



## IN THE HIGH COURT OF ORISSA AT CUTTACK

I.A. No. 26 of 2025(ARISING OUT OF ELPET No.14 of 2024)

*(An application under Section 86 of the Representation of the People Act, 1951 read with Order VI Rule 16, Order VII Rule-11 and Section 151 of the Code of Civil Procedure)*

**AFR Radheshyam Yadav .... Election Petitioner**

**-Versus-**

**Sarada Prasad Nayak .... Respondent**

**Advocate(s) appeared in this case:-**

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**For Election Petitioner :** Mr. K.K Mohapatra, S.R. Swain,  
D. Nayak, M. Deo, B. Das, S. Das, &  
U.K. Mohapatra, Advocate

**For Respondent :** M/s. U K Samal, M.R. Mohapatra,  
S.P. Patra, N. Samal & A.B. Tarini,  
Advocates

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**CORAM:**

**JUSTICE SASHIKANTA MISHRA**

**JUDGMENT**  
**06.02.2026**

**SASHIKANTA MISHRA, J.**

The present application has been filed by the sole Respondent in the above-mentioned Election Petition under Section 86 of the Representation of the People Act,



1951 read with Order VI Rule 16, Order-VII Rule-11 and Section 151 of the Code of Civil Procedure. In this application, the Respondent prays for striking out the pleadings contained in Paragraphs 10 (A) to 10 (H) and for the rejection/dismissal of the Election Petition in its entirety at the very threshold in terms of Section 86 of the said Act. It is contended that the pleadings sought to be struck off are wholly irrelevant, frivolous, and scandalous, amounting to gross abuse of the process of this Court. Additionally, it is submitted that the Election Petition lacks essential material facts and particulars, fails to disclose a complete cause of action, and does not raise any triable issues, thereby warranting its dismissal at the preliminary stage.

2. The election petition has been filed by the election petitioner (a) to declare the election of Respondent, Sarada Prasad Nayak void and (b) to direct re-election/fresh poll with respect to 12-Rourkela Assembly Constituency to the Odisha State Legislative Assembly. The election of the Respondent has been questioned principally on the following two grounds (along with its details),



attracting the provisions of Section 100 of the Representation of the People Act, 1951:

(A) Improper Acceptance of Nomination by the Returning Officer-

i) The Respondent, while filing his nomination papers, failed to disclose material particulars in the affidavit in Form-26, namely:

(a) Non-disclosure of pending criminal cases.

(b) Non-disclosure of joint property holdings.

ii) Such non-disclosure and suppression of material facts constitute violations of the mandatory requirements under Section 33A of the Act, read with Rule 4A of the Conduct of Election Rules, 1961, thereby rendering the acceptance of nomination papers by the Returning Officer improper within the meaning of Section 100(1)(d)(i) of the Act.

(B) Corrupt Practice-

(i) One Ajaya Kumar Pradhan, a close associate of the Respondent and a government official deployed on election duty in respect of the 12-



Rourkela Assembly Constituency, committed acts amounting to corrupt practice under Section 123 of the Act by posting “selfie” photographs on Facebook displaying an open EVM and VVPAT machine during the election period, thereby compromising the secrecy and sanctity of the voting process.

(ii) Subsequently his presence in a closed-room meeting with the Respondent during the election period, suggests collusion, partisanship, and breach of neutrality mandated of election officials.

3. Pursuant to notice, the Respondent entered appearance and filed his written statement. In addition, the Respondent has filed the present application on grounds which shall be adverted to in the subsequent paragraphs. The Election Petitioner has filed detailed objections controverting the averments made therein.

4. In the present application, the Respondent has contended that the copy of Election Petition served upon him is defective inasmuch as it contains two separate pages



bearing the same page number '26' with different contents, thereby not constituting an attested true copy of the petition as filed before this Court, in contravention of Section 81(3) of the Representation of the People Act, 1951, warranting dismissal under Section 86(1) thereof. It is further urged that the pleadings in Paragraphs 10(A) to 10(H) of the petition, on which the relief is founded, are vague, bald, imprecise, lacking in material facts, material particulars, and supporting documents, and therefore fail to disclose a complete cause of action as required under Section 83(1)(a) of the Act. Specific deficiencies are pointed out in each of the said paragraphs, including the absence of nomination papers, Form-26 affidavit, and source of information, supporting documentary evidence, particulars of alleged non-disclosure or misinformation, and explanation as to how the result of the election was materially affected.

