. I have perused the relevant provisions of the Constitution as well as the Act. On careful consideration of the same, I find it difficult to accept the

aforesaid contention of the learned counsel for respondent No.1. "High Court" has been defined, as indicated above, in clause (e) of section 79 of

the Act It has also been defined in clause (14) of Article 366 of the Constitution to mean "any Court which is deemed for the purposes of this

Constitution to be a High Court for any State..." Under Article 225 of the Constitution every High Court has the power to make rules of the Court

rules to regulate its own business, administrative as well as judicial. The relevant rules relating to election petitions filed in the High Court under

section 80A are contained in Chapter VIIIA under the heading "Special provisions relating to procedure in election petitions under Representation

of the People Act, 1951 as amended by Act XLVH of J966*. Rule 1 of the said Rules specifically provides that any election petition may be

presented before the stamp reporter of the High Court. The stamp reporter, therefore, is the person who is authorised under the Rules to receive

such petitions on behalf of the High Court. Presentation before him is thus presentation to the High Court.

9. On a careful scrutiny of Rule 1 in the light of the provisions of sections 80, 80A and 81 of the Act, I do not find any conflict between Rule 1 and

the provisions of the Act. I do not find any substance in the submission that the expression "High Court" as used with reference to the presentation

of an election petition in section 81 of the Act means only the "Chief Justice" or the "Judges" of the High Court. These three expressions evidently

are not interchangeable. Nor have they been used in that sense in sections 80, 80A or 81 of the Act. This view gets support from the fact that is

these sections as well as in section 79 of the Act, expressions "Chief Justice" and "Judges" of the High Court have been used in contradistinction to

the expression "High Court". In the context of presentation of the election petition the expression "High Court" has been used whereas dealing with

the power of assigning the petition for trial, the expression used is the "Chief Justice". While referring to the jurisdiction to try such a petition, it has

been provided that it shall be exercised by a "Judge" of the High Court. In other words, an election petition has to be presented to the "High

Court", it is assigned for trial to one of the "Judges" by the "Chief Justice". The petition is then tried by such "Judge". From the aforesaid

discussion, it is clear that an election petition need not be presented to the Chief Justice or the Judges but can be presented to any officer of the

High Court specified in the rules or authorised in that behalf. In that view of the matter, I am of the opinion that Rule 1 of the High Court Rules is

not in any manner, inconsistent with any of the provisions of the Act. The presentation of the election petition before the stamp reporter, in the

instant case, was, therefore, proper presentation within the meaning of section 81 of the Act. Similar conclusion had also been arrived at by this

Court in *Hokhete Sema vs Kaito*, AIR 1982 NOC 113 (Gau) *Abdul Jabbar vs. Syeda Anwara Taimur*, (1986) 1 GLR 257, 266 and *Mhelupra*

Vero vs. Vamuzo, (1990) 1 GLR 290. Issue No.2 is, therefore, answered accordingly.

10. I may now revert to issue No. 1 and the various contentions of the respondent No. 1 in regard thereto. The first contention is that the election

petition having been prepared by photo copying, it does not fall within the expression "typewritten or printed" used in Note (1) to Rule 1 of the

High Court Rules. I have considered the submission. Admittedly the election petition in the instant case, was typed and prints thereof obtained by

the process of photo copying. On one such print the court fee stamps were affixed. The same was signed by the election petitioner and presented

before the stamp reporter as the original election petition. The requisite copies of the same were also filed in addition to the same. These copies

were also prepared by photo copying process. The stamp reporter accepts the petition bearing court fee stamps and signature of the petitioner as

the original election petition and recorded his report and notes thereon. The petition, therefore, is admittedly the original petition. It is typed not hand

written. A number of copies have been prepared by the process of photo copying. All such copies, like printed copies, look alike. None of them

as such, can be termed as "original" or "copy". It will depend on the petitioner which of the copies he wants to treat as "original". Evidently, the

copy on which court fee stamps were affixed and signatures were put was the original. In view of the aforesaid discussion, I do not find any

infirmity in the original petition as filed by the petitioner.

