REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9466-9468 OF 2016

Madiraju Venkata Ramana Raju .... Appellant

:Versus:

Peddireddigari Ramachandra Reddy & Ors. ....Respondents

J U D G M E N T

A.M. Khanwilkar, J.

1. The present appeals emanate from the judgment and order dated 2nd August, 2016 of the High Court of Judicature at Hyderabad for Telangana and Andhra Pradesh, striking off paragraphs 2 & 9 to 11 of the election petition as also dismissing the election petition, being Election Petition No.8 of 2014 filed by the appellant challenging the election of respondent No.1.

2. The election in relation to Andhra Pradesh State Legislative Assembly was held on 7th May, 2014. The appellant and respondent No.1 contested the election from the Punganur Assembly Constituency. The respondent No.1 was declared as an elected candidate. By way of an election petition, the appellant challenged the election of respondent No.1 on the ground that respondent No.1 had grossly violated several instructions issued by the Election Commission as also the provisions of The Representation of the People Act, 1951 (for short, "**the Act**"). Respondent No.1, in turn, took out two applications seeking to strike out paragraphs 2 & 9 to 11 of the said election petition and to dismiss the election petition *in limine,* both of which were ultimately allowed by the High Court.

3. The background to the present conflict is set out as under:

a. On 12th April, 2014, a notice of election was issued, *inter alia* for a seat from the Punganur Assembly Constituency to the Andhra Pradesh State Legislative Assembly;

b. Respondent No.1, a member of the Yuvajana Shramika Rythu Congress Party (YSRCP) filed his initial nomination form for the aforesaid elections on 12th April, 2014 along with two

affidavits and again, second nomination form on 17th April, 2014 with two fresh affidavits. Appellant, a member of the Telugu Desham Party (TDP), filed his nomination form on 17th April, 2014.

c. After scrutiny of the nomination forms, on 21st April, 2014, a total of 8 (eight) candidates, including the appellant and respondent No.1, were found eligible to contest the elections;

d. Appellant had filed objections on the same day i.e. 21st April, 2014, objecting to the acceptance of nomination forms of respondent No.1 on the ground that he had failed to sign every page of the affidavits in support of his nomination forms and had also failed to fill up all the columns in his forms, contrary to the rules prescribed in that regard. Respondent No.1 filed his counter to the said objection petition;

e. The Returning Officer rejected the objection petition on the ground that the said petition needed no consideration and was hence over-ruled;

f. The elections were held on 7th May, 2014, and results were declared on 16th May, 2014. Respondent No.1 was

declared as the elected candidate, having secured the highest number of valid votes. Appellant finished second while the remaining 6 (six) candidates lost their deposits;

g. Appellant then challenged the election of respondent No.1 by way of an election petition dated 25th June, 2014, under Section 81 read with Sections 83, 100(1)(a) and (d)(i) of the Act before the High Court of Judicature at Hyderabad. He also sought a declaration that he was the duly elected member of the State Legislative Assembly of the 284-Punganur Assembly constituency;

h. Respondent No.1 then took out two applications in the said petition viz. E.A. No. 329 of 2015 under Order VI Rule 16 of the Code of Civil Procedure, 1908 (for short "**CPC**") for striking out the averments made in paragraphs 2 & 9 to 11 of the election petition as being frivolous and vexatious, followed by E.A. No. 330 of 2015 under Order VII Rule 11 of CPC seeking to dismiss the election petition for failing to disclose a cause of action;

i. Appellant also took out miscellaneous applications for permission to file rejoinder affidavit, expediting the election

petition and for taking note of suppression of material facts by respondent No.1;

j. The High Court vide its judgment dated 2nd August, 2016, ("**impugned judgment**") allowed both the applications of respondent No.1, eventually dismissing the election petition for want of cause of action. The High Court broadly considered three points. First, the sweep of the terms "material facts" and "cause of action" in reference to an election petition; second, whether material facts and cause of action have been pleaded in the subject election petition necessitating a trial; and, third, whether the election petition as filed deserved to be rejected *in limine* without conducting a trial. While dealing with the first point, the High Court first discussed about the inter-play between Sections 81, 83, 100 and 101 of the 1951 Act. It held that the mandate of these provisions is that the election petition must contain a concise statement of material facts on which the appellant relies and that for the election petition to succeed, the appellant should establish that the nomination of the returned candidate was improperly accepted and further, due to such improper acceptance, the election of the returned

candidate has been materially affected. The High Court relied upon the cases of ***Azhar Hussain vs. Rajiv Gandhi***,[1] ***Ram Sukh Vs. Dinesh Aggarwal***,[2] ***Pendyala Venkata Krishna Rao Vs. Pothula Rama Rao***,[3] ***Hari Shanker jain Vs. Sonia Gandhi***,[4] and **Nandiesha Reddy Vs. Kavitha Mahesh**[5] and culled out the principles as follows:-

> "15) So, on a compendious study of above precedential jurisprudence we will understand:
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> (i) The phrase material facts employed in Section 83(1)(a) of R.P.Act has not been defined and its meaning is a contextual one in a given election petition.
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> (ii) Material facts or facta probanda are those basic, elementary and prime facts which the election petitioner shall plead and if traversed prove for the Court to afford a decree.
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> (iii) Whereas material particulars or facta probantia are the particulars in the form of evidence further vivify, refine and make more clear the material facts.
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> (iv) Material facts are the entire bundle of facts which constitute a complete cause of action for the petitioner and total defence for the respondent."

Having said this, the Court then analysed the averments in the election petition in the following words:-

> "16) POINT No.2: I have carefully scrutinized the contents of the election petition to know whether the 1st respondent/election petitioner had pleaded all the relevant material facts and they constitute cause of action to proceed with trial. It is observed that in his pleadings he has

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[1] 1986 (1) (Supp) SCC 315
[2] (2009) 10 SCC 541
[3] 2005 (3) ALD 47
[4] (2001) 8 SCC 233
[5] (2011) 7 SCC 721

reproduced the five objections taken by him before the 8th respondent/Returning Officer at the time of scrutiny of nomination and reiterated that the Returning Officer has rejected his objections contrary to the Conduct of the Election Rules and guiding principles. He has given the table showing the votes polled to each contesting candidate and pleaded that he stood second highest in the tally. **As rightly contended by the petitioner except fulminating that the Returning Officer has unduly rejected his objections, the 1st respondent has not furnished the material facts in his pleadings as to how in his perception and in the eye of law, the order of the Returning Officer is impugnable. A mere scourging of the order of the Returning Officer howsoever fiercely, it must be said, will not constitute material facts and give rise to cause of action unless the pleadings are balanced with the factual and legal reasons projecting where and how the impugned order suffered perversity and illegality. In the instant case, in my considered view, unfortunately the pleadings are totally bereft of such material facts. On completion of reading of pleadings one fails to understand how the order of the Returning Officer was at fault.**

a) Paras-2, 9 to 11 are specifically attacked by the petitioner on the ground that pleadings in those paras are not supported by any material facts and hence they are liable to be struck out. In para-2 the 1st respondent narrated the five objections taken by him. In para-9 he expressed his grievance that 8th respondent has not considered his objection and his order is contrary to the judgment of the Apex Court in Resurgence Indias case (10 supra). He further mentioned in that para that as per the aforesaid judgment, filing of an affidavit with blank particulars will render the affidavit nugatory. In para-10 he pleaded that in the light of the Apex Courts judgment 8th respondent ought to have rejected the improper nomination of the instant petitioner. He also pleaded that instant petitioner misrepresented the Election Commission as well as 8th respondent as he has not added Rs.21 lakhs to the gross total of his assets and showed the gross total of his assets and showed the gross total as Rs.2,79,67,680/- instead of Rs.3,00,67,680/-. Whereas in para-11 under the caption Grounds 1st respondent reiterated that 8th respondent has made improper acceptance of nomination. **The cumulative effect of paras-2, 9 to 11 is nothing but again lampooning the order of 8th respondent as erroneous without demonstrating as to how his order was factually and**

