PETITIONER:
AZHAR HUSSAIN

Vs.

RESPONDENT:
RAJIV GANDHI

DATE OF JUDGMENT25/04/1986

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1986 AIR 1253 1986 SCR (2) 782
1986 SCC Supl. 315 1986 SCALE (1)573
CITATOR INFO :
R 1987 SC1577 (4,10,28)
R 1987 SC1926 (4)
F 1990 SC 924 (29)
R 1990 SC1731 (9,10)

ACT:
Representation of the People Act, 1951 :
Section 80 to 83, 86 & 87 - Election Petition - Mandatory requirement to furnish material facts and particulars - Non compliance - Summary dismissal of election petition - What are material particulars to be incorporated in an Election Petition.
Civil Procedure Code, 1908 - Order 6 Rule 16 and Order 7 Rule 11(a) - Election Petition - Applicability of.

HEADNOTE:
The respondent having secured the highest votes in the 1984 general elections was declared elected as a Member of the Lok Sabha from the Amethi Constituency of Uttar Pradesh. On the last date for challenging the election, the appellant, an elector from that constituency filed an election petition challenging the election of the respondent alleging various corrupt practices. The respondent upon being served, instead of filing a written statement, raised preliminary objection to the maintainability of the petition contending that the petition was lacking in material facts and particulars and was defective on that account, and that since it did not disclose any cause of action it deserved to be dismissed.
The High Court upheld the preliminary objection of the respondent and dismissed the petition.
In the appeal to this Court on behalf of the appellant it was contended : (1) that where the legislature wanted to provide for summary dismissal of the election petition, the legislature has spoken on the matter and that the intention was to provide for summary dismissal only in case of failure to comply with the requirement of sections 81, 82 and 117 and not section 83; (2) that the powers to reject an election petition summarily under the provisions of the Code of Civil
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Procedure should not be exercised at the threshold, and that

the Court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing with the defective petition which does not disclose cause of action should be exercised.

Dismissing the appeal,

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HELD : 1. The results of an election are subject to judicial scrutiny and control only with an eye on two ends. First, to ascertain that the 'true' will of the people is reflected in the results and second, to secure that only the persons who are eligible and qualified under the Constitution obtain the representation. In order that the "true will" is ascertained the Courts will step in to protect and safeguard the purity of Elections, for, if corrupt practices have influenced the result, or the electorate has been a victim of fraud or deception or compulsion on any essential matter, the will of the people as recorded in their votes is not the 'free and true' will exercised intelligently by deliberate choice. It is not the will of the people in the true sense at all. And the Courts would, therefore, be justified in setting aside the election in accordance with the law if the corrupt practices are established. So also when the essential qualifications for eligibility demanded by the constitutional requirement are not fulfilled, the fact that the successful candidate is the true choice of the people is a consideration which is totally irrelevant notwithstanding the fact that it would be virtually impossible to re-enact the elections and reascertain the wishes of the people at the fresh elections, the time scenario having changed. [788 B-F]

1.1 In matters of election the will of the people must prevail and Courts would be understandably extremely slow to set at naught the will of the people truely and freely exercised. If Courts were to do otherwise, the Courts would be pitting their will against the will of the people, or countermanding the choice of the people without any object, aim or purpose. But where corrupt practices are established the result of the election does not echo the true voice of the people. The Courts would not then be deterred by the aforesaid considerations which in the corruptior-scenario lose

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relevance. Such would be the approach of the Court in an election matter where a corrupt practice is established. [788 F-H; 789 A]

2. Undisputedly, the Code of Civil Procedure applies to the trial of an election petition by virtue of section 87 of the Representation of People Act of 1951, and so the Court trying the election petition can act in exercise of the powers of the Code including Order 6, Rules 16 and Order 7, Rule 11(a). The fact that a reference to section 83 does not find a place in section 86 of the Act does not mean that power under the Civil Procedure Code cannot be exercised. [792 D-E; 793 F]

3. 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 appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirement enjoined by section 83 of the Act to incorporate the material facts in the election petition are not complied with. [794 F-H]

3.1 Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does

not disclose any cause of action, or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of said pleading. The Courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the Court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. Such being the position in regard to matters pertaining to ordinary Civil litigation, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the Nation, the controversy is set at rest at the earliest if the facts of the case and the law so warrant. [795 H; 796 A-C; 797 D-E]

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3.2 Since the Court has the power to act at the threshold, the powers must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such power is warranted under the relevant provision of law. [797 E-F]

4. All the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. The omission of a single material fact would lead to an incomplete cause of action and an election petition without the material facts relating to a corrupt practice is not an election petition at all. [795 B-C; A-B]

4.1 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 the charges 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 s. 83(1)(a). An election petition, therefore, can be and must be dismissed if it suffers from any such vice. [795 C-D]

Hardwari Lal v. kanwal Singh, [1972] 2 S.C.R. 742, Samant N. Balkrishna & Anr. v. George Fernandez & Ors., [1969] 3 S.C.C. 239, Udhav Singh v. Madhav Rao Scindia Popatlal Manilal Joshi & Ors., [1969] 3 S.C.R. 217, relied upon.

5. The pleading in regard to matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of a meeting of which dates and particulars are not given would tantamount to failure to incorporate the essential particulars. And inasmuch as there was a possibility that witnesses could be procured in the context of a meeting at a place or date convenient for adducing evidence, the High Court should not even have permitted evidence on that point. No amount of evidence could cure the basic defect in the pleading and the pleading as it stood must be construed as one disclosing no cause of action. [806 E-G]

Nihar Singh v. Rao Birendra Singh, [1970] 3 S.C.C. 239, relied upon.