5. With regard to the allegations of corrupt practice in Paragraph 10(H), the Respondent asserts that there is no averment as to the identity, deployment, or official position of said Ajaya Kumar Pradhan, no particulars of the alleged



Facebook post or closed-room meeting, and no material to establish any nexus between such acts and the returned candidate. According to the Respondent, these omissions and defects are fatal to the petition, which, being devoid of triable issues, is liable to be rejected in limine.

6. For convenience, the parties are referred to as per their original status in the Election Petition.

7. Heard Mr. U.K Samal, learned counsel for the Respondent and Mr. K.K Mohapatra, learned counsel for Election Petitioner.

8. Out of the two principal grounds raised by the Election Petitioner, this Court considers it appropriate to first examine the second ground, namely, the allegation of corrupt practice.

9. Mr. Samal, learned counsel for the Respondent, submits that although allegations of corrupt practice have been made, the Election Petitioner has failed to file the mandatory affidavit in Form-25 along with the petition, in violation of Section 83(1) of the Act read with Rule 94-A of the Conduct of Elections Rules, 1961. It is further contended that the pleadings in Paragraph 10(H) of the



petition are bereft of material facts and particulars necessary to constitute a cause of action. In particular, it is urged that the petition does not disclose: (i) the identity of Ajaya Kumar Pradhan; (ii) his place of service; (iii) the authority which deployed him on election duty; (iv) whether the Returning Officer of the 12-Rourkela Assembly Constituency engaged him in such duty; (v) the source of the Election Petitioner's knowledge that he is a close associate of the Respondent; (vi) whether the alleged Facebook photographs have been annexed to the petition and served on the Respondent; (vii) the date of posting of such photographs; (viii) the place, date, and time of the alleged closed-room meeting between him and the Respondent; (ix) whether the alleged Facebook content was brought to the notice of the Returning Officer or the Election Commission; (x) how the posting of such photographs rendered the result of the election doubtful or manipulated; and (xi) whether any penal action was taken against the said official under the provisions of the Act. It is thus submitted that the allegations of corrupt practice are vague, unsupported by particulars, and legally insufficient.



In support of his contention, Mr. Samal relies on following judgments:

- i. ***Mulayam Singh Yadav v. Dharmpal Yadav and Ors.***<sup>1</sup>
- ii. ***Jyoti Basu v. Debi Ghosal***<sup>2</sup>
- iii. ***Rahim Khan v. Khurshid Ahmed***<sup>3</sup>
- iv. ***Dr. Shipra v. Shanti Lal Khoiwal***<sup>4</sup>
- v. ***Shri Mandir Sita Ramji v. Lt. Governor of Delhi***<sup>5</sup>
- vi. ***Ramesh v. Meenakshi Lekhi***<sup>6</sup>
- vii. ***Samant N. Balkrishna v. George Fernandez and Others***<sup>7</sup>
- viii. ***Hardwari Lal v. Kanwal Singh***<sup>8</sup>
- ix. ***Azhar Hussain v. Rajiv Gandhi***<sup>9</sup>
- x. ***R. P Moidutty v. P.T Kunju Mohammad and Anr***<sup>10</sup>
- xi. ***V. Narayan Swamy v. C.P Thiruna Vukkarasu***<sup>11</sup>
- xii. ***Hari Shanker Jain v. Sonia Gandhi***<sup>12</sup>
- xiii. ***Santosh Yadav v. Narendra Singh***<sup>13</sup>
- xiv. ***Kamalnath v. Sudesh Verma***<sup>14</sup>
- xv. ***Ram Sukh v. Dinesh Aggarwal***<sup>15</sup>
- xvi. ***Anil Vasudev Salgaonkar v. Naresh Kushali Shigonkar***<sup>16</sup>
- xvii. ***Jitu Pattnaik v. Sanatan Mohakud***<sup>17</sup>
- xviii. ***Lalit Kishore Chaturvedi v. Jagdish Prasad Thada & Ors***<sup>18</sup>

