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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ EL.PET. 4/2022 & I.A. 432/2023, I.A. 17421/2023

RAMESH KUMAR KHATRI

.....Petitioner

Through: Petitioner-in-person

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versus

DURGESH PATHAK

.....Respondent

Through: Mr. Gautam Narayan, Sr. Advocate
with Mr. Karan Sharma, Ms. Asmita
Singh, Mr. Mohit Siwach, Mr.
Rishikesh Kumar, and Ms. Sheenu
Priya, Advocates

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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

% **04.02.2025**

MINI PUSHKARNA, J:

I.A. 432/2023 (Application under Order VII Rule 11(a) and (d) of CPC)

1. The instant Election Petition has been filed under The Representation of the People Act, 1951 ("1951 Act") with a prayer to set aside the election of the respondent no. 1 held in AC-39, Rajinder Nagar, Assembly Constituency, thereby, declaring the said election as null and void. Additionally, the petitioner has also prayed for debarring the respondent no. 1 from contesting Assembly Elections for six years, as per Section 8(A) of the 1951 Act.



2. By way of the present petition, it is alleged that the respondent no. 1 has shown fabricated expenses in the day-to-day expenditure register. The respondent no. 1 has not lodged true accounts of expenditure incurred on refreshment, hoarding, banners, pamphlets, brooms, etc. in his election expenditure register.

3. The present application has been preferred on behalf of the respondent no. 1 under Order VII Rule 11(a) and (d) of Code of Civil Procedure, 1908 (“CPC”) for rejection of the present petition, on the ground that the same does not disclose any cause of action and being barred by law.

4. On behalf of the applicant/respondent no. 1, it has been submitted as follows:

4.1 The petition fails to disclose any cause of action for declaring the election of the respondent, as null and void or for debaring the respondent from contesting the elections for six years.

4.2 Mere non-compliance of Sections 77(1) and 77(2) of the 1951 Act, is not a corrupt practice, to attract Section 123 of the 1951 Act. In terms of Section 123(6) of the 1951 Act, corrupt practice only includes incurring or authorising of expenditure in contravention of Section 77 of the 1951 Act, which is beyond the prescribed limit.

4.3 The Election Petition is reiteration of information which is in public forum. The petitioner has only given a list of events and has made wide over-arching allegations. The allegations made by petitioner are in the nature of fishing and roving exercise.

4.4 Averments made in the petition are vague, without any supporting material and do not raise any triable issue.

5. Per contra, on behalf of the petitioner, it has been contended as



follows:

5.1 The respondent no. 1 has shown fabricated expenses in the day-to-day expenditure register. The respondent no. 1 has not lodged true accounts of the expenditure.

5.2 Each contesting candidate has to maintain a day-to-day election expenditure register, but the respondent no. 1 has fabricated the records of election expenditure register.

5.3 An amount of ₹ 15 Lac was credited to the account of respondent no. 1 on 07th June, 2022, but the respondent no. 1 had already spent lacs of rupees before the said amount was credited in his account, which was never shown by respondent no. 1 in any part of the election expenditure register.

5.4 The respondent no. 1 knowingly showed no other expenses other than the stamp duty and notary for filing his nomination. No expenses of conveyance, i.e., car, petrol, refreshment, etc. was shown by him in the day-to-day expenditure register for 03rd June, 2022.

5.5 On 03rd June, 2022, the respondent had shown ₹ 20,000/- cash in hand in affidavits filed by him, but he had paid ₹ 10,310/- on 03rd June, 2022 for nomination, stamp paper and notary. When he had already paid the aforesaid amount on 03rd June, 2022, in his affidavit filed on 06th June, 2022, he again showed ₹ 20,000/- cash in hand, i.e., the exact same amount in his bank account. On account of the same, it is clear that the election expenses shown by respondent in his day-to-day election expenditure, are false and fabricated.

5.6 On 03rd June, 2022, the respondent showed no expenses in the day-to-day expenditure register for Pad Yatra (Campaigning) in the Buddh Nagar Area, Bihari Enclave, Toda Pur Harbhajan Enclave, with more than



20 persons with party's cap, pamphlets, flags and party's muffler.