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6. In the instant case, on a scrutiny of the averments made in the Election Petition it is evident that it is not pleaded as to who had distributed the pamphlets, when they were distributed, where they were distributed, to whom they were distributed, and in whose presence they were distributed. The pleading is ominously silent on these aspects. It has not even been pleaded that any particular person with the consent of the respondent or his election agent distributed the said pamphlets. The pleading, therefore, does not spell out a cause of action. [818 E-G]

7. The election petition, in the instant case, was filed on the last day on which the election petition could have been presented. Having regard to the rigid period of limitation prescribed by section 81 of the Act, it could not have been presented even on the next day. Such being the admitted position, it would make little difference whether the High Court used the expression 'rejected' or dismissed'. It would have had some significance if the petition was 'rejected' instead of being 'dismissed' before the expiry of the limitation inasmuch as a fresh petition which contained material facts and was in conformity with the requirements of law and which disclosed a cause of action could have been presented 'within' the period of limitation. The High Court was, therefore, perfectly justified in dismissing the petition. And it makes no difference whether the expression employed in 'dismissed' or 'rejected' for nothing turns on whether the former expression is employed or the latter. [821 H; 822 A-D]

8. The expression 'corrupt practice' employed in the Act would appear to be rather repulsive and offensive. It can perhaps be replaced by a natural and unoffensive expression such as 'disapproved practices'. [822 D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2774 (NCE) of 1985.

From the Judgment and Order dated 6th May, 1985 of the Allahabad High Court in Election Petition No. 2 of 1985.

Ravi Prakash Gupta, N.M. Popli and Ms. Kirti Gupta for the Appellant.

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Dr. Y.S. Chitale, M.R. Sharma, S. C. Maheshwari, Ms. Rachna Joshi and Dalveer Bhandari for the Respondent.

The Judgment of the Court was delivered by

THAKKAR, J. An election petition having been dismissed on the ground that it did not comply with the mandatory requirement to furnish material facts and particulars enjoined by Section 83 of the Representation of People Act and that it did not disclose a cause of action, the election petitioner has appealed to this Court under Section 116-A of the Representation of the People Act of 1951 (Act).

The respondent was elected as a Member of the Lok Sabha from the Amethi Constituency of Uttar Pradesh in the general elections held on 24th December, 1984 under Section 15 of the Act. Having secured the highest votes (3,65,041) the respondent was declared as elected on December 29, 1984. On 12th February, 1985, the last date from challenging the election the appellant (who claims to be a worker of the Rashtriya Sanjay Manch), an elector from the Amethi constituency, filed the election petition giving rise to the present appeal.

The election of the returned candidate, respondent

herein, was challenged on the ground of alleged corrupt practices as defined by the Act. Seventeen grounds set out in para 4(I to XVII) of the election petition were called into aid in support of the challenge. The respondent upon being served, instead of filing a written statement, raised preliminary objections to the maintainability of the petition on a number of grounds inter alia contending that the petition was lacking in material facts and particulars and was defective on that account, and that since it did not disclose any cause of action it deserved to be dismissed. The appellant on his part filed two applications for amendment of the election petition. (None of which was for supplying the material facts and particulars which were missing). All these applications were heard together and were disposed of by the Judgment under appeal upholding the preliminary objection raised on behalf of the Respondent and dismissing the election petition. Hence this appeal.
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In a democratic polity 'election' is the mechanism devised to mirror the true wishes and the will of the people in the matter of choosing their political managers and their representatives who are supposed to echo their views and represent their interest in the legislature. The results of the Election are subject to judicial scrutiny and control only with an eye on two ends. First, to ascertain that the 'true' will of the people is reflected in the results and second, to secure that only the persons who are eligible and qualified under the Constitution obtain the representation. In order that the "true will" is ascertained the Courts will step in to protect and safeguard the purity of Elections, for, if corrupt practices have influenced the result, or the electorate has been a victim of fraud or deception or compulsion on any essential matter, the will of the people as recorded in their votes is not the 'free' and 'true' will exercised intelligently by deliberate choice. It is not the will of the people in the true sense at all. And the Courts would, therefore, it stands to reason, be justified in setting aside the election in accordance with law if the corrupt practices are established. So also when the essential qualifications for eligibility demanded by the constitutional requirements are not fulfilled, the fact that the successful candidate is the true choice of the people is a consideration which is totally irrelevant notwithstanding the fact that it would be virtually impossible to re-enact the elections and reascertain the wishes of the people at the fresh elections the time-scenario having changed. And also notwithstanding the fact that elections involve considerable expenditure of public revenue (not to speak of private funds) and result in loss of public time, and accordingly there would be good reason for not setting at naught the election which reflects the true will of the people lightly. In matters of election the will of the people must prevail and Courts would be understandably extremely slow to set at naught the will of the people truly and freely exercised. If Courts were to do otherwise, the Courts would be pitting their will against the will of the people, or countermanding the choice of the people without any object, aim or purpose. But where corrupt practices are established the result of the election does not echo the true voice of the people. The Courts would not then be deterred by the aforesaid considerations which in the corruption-scenario lose relevance. Such would be the approach of the Court in an
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election matter where corrupt practice is established. But

what should happen when the material facts and particulars of the alleged corrupt practices are not furnished and the petition does not disclose a cause of action which the returned candidate can under law be called upon to answer? The High Court has given the answer that it must be summarily dismissed. The appellant has challenged the validity of the view taken by the High Court.

Learned counsel for the appellant has urged four submissions in support of this appeal viz:

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 inasmuch as Section 86 of the Act which provides for summary dismissal of the petition does not advert to Section of the Act there is no power in the Court trying election petitions to dismiss the petition even in exercise of powers under the Code of Civil Procedure.

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

C - In regard to seven grounds of challenge embodied in paragraph 4 of the election petition viz. I, II (i, ii & iii), XIII, XIV and XV the High Court was not justified in dismissing the petition.

D - Even if the powers under the Code of Civil Procedure can be exercised by the Court hearing election petitions worse comes to worse, an election petition may be rejected under Order 7, Rule 11 of the Code of Civil Procedure, but in no case can it be dismissed.

GROUND A:

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In order to understand the plea, a glance at Sections 83 and 86(1) in so far as material is called for :-

"83. Contents of petition:- (1) an election petition

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

b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each of such practice; and

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

(Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof)

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

"86 - Trial of election petitions -

(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 82 or section 117.

Explanation - An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98."

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The argument is that where the legislature wanted to provide for summary dismissal of the election petition, the legislature has spoken on the matter. The intention was to provide for summary dismissal only in case of failure to comply with the requirement of Sections 81, 82 and 117 (1) and not Sec. 83.

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(1) 81. Presentation of petitions - (1) An election petition calling in question any election may be presented on one or more of the grounds specified in (sub-section (1)) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation : In this sub-section 'elector' means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such an election or not.