10. Per contra, Mr. K.K. Mohapatra, learned Counsel for the Election Petitioner, contends that the objections raised by the Respondent are false, baseless, and misconceived. It

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<sup>1</sup> (2001) 7 SCC 98

<sup>2</sup> (1982) 1 SCC 691

<sup>3</sup> (1974) 2 SCC 660

<sup>4</sup> (1996) 5 SCC 181

<sup>5</sup> (1975) 4 SCC 298

<sup>6</sup> AIR 2023 Del 290

<sup>7</sup> (1969) 3 SCC 238

<sup>8</sup> (1972) 1 SCC 214

<sup>9</sup> (1986) Supp. SCC 315

<sup>10</sup> (2000) 1 SCC 481

<sup>11</sup> (200) 2 SCC 294

<sup>12</sup> (2001) 8 SCC 233

<sup>13</sup> (2002) 1 SCC 160

<sup>14</sup> (2002) 2 SCC 410

<sup>15</sup> (2009) 10 SCC 541

<sup>16</sup> (2009) 9 SCC 310

<sup>17</sup> (2012) 4 SCC 194

<sup>18</sup> AIR 1990 SC 1731





is averred that Ajaya Kumar Pradhan, an official on election duty for the 12-Rourkela Assembly Constituency and a close associate of the Respondent, was engaged in corrupt practices by posting on Facebook 'selfie' with an open EVM and VVPAT machine during the election period and was later seen with the Respondent in a closed-room meeting. Learned Counsel submits that these allegations have been specifically pleaded in Paragraph 10(H) of the election petition, satisfying the requirement of Section 83(1)(a) of the Representation of the People Act, 1951, which mandates submission of concise statement of material facts falling squarely within the grounds enumerated in Section 100 of the Act for declaring an election void. It is denied that said paragraph is lacking in material facts, particulars, or supporting evidence; rather, the pleadings are complete, precise, and supported by facts sufficient to constitute a valid cause of action. The contrary averments of the Respondent, describing them as vague, bald, or unspecific, are denied.



Mr. Mohapatra relies on the following judgments:

- i. ***Pruthvirajsinh Nodhubha Jadeja v. Jayeshkumar Chhakaddas Shah***<sup>19</sup>
- ii. ***Sathi Vijay Kumar v. Tota Singh***<sup>20</sup>
- iii. ***Ponnala Lakshmaiah v. Kommuri Pratap Reddy***<sup>21</sup>
- iv. ***D. Ramachandran v. R.V. Janakiraman***<sup>22</sup>
- v. ***H.D. Revanna v. G. Puttaswamy Gowda***<sup>23</sup>
- vi. ***Krishnamoorthy v. Sivakumar***<sup>24</sup>
- vii. ***A. Manju v. Prajwal Revanna alias Prajwal R***<sup>25</sup>
- viii. ***Virender Nath Gautam v. Satpal Singh and Ors***<sup>26</sup>
- ix. ***Nainsingh v. Koonwarjee and others***<sup>27</sup>
- x. ***Kisan Shankar Kathore v. Arun Dattatray Sawant***<sup>28</sup>
- xi. ***Kailash v. Nanhku***<sup>29</sup>

11. This Court has given its anxious consideration to the contentions raised by learned counsel for both sides at length and carefully examined the pleadings contained in Paragraph 10(H) of the Election Petition in light of the settled legal principles. It is evident that the Election Petitioner has based his allegation on certain Facebook photographs which, in the considered view of this Court, forms an integral part of the allegation of corrupt practice. However, said photographs were not annexed to the

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<sup>19</sup> (2019) 9 SCC 533