5.7 On 04th June, 2022, the respondent no. 1 knowingly showed no expenses for campaigning in the day-to-day expenditure register, which is not sustainable in the eyes of law, as the respondent had done Pad Yatra with approximately 100 persons with flags and banners in Rajiv Gandhi Camp area of Rajinder Nagar Assembly Constituency. The respondent no. 1 has not lodged true accounts of expenditure incurred on refreshment, hoardings, banners, pamphlets, etc. in his election expenditure register.

5.8 The respondent no. 1 had failed to show the details of loan, gift and donation received from the concerned persons with his correct address, name and place in correct manner.

6. I have heard learned counsels for the parties and have perused the record.

7. At the outset, this Court notes that the present Election Petition has been filed on the basis that the respondent no. 1 indulged in corrupt practice, by not maintaining proper accounts or accurately disclosing the expenditure undertaken by him. On this basis, the petitioner is seeking setting aside of the election of the respondent no. 1 held in the constituency of Rajinder Nagar Assembly AC-39, on 23rd June, 2022. The petitioner is also seeking disqualification of the respondent from contesting any election for a period of six years.

8. It is to be noted that the petitioner had also filed his nomination from the same constituency. The petitioner polled 22 votes and lost to the respondent no. 1, who polled 40,319 votes.

9. The present application has been preferred by the respondent no. 1 under Order VII Rule 11(a) and (d) of the CPC read with *inter alia* Section



83 of the 1951 Act, seeking dismissal of the petition for failure to disclose a cause of action and being barred by law.

10. Under Section 100(1)(b) of the 1951 Act, election of a returned candidate can be countermanded on the basis that a corrupt practice has been committed by him or his election agent. Section 100(1)(b) of the 1951 Act, reads as under:

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

... ..

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

xxx xxx xxx”

11. Perusal of the Election Petition shows that the allegations raised by the petitioner against the respondent no. 1 are that the respondent no. 1 failed to maintain proper accounts of the election expenditure or to make an accurate disclosure of the expenses.

12. Section 123 of the 1951 Act defines corrupt practice. With regard to the aspect of expenditure, the said Section stipulates that incurring or authorising of expenditure, in contravention of Section 77, constitutes corrupt practice. Section 123(6) of the 1951 Act, reads as under:

“123. Corrupt practices.— The following shall be deemed to be corrupt practices for the purposes of this Act:—

xxx xxx xxx

(6) The incurring or authorising of expenditure in contravention of Section 77.

xx xxx xxx”

13. Under Section 77 of the 1951 Act, a candidate is obliged to maintain a separate account of the expenditure incurred. The said Section reads as



under:

“77. Account of election expenses and maximum thereof.—(1)Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between 195[the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

[Explanation 1.—For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section;

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of Section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.—For the purposes of clause (a) of Explanation 1, the expression “leaders of a political party”, in respect of any election, means,—

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral



Officers of the State, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.]

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.”

14. Reading of the aforesaid Section makes it evident that every candidate at an election, shall keep a separate and correct account of all expenditure, in connection with the election, incurred or authorized by him, or by his election agent. Further, in terms of Section 77(3) of the 1951 Act, the total of the said expenditure shall not exceed such amount, as may be prescribed.

15. However, every contravention of Section 77 of the 1951 Act, does not constitute a corrupt practice. As per the law laid down by the Supreme Court, contravention of Sections 77(1) and 77(2) or the failure to maintain correct accounts with the prescribed particulars, does not fall within the definition of corrupt practice, as defined in Section 123(6) of the 1951 Act. It is only if the candidate incurs or authorizes expenditure in excess of the prescribed amount in contravention of Section 77(3) of the 1951 Act, that a candidate would be considered to have committed corrupt practice in terms of Section 123(6) of the 1951 Act.

16. Thus, Supreme Court in the case of *Dalchand Jain Versus Narayan Shankar Trivedi and Another, (1969) 3 SCC 685*, has held as follows:

“xxx xxx xxx

13. Counsel for Respondent 1 contends that as the appellant did not keep correct account under Section 77(1) and as his return of election expenses is false in material particulars the appellant committed the corrupt practice under Section 123(6). We are unable to accept this contention.