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

82. Parties of the petition - A petitioner shall join as respondents to his petition -

(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidate is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

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The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions, non-compliance with which entails dismissal of the election petition, it follows that non-compliance with the requirements of Section 83(1), even though mandatory, do not have lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of section 87 of the Act (2). Since CPC is applicable, the Court trying the election

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117. Security for costs - (1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the Rules of the High Court a sum of two thousand rupees as security for the costs of the petition.

(2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.

(2) 87. Procedure before the High Court - (1) Subject

to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of the suits ;

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

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petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) which read thus :-

Order 6, Rule 16 : "Striking out pleadings - The Court may at any stage of the proceedings order to be struck out or amend any matter in any pleading -

a) which may be unnecessary, scandalous, frivolous or vexatious, or

b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or

c) which is otherwise an abuse of the process of the Court."

Order 7, Rule 11 : "Rejection of Plaint - The plaint shall be rejected in the following cases :-

a) where it does not disclose a cause of action ;

xxxxx xxxxx xxxxx"

The fact that Section 82 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.

There is thus no substance in this point which is already concluded against the appellant in Hardwari Lal v. Kanwal Singh, [1972] 2 S.C.R. 742 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, J. who spoke for the three-judge Bench :

"The allegations in paragraph 16 of the election petition do not amount to any statement or material

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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 gravamen 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 suggestion as 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. Under section 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 Code of Civil Procedure 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed."

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 Code of Civil Procedure 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 & Anr. v. George Fernandez & Ors., [1969] 3 S.C.C. 239, has expressed itself in no unclear terms that

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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 Udhav Singh v. Madhav Rao Scindia, [1977] 1 S.C.C. 511, 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 of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt 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 the 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 disobediance 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.

GROUND B :

Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of confernment of such powers is to ensure that a litigation which is meaningless and bound to prove

abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocle need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the
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concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The Courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the Court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matters pertaining to ordinary Civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections. So long as the sword of Damocles of the election petition remains hanging an elected member of the Legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in a campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the
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elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to wind the vote of the people but also to win the vote of the Court in a long drawn out litigation before he can whole-heartedly engaged himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as a hindrance if he be entrusted with some public office in his elected capacity. He may even have occasions to deal with

the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern metal, the constraint introduced by the pendency of an election petition may have some impact on his sub-conscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the Nation, the controversy is set at rest at the earliest, if the facts of the case and the law so warrant. Since the Court has the power to act at the threshold the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law. To wind up the dialogue, to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The Court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled.

GROUND C :

The learned counsel for the election pecitioner has very

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fairly contended that out of the 17 grounds embedded in the election petition, grounds other than the seven mentioned by him cannot be pressed into service and that he would restrict his submissions to these seven grounds. It is therefore unnecessary to advert to grounds other than the seven grounds which have been urged in support of this petition. We will accordingly proceed to consider the plea urged to the effect that in regard to the aforesaid alleged corrupt practices, the High Court was not justified in dismissing the election petition.

Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression 'material facts and particulars', which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act.

(1) What are material facts and particulars ? Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. Manubhai Nandlal Amarsey v. Popatlal Manilal Joshi & Ors., [1969] 3 S.C.R. 217.

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant, the following facts are

essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded. Hardwari Lal v. Kanwal Singh, [1972] 2 S.C.R. 742:
a) mode of assistance;
b)measure of assistance; and

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c) all various forms of facts pertaining to the assistance.
(3) In the context of an allegation as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of Government servants in election it is absolutely essential to plead the following :
a) kind or form of assistance obtained or procured;
b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election-candidate for promoting the prospects of his election Hardwari Lal v. Kanwal Singh. (supra)
(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured Hardwari Lal v. Kanwal Singh (supra)
(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered. Hardwari Lal v. Kanwal Singh (supra).
(6) The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars Hardwari Lal v. Kanwal Singh (supra).

And having restated the settled position in regard to the content of the expression 'material facts', the time is now ripe to proceed to deal with the grounds on which the election of the returned candidate is assailed, seriatim.

GROUND I :

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Alleged corrupt practice as incorporated in Ground I reads thus :-

"The election of the respondent is liable to be set declared void because the respondent was guilty of the following corrupt practice as defined under Section 123(7) of the Representation of People Act, 1951, read with Section 100(1)(b) and 100(D)(ii) of the said Act, the said corrupt practice was committed with the consent of the respondent returned candidate and of other workers of his with his consent. In any event, it was committed by the respondent's agents in the interests of the returned candidate and the said corrupt practice has materially affected the result of the election in so far as it concerns the returned candidate. One M.H. Beg who at one time was the Chief Justice of the Supreme Court of India and is a close friend of the Nehru family and is personally known to and friendly with the respondent, appeared on the government controlled news media and made a speech praising the

respondent and comparing his entry into politics as the birth of new Arjuna, the insinuation being that the opposition were the kauravas. His appearance on the television was relayed day after day on the government controlled media. Television sets had been installed in practically every election office of the respondent in Amethi constituency and throughout the election campaign thousands and thousands of voters were exposed to the television appearance and speech of the said Mr. Beg. Mr. Beg is a gazetted officer, being the Chairman of the Minorities Commission. His services were procured and obtained by the respondent, his agents and other persons with the consent of the respondent with a view to assist the furtherance of the prospects of the respondent's election. Mr. Beg was seen and heard on the television as later as 21st December, 1984. Propaganda about Mr. Beg's was done particularly amongst the members of the Muslim community. Apart from being gross misuse of the office of Chairman of the Minorities Commission, the same constitutes

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a gross corrupt practice under the election law."

Why the High Court held that material facts and particulars are absent and did not disclose a cause of action ?