> **legally perverse and wrong. Even the mentioning of the judgment in Resurgence Indias case (10 supra) and the allegation that the petitioner suppressed Rs.21 lakhs from the total assets, we will presently see, will not constitute any material facts so as to strengthen the allegations in paras-2, 9 to 11.**"
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> (emphasis supplied)

4. Relying on the decision in ***Pothula Rama Rao Vs. Pendyala Venkata Krishna Rao and Ors.,***[6] the High Court concluded that the pleadings in paragraphs 2 and 9 to 11 were frivolous and vexatious and not containing any material facts and cause of action, for which the same were liable to be struck off. The High Court then proceeded to examine the third point with an opening remark that the election petition filed by the appellant was woefully silent about the material facts constituting cause of action. It then proceeded to consider the argument of the appellant as to how the order of the Returning Officer was factually and legally incorrect. It first considered objection Nos.1 and 3 taken by the appellant that respondent No.1 had not signed at the bottom of each and every page of the affidavit in Form No.26, which was violative of Rule 35 of Civil Rule of Practice and that mere signing the last page of

[6] (2007) 11 SCC 1

affidavit was not enough. After adverting to Rule 35 of Civil Rule of Practice, the High Court concluded that the said Rule was inapplicable to the Form of affidavit filed before the statutory authority such as the Returning Officer. It then referred to the Hand-book for the Returning Officer-2014 issued by the Election Commission of India prescribing form of affidavit to be submitted by the contesting candidates. As per the said instructions, the candidate is required to sign on the last page of the affidavit. On this finding, the objection of the appellant was negatived. While dealing with the objection No.2(a) taken by the appellant that in Serial No.2 of Item No.4 in one of respondent No.1's affidavits, the space under the heading of Total Income shown in IT returns relating to wife of petitioner was left blank. Further, the candidate is not entitled to file two affidavits in Form 26 in terms of Notification No.3/4/2012/SDR dated 24th August, 2012, issued by the Election Commission of India. Furthermore, respondent No.1 did not disclose the crucial information relating to criminal background if any, assets, liabilities and educational qualifications etc., which rendered the nomination form invalid as per ***Kisan Shankar***

Kathore Vs. Arun Dattatray[7]. The High Court rejected even this objection. While dealing with the instructions issued by the Election Commission of India, the High Court opined that the candidates were required to declare the information about the criminal background if any, assets, liabilities, educational qualification etc. The amended Form 26 was a comprehensive form to include all the information that was sought in the two separate affidavits. The revised form of Form 26 was notified in the official gazette on 1st August, 2012, whereafter, the Election Commission of India made it clear by its Notification dated 24th August, 2012, that the candidate shall file only one affidavit in the revised Form 26. At the same time, the High Court held that the Notification did not put any embargo on the candidate to file multiple nomination papers contrary to Section 33(6) of the 1951 Act. On this basis, the decision in ***Kisan Shankar Kathore*** (supra) was distinguished. While dealing with objection Nos.2(b) and 4 raised by the appellant, that in Item No.6 the respondent No.1 did not strike-out the inapplicable words in the Form and thus suppressed crucial facts relating to his involvement in offence, if any, the High Court noted

[7] (2014) 14 SCC 162

that mere failure to strike out the inapplicable words would not lead to an inference that there was suppression of any material facts. For, the respondent No.1 had placed on record the same facts against columns (a), (b), (c) and (d) being not applicable. The High Court distinguished the decision of this Court in the case of ***Krishnamoorthy Vs. Siva Kumar and others***[8]. In examining objection No.2(c) regarding Item No.8(III) of Part-B of the affidavit under the heading 'Approximate Current Market Price', which was left blank by respondent No.1, the High Court accepted the plea of respondent No.1 that the said information was disclosed against the columns (a) and (b). It held that the candidate is required to give the same particulars against columns (a) and (b) and not against the heading. The decision of this Court in the case of ***Resurgence India Vs. Election Commission of India***[9] was thus distinguished. While dealing with the fifth objection regarding the proxy of the respondent No.1, namely, P. Dwarakanath Reddy, regarding failure to put his signature on each and every page of affidavit and Form 26 and later withdrawal of his nomination, the High Court found that respondent No.1 has nothing to do with the nomination of P.

[8] (2015) 3 SCC 467
[9] (2014) 14 SCC 189

Dwarakanath Reddy. In other words, the High Court examined each objection raised by the appellant before the Returning Officer and reiterated in the election petition on its own merit to conclude as follows:-

> "23) Thus, none of the objections raised by the 1st respondent before the 8th respondent and repeated in his election petition merit consideration. Apart from the above, the 1st respondent in para-10 of the election petition has taken a new ground to the effect that the petitioner has concealed Rs.21 lakhs worth of movable assets of his wife and showed his gross total value as Rs.2,79,67,680/- instead of Rs.3,00,67,680/-. It must be held that this objection also does not hold water. In Item No.VII the petitioner has shown item wise moveable assets of his wife-G. Swarnalatha and showed their gross total value as Rs.2,79,67,680/-. However, the total value comes to Rs.3,00,67,680/-. It is only a mistake in totaling the items of moveable properties. Since there is no concealment of any item, the clerical error in totaling cannot be taken as a felony.
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> 24) **Thus, on a conspectus, the election petition is liable to be dismissed in limine without necessity of conducting trial for two reasons – firstly, the petition is bereft of material facts and cause of action and secondly, the objections raised before the 8th respondent and repeated in the election petition do not merit consideration, which can be and in fact, have been, decided without necessity of conducting trial.** It is true that in Ashraf Kokkurs case (5 supra) cited by the 1st respondent the Apex Court held that when the facts disclose material facts and cause of action though not complete cause of action, the election petition need not be dismissed at the threshold. **However, in the instant case, as already observed supra, the election petition totally lacks material facts except repetition of the objections raised before the 8th respondent. Therefore, election petition merits dismissal.**
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> a) As already stated supra, the 1st respondent has raised some new objections with regard to alleged suppression of

> assets of the petitioner and his wife in his counter for the first time but not pressed the said objection. Hence, the said objection is not taken into consideration. So, at the outset, the two petitions filed by the petitioner deserve to be allowed and consequently the election petition is liable to be dismissed in limine.
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> This point is answered accordingly."
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> (emphasis supplied)

On this basis, the High Court allowed EA No. 329 of 2015 filed by respondent No.1 for striking out the pleadings in paragraphs 2 and 9 to 11 of the election petition being frivolous and vexatious and not containing material facts and cause of action therein. The High Court also allowed the second application filed by respondent No.1 being EA No.330 of 2015 and rejected the Election Petition No.8 of 2014 *in limine*.

