

Sheikh Noorul Hassan vs Nahakpam Indrajit Singh on 8 May, 2024

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Bench: D.Y. Chandrachud

2024 INSC 391

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1389 OF 2024
(Arising out of SLP (C) No.11136 of 2023)

SHEIKH NOORUL HASSAN

... AP

VERSUS

NAHAKPAM INDRAJIT SINGH & ORS. ... RESPONDENT(S)

JUDGMENT

MANOJ MISRA, J.

1. This appeal is directed against the order of the High Court of Manipur at Imphal¹ dated 14.03.2023, whereby leave has been granted to the election petitioner (the first respondent herein) to file a replication in answer to the new facts asserted in the written statement filed by the returned candidate (the appellant herein).

High Court Factual Matrix

2. The first respondent filed an election petition seeking a declaration that the election of the returned candidate, namely, the appellant herein, is null and void under: (a) Section 100(1) (d) (i) (ii) and (iv); and (b) Section 100 (1) (b) of the Representation of Peoples Act, 1951². In addition, thereto, a prayer was made to declare the election petitioner as duly elected from the concerned legislative constituency³ of 12th Manipur Legislative Assembly.

3. In the election petition, it was alleged, inter alia, that the returned candidate had failed to make necessary disclosures in the nomination paper/the affidavit (i.e., Form

26) which had a material bearing on the election result. In support of that allegation, particulars of such non-disclosure / incorrect disclosure were detailed in the election petition. These allegations, however, were not only traversed in the written statement filed by the returned candidate (i.e. the appellant herein) but additional facts were also laid out 1951 Act 4- Kshetrigao Assembly Constituency.

therein. As a result, the election petitioner filed an application seeking leave to file a replication, which came to be allowed by the impugned order of the High Court.

Impugned Order

4. The High Court vide impugned order allowed the application seeking leave to file subsequent pleading while, inter alia, observing as follows:

“15. The petitioner has filed the election petition, inter alia, on the ground that the first respondent has failed to disclose the details – status of his bank accounts with respective balances in Form 26. The first respondent has also failed to disclose the details of liability and also the car bearing DL4CNB4776 owned by him in Form 26.

16. On a reading of the election petition, it is seen that the petitioner has also taken other grounds. However, in reply to the ground for non-disclosure of the account details, the first respondent replied in his written statement that the said accounts opened for establishment of Self Help Group, namely, Panthoibi SHG, Yaiphabi SHG.

Paragraphs 12 and 17 of the written statement speak about the opening of the bank accounts and also stated that some of the accounts have NIL balance and were lying in a dormant condition at the time of filing nomination papers. Therefore, there is no necessity to disclose the same in Form 26. The opening of the accounts for establishment of Self Help Groups, according to the petitioner, is new plea and the petitioner has to controvert the said facts by clarifying the relation between the accounts and Self Help Groups.

17. The learned counsel for the petitioner submitted that the accounts are joint accounts which actually belonged to the first respondent and others and nowhere mentioned that these accounts are the social or charitable account. The argument of the learned counsel for the petitioner appears to merit consideration.

18. The petitioner being election petitioner and the election petition being civil litigation, the celebrated principle of variance between pleading and proof is very much attracted in the matter of appreciation of evidence. It is lawful to the petitioner to file an application to add to his pleas already made in the election petition and the only condition thereon is the leave of the court. Even in cases that require leave, it is open to the court to grant leave with or without conditions.

19. It is pertinent to note that the law is well settled that the plaintiff cannot be permitted to raise a new plea under the garb of filing rejoinder/replication or take a plea inconsistent to the pleas taken

by him in the plaint, nor the rejoinder can be filed as a matter of right, even the Court can grant leave only after applying its mind on the pleas taken in the plaint and the written statement.

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23. The specific plea of the petitioner is that the first respondent has asserted some new facts in his written statement, particularly, paragraphs 1(i) to (x), 10, 12, 13, 14, 15, 16, 18, 18.1, 18.2, 18.3, 19, 21 and 30 and it is necessary for the petitioner to reply by filing the replication. Though the first respondent contended that the petitioner has filed the proposed replication and introducing new facts and also trying to fill up the lacuna, nothing has been produced to prove the same.

24. Admittedly, on a reading of the averments set out in the subsequent pleading/replication, it is clear that they are the clarification and amplification of the earlier pleading made in the election petition and if the pleading of the election petition is read conjointly with the pleading of the replication, the pleading of replication are the addition of facts of the earlier facts of the election petition and the annexed documents are also related with the earlier facts of the election petition. In other words, the replication of the petitioner is to controvert the averments made in the written statement to the election petition. That apart, prima facie, the averments pleaded in the replication are not contrary to the averments made in the election petition and in fact, they are only explanatory to the plea taken by the first respondent in the written statement.