The High Court observed :-

"The contention of the learned counsel for the respondent is that there is no pleading that Mr. Beg was "a person in the service of the government" as, according to the learned counsel, the Chairman of the Minorities Commission is not a person in the S service of the government. Learned counsel for the petitioner says that the petitioner had specifically pleaded that Mr. Beg was a gazetted officer which implies a pleading that he was in the service of the government. Learned counsel for the respondent says that simply because a person is a gazetted officer, it is not necessary that he must also be a government servant because the appointment of so many persons is gazetted and yet some of them may not be government servants. Be that as it may, the fact remains that the petitioner had not stated in the pleading that Mr. Beg was a person in the service of the government as specifically required by Section 123(7) of the Act. This requirement is a requirement of the statute and is, therefore, a material fact within the meaning of Sec. 83(1)(a) of the Act. Similarly, the statement that the services of Mr. Beg were procured and obtained "by the respondent, his agents and other persons with the consent of the respondent" is clearly vague as discussed above. It was incumbent upon the petitioner to specify which of the three alternatives he meant to plead; in particular it was necessary for him to indicate the names of the respondent's agents and other persons to enable the respondent to know that what was the case which he was expected to meet. Learned counsel for the respondent further contended that the petitioner has not set out the exact words used by Mr. Beg in his speech; the expression "a speech prais-

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ing the respondent" and comparing his "entry into politics as the birth of new Arjuna" is not what Mr. Beg might have said. In the case of K.M. Mani v. P.J. Antony, [1979] 2 S.C. Cases 221, the speech made by a Police Officer exhorting the electors in an election meeting to support a candidate was questioned. It was held that a mere statement of the making of the speech or exhortation was not enough, and that transcript of the alleged speech or contemporaneous record of the points or atleast substance of the speech should have been made available. In these circumstances the proposed pleading in this paragraph does not set out the material facts and, therefore, constitutes an in complete cause of action under section 123(7) of the Act."

Whether the High Court was right in taking the aforesaid view:

The averments contained in paragraph 4 pertaining to Ground No.l do not satisfy the test prescribed in Manubhai Anarsey v. Popatlal Manilal Joshi & Ors., (supra) and Hardwari Lal v. Kanwal Singh, (supra). The most important test which remained unsatisfied is as regards the omission to satisfy in what manner the assistance was obtained and procured by the election-candidate for promoting the prospects of his election. All that has been stated is:

"His services were procured and obtained by the respondent, his agents and other persons with the consent of the respondent with a view to assist the furtherance of the prospects of the respondent's election.."

It is not mentioned as to who procured or obtained the services of Shri Beg, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent. Unless these "essential facts which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are pleaded as per the law laid down in Manubbai Nandlal Amarsey v. Popatlal Hanilal Joshi & Ors., (supra) it cannot be said that the petition discloses a cause of action in regard to

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this charge. In the absence of these material facts and particulars the Court could not have rendered a verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition. It is not sufficient to show that a Government servant had appeared on the public media to praise one of the candidates. It must also be shown that the assistance of the Government servant was obtained either by the respondent or his agent or by any other person with the consent of the election candidate or his election agent. The averments made in the petition do not show (i) who had obtained or procured the assistance from Shri Beg; (ii) how he had obtained or procured the assistance of Shri Beg; and (iii) how it was said that it was with the consent of the respondent or his election agent. Nor is it shown which, if any, facts went to show that it was in furtherance of the prospects of the respondent's election. In the absence of material facts and particulars in regard to these aspects, the petition would not disclose the cause of action. The High Court, was therefore, perfectly justified in reaching this conclusion. The petition also does not disclose the exact words used in the speech; or the time and date of making such a speech. Now, unless the relevant or offending passage from the

speech is quoted, it cannot be said what exactly Shri Beg had said, and in what context, and whether it was calculated to promote the election prospects of the respondent. Be that as it may, inasmuch as these material facts and particulars to show that the services of Shri Beg were procured by someone with the consent of the respondent or his election agent are not there, the averments pertaining to the charge do not disclose a cause of action. Unless the nexus between the appearance of Shri Beg on the media and the prior consent of the respondent or his election agent in regard to what he was going to say and the purposes for which he was going to say is set out in the material particulars it cannot be said that it disclosed a cause of action and the test laid down in Manubhal Nandlal's case, as also Hardwari Lal's case is satisfied. The High Court was therefore justified in taking the view that it has taken. We may, in passing, mention a point made by learned counsel for the respondent. It was submitted that the averment must also mention whether the interview was a live one telecast after the date of filing of the nomination. If it was one recorded prior to the said date it may not be of any

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consequence. This argument also requires consideration but we do not propose to rest our conclusion on this aspect as it is not necessary to do so.

GROUND II(i) :

It has been set out in para 4 of the petition in the following terms :

> "Throughout the petitioner's constituency in Amethi, worker employed by the respondent and/or his agents painted available space with two slogans. The first one was "BETI HAI SARDAR KI. DESHI KE GADDAR KI". Literally translated it implied one of the candidates i.e. Mrs. Maneka Gandhi is the daughter of a Sikh and that Sikhs including her father are traitors. The second slogan was "MANEKA TERA YE ABHIMAN. BANANE NA DENGE KHALISTAN". Literally translated it means Maneka this is your illusion. We will not allow Khalistan to be set up. The clear insinuation was that the said candidate i.e. Mrs. Maneka Gandhi had a vision of Khalistan being set up, that her election would mean the creation of Khalistan and that she was a supporter of the Khalistan demand. These slogans were also painted on some of the vehicles used by the respondent's workers during the course of campaign. On every occasion those slogans were uttered and broadcast from vehicles and from microphones used at public meetings and from the Congress (I) party office in the constituency of the respondent. The use of such slogans was the pet theme of almost every speech delivered in the constituency during the election campaign. The use of these objectionable slogans and posters harmful to newspapers and the respondent must have known to them. But for the fact chat they had been used with his consent, he would have taken some steps to repudiate them or have their use discontinued. Photographs of walls, with the said slogans alongwith certificates will be filed as Exhibit-A."

Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?

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In this context the High Court observed :-

> "..... The contention of learned counsel for the respondent is that this pleading suffers from lack of material facts because the names of the workers, employed by the respondent, or his agents, who painted the slogans or uttered them in speeches or broadcast from the vehicles, have not been indicated. It is pointed that the allegation regarding the painting of slogans is vague because it is stated to have been done by "workers..... and/or his agents" signifying that the petitioner himself did not know whether painting work was done by workers employed by the respondent or by his agents or by both. I have already pointed out that this kind of statement is vague and embarrassing and, therefore, is contrary to the concept of material facts. In the case of Nihal Singh v. Rao Birendra Singh & Anr., [1970] 3 Supreme Court Cases 239 it was held that the allegation that at meetings in different villages, speeches were given on 5th and 12th May 1968 was vague in the absence of a specification of date and place of each meeting and evidence could not be permitted to be led in the matter. The allegation of consent of the respondent to the paintings of the slogans or to their utterances in the speeches of his workers is only inferential. There is a distinction between consent and connivance. The pleading is in the nature of a pleading of connivance and not of consent which is not enough, vide the case of Charan Lal Sahu v. Giani Zail Singh (A.I.R. 1984 S.C. 309). In the case of Surendra Singh v. Hardial Singh (A.I.R. 1985 S.C. 89), it has been indicated in para 37 that consent is the life-line to link up the candidate with the action of the other person which may amount to corrupt practice unless it is specifically pleaded and clearly proved and proved beyond reasonable doubt, the candidate cannot be charged for the action of others."