5. We have heard Mr. Siddharth Luthra, learned senior counsel appearing for the appellant and Mr. Raju Ramachandran, learned senior counsel appearing for the contesting respondent.

6. The principal contention of the appellant is that whilst dismissing his election petition, the High Court has overlooked the cause of action stated in the election petition, which arose from the

fact that two different sets of nomination forms and affidavits were filed by respondent No.1 containing several material deficiencies and discrepancies and which was fatal. In other words, the nomination form of respondent No.1 was wrongly accepted and it materially affected the election results of the appellant. According to the appellant, the affidavits filed by respondent No.1 in support of his nomination forms admittedly contained blank columns and did not contain his signature on every page, which was not only in contravention of several judgments of this Court, but also violated Section 125A(i) of the Act and additionally, was also against several circulars issued by the Election Commission. Respondent No.1 also filed two affidavits along with each one of his nomination forms, in direct contravention of the mandate in the instructions issued by the Election Commission permitting for only one affidavit to be filed. Further, perusal of the said affidavits would reveal that respondent No.1 had suppressed crucial information relating to movable and immovable assets owned by him and his family members and in fact, filed a conflicting affidavit before the Speaker of the State Legislative Assembly. In light of respondent No.1's suppression of significant information, the matter in issue required a full-fledged

trial and the High Court committed manifest error in dismissing the election petition *in limine*. The High Court also erred in striking off paragraphs 2 and 9 to 11 of the election petition on the ground that the averments contained therein were vexatious and frivolous, without giving any legal justification for the same. The High Court also took into account pleadings made in the counter/reply submitted by respondent No.1 as opposed to only considering the averments made in the election petition. Further, respondent No.1 had failed to specifically deny the allegations/averments in the election petition.

7. Mr. Siddharth Luthra relies upon the judgments of this Court in ***Resurgence India*** (supra), ***Krishna Murthy*** (supra), ***Duni Chand Vs. State of Himachal Pradesh & Ors***.[10], ***Kuldeep Singh Pathania Vs. Bikram Singh Jaryal***[11], ***D. Ramachandran Vs. RV Jankiraman & Ors.***[12], ***Asharaf Kokkur Vs. KV Abdul Khader & Ors.***[13], ***Virender Nath Gautam Vs. Satpal Singh & Ors.***[14], ***Kishan Shankar Kathore*** (supra), ***Harkirat Singh Vs. Amrinder***

[10] (2014) 16 SCC 152
[11] (2017) 5 SCC 345
[12] (1999) 3 SCC 267
[13] (2015) 1 SCC 129
[14] (2007) 3 SCC 617

Singh[15]***, Mohd. Akbar Vs. Ashok Sahu & Ors.***[16]***, RK Roja Vs. US Rayudu & Anr.*** [17] ***, Mairembam Prithviraj Vs. Pukhrem Sharathchandra Singh*** [18] and ***Shri Balwant Singh Vs. Sri Laxmi Narain***[19].

8. *Per contra*, Mr. Raju Ramachandran, learned senior counsel appearing for respondent no.1, submits that the findings of the Returning Officer, as regards the objections taken by the appellant to respondent No.1's nomination form, were just and proper. He submits that every election petition is not required to go for trial, merely for performing a formal exercise. The present case was purely based on documents on record and there was no requirement of leading evidence in that regard. Even before the High Court, only technical pleas were argued, none of which were borne out by the record. As per Section 36(4) of the Act, respondent No.1's nomination paper could be rejected merely on technical pleas. Since it is well settled that an election petition was a statutory proceeding and not an action at law or a suit in equity,

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[15] (2005) 13 SCC 511
[16] (2015) 14 SCC 519
[17] (2016) 14 SCC 725
[18] (2017) 2 SCC 487
[19] AIR 1960 SC 770

the determination of such petition had to be in consonance with Section 36(4) of the Act. Further, the *sine qua non* for declaring an election void under Section 100(1)(d) of the Act was to plead and also establish that improper acceptance of nomination had materially affected the results of the election, which, in the present case, appellant had failed to assert. No such pleading of material fact had been made by appellant. Similarly, the election petition, as filed, failed to disclose even the material particulars of facts to establish a cause of action warranting a trial. Finally, appellant had introduced fresh allegations into his petition, including suppression of assets and fraud, by way of counter affidavits to the application filed by respondent No.1. This clearly went against the established law that new facts could not be introduced in an election petition beyond a period of 45 days after declaration of the result of the impugned election. For, the election petition had been filed in June 2014, whereas the counter affidavits were filed around a year later i.e. June 2015 and, therefore, the averments contained therein could not be taken into consideration.

9. Mr. Ramachandran relied upon the following judgments: ***Pothula Rama Rao*** (supra), ***Samant N. Balkrishna & Anr. Vs. George Fernandez & Ors.***[20], ***L.R. Shivaramagowda & Ors. Vs. T.M. Chandrashekar (Dead) by LRs & Ors.***[21], ***Ram Sukh Vs. Dinesh Aggarwal***[22], ***Mangani Lal Mandal Vs. Bishnu Deo Bhandari***[23], ***Shambhu Prasad Sharma Vs. Charandas Mahant & Ors.***[24], ***Hukumdev Narain Yadav Vs. Lalit Narain Mishra***[25], ***K. Venkateswara Rao & Anr. Vs. Bekkam Narasimha Reddi & Ors.***[26], ***Harmohinder Singh Pradhan Vs. Ranjeet Singh Talwandi & Ors.***[27], ***Hari Shanker Jain Vs. Sonia Gandhi***[28] and ***Tek Chank Vs. Dile Ram***[29].

10. The central issue in these appeals is: whether the contents of the subject election petition disclose cause of action warranting a trial? The High Court by a composite judgment allowed the two applications filed by respondent No.1 (returned candidate) praying

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[20] 1969 (3) SCC 238
[21] (1999) 1 SCC 666
[22] (2009) 10 SCC 541
[23] (2012) 3 SCC 314
[24] (2012) 11 SCC 390
[25] (1974) 2 SCC 133
[26] (1969) 1 SCR 679; AIR 1969 SC 872
[27] (2005) 5 SCC 46
[28] (2001) 8 SCC 233
[29] (2001) 3 SCC 290

for striking out paragraphs 2 & 9 to11 of the election petition, being frivolous and vexatious and not containing any material facts and not disclosing any cause of action; and the second application for rejecting the election petition *in limine* for non-disclosure of cause of action.