[Paragraph 11 ****]

12. The submission of the learned counsel for the respondent No.1, Mr.A.M. Mazumdar is that in an election petition, every procedural

requirement has to be construed strictly and any noncompliance therewith will be fatal. I have considered the submission. I find it difficult to accept

the same. I am not prepared to hold that simply because a petition before the Court happens to be an election petition, the procedural

requirements should be construed in a mechanical or pedantic manner without any regard to the object sought to be achieved thereby. The law

does not require the Court, while dealing with an election petition, to construe the pleadings in such a hyper technical manner and to make a

microscopic examination thereof with a view to finding out a slip here or a deviation there which may be used as a ground for the rejection of the

petition in limine in the name of maintaining the democratic process or the purity of election. In my opinion, the procedural requirements in an

election case also should be construed in the same manner as in cases under the CPC. The approach of the Court should not be to reject the

election petition, in limine, on every possible pretext of noncompliance with one or more of the procedural requirements unless the law itself, in

clear terms, mandates it to do so. It should be remembered that every procedural requirement is intended to serve a particular purpose and to help

the Court in the administration of justice. The object of the various procedural requirements in election law is to provide machinery by means of

which the Court may dispense justice in election disputes. These are merely a part of the adjective law and deal with the procedure alone and must

be construed only in a manner which is consistent with the object sought to be achieved. These are intended to advance the cause of justice not to

obstruct or retard the course of justice. It must be remembered that the wellsettled principle is that as far as possible no proceeding in a Court of

law should be allowed to be defeated on mere technicalities. As observed by the Supreme Court in *Raj Narain vs. Indira Gandhi*, AIR 1973 SC

1302 (at p. 1307)

Rules of pleadings are intended as aids for fair trial and for reaching a just decision. An action at law should not be equated to a game of chess.

Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic

principle. It is the duty of the Court to ascertain that principle and implement it.

13, In the instant case the petitioner had made an endorsement on the copy "certified true copy" and put his signature below the same.

This, in my option, fully complies with the requirement of section 81 (3) of the Act, which simply requires that the copy should be attested by the

petitioner under his own signature to be a true copy of the petition. The petitioner has done so in no less express terms. Even literally "to attest

means "to bear witness to, affirm the truth or genuineness of, to testify...". Certifying a document to be a true copy is in no way different from

"attesting". In this connection, we may refer to a decision of the Supreme Court in *Subba Rao vs. Member, Election Tribunal*, AIR 1964 SC

1027. In that case, the Supreme Court, while considering a case where even the words "true copy" were not written above the signature of the

petitioner on the copies, held that absence of the words "true copies" above the signature of the petitioner would not constitute noncompliance with

the provision of section 81 (3) of the Act and the signature on the copy even without the words "true copy" was substantial compliance with the

requirement of the said section. In Anup Singh vs. Abdul Ghani, AIR 1965 SC 815 also where carbon copies of original accompanying election

petition bearing signature of the petitioner were supplied without the words "true copy" written above the signature, it was held that there was

substantial compliance with section 81(3). Presence of original signature in the copies itself was held sufficient to indicate that the copy was attested

as true copy even though the words "true copy" were not written above the signature in the copies. In view of the aforesaid discussion, I am of the

clear opinion that in the instant case there was no noncompliance of the requirements of section 81 (3) of the Act.

14. The next objection of the respondent No.1 is that the copy of the election petition along with annexures served on him was not the true copy of

the original. In this connection, it may be apposite to refer to the decision of the Supreme Court in Murarka Radhyshyam vs. Roop Singh, AIR

1964 SC 1545 whereon interpretation of section 81 (3) of the Acts it was held :

the word "copy" in subsection (3) of section 81 does not mean an absolutely exact copy but means that the copy shall be so true that nobody

can by any possibility misunderstand it. The test whether copy is a true one is whether any variation from the original is calculated to mislead an

ordinary person".

If there is substantial compliance with the requirements of section 81 (3), the election petition cannot be dismissed. In the instant case, the stamp

reporter, who received the election petition as well as copies thereof for serving on the respondents, in his endorsement on the back of the petition

has clearly noted as follows :

The following enclosures have been received along with the petition (1) 3 copies of the petition duly attested by the petitioner with one extra copy,

(2) 10 annexures with verification...