<sup>20</sup> (2006) 13 SCC 353

<sup>21</sup> (2012) 7 SCC 788

<sup>22</sup> (1999) 3 SCC 267

<sup>23</sup> (1999) 2 SCC 217

<sup>24</sup> (2015) 3 SCC 467

<sup>25</sup> AIR 2022 SUPREME COURT 196

<sup>26</sup> AIR 2007 SUPREME COURT 581

<sup>27</sup> AIR 1970 SUPREME COURT 997

<sup>28</sup> AIR 2014 SUPREME COURT 2069

<sup>29</sup> (2005) 4 SCC 480



Election Petition at least at the time of its presentation, i.e., on 15.07.2024 at 1:30 p.m. nor were they filed along with the requisite process for service of the copy of the Election Petition upon the Respondent. Said documents (photographs) were subsequently filed by way of an additional document on 01.08.2024 at 3:50 p.m., without however filing any application praying for their acceptance. It is noteworthy that the said additional documents, which, according to the Election Petitioner form an essential annexure or schedule to the Election Petition, do not comply with the requirement laid down under Section 83(2) of the Act, which mandates that any schedule or annexure to the petition shall be signed by the petitioner and verified in the same manner as the election petition itself. Admittedly, the additional documents have not been signed or verified in the manner prescribed under the aforesaid provision.

It is further borne out from the record that upon filing of requisites by the Election Petitioner on 15.07.2024, along with the process fee of Rs. 5/- in the form of court fee, postal envelopes, summons forms, and postal stamps



worth Rs. 120/-, summons was issued by the High Court Registry on 15.10.2024 with a set of the Election Petition containing 43 sheets. This clearly shows that the Election Petition served upon the Respondent did not contain the said documents (photographs) on which the Election Petitioner seeks to rely. Thus, where the very foundation of the allegation rests upon such photographs, the Respondent obviously cannot not effectively meet or counter the same in their absence. The said documents ought to have been annexed to the Election Petition at the time of presentation and a copy thereof served upon the Respondent along with the petition.

12. What would be the consequence of the above omission? In this context, it would be apposite to refer to the decision of the Supreme Court in ***U.S. Sasidharan v.***

***K. Karunakaran***<sup>30</sup>, wherein it was observed as follows:

*“15. We have already referred to Section 83 relating to the contents of an election petition. The election petition shall contain a concise statement of material facts and also set forth full particulars of any corrupt practice. The material facts or particulars relating to any corrupt practice may be contained in a document and the election petitioner, without pleading the material facts or particulars of corrupt practice, may refer to the document. When such a reference is made in the election petition, a copy of the document must be supplied inasmuch as by making a reference to the document and*

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<sup>30</sup> (1989) 4 SCC 482



*without pleading its contents in the election petition, the document becomes incorporated in the election petition by reference. In other words, it forms an integral part of the election petition. Section 81(3) provides for giving a true copy of the election petition. When a document forms an integral part of the election petition and a copy of such document is not furnished to the respondent along with a copy of the election petition, the copy of the election petition will not be a true copy within the meaning of Section 81(3) and, as such, the court has to dismiss the election petition under Section 86(1) for non-compliance with Section 81(3).*

16. On the other hand, if the contents of the document in question are pleaded in the election petition, the document does not form an integral part of the election petition. In such a case, a copy of the document need not be served on the respondent and that will not be non-compliance with the provision of Section 81(3). The document may be relied upon as an evidence in the proceedings. In other words, when the document does not form an integral part of the election petition, but has been either referred to in the petition or filed in the proceedings as evidence of any fact, a copy of such a document need not be served on the respondent along with a copy of the election petition.

17. There may be another situation when a copy of the document need not be served on the respondent along with the election petition. When a document has been filed in the proceedings, but is not referred to in the petition either directly or indirectly, a copy of such document need not be served on the respondent. What Section 81(3) enjoins is that a true copy of the election petition has to be served on the respondents including the elected candidate. When a document forms an integral part of an election petition containing material facts or particulars of corrupt practice, then a copy of the election petition without such a document is not complete and cannot be said to be a true copy of the election petition. Copy of such document must be served on the respondents.