11. Ordinarily, an application for rejection of election petition *in limine*, purportedly under Order VII Rule 11 for non-disclosure of cause of action, ought to proceed at the threshold. For, it has to be considered only on the basis of institutional defects in the election petition in reference to the grounds specified in clauses (a) to (f) of Rule 11. Indeed, non-disclosure of cause of action is covered by clause (a) therein. Concededly, Order VII of the CPC generally deals with the institution of a plaint. It delineates the requirements regarding the particulars to be contained in the plaint, relief to be specifically stated, for relief to be founded on separate grounds, procedure on admitting plaint, and includes return of plaint. The rejection of plaint follows the procedure on admitting plaint or even before admitting the same, if the court on presentation of the plaint is of the view that the same does not fulfill the statutory and

institutional requirements referred to in clauses (a) to (f) of Rule 11. The power bestowed in the court in terms of Rule 11 may also be exercised by the court on a formal application moved by the defendant after being served with the summons to appear before the Court. Be that as it may, the application under Order VII Rule 11 deserves consideration at the threshold.

12. On the other hand, the application for striking out pleadings in terms of Order VI Rule 16 may be resorted to by the defendant(s)/respondent(s) at any stage of the proceedings, as is predicated in the said provision. The pleading(s) can be struck off by the Court on grounds specified in clauses (a) to (c) of Rule 16.

13. Indeed, if the defendant moves two separate applications at the same time, as in this case, it would be open to the court in a given case to consider both the applications together or independent of each other. If the court decides to hear the application under Order VII Rule 11 in the first instance, the court would be obliged to consider the plaint as filed as a whole. But if the court decides to proceed with the application under Order VI Rule 16 for striking out the pleadings before consideration of the

application under Order VII Rule 11 for rejection of the plaint, on allowing the former application after striking out the relevant pleadings then the court must consider the remainder pleadings of the plaint in reference to the postulates of Order VII Rule 11, for determining whether the plaint (after striking out pleadings) deserves to be rejected *in limine*.

14. In the present case, the High Court has presumably adopted the latter course. It first proceeded to examine the application for striking out the pleadings in paragraphs 2 & 9 to 11 of the election petition being frivolous and vexatious and also because the same did not disclose any cause of action. And having accepted that prayer, it proceeded to reject the election petition on the ground that it did not disclose any cause of action. However, we find that the High Court has muddled the analysis of the pleadings. It merely focused on the pleadings in paragraphs 2 & 9 to 11 of the election petition. It is one thing to strike out the stated pleadings being frivolous and vexatious but then it does not follow that the rest of the pleadings which would still remain, were not sufficient to proceed with the trial or disclose any cause of action, whatsoever,

for rejecting the plaint as a whole *in limine* or to hold that it did not warrant a trial. No such finding can be discerned from the judgment under appeal. Be that as it may, the High Court committed manifest error in striking out the pleadings in paragraphs 2 & 9 to 11 of the election petition, being frivolous and vexatious by considering the factual matrix noted therein as untenable on merit. For striking out the pleadings or for that matter, rejecting the plaint (election petition), the High Court is not expected to decide the merits of the controversy referred to in the election petition. We shall elaborate on this aspect a little later.

15. Reverting to the contents of the election petition in paragraph 1, it is asserted that the election petition was to challenge the declaration of election of respondent No.1 to the 284-Punganur Assembly Constituency of Andhra Pradesh. The election petitioner has then given the other factual details relating to the election process, which concluded with the declaration of results on 16th May, 2014. In paragraph 2, the election petitioner (appellant herein) has asserted that he was challenging the election on the ground of improper acceptance of nomination of respondent No.1 by the

Returning Officer (respondent No.8). It is pointed out that the Returning Officer entertained two sets of nominations of respondent No.1, despite the written objections taken by the appellant. The nature of five objections taken by the appellant before the Returning Officer have been mentioned, including the violation of Rule 35 of Civil Rules of Practice and also Rule 4A of Election Rule, 1961 and non-signing of each and every page at the bottom of the nomination form. The five objections taken before the Returning Officer have been reproduced as follows:

> "Objection No.1: The 1st Respondent who filed nominations has failed to sign on bottom of each and every page of the affidavits in Form-26 as contemplated under Civil Rules of Practice and also deliberately violated the conduct of Election Rules.
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> Objection No.2: The 1st respondent as a candidate failed to fill up the affidavit at
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> a. The Column No.4 and Column No.2 under the head of total Income shown in Income Tax returns.
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> b. The two sets of affidavits at Column No.6 have not properly strike off which ever not applicable.
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> c. The Respondent No.1 in his two sets of affidavits kept blank at Column No.8 (B) (III), where the words stand of "Approximate Current market Price of …" at Part-B of (11) abstract of the details given in (1) to (10) of Part-A. This is mandatory as per the Conduct of Election Rules and also the

> recent Apex Court judgment, circulated under Instruction No.18 to the Returning Officer.
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> Objection No.3: The Respondent No.1 has not singed on each and every page in the affidavit of Form-26 as contemplated under Civil Rules of Practice and also contemplated under Hand Book of Returning Officers-2014 under Chapter 5.20.1.
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> Objection No.4: The Respondent No.1 in his affidavit at Column No.6 has not properly struck off "which ever not applicable.
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> Objection No.5: The proxy of the 1st respondent namely P. Dwarakanath Reddy did not file his affidavit properly and also not put his signatures and date on each and every page of Form-26. Later he has withdrawn his nomination."

16. In paragraph 3 of the election petition, it has been asserted that the appellant had raised objections before the Returning Officer on 21st April, 2014. Further, respondent No.1 had given authorization to one Shri V. Sreerami Reddy to answer the objections, who then filed a reply to the objections taken by the appellant by merely denying and asserting that the same were purely technical grounds and, therefore, to reject the same. In paragraph 4 of the election petition, reference is made to the proceedings before the Returning Officer as to how the objections were rejected by him. It is then asserted that the rejection was for the reasons best known to the Returning Officer and contrary to the

mandatory Conduct of Election Rules and governing provisions and instructions given to the Returning Officer by way of Compendium Instructions, Volume-2 supplied to the Returning Officer(s) in light of the Supreme Court judgment regarding the affidavits and blank columns. It is then stated that the Returning Officer had also circulated "do's and dont's" along with the check-list to every candidate contesting the election which clearly stated that the candidates must strictly follow the procedure stipulated under the Election Rules. The said instructions were supplied to the candidates along with the set of nomination papers highlighting the decision of this Court in ***Resurgence India*** (supra), regarding the consequence of keeping the relevant columns in the nomination Form-26, blank. In paragraph 5 of the election petition, it is stated that the appellant had applied for a certificate of its objection, authorization given to the third party and counter, respectively. In paragraph 6, it is asserted that the appellant secured second highest votes and respondent No.1 was declared elected candidate. The tally of votes secured by the 8 candidates who contested the election has been given in this paragraph. In paragraph 7, it is pointed out that the Government of India issued a notification in its

extraordinary Gazette published on 1st August, 2012 and amended Form-26 under Rule 4A of the Conduct of Election (Amendment) Rules, 2012. In the footnote of the Gazette Notification, Note-1 to Note-4 have been given which are relevant instructions for accepting a valid Form-26 given to the Returning Officer. Those notes have been reproduced as follows:

> "Note: 1: Affidavit should be filed latest by 3.00 PM on the last day of filing nomination.
> Note: 2: Affidavit should be sworn before on Oath Commissioner or Magistrate of the First Class or before a Notary Public.
> Note: 3: All column should be filled up and no column to be left blank. If there is no information to furnish in respect of any item, either 'Nil' or 'Not applicable' as the case may be, should be mentioned.
> Note: 4: The Affidavit should be either typed or written legibly and neatly."