No defect was found by the stamp reporter. This is on record. Rule 1 of the High Court Rules requires the stamp reporter to verify that the

petition has been filed with the requisites mentioned herein and in case he finds that it is not so presented, to return the same for refilling. The stamp

reporter, in the instant case, found the copies in order and made his endorsement accordingly. I do not find any reason not to rely upon the

endorsement of the stamp reporter. The respondent has also not adduced any evidence to show that the copy received by him was not the "true

copy" of the original. On the other hand, the admitted position is that what was served on the respondent was photocopy of the original. No

specific omission or deviation in the copy from the original was pointed out nor it was shown how the respondent was misled thereby. Under the

circumstances, it is difficult to accept the contention of the respondent that the copy of the election petition supplied to him was not the true copy of

the original.

15. The next submission of the learned counsel for respondent No. 1 is that annexures to the petition were not signed by the petitioner and attested

as true copy of the original which amounted to noncompliance of the requirement of section 81 (3) and 83(2) of the Act. It was also submitted that

some of the annexures were incomplete and there was no verification in the manner laid down in the CPC. I have carefully considered the

submissions. I have perused the annexures to the original petition. It appears that the petitioner has written on the annexures the word "original"

and put his signature below such writing. Where the annexures are translated copies of the original, the words "true copy" have been written in

place of the word "original". Similarly, copies of the annexures supplied for service to the respondents also bear the signature of the petitioner with

the words "true copy" written above it. It also appears that every annexure is accompanied by a verification duly signed by the petitioner.

According to the learned counsel for the respondent No.1 writing "true copy" does not satisfy the requirement of the law. I have already discussed

at length this aspect of the matter in the preceding paragraphs dealing with the attestation of the copies of the petition and also referred to various

decisions of the Supreme Court on the point. In view of the aforesaid discussion, I am of the opinion that there was substantial compliance of the

requirement of the law in the matter of attestation and verification of the annexures in the instant case.

[Paragraph 16 ****]

17. The next question that falls for consideration is whether the petition and the annexures have been signed and verified in the manner laid down in

the CPC, and section 81 (3) (c) of the Act. The submission of the respondent No.1 is that the verification is not in the prescribed form. On perusal

of the verification, I could not find any defect in the verification as such. Besides, even if any defect is pointed out in any verification, the same may

be removed by the petitioner by filing a supplementary verification. A defect in the verification per se cannot be a ground for rejecting the election

petition. This is the consistent view of the Supreme Court. Reference may be made in this connection to the decisions of the Supreme Court in

KM. Mani vs. P.J. Antony, AIR 1979 SC 234 and Thikaji Kasba vs. Brijlal, AIR 1955 SC 610. In that view of the matter, I do not find that it

in the instant case, there is any defect in the verification which may justify dismissal of the petition in limine.

18. Another submission of the respondent No. 1 is that the affidavit annexed to the election petition does not conform to Form No.25 as required

under Rule 94A of the Rules inasmuch as no separate schedule of the particulars of corrupt practice has been annexed and, as such, it is liable to

be dismissed in limine. The learned counsel for the petitioner, on the other hand, drew my attention to the affidavit to show that it is in substance in

From No. 25 and complies with the requirement of Rule 94A. It was also submitted that all the material facts in regard to corrupt practice have

been stated in the election petition. The election, in the instant case, has in fact been challenged only on the ground of corrupt practices. As such,

reproduction of the same in the form of a schedule was unnecessary and in that view of the matter absence of a schedule in no way affected the

petition or the understanding of the case of the petitioner by the respondent. The submission, in short, is that the petition cannot be said to be not

maintainable merely on the ground that no schedule has been attached to the affidavit, more so in view of the fact that all the material facts and

particulars of alleged corrupt practice had been stated in the body of the election petition itself. The counsel further submits that the schedule is only