Whether the High Court was right in taking the aforesaid view:

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There is a glaring omission to mention the names of the workers said to have been employed by the respondent or his agents who have allegedly painted the slogans. So also no material particulars are given as regards the vehicles on which the said slogans have been said to have been painted. There are no material particulars or facts. We are of the view that inasmuch as the material facts and particulars in regard to this alleged practice were not mentioned and the High Court was justified in taking the view that it had taken. The averments contained in regard to this charge also do not satisfy the test laid down by the various decisions of this Court adverted hereinabove. A Division Bench of this Court in Nihal Singh v. Rao Birendra Singh, [1970] 3 S.C.C. 239, speaking through Bhargava, J. has observed :-

> "...The pleading was 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 pleding, 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..... "

(see para 8)

The principle laid down is that the pleading in regard to matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of a meeting of which dates and particulars are not given would tantamount to failure to incorporate the essential particulars and that inasmuch as there was a possibility that witnesses could be procured in the context of a meeting at a place or date convenient for adducing evidence, the High Court should not even have permitted evidence on that point. In other words, no amount of evidence could cure the basic defect in the pleading and the pleading as it stood must be construed as one disclosing no cause of action. In the light of the aforesaid principle laid down by the Supreme Court which has held the field for more than 15 years, the High Court was perfectly Justified in reaching the conclusion called into question by the appellant.

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Ground II(ii) :

Alleged corrupt practice as incorporated in Ground II(ii) reads as under :-

> "The respondent himself toured the constituency on the 12th and 13th December, 1984. On the night of the 11th as he was entering the constituency he was stopped by the petitioner's workers at Inhauna Kashah. The walls there bore these slogans. The petitioner alongwith other workers stopped the respondent's vehicle and drew his attention to the so vulgar slogans. The respondent saw nothing objectionable in these slogans. He was requested to give instructions to the authorities that these should be removed and he contemptuously had the workers dismissed and dispersed. He declared that their leader (refering to Mrs. Maneka Gandhi) deserves nothing better. The respondent delivered several speeches during the course of his visit. In none of these speeches did he repudiate these slogans. He repeatedly referred to the assassination of his mother and to the Anandpur Resolution saying that the opposition had encouraged seccessionist and violent elements and that the opposition conclaves in the past had given rise to the emotion that had eventually taken the prime minister, his mother's life. He insinuated that the assassins were sikhs and then asked the audience to make up their minds whether they still wanted somebody from the same community to succeed in the election."

Why the High Court held that material facts and particulars are absent and did not disclose a cause of action ?

> The High Court observed :
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> "Learned counsel for the respondent correctly contends that these averments again are vague because they do not describe the petitioner's workers who stopped the respondent or furnish details of the speeches in which the respondent was

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> expected to repudiate the slogans. He has also correctly urged that the so-called request if any, to the respondent for 'instructions to the authorities' was misconceived and did not establish any obligation of the respondent to direct the authorities under any provision of the election law."

Whether the High Court was right in taking the aforesaid

view:

In this case also, no time, date and place of the speeches delivered by the respondent have been mentioned. No exact extracts from the speeches are quoted. Nor have the material facts showing that such statements imputed to the respondent were indeed made, been stated. No allegation is made to the effect that it was in order to prejudice the election of any candidate. Or in order to further the prospects of the election of the respondent. The essential ingredients of the alleged corrupt practice have thus not been spelled out. So far as the meeting is concerned, the principle (1) laid down in Nihal Singh's case (supra) discussed in the context of the charge contained in ground (Il)(i) is attracted. The view taken by the High Court is therefore unexceptionable.

Ground II(iii) :

The alleged corrupt practice as incorporated in ground II(iii) reads as under :-

> "In line with the respondent's speeches, his . workers with the knowledge and consent of the respondent and other agents of the respondent entrusted with the task of conducting the election campaign caused a poster of Hindi and Urdu to be affixed in all prominant places throughout the constituency. The said poster was in fact a page of

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(1)"..... The pleading was 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..... "

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> the Blitz newspaper of 30.6.84 called the Id Special. The Id that year was on 1st July, 1984.
> The heading of the said poster which was underlined in red alleged conspiracy between the leader of the petitioner party and Bhindaranwale. Photographs of Mrs Maneka Gandhi and Bhindaranwale appeared separately on left and right hand corners of the said advertisement. A literal English translation of the poster is given below :- A copy of the said poster will be filed as Exhibit-B. The poster also purported to carry a fascimile copy of a letter dated the 10th September, 1983, purporting to be addressed by Shri Kalpnath Sonkar, a member of the Rashtriya Sanjay Manch, to Shri Bhindaranwale. The letter is a forgery and that it was forged was publicly stated by alleged author of the alleged letter and a criminal case is pending in the matter thereof. The letter was fabricated expressly for the express purpose of showing :-
> (a) that Mrs. Maneka Gandhi was in secret conspiracy with Bhindaranwale.
> (b) that Mrs. Maneka Gandhi illegally supplied arms to Bhindaranwale and other successionists and terrorists.
> (c) that Maneka Gandhi was in sympathy with the creation of Khalistan and the division of the country and the use of violence to achieve that end.
> The said allegations are totally false and

fabrication. The respondent knew them to be false. He did not and could not believe them to be true. That complaints were made to the District authorities about the obnoxious wall paintings and posters to which the attention of the respondent had been drawn. The said authorities while clearly admitting the R.S.M. election agents and worker as well as to the press correspondents that they were objectionable took no steps to remove or obliterate them. Prominent newspapers and press correspondents

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continued to draw attention to those slogans and posters but the respondent or his workers took no steps whatsoever to stop their exhibition, circulation and use. The respondent condoned and sanctioned the exhibition and circulation of this poster. He did nothing to stop the use thereof by his workers. The wall painting mentioned above and this poster were paid out of Congress (I) Party's. These were therefore, his own expenses sanctioned by himself. Cutting of some of the newspapers reports will be filed as Exhibit C."

Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?

The High Court held :

"..... It appears to me that if an averment of fact is an essential part of the pleading, it must be considered to be an integral part of the petition. If such an averment is not actually put in the election petition, the petition suffers from the lack of material facts and therefore, the statement of cause of action would be incomplete. If it is stated in the election petition, either in the body of the petition itself or by way of annexure, but its copy is not furnished to the respondent, the election petition would be hit by the mischief of Section 81(3) read with Section 86(1) of the Act. In my opinion, the reference to the poster and its proposed translation in the election petition, which was never incorporated into it, are material facts under Section 83(1)(a) of the Act their absence cannot now be made good by means of an amendment. The pleading as it stands, and even if it were permitted to be amended would suffer from lack of cause of action on this material fact, and, therefore, is liable to be struck out. The newspaper cutting are not used by the petition as containing fact, but only as evidence to that extent amendment is allowed.

Whether the High Court wax right in taking the aforesaid view?

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It will be noticed that in the election petition it has been mentioned that a copy of the poster would be subsequently filed, and the cuttings of some newspaper reports would also be filed later on. The election petitioner sought an amendment to delete the averments on both these aspects. The High Court rejected the prayer in regard to poster (Ex. B), but granted the prayer in respect of the cuttings. The High Court has taken the view that the poster was claimed to be an integral part of the election petition and since it was not filed (much less its copy furnished to the respondent) the pleading suffered from infirmity and non-compliance with Section 83(1) read with

Section 86(1) of the Act. Non-filing of the poster is fatal to the election petition as in the absence thereof the petition suffers from lack of material facts and therefore the statement of cause of action would be incomplete. Nothing turns on the facts whether or not the words "a copy of the said poster would be filed as Exhibit B" are allowed to be retained in the election petition or are deleted as prayed for by the appellant. The fact remains that no copy of the poster was produced. It must also be realized that the election petitioner did not seek to produce the copy of the poster, but only wanted a reference to it deleted so that it cannot be said that the accompaniments were not produced along with the election petition. The fact remains that without the production of the poster, the cause of action would not be complete and it would be fatal to the election petition inasmuch as the material facts and particulars would be missing. So also it could not enable the respondent to meet the case. Apart from that the most important aspect of the matter is that in the absence of the names of the respondent's workers, or material facts spelling out the knowledge and consent of the respondent or his election agent, the cause of action would be incomplete. So much so that the principle enunciated by this Court in Nihal Singh's case (supra) would be attracted. And the Court would not even have permitted the election petitioner to lead evidence on this point. The High Court was therefore fully justified in taking the view that it has taken.

Ground XIII :

Alleged corrupt practice as incorporated in ground No. XIII reads as follows :-

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> "That, in the later half of June, 1983, a family friend of the respondent and a very close and intimate friend of the respondent's mother, Shri Mohammed Yunus, wrote a book called "Son of India". A committee called the Son of India committee published the book. It was printed by Virendra Printers of Karol Bagh, New Delhi. The Son of India committee consisted among others of Minister Narasimha Rao, M.P., the Executive President of the Congress (I) Shri Kamlapati Tripathi, Ministers Sitaram Kesari and Narain Dutt Tiwari. The book starts with a brief comment by the editor entitled "Pathakon Se Do Battein" (short dialogue with the readers) and is followed by a 22 page story of the two brothers, namely the respondent and his late brother Shri Sanjay Gandhi. This book was written, printed and published with the knowledge, consent and assistance of the respondent. The respondent by himself by the party, by his workers and through other persons acting with the consent of the respondent and/or his election agent, distributed the said book in the Amethi constituency during the entire course of the election campaign. The said book contains statements which are false and which to the knowledge of the respondent were believed to be false. The said statements are in relation to the personal character and conduct of Mrs. Maneka Gandhi. The said statements were reasonably calculated to prejudice the prospects of the petitioner's election. All statements made in relation to the character or conduct of the petitioner are totally false. In particular, the petitioner says that the following statements made

therein answer the description aforesaid and constitute a gross, corrupt practice within the meaning of Section 123(4) of the Representation of the People Act, 1951. The said corrupt practice has been committed by the respondent, the returned candidate. It has also been committed by his election agents and by other persons with the consent of the respondent and/or his election agents. A copy of the booklet entitled Son of India will be filed as Exhibit 'P'. It has also been committed in the interest of the

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respondent returned candidate and by his agents. The said corrupt practice renders the election of the respondent liable to be set aside and declared void, as a result of Section 100(I)(b) of the said Act. Reproduced herebelow are some of the false statements contained in the said book "Son of India" relating to the personal character and conduct of Mrs. Maneka Gandhi one of the candidates in the said election.

(a) That Mrs. Maneka Gandhi utilised her marriage to the late Sanjay Gandhi as a means of enriching herself.

(b) She is spending so much money on herself and her various activities. Where does all this money come from? The insinuation is that the petitioner is possessed of wealth corruptly made which is now being spent.

(c) That she misused her marriage to increase her influence and amass wealth.

(d) That her marriage life was one of the constant friction with her husband.

(e) That due to her foolish actions, her husband became more and more unhappy. It is as a result of domestic unhappiness created by her that Sanjay Gandhi to drown his sorrow took to flying. His flying in the plane which ultimately crashed and in which he died as a direct result of her misconduct.

(f) That she was totally indifferent to her husband's death.

(g) That she left her mother-in-law's home because she was denied a Parliamentary Seat.

(h) That she had no love for her husband and she should be ashamed of herself.

Why the High Court held that material facts and particulars are absent and had not disclosed a cause of action?