17. In paragraph 8 of the election petition, it is asserted that after the aforementioned Government Notification, the Election Commission of India issued proceedings bearing No.3/4/2012/SDR dated 24.8.2012, Annexure-X directing all the State Election Commissions, political parties and other organizations to follow the single affidavit strictly in accordance with Form-26.

18. In paragraph 9 of the election petition, the appellant has asserted that the objections taken by the appellant were not

considered by the Returning Officer, for which reason the decision of the Returning Officer was contrary to the decision of this Court in the case of ***Resurgence India*** (supra). Paragraph 27 of the said judgment has been highlighted by the appellant. It is then asserted that the contents of paragraph 27 were circulated along with the nomination papers by the Returning Officer to every candidate. Thus, respondent No.1 was aware about the same. Further, respondent No.1 did not sign each page of Form-26 in both the sets of nomination papers filed before the Returning Officer. The two sets of nomination papers were attested by the same Notary on the last page of both the sets of nomination papers filed by respondent No.1, and so the omission of signature and blank columns are "not in the nature of technical mistakes at all". This assertion is followed by the averments in paragraph 10 that the Returning Officer ought to have rejected the nomination form of respondent No.1 at the threshold in light of the decision of this Court. This is to assert that it was improper nomination of respondent No.1, wrongly accepted by the Returning Officer as contemplated under Section 100(1)(d)(i) of the 1951 Act. It is then stated that the Returning Officer was fully aware about the requirements as per the decision of this

Court, including the election material such as Handbook for Returning Officer-2014, General Elections-2014, Compendium Instructions, Volume-2 and Form-26 circulated by him. It is then asserted that in spite of that the Returning Officer accepted the nomination of respondent No.1, which enabled the respondent No.1 to contest the election and eventually get elected. The declaration of election of respondent No.1 by the Returning Officer (respondent No.8) was thus a clear abuse of the process of law in light of the decision of this Court. It is also asserted that respondent No.1 misrepresented the Election Commission as well as the Returning Officer (respondent No.8) by giving false information in a casual manner, at paragraph 7A regarding the details of Immovable Assets in the two sets of affidavits in Form-26, by showing the gross total value of Rs.2,79,67,680/- instead of Rs.3,00,67,680/- and deliberately did not count the column amount at 7(vii) of Rs.21,00,000/-.

19. In paragraph 11 of the election petition, it is stated that the nomination forms (Form-26) filed by the appellant and respondent No.1 in two sets, may be treated as forming part of the election

petition along with the grounds of the election petition. Indeed, the opening part of paragraph 11 is not happily worded but it certainly conveys that the nomination form of the respective candidates be treated as forming part of the election petition and by reference thereto, the same would become an integral part of the election petition. The grounds have been articulated in paragraph 11 which reads thus:

> "GROUNDS
>
> a). Whether the 8th Respondent has ignored the Constitutional Spirit of Representation of the People Act (Act 43 of 1950) and Act 43 of 1951 with allied Acts, Rules, Orders, Model Code of Conduct for Guidance of Candidates supplied by the Election Commission for the Election 284, Punganur Assembly Constituency failing to conduct a fair scrutiny in accordance with the law while conducting a fair scrutiny of the nomination of the Respondent No.1 Form-26 in accordance with law?
>
> b). Whether the 8th Respondent acceptance of the improper nomination of Forum-26 application as contemplated despite the fatal omission of blank column under Section 100 (1) (d) (i) of Representation of the People Act, 1951 of the two sets of affidavits of the Respondent No.1 kept in blank at Column No.8 (B) (III), where the words stand of "Approximate Current market Price of …" at Part-B of (11) abstract of the details given in (1) to (10) of Part-A?
>
> c). Whether the Respondent No.1 election to 284, Punganur Assembly Constituency can be set aside on the grounds that the Respondent No.8/Returning Officer has accepted the

> improper nomination Form vide Form-26 with omissions of not signing on each and every page of the affidavit and not keep intact of filling of the blanks contrary to the spirit of the Apex Court judgment rendered in Resurgence India Vs. Election Commission of India & Anr., held in Writ Petition (Civil) No.121 of 2008 dt. 13.09.2013?
>
> d). Whether the Respondent No.1 Affidavit with blank particulars will render the affidavit nugatory and hit by Section 125 A(i) of Representation of Peoples Act, 1951 directly and has to set aside the election?"

20. On the basis of these pleadings, the appellant has prayed for the following reliefs in the election petition:

> "17. Under these circumstances it is prayed that this Hon'ble Court may be pleased to:
>
> a) declare the election of Peddireddigari Ramachandra Reddy (Respondent No.1) to the 284 Punganur Assembly Constituency to be null and void and set-aside the same:
>
> b) Further declare that the Petitioner has been duly elected as Member of State Legislative Assembly of the 284 Punganur Assembly Constituency under Section 84 of the Representation of the People Act 1951.
>
> c) Award the costs of the petition
>
> d) And pass such other order or orders as it may deem fit and proper in the circumstances of the case."

21. It is well settled that the election petition will have to be read as a whole and cannot be dissected sentence-wise or paragraph-wise to rule that the same does not disclose a cause of action.

Cause of action embodies a bundle of facts which may be necessary for the plaintiffs to prove in order to get a relief from the Court. The reliefs claimed by the appellant are founded on grounds *inter alia* ascribable to Section 100(1)(d)(i). Further relief has been claimed to declare the appellant as having been elected under Section 101 of the 1951 Act. The cause of action for filing the election petition, therefore, was perceptibly in reference to the material facts depicting that the nomination form of respondent No.1 was improperly accepted by the Returning Officer.

22. On reading the election petition as a whole, we have no hesitation in taking a view that the High Court misdirected itself in concluding that the election petition did not disclose any cause of action with or without paragraphs 2 & 9 to 11 of the election petition. Indeed, the pleadings of the election petition should be precise and clear containing all the necessary details and particulars as required by law. 'Material facts' would mean all the basic facts constituting the ingredients of the grounds stated in the election petition in the context of relief to declare the election to be void. It is well established that in an election petition, whether a

particular fact is material or not and as such required to be pleaded, is a question which depends on the nature of the grounds relied upon and the special circumstances of the case. Particulars, on the other hand, are the details of the case set up by the party. The distinction between "material facts" and "full particulars" has been delineated in the case of ***Mohan Rawale v. Damodar Tatyaba***[30]. This judgment has been adverted to in the reported decision relied by the parties. The Court noted thus:

> "10. We may take up the last facet first. As Chitty, J. observed, "There is some difficulty in affixing a precise meaning to" the expression "discloses no reasonable cause of action or defence". He said: "In point of law … every cause of action is a reasonable one." (See Republic of Peru v. Peruvian Guano Co.[31]) A reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. **But so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are quite often more known than clearly understood. It does introduce another special demurrer in a new shape. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars.** The distinctions among the ideas of the "grounds" in Section 81(1); of "material facts" in Section 83(1)(a) and of "full

[30] (1994) 2 SCC 392
[31] (1887) 36 Ch D 489

particulars" in Section 83(1)(b) are obvious. The provisions of Section 83(1)(a) and (b) are in the familiar pattern of Order VI, Rules 2 and 4 and Order 7, Rule 1(e) Code of Civil Procedure. There is a distinction amongst the 'grounds' in Section 81(1); the 'material facts' in Section 83(1)(a) and "full particulars" in Section 83(1)(b).