optional and the mention of "schedule" in Form 25 is only to cover the eventuality where a schedule is filed. Reliance is placed in this regard on the

decision of the Supreme Court in Balakrishna vs. George Fernandes, AIR 1969 SC 1301,1212. I have considered the rival submissions. I have

also perused the election petition. I find that all the allegations of corrupt practice have been stated in the body of the petition which have been duly

verified. They are also supported by affidavit. The whole case of the petitioner is based on the allegations of corrupt practice. Under such

circumstances not setting out the same separately by way of a schedule does not in any way affect the election petition. It might have had some

relevance in a case where the election is challenged on various grounds, corrupt practice being one of them. However, it is not a case of that type,

I am, therefore, of the opinion that the instant election petition cannot be dismissed in limine on that account.

19. In view of the foregoing discussion, issue No. 1 is also decided in favour of the election petitioner.

20. The preliminary objections of the respondent No. 1 in regard to the maintainability of this petition are, therefore, rejected.

[Paragraph 21 ****]

22. I have perused the election petition. The election of the respondent No. 1 has been challenged on the ground of corrupt practice. What is to be

seen is whether material facts necessary for the purpose have been set out in the petition and whether any cause of action is disclosed. "Cause of

action"" means the whole of the material facts which it is necessary for the plaintiff to allege and prove in order to succeed. It is not intended to

comprise every fact which may be proved in evidence. It may also be seen whether any statement contained in any part of the petition is

unnecessary, scandalous, vexatious or likely to prejudice, embarrass or delay the fair trial of the case, which may otherwise amount to abuse of the

process of the Court. If any of these elements are present, the particular pleadings or paras in the petition should be struck off. If it is found that the

election petition does not disclose any cause of action, the election petition itself has to be rejected in limine. If a cause of action is disclosed but it

is found that there is any statement which is irrelevant, scandalous or has nothing to do with the cause of action, the same may be struck off. The

contention of respondent No. 1, as earlier stated, is that no cause of action has been disclosed and so the election petition should be rejected in

limine. In the alternative, he claims that certain paras or certain parts thereof should be struck off under Order 6 Rule 16 of the CPC.

23. It is well settled that section 8J of the Act is mandatory and requires the election petition to contain first a concise statement of material facts on

which the petitioner relies and where a corrupt practice is alleged against the returned candidate, clause (b) of subsection (1) thereof requires that

full particulars of corrupt practice which the petitioner alleges must be set forth in the petition. The object is to give the charge a definite character

and to enable the Court to understand what the charge is. It also requires that ""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 commission should also be set forth in the petition. The main object of insisting on

the pleadings in the manner laid down in section 83 is that the other party may have proper notice of the ground of attack which he has to meet.

The pleading, therefore, need not to be scrutinised rigorously. The form of the pleadings or the language thereof should not be given undue

importance. As observed by the Supreme Court in *Roop Lal Sethi vs. Nakkimmar Singh*, AIR 1982 SC 1569, a preliminary objection that the

election petition is not in conformity with section 83 (1) (a) of the Act, that is, it does not contain a concise statement of material facts on which the

petitioner relies is but a plea in the nature of demurrer. In deciding the question, the Court has to assume, for this purpose, that the averments

contained in the election petition are true. The election petitioner is not supposed to anticipate the defence and to state what he would have to say

in answer to it, and therefore such statements need not find a place in the petition. The principles, as to the nature of pleadings in an election

petition were recently summarised by the Supreme Court in Luxminarayan Nayak vs. Ramratan Chaturvedi, (1990) 2 SCO 173 at page 177, in

the following terms :[Quotation not printed]

24 It is no doubt a sound principle of natural justice that success of the candidate who has won at an election should not be lightly interfered with

and any petition seeking such interference must strictly conform to the requirement of the law. But as observed by the Supreme Court in Jagan

Nath vs. Jaswant Singh, AIR 1954 SC 210, it is also to be borne in mind that one of the essentials of that law is also to safeguard the purity of the

election process and also to see that the people do not get elected by flagrant breaches of that law or by corrupt practice. It is in that light that the

Supreme Court held that where the election law does not prescribe the consequence or does not lay down penalty for noncompliance with certain

procedural requirement of that law, the jurisdiction of the Court or Tribunal entrusted with trial of the case is not affected.