*[Emphasis Added]*

13. Applying the aforesaid principle to the facts of the present case, this Court finds that the Election Petitioner has not pleaded the complete contents, context, or particulars of the alleged photographs in the body of the



Election Petition. In the absence of such pleadings, the photographs cannot be treated as supplementary pieces of evidence of material facts pleaded to be produced at a later stage; rather, they form an integral part of the Election Petition itself. Consequently, failure to annex and serve the said photographs at the time of presentation of the petition is fatal and cannot be cured by subsequent filing.

14. Even otherwise, on a careful scrutiny of Paragraph 10(H) of the Election Petition, this Court finds that the election petition does not disclose the official position or capacity in which Ajaya Kumar Pradhan was allegedly deployed on election duty, the authority who authorized such deployment if at all, or the nexus between him and the returned candidate.

Further, the pleadings are conspicuously silent as to the date, time and place where the alleged photographs were taken. There is no averment as to whether the photographs were taken before, during or after polling, or whether they were taken during a mock poll or any authorized demonstration. It is only averred that the same were posted on his Facebook account during



the period of election. There is also no pleading explaining how the alleged acts materially affected the election or had any bearing on the result of the election, which is a *sine qua non* for invoking the ground of corrupt practice.

Another infirmity relates to the complete absence of pleadings disclosing the relationship or nexus between the Respondent and Ajaya Kumar Pradhan. While the Election Petitioner has vaguely described Ajaya Kumar Pradhan as “one of the closest” of the Respondent, there is no averment as to how he is connected to the Respondent, whether in his personal, political or professional capacity. The pleading is silent in the manner in which the Respondent is stated to have exercised any influence and control over him.

For better appreciation, paragraphs 8 and 10(H) is quoted below:

*“8. That the Petitioner humbly submits that the result of election so far as it relates to 12-Rourkela Assembly Constituency in declaring the Respondent, Sarada Prasad Nayak to have been elected as M.L.A to the Odisha State Legislative Assembly has been materially affected on account of suppression of material facts, corrupt practices made by Ajaya Kumar Pradhan (who was serving election duty during the election under “12- Rourkela Assembly Constituency” and closest of Sarada Prasad Nayak) as he posted a selfie photo with the open EVM and VVPAD machine in his Facebook social media*



*account during the period of election, and subsequently he has spotted with the Respondent (Sarada Prasad Nayak) in a meeting held in a close room, therefore it clearly flouted and attracted declaration of returned candidature of Respondent in “12-Rourkela Assembly Constituency” has doubtful and particulars further also in regards to non-discloser of criminal cases and joint property (which is morefully described inside the petition). As such the above declaration and act of corrupt practice are sufficient to prove void, illegal of declaration of election of 12-Rourkela Assembly Constituency and as such the above declaration is void, illegal, not legally sustainable and the same is liable to be set aside.*

*10 (H). That Petitioner made Corrupt practices in the recent General Election due to “12-Rourkela following reasons; i. One Ajaya Kumar Pradhan (who was serving election duty during the election under Assembly Constituency” and one of the closest of Sarada Prasad Nayak) as he posted a selfie photo with the open EVM and VVPAD machine in his Facebook social media account during the period of election, and subsequently he has spotted with the Respondent (Sarada Prasad Nayak) in a meeting held in a close room, therefore it clearly floated and declaration of attracted returned candidature of Respondent in “12-Rourkela Assembly Constituency” has doubtful and manipulated.”*

A bare reading of the above shows that the allegations are vague and non-specific without disclosing the material facts in support of the same.

15. It is the settled principle of election law that an Election Petition must comply strictly with the requirement of stating material facts as mandated under Section 83(1)(a) of the Representation of the People Act, 1951. The





Supreme Court in **C.P. John v. Babu M. Paliserry**<sup>31</sup>, has categorically held that:

*“19. To put it differently, when the election petition is taken up for consideration, the Court which deals with such an election petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place, etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both Sections 83(1)(a) and (1)(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94-A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of the First Class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in Form 25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statements of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.”*

*[Emphasis added]*

Moreover, in **Hari Shanker Jain** (supra) the Supreme Court held that:

*“Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a*

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<sup>31</sup> AIR 2015 Supreme Court 16



series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna v. George Fernandez* 18, *Jitendra Bahadur Singh v. Krishna Behari*<sup>19</sup>.) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan v. P.J. Francis* this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition. It is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose the cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

[Emphasis added]

As held in the above case, no amount of evidence can cure a basic defect in pleadings, and that vague or general



allegations, particularly concerning corrupt practices, cannot be entertained.