11. Referring to the importance of pleadings a learned author says:

"Pleadings do not only define the issues between the parties for the final decision of the court at the trial, they manifest and exert their importance throughout the whole process of the litigation. … They show on their face whether a reasonable cause of action or defence is disclosed. They provide a guide for the proper mode of trial and particularly for the trial of preliminary issues of law or fact. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They act as a measure for comparing the evidence of a party with the case which he has pleaded. They determine the range of the admissible evidence which the parties should be prepared to adduce at the trial. They delimit the relief which the court can award. …"

[See: Jacob: "The Present Importance of Pleadings" (1960) Current Legal Problems, at pp. 175-76].

12. Further, the distinction between "material facts" and "full particulars" is one of degree. The lines of distinction are not sharp. "Material facts" are those which a party relies upon and which, if he does not prove, he fails at the time.

13. In Bruce v. Odhams Press Ltd.[32] Scott L.J. said: "The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad." The purpose of "material particulars" is in the context of the need to give the opponent sufficient details of the

[32] (1936) 1 KB 697 : (1936) 1 All ER 287

charge set up against him and to give him a reasonable opportunity.

14. Halsbury refers to the function of particulars thus:

"The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been variously stated, namely either to limit the generality of the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required."

(See: Pleadings Vol. 36, para 38)

15. In Bullen and Leake and Jacob's "Precedents of Pleadings" 1975 Edn. at p. 112 it is stated:

"The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to save costs. The object of particulars is to 'open up' the case of the opposite party and to compel him to reveal as much as possible what is going to be proved at the trial, whereas, as Cotton L.J. has said, 'the old system of pleading at common law was to conceal as much as possible what was going to be proved at the trial'."

16. The distinction between 'material facts' and 'particulars' which together constitute the facts to be proved — or the facta probanda — on the one hand and the evidence by which those facts are to be proved — facta probantia — on the other must be kept clearly distinguished. In Philipps v. Philipps[33], Brett, L.J. said:

"I will not say that it is easy to express in words what are the facts which must be stated and what matters need not be stated. … The distinction is taken in the very rule itself, between the facts on which the party relies and the evidence

[33] (1878) 4 QBD 127, 133

> to prove those facts. Erle C.J. expressed it in this way. He said that there were facts that might be called the allegata probanda, the facts which ought to be proved, and they were different from the evidence which was adduced to prove those facts. And it was upon the expression of opinion of Erle C.J. that Rule 4 [now Rule 7(1)] was drawn. The facts which ought to be stated are the material facts on which the party pleading relies."
>
> 17. Lord Denman, C.J. in Willians v. Wilcox[34] said:
>
> "It is an elementary rule in pleading that, when a state of facts is relied it is enough to allege it simply, without setting out the subordinate facts which are the means of proving it, or the evidence sustaining the allegations."
>
> 18. **An election petition can be rejected under Order VII Rule 11(a) CPC if it does not disclose a cause of action. Pleadings could also be struck out under Order VI Rule 16, inter alia, if they are scandalous, frivolous or vexatious. The latter two expressions meant cases where the pleadings are obviously frivolous and vexatious or obviously unsustainable.**"
>
> (emphasis supplied)

23. In the case of ***Harkirat Singh*** (supra), this Court once again reiterated thus:

> "46. From the above provisions, it is clear that an election petition must contain a concise statement of "material facts" on which the petitioner relies. It should also contain "full particulars" of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908

[34] (1838) 8 Ad & EI 331

(hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.

47. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

48. **The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". Burton's Legal Thesaurus (3rd Edn.), p. 349.] The phrase "material facts", therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.**"

(emphasis supplied)

Again in paragraphs 51 & 52, this Court observed thus:

"51. **A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be**

> **pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.**
>
> 52. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

And again in paragraph 72, the Court noted thus:

> "72. The Court, however, drew the distinction between "material facts" and "particulars". **According to the Court, "material facts" are facts, if established would give the petitioner the relief prayed for. The test 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.**"
>
> (emphasis supplied)

24. In ***Ashraf Kokkur*** (supra), this Court adverted to the exposition in ***M. Kamalam Vs. V.A. Syed Mohammed***, [35] and ***G.M.***

[35] (1978) 2 SCC 659

Siddeshwar Vs. Prasanna Kumar[36] and in paragraph 21 noted that the pleadings must be taken as a whole to ascertain whether the same constitute the material facts involving triable issues. In paragraph 22, the Court observed as follows:

> "22. After all, the inquiry under Order 7 Rule 11(*a*) CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. **The limited inquiry is only to see whether the petition should be thrown out at the threshold.** In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. **The expression "material facts" plainly means facts pertaining to the subject-matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial.**"
>
> (emphasis supplied)

25. The Court then went on to analyse the decision of a three-Judge Bench in the case of ***V.S. Achuthanandan Vs. P.J. Francis***[37], wherein it has been observed that an election petition was not liable to be dismissed *in limine* merely because full particulars of corrupt practice alleged were not set out. Further, material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. It has also observed that so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the

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[36] (2013) 4 SCC 776
[37] (1999) 3 SCC 737

mere fact that the case is weak and not likely to succeed is no ground for striking it out. Further, the implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood and that the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. This decision also adverts to the case of ***Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy***,[38] wherein the Court observed that the Courts need to be cautious in dealing with request for dismissal of the petition at the threshold and exercise their power of dismissal only in cases where on a plain reading of the petition no cause of action is disclosed.

26. The counsel for the contesting respondent has relied on the decisions in ***Pendyala Venkata Krishna Rao Vs. Pothula Rama Rao*** (supra), particularly paragraphs 8-10, 11 and 16 of the reported decision. In that case, on facts, the Court found that necessary material facts in relation to the ground of improper acceptance of nomination form were not pleaded by the election

[38] (2012) 7 SCC 788

petitioner. In the present case, we have held that there is discernible pleading as to what objections were taken before the Returning Officer and as to why he was in error in not rejecting the nomination of respondent No.1.

27. The counsel for the contesting respondent also relied on the decision in ***Samant N. Balkrishna Vs. George Fernandez***[39]. No doubt this decision predicates that election petition is a statutory proceedings and not an action at law or suit in equity. There can be no debate with regard to this proposition. At the same time, we cannot be oblivious about the scope of the enquiry permissible at this stage by the election court/tribunal while considering the application under Order VII Rule 11(a) of C.P.C.