14. Section 123(6) lays down that “the incurring or authorising of expenditure in contravention of Section 77” is a corrupt practice. Every contravention of Section 77 does not fall within Section 123(6). Section 77 consists of three parts. Section 77, sub-section (1) requires the candidate to keep a separate and correct account of all election expenses incurred or authorised by him within certain dates. Section 77, sub-section (2) provides that the account shall contain such particulars as may be prescribed. Section 77, sub-section (3) requires that the total of the said expenditure shall not exceed the prescribed amount. Section 123(6) is related to Section 73(3). If the candidate incurs or authorises expenditure in excess of the prescribed amount in contravention of Section 77(3) he commits corrupt practice under Section 123(6). The contravention of Section 77, sub-sections (1) and (2) or the failure to maintain correct accounts with the prescribed particulars does not fall within Section 123(6). See Sri Krishna v. Sat Narain [CA No 1321 of 1967, decided on 22-3-68] . The same opinion has been expressed in several decisions of the High Courts, see Savitri Devi v, Prabhawati Misra; [15 ELR 358, 369] N.L. Verma v. Muni Lal; [15 ELR 495, 499] Narasimhan v. Natesa [AIR 1959 Mad 514, 517-518] and the cases referred to therein.

15. Section 124(4) as it stood before its amendment by Act 27 of 1956 provided that the making of any return which was false in material particulars was a minor corrupt practice. That provision has now been deleted and the submission of an incorrect return of expenses is no longer a corrupt practice.

xxx xxx xxx”

(Emphasis Supplied)

17. There is no averment in the Election Petition that the respondent no. 1 has spent for the election, an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the respondent no. 1 to give true and correct accounts of the expenditure. The petitioner has annexed certified copy of the accounts, as submitted by the respondent no. 1, to the competent authority. Perusal of the said documents filed along with the Election Petition by the petitioner, discloses that the respondent no. 1 had incurred lesser expenditure as per the record maintained by the representatives of the Election Commission of India, than



what was claimed by the respondent no. 1.

18. Perusal of the Register for Maintenance of day-to-day accounts of election expenditure by contesting candidates, as filed along with the petition, shows that inspections of the said register containing the accounts of election expenditure by the respondent no. 1, was conducted on three separate occasions by the representative of the Election Commission of India, and no fault whatsoever was found with the accounts maintained by the respondent no. 1.

19. Holding that failure on the part of the returned candidate to maintain accounts, as required by Sections 77(1) and 77(2) of the 1951 Act, will in no case affect the result of the election and does not fall within the scope of corrupt practice, the Supreme Court in the case of *L.R. Shivaramagowda and Others Versus T.M. Chandrashekar (Dead) by LRs and Others, (1999) 1 SCC 666*, has held as follows:

“xxx xxx xxx

10. That apart, it is rightly pointed out by the appellant's counsel 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 concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the Act or of the Rules. We have already extracted para 39 of the election petition which is the only relevant paragraph. One will search in vain for an averment in that paragraph that the appellant had spent for the election an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the appellant to give true and correct accounts of expenditure. In the absence of either averment, it was not open to the appellant to adduce evidence to that effect. It cannot be denied that the two matters referred to above are material facts which ought to find a place in an election petition if the election is sought to be set aside on the basis of such facts.

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18. We shall now proceed to the second limb of the argument of the



appellant's counsel. The High Court has held that the appellant had not maintained a true and correct account of expenditure incurred or authorised and the same amounted to corrupt practice. "Corrupt practices" have been set out in Section 123 of the Act. According to the first respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section, the incurring or authorising of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Elections Rules, 1961 sets out the particulars to be contained in the account of election expenses. **Sub-sections (1) and (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Elections Rules prescribes the maximum limit for any Assembly Constituency. In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-section (1)(b) of Section 100 relates to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. In order to bring a matter within the scope of sub-section (1)(b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section (3) of Section 77, i.e., the incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Sections 77(1) and (2) would also fall within the scope of Section 123(6). Consequently, it cannot fall under Section 100(1)(b). The attempt here by the first respondent is to bring it within Section 100(1)(d)(iv). The essential requirement under that sub-section is that the result of the election insofar as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Sections 77(1) and (2) will in no case affect, and much less materially, the result of the election.**