[Paragraph 25 ****]

26. In the backdrop of the foregoing discussion, we may examine the requirements of clause (a) and (b) of subsection (1) of section 83 of the Act.

Clause (a) requires that a concise statement of all material facts on which the petitioner relies should be stated in the petition clause (b) requires that

full particulars of any corrupt practice alleged by the petitioner should be set forth in the election petition. It is well settled that all the primary facts

which must be proved at the trial by a party to establish the existence of a cause of action are ""material facts"". In short, all those facts which are

essential to clothe the petitioner with a complete cause of action, are ""material facts"" which must be pleaded and failure to plead even a single

material fact amounts to disobedience of the mandate of section 83 (1) (a). So far as other details are concerned, it is qualified with the expression

""as full a statement as possible"". The object and purpose of the use of this expression in the second limb of clause (b) will be evident from a

reading of subsection (5) of section 86 of the Act which empowers the High Court to allow the particulars of any corrupt practice alleged in the

petition to be amended or amplified in such a manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition.

[Paragraph 27 ****]

28. In the result, the petition for striking off is disposed of accordingly. To sum up, paras 6, 9, 12, 13, 21, 22, 38 and 40 shall stand deleted and

paras 3,4,5,8, 14 to 20, 25 to 27, 30 to 37, 39 and 45 shall stand modified as indicated above. All allegations against election agents of the

respondent No.1 in the petition shall stand deleted. The allegation of corrupt practices shall remain confined to respondent No.1 only.

29. On consideration of the pleadings, which have survived the striking off exercise as a whole, I find that the facts stated in the petition are

sufficient to bring out the ingredients of the alleged corrupt practices, which give rise to triable issues and constitute cause of action. As all the

references in the election petition to the election agent or other agents of respondent No.1 in connection with the various allegations of corrupt

practice have been deleted and the allegations are confined to respondent No.1 alone, all objections of the respondent No.1 based on lack of full

particulars or details of such agents or their activities etc. are no more relevant. This election petition, therefore, cannot be rejected at the threshold

on the plea of triable issues or cause of action.

30. I may now take up the petition filed under section 86 of the Act and Order 6 Rule 17 of the CPC. for amendment of the pleadings. The

petitioner has submitted an amended petition consolidating the proposed additions as well as the original paras. The submission of the petitioner is

that by the proposed additions, he wants to furnish better particulars amplifying the material facts and particulars already contained in election

petition for the purpose of ensuring a fair and effective trial of the election petition. Respondent No. 1 has filed objection to the proposed

amendments alleging that in the garb of amendments the petitioner seeks to introduce new facts and particulars which were not pleaded in the

original petition thereby giving rise to a new cause of action, which is not permissible under section 86 (5) of the Act. I have considered the rival

submissions. I have carefully scrutinised the original petition as well as the proposed amendments. The learned counsel for the petitioner has also

filed before this Court a note on the proposed amendments. In part A of the said note under paras 4A, 4 B and 4C the proposed additions have

been summarised. I have perused the proposed amendments. However, before going into the merits of the same, it may be appropriate to refer to

subsection (5) of section 86 of the Act which deals with the power of the Court in regard to amendment, sub section (5) of section 86 reads :

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the

petition to be amended or amplified in such manner as may in its opinion necessary for ensuring a fair and effective trial of the petition but shall not

allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

From a bare reading of the aforesaid provision it is clear that the power of the High Court to allow amendment and amplification of the particulars

of any corrupt practice alleged in the petition is very wide. The only requirement is that it is necessary for ensuring a fair and effective trial of the

petition. This power, however, cannot be exercised to allow any amendment which will have the effect of introducing corrupt practice nor

previously alleged in the petition. Thus amendments can be made for removing any vagueness from the election petition by confining the allegations

of corrupt practice to the returned candidate himself. Such an amendment clearly falls within the purview of section 86 (5) of the Act. (See

Ziyauddin Rurhanuddin Bhukhari vs. Brijmohaa Rumdas Mehra, AIR 1975 SC 1788). However, when it is found that the proposed amendments

are not in the nature of supplying particulars but to raise new grounds of challenge the same has to be rejected. The proposed amendments may be

scrutinised in the light of the law set out above.