28. In ***Kuldeep Singh Pathania*** (supra), the decision of the High Court which is similar to one under consideration (namely the impugned judgment) had accepted the explanation offered by the respondents and meticulously dealt with it to conclude that the petition did not disclose any cause of action since it lacked material facts. The High Court passed that order purportedly in exercise of

[39] (1969) 3 SCC 238

power under Order XIV Rule 2. This Court pointed out the distinction between an order under Order VII Rule 11 to reject the election petition *in limine* for non disclosure of cause of action and an order under Order XIV Rule 2 for disposal of the petition on a preliminary issue. In that case, the order passed by the High Court was relatable only to Order VII Rule 11. This Court adverted to the decisions in ***Mayar (H.K.) Ltd. and Ors. Vs. Owners and Parties Vessel M.V. Fortune Express and Ors.***[40] and ***Virendra Nath Gautam Vs. Satpal Singh and Ors.,***[41] and explicated that under Order VII Rule 11(a), only the pleadings of the plaintiff-petitioner can be looked at as a threshold issue. Whereas, entire pleadings of both sides can be looked into for considering the preliminary issue under Order XIV Rule 2. Neither the written statement nor the averments or case pleaded by the opposite party can be taken into account for answering the threshold issue for rejection of election petition in terms of Order VII Rule 11 (a) of the Act.

29. Whether the material facts as asserted by the appellant can stand the test of trial and whether the appellant would be able to

[40] (2006) 3 SCC 100
[41] (2007) 3 SCC 617

bring home the grounds for declaring the election of respondent No.1 to be void, is not a matter to be debated at this stage. Suffice it to observe that the averments in the concerned paragraphs of the election petition, by no standard can be said to be frivolous and vexatious as such. The High Court committed manifest error in entering into the tenability of the facts and grounds urged in support thereof by the appellant on merit, as is evident from the cogitation in paragraphs 16 to 22 of the impugned judgment.

30. It is not necessary to multiply authorities on this point. The High Court has opined that the contents of paragraphs 2 & 9 to 11 of the election petition did not furnish "any" material facts but were only in the nature of fulminating and lampooning order of the Returning Officer for having unduly rejected the objections taken by the appellant whilst accepting the nomination form submitted by respondent No.1. The High Court broadly referred to the contents of the concerned paragraphs of the election petition, but the analysis of the High Court in that behalf is not correct. We have elaborately adverted to the contents of paragraphs 2 & 9 to 11 of the election petition. We find force in the argument of the appellant that the

said paragraphs plainly disclose the facts, which are material facts for adjudicating the grounds for declaring the election of respondent No.1 as being void, because of improper acceptance of his nomination form by the Returning Officer (respondent No.8): To wit;

(i) The Returning Officer has improperly accepted the nomination paper of the respondent No.1 despite the categorical objections raised, being contrary to Rule 35 of Civil Rules of Practice, Rule 4A of the Conduct of Election Rules, 1961 and also contrary to the judgment of this Court in ***Resurgence India*** (supra).

(ii) Respondent No.1 failed to sign each and every page of the affidavit (Form No.26), which is in violation of Civil Rules of Practice, Conduct of the Election Rules and Hand Book of Returning Officer-2014 under Chapter 5.20.1.

(iii) Respondent No.1 failed to fill up the Column No.4 and Column No.2 under the head of Total Income shown in Income Tax Returns, of the said affidavit (Form No.26).

(iv) The Column No.6 of said two sets of affidavit has not been properly struck off, whichever is not applicable.

(v) Column No.8(B)(III), where the words stand for "Approximate Current Market Price of..." at Part-B of 11 abstracts of the details given in (1) to (10) of Part A of the said affidavits, which is mandatory as per Election Rules, judgments of this Court and Circular and Instructions issued by the Returning Officer.

(vi) Omission and blank Columns left in the said affidavits are not at all a technical mistake. The respondent No.1 was very much aware of the said rules and the law.

(vii) The Returning Officer did not follow the stated Rules and law, and has favoured the respondent No.1 by accepting the improper nomination/affidavit filed by him, enabling him to contest the election, which is abuse of the processes of law in light of the judgment of this Court (Resurgence India).

(viii) The Returning Officer (R-8) ought to have rejected the improper nomination of the respondent no.1 on 21.04.2014 itself at the threshold as contemplated under Section 100(1)(d)(i) of the Representation of People Act.

(ix) The respondent No.1 misrepresented the Election Commission as well as the Returning Officer (R-8) in a

casual manner by giving false information at Para 7A of details of Immovable Assets in his two set of affidavits under Form-26 by showing the gross total value of Rs.2,79,67,680 instead of 3,00,67,680 and deliberately did not count the Column amount at 7(vii) of Rs.21,00,000/-.

(x) Form No.26 of two sets of nomination paper of Respondent No.1 be read as Annexure-XIII for prosecution of the election petition along with the grounds mentioned in the petition. In the grounds at para 11 of the election petition, the appellant has re-agitated these contentions.

31. Indubitably, the requirement of putting one's signature on each and every page on the affidavit has been restated in the case of ***Resurgence India*** (supra). It is held that when a candidate files an affidavit with blank particulars it renders the affidavit itself nugatory. Inasmuch as, the purpose of filing affidavit (form No.26) along with nomination papers is to effectuate the fundamental right of the citizens under Article 19 (1) (a) of the Constitution of India, who are entitled to have the necessary information of the candidate at the time of his filing of the nomination papers in order to make a

choice of their voting. In Paragraphs 25 and 26 of this judgment, the Court clarified that the observations made in paragraph 73 of the judgment in ***People's Union for Civil Liberties Vs. Union of India***,[42] will not come in the way of the Returning Officer to reject the nomination paper if the said affidavit is filed with blank columns. It further observed that the candidate must take the minimum effort to explicitly remark as "NIL" or "Not Applicable" or "Not Known" in the columns and not to leave the particulars blank, if he desires that his nomination paper be accepted by the Returning Officer during the scrutiny of nomination in exercise of powers under Section 36 (6) of the 1951 Act being invalid nomination found and hit by Section 125-A (i) of the 1951 Act. In paragraph 27 of the judgment, the Court observed thus:

> "27. If we accept the contention raised by the Union of India viz. the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated on a par, it will result in breach of fundamental right guaranteed under Article 19(1) (a) of the Constitution viz. "right to know", which is inclusive of freedom of speech and expression as interpreted in *Assn. for Democratic Reforms*."

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[42] (2003) 4 SCC 399

The conclusions and directions articulated in paragraph 29 of the decision, read thus:

> **"**29. **What emerges from the above discussion can be summarized in the form of the following directions:**
>
> 29.1. The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies and such right to get information is universally recognized. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.
>
> 29.2. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.
>
> 29.3. **Filing of affidavit with blank particulars will render the affidavit nugatory**.
>
> 29.4. **It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the "right to know" of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected.** We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.
>
> 29.5. **We clarify to the extent that para 73 of *People's Union for Civil Liberties case* will not come in the way of the Returning Officer to reject the nomination paper when the affidavit is filed with blank particulars**.
>
> 29.6. **The candidate must take the minimum effort to explicitly remark as "NIL" or "Not Applicable" or "Not known" in the columns and not to leave the particulars blank.**

> 29.7. **Filing of affidavit with blanks will be directly hit by Section 125-A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalized for the same act by prosecuting him/her**."
>
> (emphasis supplied)

32. The purport of assertions made in the election petition was to highlight this aspect in support of the ground for declaring the election of respondent No.1 as being void on account of improper acceptance of his nomination form by the Returning Officer (respondent No.8).