19. This view has been expressed by this Court in Dalchand Jain v. Narayan Shankar Trivedi [(1969) 3 SCC 685]. A Bench of three Judges held that it is only sub-section (3) of Section 77 which



can be invoked for a corrupt practice under Section 123(6) and the contravention of Section 77 sub-sections (1) and (2) or the failure to maintain correct accounts with the prescribed particulars does not fall under Section 123(6). The Bench has referred to several earlier decisions of the High Court and the decision of this Court in *Shri Krishan v. Sat Narain* [37 ELR 13].

xxx xxx xxx”

(Emphasis Supplied)

20. Applying the aforesaid law, even if the allegations made by the petitioner are taken to be *prima facie* correct, these would not constitute a ground for countermanding the election under Section 100(1)(b) of the 1951 Act. The petitioner has made allegations in the petition that the respondent no.1 has not maintained proper account of his election expenditure. However, there is no allegation whatsoever to the effect that the respondent no.1 has spent more than the prescribed maximum amount in terms of Section 77(3) of the 1951 Act. Even if the allegations made in the petition regarding not maintaining proper account is established, that would still not amount to constituting a corrupt practice, in terms of the law laid down by the Supreme Court. Accordingly, the petition does not disclose any cause of action.

21. It is settled law that an election petition, which does not set out material facts as required by Section 83(1)(a) of the 1951 Act and, therefore, does not disclose a cause of action, can be dismissed at the threshold. Thus, Supreme Court in the case of *Ram Sukh Versus Dinesh Aggarwal, (2009) 10 SCC 541*, has held as follows:

“xxx xxx xxx

18. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The



object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail.

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24. It needs little reiteration that for the purpose of Section 100(1)(d)(iv), it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the first respondent was materially affected due to the said omission on the part of the Returning Officer. Unfortunately, such averment is missing in the election petition.

xxx xxx xxx”

(Emphasis Supplied)

22. Underscoring that material pleadings have to be made so as to prove that due to the alleged corrupt practice, the election has been vitiated in a manner that the petitioner could have been returned as a winning candidate, the Supreme Court in the case of *Anil Vasudev Salgaonkar Versus Naresh Kushali Shigaonkar*, (2009) 9 SCC 310, has held as follows:

“xxx xxx xxx

50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.

51. This Court in Samant N. Balkrishna case [(1969) 3 SCC 238] has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a



cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

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55. In *Harkirat Singh v. Amrinder Singh* [(2005) 13 SCC 511] this Court again reiterated the distinction between “material facts” and “material particulars” and observed as under: (SCC p. 527, paras 51-52)

“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.”

56. In *Sudarsha Avasthi v. Shiv Pal Singh* [(2008) 7 SCC 604] this Court observed as under: (SCC p. 612, para 20)



“20. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose.”

57. It is settled legal position that all “material facts” must be pleaded by the party in support of the case set up by him within the period of limitation. 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 will entail dismissal of the election petition. The election petition must contain a concise statement of “material facts” on which the petitioner relies.

58. There is no definition of “material facts” either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to formulate a complete cause of action should be termed as “material facts”. All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. “Material facts” in other words mean the entire bundle of facts which would constitute a complete cause of action. This Court in Harkirat Singh case [(2005) 13 SCC 511] tried to give various meanings of “material facts”. The relevant para 48 of the said judgment is reproduced as under: (SCC pp. 526-27)

“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.”

xxx xxx xxx

60. According to the appellant, in the election petition, there was no



avermment whether the bore wells were dug with the consent and/or active knowledge of the appellant. This averment was absolutely imperative and the failure to mention such an important averment in the petition is fatal for the election petitioner (the respondent herein) and the election petition is liable to be summarily dismissed on that ground.

61. The legal position has been crystallised by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are “material facts” which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act.