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The High Court observed as under :-

"In this connection learned counsel for the respondent has also referred to the averment that the said statement "were reasonably calculated to prejudice the prospects of the petitioner's election". Similarly, he refers to statements (b) contained in the paragraph wherein an observation is made that "the insinuation is that the petitioner is possessed of wealth corruptly made....." The contention is that these averments would apply to Smt. Maneka Gandhi personally as if she was the petitioner and not to Ch. Azhar Hussain the present petitioner. Ch. Azhar Hussain was not contesting the election, he was only a voter. The statement "that the petitioner's election were calculated to be

prejudiced" or that "the petitioner was possessed of wealth corruptly made" was wholly inapplicable to the petitioner Ch. Azhar Hussain and could certainly apply to Smt. Maneka Gandhi. It is, therefore, urged that this pleading is not made by the petitioner himself and therefore, cannot be looked into. Realising the error the petitioner has applied for amendment to the petition to mention that the statements were calculated to prejudice the leader of the petitioner's political party and that regarding possession of wealth, it related to the leader of the petitioner's political party, namely, Smt. Maneka Gandhi. It appears to me that, as pointed out by the learned counsel for the respondent, the proposed amendment changes the entire nature of the pleading in this paragraph and is not merely a clerical mistake. It is an indication of the fact that the pleading has been made without an application of mind and it seems to me that it is hit by one of the principles set forth in Section 86(5) of the Act for which an amendment must not be allowed. I am not satisfied that the proposed amendment could justly be allowed and therefore, must fail. On a consideration of all the matters, I would hold that the pleading in this paragraph is not sustainable, suffers from lack of material facts as a result of non-application of mind of the petitioner himself and is irrelevant."

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Whether the High Court was right in taking the aforesaid view :-

There is no averment to show that the publication was made with the knowledge or consent of the returned candidate when the book was published in June, 1983. In fact, in 1983 there was no question of having acted in anticipation of the future elections of 1985 and in anticipation of the respondent contesting the same. In the election petition even the offending paragraphs have not been quoted. The petitioner has set out in paragraphs (a) to (h) the inferences drawn by him or the purport according to him. This apart, the main deficiency arises in the following manner. The essence of the charge is that this book containing alleged objectionable material was distributed with the consent of the respondent. Even so strangely enough even a bare or bald averment is not made as to :

i) whom the returned candidate gave consent ;

ii) in what manner and how ; and

iii) when and in whose presence the consent was given,

to distribute these books in the constituency. Nor does it contain any material particulers as to in which locality it was distributed or to whom it was distributed, or on what date it was distributed. Nor are any facts mentioned which taken at their face value would slow that there was consent on the part of the returned candidate. Under the circumstances it is difficult to comprehend how exception can be taken to the view taken by the High Court.

GROUND XIV :

Alleged corrupt practice as incorporated in ground No. XIV reads thus :-

"That during the same campaign in the Amethi constituency, another booklet in Hindi with the photograph of the respondent on the cover page under the title "Rajiv Kyon" (Why Rajiv) purporting

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to be written by one Jagdish Pyush, was distributed in lacs by the respondent, his election agent and a large number of other persons with the consent of the respondent and/or his election agent. On the third page of the said pamphlet occurs the following sentences :

"Amethi is the place where Rajiv's younger brother did his principal work. If Maneka was in sympathy with the desires of the late Sanjay Gandhi why would she not run an orphanage in Amethi. Why would she not serve the helpless poor and why would she not employ her vast assets (Arbon Ki Sampati) (of hundres of crores) in some constructive work..... The same conspiratorials and mischievous elements who had painted the hands of Sanjay Gandhi and Maneka yellow and the same foreign powers, disruptionists and enemies of the country who got Maneka out of her family home, are now wanting to make a Razia Sultan or Noor Jahan and seeing her in those roles. These people (obviously including the petitioner) not merely desired the partition of Smt. Gandhi's family, not only the partition of Amethi and Rai Bareilly, but also partition of the people and partition of the country. The very people who want another Pakistan in India, who want Khalistan are the very persons who are tinkering with the progress of Amethi and cannot permit the widow of Sanjay Gandhi to be in the company of the country's loafers, because no family of India can permit its daughters or daughters-in-law and the widow of its loved one to go about behaving like a vagabond. She is in acute distress about her late husband's property. She is conducting her politics in his name. She is abusing her monther-in-law and her brother-in-law. Having kicked her family, she is now doing her dirty deeds (Gulchhade Uda Rahai Hai) in a house which costs Rs. 80,000 annual rent..... Social reformers had not advocated the pursuit of ambitions by widows and in the same vein, the pamphlet proceeds to state in other context thereafter that the petitioner moved about in the company of traitors. She has exploited the

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person of her innocent child for political purpose. For power and pleasure, Maneka can do anything. The petitioner says that the entire trend of this pamphlet and the propaganda conducted on the basis thereof casts serious aspersions on the personal character of the candidate of his party. It accuses her of being possessed of corrupt wealth, disregard of her husband's wishes, breaking of family ties for political ambitions not conforming to the standard of conduct expected of a widow, keeping company with questionable characters capable of any immoral action for pleasure of the body and even exploiting her innocent child for her own advancement. All these aspersions were extensively published with the knowledge and consent of the respondent, as well as, with the knowledge and consent of his election agent and by other persons with the consent of the respondent and/or his election agent. The publisher of this pamphlet is

an important political worker of the Respondent. He is a member of his party and campaign extensively for the respondent and his company. The publication, printing and circulation thereof and the propaganda based thereon was in any event, done by the agents of the respondents and in the interest of the election of the respondent. Each of these statements is false. The respondent and others who made or repeated the same, believed them to be false. At any rate, they did not believe them to be true. These statements are in relation to the personal character or conduct of the candidate and they are in relation to her candidature. These statements were reasonably calculated to prejudice the prospects of her election. The election of the respondent is thus liable to be declared void under section 100(1)(b). This was also liable to be set aside under section 100(1)(d)(ii), inasmuch as the result of the election in so far as it concerned the returned candidate has been materially affected by this gross corrupt practice. A copy of the booklet Rajiv Kyon will be filed as Ex. 'Q'."

Why the High Court held that material facts and particulars are absent and had not disclosed a cause of action?

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In this connection, the High Court observed :-

"While undoubtedly these allegations relate to the personal character and conduct of Smt. Maneka Gandhi, the elements of law required by Section 123(4) of the Act have not been specifically set out. As already held, it was the duty of the petitioner to make his choice of the particular person with whose consent the statement was made or distributed. According to the petitioner himself it was not made by the respondent but by one Jagdish Piyush. The petitioner instead of pinpointing the particular person who distributed the booklet or with whose consent it was distributed made a broad and vague statement that was done by the respondent, his election agent, a large number of other persons with his consent and/or with the consent of his election agent. The date, time and place of distribution, the names of the agents or persons who distributed it have not been indicated and, therefore, the pleading is vague and cannot be sustained."