16. As already stated reading of the relevant paragraphs 8 and 10(H) in the present case reveals that the averments fall short of setting out the material facts on which the Election Petitioner seeks to establish that the alleged act materially affected the result of the election. The allegations are sweeping and general in nature, lacking any clear indication as to how the Facebook photographs, if at all, influenced the election result. The petition is also silent as to if any objection was ever raised before the Returning Officer in this regard.

17. It is trite that an Election Petition is a serious matter; it cannot be treated lightly or used as a tool for vexatious purposes. In **Ram Sukh** (supra) the Supreme Court, while interpreting Section 100(1)(d)(iv) of the Act, observed as follows-

*“21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83(1)(a) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(d)(iv). For the sake of ready reference, the said provision is extracted below:*



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

*\*\*\**

*(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—*

*\*\*\**

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

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

*It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected.”*

18. Similarly, in **Senthilbalaji v. A.P. Geetha & Ors.**<sup>32</sup>, the Supreme Court held that failure to plead material facts relating to corrupt practice is fatal to the Election Petition and warrants rejection at the threshold.

Relevant observation of the Supreme Court is as follows:

*“13. Section 123 of the RP Act of 1951 defines corrupt practices. In paragraphs 6 and 7, even bare particulars of any of the corrupt practices covered by Section 123 have not been pleaded. What is the nature of corrupt practice is also not described except for making a bald allegation that in the representations mentioned in paragraph 6, the first respondent has set out electoral misconduct, corrupt practice, and bribery on the part of the appellant. Clause (a) of sub-section (1) of Section 83 mandates that an election petition must contain a concise statement of material facts. When the allegation is of corrupt practice, the basic facts constituting corrupt practice must be pleaded in order to make compliance with Clause (a) of sub-section (1) of Section 83. In this*

<sup>32</sup> 2023 LiveLaw (SC) 471



case, such concise facts are not at all pleaded. Basic facts cannot be pleaded only by stating that the same find place in the documents relied upon. The first respondent has merely stated that the contents of representations may be read as a part of the petition. This does not satisfy the requirement of incorporating a concise statement of material facts. Moreover, when the allegation is of corrupt practice, the proceedings virtually become quasi-criminal. Therefore, the elected candidate must get adequate notice of what is alleged against him. That is why material facts concerning the ground of corrupt practice must be pleaded. The outcome of such a petition is very serious. It can oust a popularly elected representative of the people. Therefore, noncompliance with the requirement of stating material facts must result in the rejection of the petition at the threshold."

[Emphasis added]

In the above case, it was further held that-

"20. We must note here that the emails, photographs, and video footage have not been relied upon in the list of documents filed along with the Election Petition. At the highest, these documents will constitute particulars and not material facts. Secondly, the High Court had no reason to direct the election petitioner to file the said documents on record while dismissing applications filed by the appellant and the 6th respondent. It was for the first respondent to seek permission to produce the documents. The first respondent never sought such permission. Even if the documents are produced, the same will be without any foundation in the pleadings. Therefore, it is very difficult to sustain the said direction as well."

[Emphasis added]

Even though the Election Petitioner alleges the commission of corrupt practices by the Respondent, the pleadings fail to disclose the factual foundation necessary to bring the case within the ambit of Section 123 of the Act, which defines and highlights what constitutes 'corrupt practice.'



Consequently, this Court finds the contention raised by the Election Petitioner on this ground untenable.