25. The argument of the learned counsel for the first respondent that the replication sought to be made by the petitioner clearly violates the requirement of the provisions of the Representation of People Act, 1951 and that the petitioner sought to introduce new facts after the expiry of 45 days, cannot be countenanced for the reason that the petitioner does not insert any new facts. It appears that the first respondent has filed his written statement on 4.8.2022 and petition to grant leave to file replication was filed on 7.9.2022 within a reasonable time.

26. As stated supra, the statement made in the replication are the denial of the statement made in the written statement filed by the first respondent to the election petition. If the same is received, no prejudice would be caused to the other side, especially, the first respondent. Moreover, it is the bounden duty of the election petitioner to clarify the averments made by the first respondent in his written statement. That apart, there is no bar for clarification of the earlier pleading, which has already been taken in the election petition by the petitioner.

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31. On a perusal of the replication filed by the petitioner, this Court finds that the averments set out in the replication are not contrary to the averments set out in the election petition and these are only explanatory to the plea advanced by the first respondent in the written statement. Therefore, in order to explain/clarify the plea of the first respondent and for fair trial of the election petition and also in the interest of justice, this court is inclined to grant leave to the petitioner to file replication.”

5. We have heard Mr. Shyam Divan, learned senior counsel, for the appellant (i.e., the returned candidate) and Mr. Anupam Lal Das, learned senior counsel, for the contesting respondent (i.e., the election petitioner). Submissions on behalf of Appellant/Returned Candidate

6. Mr. Shyam Divan appearing for the appellant, inter alia, submitted:

(i) The remedy of an election petition is a statutory remedy governed by the provisions of the 1951 Act. There is no provision in the 1951 Act for filing a replication in response to a written statement. Hence, there is no foundation in law for the impugned order;

(ii) Election petitioner's replication is barred by the provisions of section 814 (1) of the 1951 Act as it sets out a time-limit of 45 days for filing an election petition. Taking into consideration new allegations introduced through a replication would tantamount to entertaining a time-barred petition. Allegations in paragraphs 15, 16, 18, 19, 22 and 23 of the Replication are new. Not only that, new documents have Section 81. Presentation of petitions.— (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within 45 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 dates of that election are different, the latter 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. (2) ***** (Omitted by Act 47 of 1966, w.e.f. 14.12.1966) (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.

been annexed by way of: (i) Ex.-A-18- List of Self-Help groups in the concerned Assembly Constituency; (ii) Ex.- A-19 and 20

- Status report of Income Tax demands; and (iii) A-21- Original Copy of registration certificate of vehicle number DL4CNB4776.

Submissions on behalf of First Respondent/ Election Petitioner

7. Per contra, Mr. Anupam Lal Das, inter alia, submitted:

(i) Section 875 of the 1951 Act provides that subject to the provisions of the Act, and of any rules made thereunder, an election petition shall be tried by the High Court in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to try a suit. A written statement can be rebutted under Order VIII Rule 97 of the CPC. Therefore, it Section 87. Procedure before the High Court.— (1) Subject to the

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

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

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

CPC Order VIII Rule 9.— Subsequent pleadings.— No pleading subsequent to the written statement of a defendant other than by way of defence to set off or counterclaim, and shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than 30 days for presenting the same.

is incorrect to state that filing of a replication in the proceedings of an election petition has no legal basis.

(ii) No new case has been introduced by way of the replication. Though, by way of rebuttal of paragraphs 1(i) to (x) and paragraphs 14, 18.1 and 18.2 of the written statement, which introduced new facts, explanatory facts, by way of clarification / amplification of earlier pleading, have been pleaded, which is permissible in law. These include: (a) details of bank accounts; (b) details of tax demands/liability; and (c) ownership of vehicle, which are referred to in the original petition. The replication only seeks to rebut the explanation offered in the written statement in respect of those accounts, demands and the vehicle.

Analysis

8. Having taken note of the rival submissions, before we proceed to weigh the rival submissions in respect of the correctness of the impugned order, it would be useful to consider the following issue:

Whether during the course of the proceeding of an election petition, preferred under the provisions of the 1951 Act, subsequent pleading, as envisaged in Order VIII Rule 9 CPC, is permissible? If yes, in what circumstances leave to file such subsequent pleading may be granted by an Election Tribunal/ Court?

Subsequent Pleading can be filed in an Election Petition.

9. Before we deal with the aforesaid issue, it would be useful to refer to the provisions of the CPC in relation to pleadings. Order VI Rule 1 of the CPC declares that pleading shall mean a plaint and a written statement. Rule 9 of Order VIII specifically edicts that no pleading subsequent to the written statement of a defendant other than by way of defence to set off or counter-claim shall be presented except by the leave of the Court. Though, however, the Court may at any time require a written statement or additional written statement.