33. To put it differently, the approach of the High Court in considering the two applications is, in our opinion, manifestly erroneous, if not perverse. For, it has ventured into the arena of analysis of the matter on merit. That is a prohibited area at this stage. Since the conclusion reached by the High Court that the pleadings in paragraphs 2 and 9 to 11 of the election petition are frivolous and vexatious is untenable, it would necessarily follow that the election petition, as filed, will have to be examined as a whole without subtracting any portion therefrom. If so read, it is not possible to take a view that the same does not disclose any cause of

action at all. On this finding, the application preferred by respondent no.1 for rejection of election petition *in limine* under Order VII Rule 11, cannot be countenanced and must also fail.

34. The only other plea of respondent No.1 that needs examination is about the absence of averment in the election petition that because of improper acceptance of nomination form of respondent No.1, it has materially affected the election results of respondent No.1. Even this contention should not detain us in light of the exposition in the recent decision of this Court in ***M. Prithviraj*** (supra). For, the case of ***Durai Muthuswami Vs. N. Nachiappan and Ors.***,[43] noticed in this judgment, it has been observed that in the case of election to a single member constituency, if there are more than 2 candidates and the nomination of one of the defeated candidates had been improperly accepted, a question might arise as to whether the result of the election of the returned candidate had been materially affected by such improper reception. That would not be so in the case of challenge to the election of the "returned candidate" himself on the ground of improper acceptance of his

[43] (1973) 2 SCC 45

nomination. In paragraph 23 of the judgment in ***M. Prithviraj*** (supra), after analysing the exposition in ***Durai Muthuswami*** (supra), the Court observed thus:

> "23. It is clear from the above judgment in Durai Muthuswami that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. **On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted.** It is not necessary for the respondent to prove that result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected."
>
> (emphasis supplied)

35. The Court then noted that the decision in ***Durai Muthuswami*** (supra), has been followed in ***Jagjit Singh Vs. Dharam Pal Singh***

and Ors.[44]. This Court then adverted to its earlier decision in ***Vashist Narayan Sharma Vs. Dev Chandra & Ors.***[45], paragraph 9 thereof. That has been extracted in paragraph 25 of the judgment in ***M. Prithviraj*** (supra).

36. In ***Duni Chand*** (supra), this Court was called upon to consider whether the nomination paper submitted by the appellant therein was improperly accepted by the Returning Officer. It observed that if the Returning Officer had rejected the nomination paper of the appellant therein at the time of scrutiny, the order of rejection would have been valid. As a result, the appellant could not have participated in the election process and there would have been no occasion for him to be elected. It would therefore, follow that improper acceptance of his nomination by the Returning Officer has inevitably materially affected his result of the election.

37. The respondent No.1 on the other hand, has relied on the decision in ***Mangani Lal Mandal*** (supra). In this case, the election was challenged by invoking the ground under Section 100(1)(d)(iv) and in that context the Court observed that it was essential for the

[44] (1995) Supple (1) SCC 422
[45] (1955) 1 SCR 509 = AIR 1954 SC 513

election petitioner to plead material facts that the result of the election in so far as it concerned the returned candidate has been materially affected, by such observance or non-observance. In the present case, the election is challenged by invoking ground of improper acceptance of nomination of the respondent No.1 – returned candidate under Section 100(1)(d)(i). Even the other case i.e. ***Shambhu Prasad*** (supra), relied by respondent No.1 will be of no avail. In that case, 22 candidates had filed their nomination papers for election from the concerned constituency, out of which only 17 candidates were left in the fray besides the election petitioner, after withdrawal of nomination papers of 4 of such candidates. The margin of victory between respondent No.1 and Karuna Shukla, who emerged as his nearest rival, was more than 20,000 votes. The appellant in that case had polled 21,000 votes. He filed an election petition before the High Court seeking a declaration about his having been elected. Notably, the ground for declaring the election to be void was not because of improper acceptance of nomination form of the returned candidate *per se* but because of improper acceptance of nomination papers of other defeated candidates.

38. Our attention has also been invited by the learned counsel to ***L.R. Shivaramagowda*** (supra), with particular emphasis on paragraph 10 and 11, wherein the Court observed that in order to declare an election to be void under Section 100(1)(d)(iv) it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerns the returned candidate has been materially affected. In the present case, the election petition is in reference to the ground of improper acceptance of nomination form of respondent No.1 – the returned candidate under Section 100(1)(d)(i). Thus, if that plea is accepted and the election of respondent No.1 is declared to be void, it would necessarily follow that the election result of the returned candidate has been materially affected.

39. The respondents had then contended that the election petitioner cannot be permitted to bring or introduce a new ground or cause of action beyond limitation period of 45 days of declaration of the result of the election. We do not wish to dwell upon this issue. In our opinion, this contention will have to be addressed by the High Court in the first instance. The High Court, without

recording any reason has disposed of the applications filed by the election petitioner (appellant) as the election petition itself was dismissed *in limine*. Since the election petition will stand restored before the High Court, to subserve the ends of justice, the applications preferred by the election petitioner (appellant) will also stand restored for being heard by the High Court on its own merit and to decide it in accordance with law. As a result, it is not necessary for us to dilate on the decision relied by the respondents in the case of ***Harmohinder Singh*** (supra). We leave this contention open to be decided by the High Court at the appropriate stage.

40. Taking any view of the matter, therefore, the impugned judgment of the High Court in allowing both the applications filed by respondent no.1 cannot stand the test of judicial scrutiny. For, we do not find any merit in the plea of the respondent No.1 that paragraphs 2 & 9 to 11 of the election petition are frivolous and vexatious, which contention erroneously commended to the High Court. On the other hand, we are of the considered opinion that the subject election petition plainly discloses cause of action for filing of

the election petition to declare the election of respondent No.1 to be void on the ground of improper acceptance of his nomination.

41. We make it clear that we may not be understood to have expressed any opinion on the merits of the other issues to be decided by the High Court. In other words, our analysis is limited to the threshold matter considered in this judgment about the striking off of the pleadings and rejection of the election petition *in limine*.

42. In light of the above, we hold that E.A. No.329 of 2015 and EA No.330 of 2015, both filed by respondent No.1 in the subject election petition, deserve to be rejected. Further, the Election Petition No.8 of 2014 shall stand restored to the file of the High Court to its original number for being proceeded further in accordance with law. Similarly, the applications filed by the appellant shall stand restored (except the application for early hearing), to their original numbers to be decided by the High Court in accordance with law.

43. As regards the application for early hearing of the election petition filed by the appellant before the High Court, the same be treated as disposed of in terms of this order. The imperativeness of

expeditious disposal of the election petition is underscored in Section 86(7) of the 1951 Act. As per the said provision, the trial of the election petition is required to be disposed of preferably within six months from the date of its presentation before the High Court. Besides, this Court in the case of ***Mohd. Akbar*** (supra) has highlighted the necessity of discharging the pious hope expressed by the Parliament. Therefore, we may only request the High Court to expeditiously dispose of the election petition preferably within three months from the production of a copy of this judgment by either party before it.

44. Accordingly, these appeals are allowed in the above terms with no order as to costs.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Dr. D.Y. Chandrachud)

New Delhi;
March 21, 2018.