19. The next issue for consideration is whether, on the sole ground that the averments in Paragraphs 8 and 10(H) of the Election Petition are incomplete or lack particulars of corrupt practice, the entire petition is liable to be dismissed. It is the settled proposition of law that an election petition must contain a concise statement of material facts and must set forth full particulars of any corrupt practice. The material facts and the particulars together constitute the cause of action for the petition. Where either is absent—particularly when the result is that no cause of action is disclosed—the petition is liable to be dismissed under Order VII Rule 11(a) of the Code of Civil Procedure, as held by the Supreme Court in **Azhar Hussain** (supra).

20. It is therefore necessary to view the matter in light of Section 86(1) of the Representation of the People Act, 1951, which reads:

*“86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.*

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This provision is peremptory and admits of no exception; where non-compliance with Section 81 is established, the Court must enforce dismissal. Section 81 reads:

*“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 8 [sub-section (1)] of section 100 and section 101 to the 6 [High Court] by any candidate at such election or any elector 9 [within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one 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 election or not.*

XX XX XX  
*(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.*

*[Emphasis added]*

21. The Supreme Court has consistently held that the right to elect, be elected, and dispute an election are purely statutory, existing only within the limits of the statute, with no basis in fundamental or common law. An election petition is a special statutory proceeding governed strictly by the Act, not by common law or equity. The mandate of the returned candidate cannot be unsettled on flimsy grounds, wild allegations, or conjectures, as doing so would undermine the democratic will of the people. In such



view of the matter, it would be profitable to refer to the ratio held in the case of **U.S. Sasidharan** (Supra), wherein the Supreme Court observed as follows:

*“30. Apart from striking out the whole of the election petition when it does not disclose a cause of action, the court can strike out any statement which is irrelevant, scandalous or has nothing to do with the cause of action under the provision of Order 6 Rule 16 of the Code of Civil Procedure. It is submitted by Mr Poti that if the averments in para 5(xi) of the election petition are irrelevant or do not disclose any cause of action, at the most the said paragraph can be struck out by the court under the provision of Order 6 Rule 16 of the Code of Civil Procedure. We are afraid, we are unable to accept the contention. We are not concerned with whether para 5(xi) can be struck out by the court under the provision of Order 6 Rule 16 of the Code of Civil Procedure as not disclosing any cause of action, but really we are concerned with the question as to whether the copy of the election petition which has been served on the first respondent without a copy of video cassette is a true copy of the election petition or not within the meaning of Section 81(3) of the Act. We have come to the conclusion that the appellant has not served on the first respondent a true copy of the election petition inasmuch as, admittedly, a copy of the video cassette which forms an integral part of the election petition, was not served along with the election petition. There is, therefore, no substance in the contention which is rejected.”*

*[Emphasis added]*

22. Applying the above principles to the facts of the present case, this Court finds that the allegation of corrupt practice in the Election Petition lacks substance, inasmuch as the Facebook photographs in question despite forming an integral part of the pleading, have not been included in





the election petition while serving a copy of it along with the copy of the Election Petition upon the Respondent. Non-furnishing of the photographs amounts to non-compliance with Section 81(3) of the Act, which is fatal as per Section 86(1). It also goes without saying that, once paragraphs 8 and 10(H) are found to lack material facts, the question relating to the absence of the affidavit in Form-25 becomes redundant.

23. In view of the foregoing discussion, this Court holds that the Election Petition is liable to be dismissed on the ground that the copy served upon the Respondent was incomplete and did not constitute a “true copy” within the meaning of Section 81(3) of the Act. In light of this finding, it is unnecessary to examine the other grounds raised in the Election Petition.

24. In the result, the IA is allowed. The Election Petition is dismissed. There shall be no order as to costs.

25. Office is directed to communicate the substance of this order to the Election Commission and the Speaker of the State Legislative Assembly at the earliest, so also an authenticated copy of this order to the Election



Commission, in terms of Section 103 of the R.P. Act, read with Rule 16 under Chapter-XXXIII of the High Court of Orissa Rules, 1948.

.....  
**Sashikanta Mishra,**  
**Judge**

**Orissa High Court, Cuttack**  
**The 6<sup>th</sup> February, 2026/A.K. Rana/P.A.**