Whether the High Court was right in taking the aforesaid view:-

On a scrutiny of the averments made in the election petition it is evident that it is not pleaded as to who has distributed the pamphlets, when they were distributed, where they were distributed and to whom they were distributed, in whose presence they were distributed etc. etc. pleading is ominuously silent on these aspects. It has not even been pleaded that any particular person with the consent of the respondent or his election agent distributed the said pamphlets. (in fact it has been stated by the learned counsel for the respondent that no election agent has been appointed by the respondent during the entire elections).

The pleading therefore does not spell out the cause of action. So also on account of the failure to mention the material facts, the Courts could not have permitted the election petitioner to adduce evidence on this point. It would therefore attract the doctrine laid down in Nihal

Singh's case and then would be nothing for the respondent to answer.

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Ground No. XV:

Alleged corrupt practice as incorporated in ground No. XV reads as under :_

> "That during the course of the campaign, the respondent, his election agent and his party brought into existence a propaganda committee to further the prospects of the respondent's election. This committee was called the "Amethi Matdata Parishad". Through the agency of this Committee, the respondent, his election agent and others with their consent and knowledge caused another pamphlet to be printed, published and circulated during the entire election campaign under the title "How do Intelligent people think? who is an obstacle in the progress of Amethi". The said pamphlet inter alia, contains the following statements :-
>
> 'That Maneka Gandhi is surrounded only by anti-social elements. She was also seen in the company of terrorists. Her whole campaign is based on money ..... In my view, Maneka seems to have a big hand in the fire of Punjab. Maneka has no merit of her own. If she had anything in her, it would have come out before her marriage to Sanjay....If she had any desire for leader-ship or service of the country, she would have corporated with her husband. Politics is for her a pursuit of pleasure ("Shaukiya Dhandha"). Therefore, she is conducting her politics on the strength of people like Haji Masthan and Virendra Shai.... A woman who could not protect the honour of a vast country like India.... Maneka is the destroyer of the country'.
>
> The petitioner says that the entire trend of this pamphlet and the propaganda conducted on the basis thereof casts serious aspersions on the personal character of a candidate. Each of these statements is false to the knowledge of the respondents and others. The printing, publication and circulation of the said pamphlet and the propaganda based thereon was, in any event, done by the agents of

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> the respondent and in the interest of the election of the Respondent. These statements are in relation to the personal character or conduct of a candidate and they are in relation to her candidature. These statements were reasonably calculated to prejudice the prospects of the petitioner's election. The election of the respondent is thus liable to be declared void under section 100(1)(b). This was also liable to be set aside under section 100(1)(d) (ii), inasmuch as the result, of the election in so far as it concerned the returned candidate, has been materially affected by this gross corrupt practice.
>
> In this pamphlet, the same Jagdish Piyush who is referred to in the pamphlet in the preceding paragraphs, is one of the contributors and in that contribution, he has referred to his publication mentioned in the previous paragraphs".

Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?

The High Court observed :

> "The petitioner has set out specific statements from this pamphlet commenting adversely on the character and conduct of Smt. Maneka Gandhi where inter alia, her association with terrorists and other persons of questionable antecedents was set out. It has been stated that these statements are false to the knowledge of the respondent and other and the pamphlet was distributed by the agents of the respondent in the interest of the election of the respondent and that the result, so far as the respondent is concerned, has been materially affected by the corrupt practice. Here also, the petitioner has made an omnibus statement of the printing, publication and circulation of the pamphlet by the respondent, his election agent and others with their consent and knowledge without trying to pinpoint the particular person who had done so. The places, dates where the pamphlets were

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> distributed have also not been indicated. It was necessary for the petitioner to do under the law as set out above. The pleading is therefore, vague, embarrassing and lacks in material facts and, therefore, must fail. The petitioner's prayer for an amendment to delete the proposal to file a copy of the pamphlet is allowed as it is evidence and not integral part of the petition".

Whether the High Court was right in taking the aforesaid view ?

In view of the doctrine laid down in Nihal Singh's case (supra) as early as in 1970, the High Court was perfectly justified in taking the view that no cause of action was made out. For, in the absence of material particulars as to who had printed, published or circulated the pamphlet, when, where and how it was circulated and which facts went to indicate the respondent's consent to such distribution, the pleading would not disclose a cause of action. There would be nothing for the respondent to answer and the matter would fall within the doctrine laid down in Nihal Singh's case (supra). The learned counsel for the appellant is unable to show how the Court has committed any error in reaching this conclusion.

Thus there is no substance in the contentions urged by the learned counsel for the appellant in order to assail the judgment of the High Court in the context of the seven charges of alleged corrupt practices which the learned counsel wanted to call into aid in support of his submission.

Last submission (ground D supra) :

Counsel for the appellant has taken exception to the fact that the High Court has dismissed the election petition in exercise of powers under Order 7 Rule 11 of the Code of Civil Procedure notwithstanding the fact that under the said provision if the petition does not disclose cause of action it can only be rejected (and not dismissed). The contention urged by the learned counsel would have had some significance if the impugned order was passed before the expiry of the period of limitation for instituting the election petition. In the present case the election petition was filed on the last

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day on which the election petition could have been presented having regard to the rigid period of limitation prescribed

by Section 81 of the Act. It could not have been presented even on the next day. Such being the admitted position, it would make little difference whether the High Court used the expression 'rejected' or 'dismissed'. It would have had some significance if the petition was 'rejected' instead of being 'dismissed' before the expiry of the limitation inasmuch as a fresh petition which contained material facts and was in conformity with the requirements of law and which disclosed a cause of action could have been presented 'within' the period of limitation. In this backdrop the High Court was perfectly justified in dismissing the petition. And it makes no difference whether the expression employed is 'dismissed' or 'rejected' for nothing turns on whether the former expression is employed or the latter. There is thus no valid ground to interfere with the order passed by the High Court, and the appeal must accordingly fail.

But before the last word is said one more word needs to be said. The expression 'corrupt practice' employed in the Act would appear to be rather repulsive and offensive. Can it perhaps be replaced by a neutral and unoffensive expression such as 'disapproved practices'? Since this aspect occurred to us and there is an occasion to do so, we hint at it, and rest content at that.

And now the last word. The appeal is dismissed. No costs throughout.

A.P.J. Appeal dismissed.

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