31, The case of the petitioner in the instant case is based on publication of literatures containing appeal on ground of religion etc. All such

publications including election manifesto, leaflets, pamphlets, stickers etc. have been referred to in the election petition and offending passages

therefrom quoted in extensor in the body of the petition itself. The case of the petitioner is that such literatures were widely circulated throughout

the constituency by respondent No.I during his election campaign. It is also alleged that respondent No.I organised and addressed public meetings,

street corner meetings and conducted door to door canvassing during the period from 31.12.89 to 19.1.90. The places where such meetings were

held and canvassing was done, have been specified in the petition. It is alleged that in such meetings the literature containing offending statements

besides widely circulated, were read over and explained to the audience including electors by the respondent No.I. Thus the allegations, in brief, is

publication/ distribution/ circulation etc. of the literature containing offending statements by the respondent No. 1 as indicated above and reading

over and explaining the same by him in such meetings etc. In the amendments, as proposed, the petitioner has, besides giving particulars of such

meetings, also added the extracts from the speeches allegedly made by respondent No.I in such meetings. Evidently, the speeches made by the

respondent No.I and the statements contained therein, other than those contained in the literature referred to in the election petition definitely

amount to new facts which may give rise to new cause of action. In fact, it amounts to raising new grounds of challenge. Such amendments, in view

of the clear provisions of the law, cannot be allowed. However, those portions of the amendments which relate to clarification or amplification of

the particulars already filed may be allowed to be incorporated by way of amendment. Reading proposed amendments as well as the extracts

therefrom set out by the petitioner in the three paras in the Note, it appears that in paragraphs 3 and 4, elaborate amendments have been proposed

to be made giving particulars of distribution of the election manifesto and other literature by the President of the MPCC (I) and extract from the

speeches allegedly delivered in course of such distribution by him as well as respondent No.1. Such amendment cannot be allowed as they are

purported to raise new allegations of corrupt practice not originally pleaded. Similarly, particulars sought to be incorporated, which fall in the zone

of evidence, alb ! need not be allowed to be incorporated in the pleadings.

32. On carefully going through the proposed amendment, in my opinion, the following amendment can be allowed.

Para 3 of the election petition

The following additions may be allowed in para 5 of the election petition :

The respondent No. 1 himself addressed a public meeting in the election office at Village Chandmeri, Lunglei, Mizoram on 16.1.89 at about 11

A.M. before an audience of about 100 persone. Before addressing the public meeting respondent No. 1 distributed to the audience election

campaign material namely AnnexuresI to IV and VI annexed with election petition"".

Para 4 of the election petition

The following additions may be allowed in para 4 of the election petition :

The respondent No. 1 himself addressed the public meeting in the election office at Village Chandmeri, Lunglei on 18.1.89 at about 3 P.M. before

an audience of 200 persons. Before addressing the public meeting respondent No. 1 distributed to the audience election campaign materials

namely AnnexuresI to IV and VI annexed with election petition"" and ""The respondent No. 1 himself addressed the public on 18.1.89 at

Chandmeri at about 10 A.M. before an audience of 30J persons. Before addressing the public meeting respondent No. 1 distributed to the

audience election campaign materials namely Annexures I to IV and IV annexed with election petition"", It is ordered accordingly.

33. So for as incorporation of names of the persons who attended the meetings or who received the literature is concerned, those being matters of

evidence need not from part of the pleadings. As such they are not allowed to be added.

34. The petition for amendment is, therefore, partly allowed to the extent indicated above.

[Paragraphs 35 and 36 ****]

37. In the result, the preliminary objections of the respondent No. 1 are rejected. The petition for striking off pleadings filed by respondent No 1

and the petition for amendment of the election petition filed by the petitioner are partly allowed.

38. The trial of the case shall proceed accordingly.