62. When we apply the aforementioned test to the election petition in this case, then the conclusion becomes irresistible that the election petition lacks the materials facts. The election petition read as a whole does not disclose any cause of action.

xxx xxx xxx”

(Emphasis Supplied)

23. The Supreme Court has consistently held that material facts consist of all those facts which are necessary to plead, for a court to decide the petition in favour of the petitioner, even if the respondent has failed to appear to defend himself. Thus, where no cause of action is established and no material facts and particulars have been given, then in such a case, the election petition is liable to be dismissed at the threshold.

24. Elucidating the authority of the court to dismiss an election petition if the same does not disclose material facts and particulars and cause of action, the Supreme Court in the case of *Azhar Hussain Versus Rajiv Gandhi, 1986 SCC OnLine SC 394*, has held as follows:

“xxx xxx xxx

12. Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of



the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. **The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action.** Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. **The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matter pertaining to ordinary civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections.** So long as the sword of Damocles of the election petition remains hanging an elected member of the legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of



*being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to win the vote of the people but also to win the vote of the court in a long drawn out litigation before he can wholeheartedly engage himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as hindrance if he be entrusted with some public office in his elected capacity. He may even have occasion to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern mettle, the constraint introduced by the pendency of an election petition may have some impact on his subconscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the nation, the controversy is set at rest at the earliest, if the facts of the case and the law so warrant. **Since the court has the power to act at the threshold the power must be exercised at the threshold itself in case the court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law.** To wind up the dialogue, to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled.*

xxx xxx xxx”

(Emphasis Supplied)

25. The fundamental rule underlying Order VII Rule 11 CPC is that a



court is required to examine the allegations made in the petition alone. It is the petition which must *ex facie* disclose cause of action, on the basis of which the case would proceed further for trial. However, where the allegations made in the petition are taken to be true and correct on the face of it, and the same does not disclose any cause of action or triable issue, then said petition would be liable to be dismissed, by invoking the authority under Order VII Rule 11 CPC. Thus, the Supreme Court in the case of ***Karim Uddin Barbhuiya Versus Aminul Haque Laskar and Others, 2024 SCC OnLine SC 509***, has held as follows:

“xxx xxx xxx

12. At the outset, it may be noted that as per the well settled legal position, *right to contest election or to question the election by means of an Election Petition is neither common law nor fundamental right. It is a statutory right governed by the statutory provisions of the RP Act. Outside the statutory provisions, there is no right to dispute an election. The RP Act is a complete and self-contained code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of Civil Procedure Code are applicable to the extent as permissible under Section 87 of the RP Act.*

13. It hardly needs to be reiterated that in an Election Petition, pleadings have to be precise, specific and unambiguous, and if the Election Petition does not disclose a cause of action, it is liable to be dismissed in limine. It may also be noted that the cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the RP Act. As held in Bhagwati Prasad Dixit ‘Ghorewala’ v. Rajeev Gandhi⁴ and in Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi⁵, *if the allegations contained in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the pleadings are liable to be struck off and the Election Petition is liable to be rejected under Order VII, Rule 11 CPC.*

xxx xxx xxx

24. As stated earlier, *in Election Petition, the pleadings have to be precise, specific and unambiguous. If the allegations contained in Election Petition do not set out grounds as contemplated in Section*



100 and do not conform to the requirement of Section 81 and 83 of the Act, the Election Petition is liable to be rejected under Order VII, Rule 11 of CPC. An omission of a single material fact leading to an incomplete cause of action or omission to contain a concise statement of material facts on which the Election petitioner relies for establishing a cause of action, would entail rejection of Election Petition under Order VII Rule 11 read with Section 83 and 87 of the RP Act.

xxx xxx xxx”

(Emphasis Supplied)

26. Consequently, it is held that the present petition does not disclose any cause of action. The only allegations that have been made in the election petition, are pertaining to improper maintenance of accounts by the respondent, which as per the law laid down by the Supreme Court, does not fall within the scope of ‘corrupt practice’ as defined in Section 123(6) of the 1951 Act.

27. The present application is allowed and the petition is rejected, in terms of Order VII Rule 11 (a) and (d) of CPC.

28. The present petition, along with the pending applications, is accordingly, disposed of.

**(MINI PUSHKARNA)
JUDGE**

FEBRUARY 04th, 2025

KR/au