10. In *Anant Construction (P) Ltd. v. Ram Niwas*⁸, High Court of Delhi, in an exhaustive judgment authored by R. C. Lahoti, J, as His Lordship then was, dealt with the terms ‘Replication’ and ‘Rejoinder’, as is commonly used for 1994 (31) DRJ 205 = 1994 SCC OnLine Del 615 subsequent pleadings, as also as to when leave for filing subsequent pleading may be granted by the Court. After referring to various legal texts including *Corpus Juris Secundum*, it was observed:

“12. A more detailed rather exhaustive statement of law is to be found in *CORPUS JURIS SECUNDUM*. It would be useful to extract and reproduce the following paragraphs:

“A reply or replication is purely a defensive pleading, the office or function of which is to deny, or allege facts in avoidance of, new matters alleged in the plea or answer and thereby join or make issue as to such new matters. (para 184) No reply or replication is necessary where the issues are completed by, and no new matter is set up, in the plea or answer. (para 185 a.) At common law a replication is necessary where a plea introduces new matter and concludes with a verification; but under the codes, practice acts, or rules of civil procedure of a number of states a reply to new defensive matter is not necessary or is necessary only when ordered by the court. A reply to a counterclaim is generally necessary; but under some code provisions no reply or replication is required in any case. (para 185 b.(1)) The discretion which the court possesses, under some codes or practice acts, to direct the plaintiff, on the defendant’s application, to reply to new matter alleged as a defence by way of avoidance will be exercised in favour of granting the application where the new matter, if true, will constitute a defence to the action and granting the order will prevent surprise and be of substantial advantage to the defendant without prejudice to the plaintiff. (para 185 b.(ii)) A replication, however, is unknown in the practice of a few states and in some states is not permitted. So too, under a statute providing that there shall be no reply except in enumerated situations, a reply is not permissible in a case not within one of the exceptions. Indeed, generally, in jurisdictions wherein pleading is governed by statutory provisions, plaintiff has no right to file a reply when a reply is not required by statute or order of court and a reply filed in a case where no reply is required is to be treated as a nullity, unless, and to the extent that, it constitutes an admission by plaintiff, as discussed *infra* para 204.

Under the common law system of pleading, plaintiff may, at his election, file a replication to a special plea setting up an affirmative defence. On the other hand, it is proper to reject a replication to pleas which merely traverse allegations of the declaration and set up no new matter. Where the

plea concludes to the contrary, plaintiff cannot reply with any new matter but must either accept it by a similitur or demur. So a good special traverse can be answered only by joining issue thereon and not by filing a replication. (para 191).

13. Decided cases in India use the term rejoinder loosely for a reply or replication filed by the plaintiff in answer to the defendant's plea. Strictly speaking a reply filed by the plaintiff (when permissible) is a replication. A pleading filed by the defendant subsequent to replication is a rejoinder.

14. A replication is not to be permitted to be filed ordinarily, much less in routine. A replication is permissible only in three situations: (1) when required by law; (2) when a counter-claim is raised by the defendant; (3) when the court directs or permits a replication being filed. The court may direct filing of a replication when the court having scrutinised the plaint and the written statement feels the necessity of asking the plaintiff to join specific pleadings to a case specifically and newly raised by the defendant in the written statement. The plaintiff may also feel the necessity of joining additional pleading to put forth his positive case in reply to the defendant's case but he shall have to seek the leave of the court by presenting the proposed replication along with an application seeking leave to file the same. The court having applied its mind to the leave sought for, may grant or refuse the leave. Ordinarily the necessity of doing so would arise only for 'confession and avoidance.' Having observed so, a distinction between a plea requiring amendment of the plaint and a plea sought to be introduced by way of a replication was noticed as under:

"17. A distinction between a plea requiring amendment of the plaint and a plea sought to be introduced by replication shall have to be kept in view. A plea which essentially constitutes the foundation of a claim made by the plaintiff or which is essentially a part of plaintiff's cause of action cannot be introduced through a replication. As already stated replication is always a defensive pleading in nature. It is by way of confession and avoidance or explanation of a plea raised in defence. It will be useful to quote from Halsbury's Laws of England (Volume 36, para 62, page 48):-

"62. Necessity for amendment. The fact that a party may not raise any new ground of claim, or include in his pleadings any allegation or fact inconsistent with his previous pleadings, has been considered elsewhere. In order to raise such a new ground of claim, or to include any such allegation, amendment of the original pleading is essential." 17.1 In MSM Sharma versus Sri Krishna Sinha, AIR 1959 SC 395, their Lordships refused to consider a plea raised in rejoinder for the first time, observing:

"The case of bias of the Chief Minister (respondent No.2) has not been made anywhere in the petition and we do not think it would be right to permit the petitioner to raise this question, for it depends on facts which were not mentioned in the petition but were put forward in a rejoinder to which the respondent had no opportunity to reply." Finally, the Court summed up its conclusions as under:

"24. To sum up:

(1) 'Replication' and 'rejoinder' have well defined meanings. Replication is a pleading by plaintiff in answer to defendant's plea. 'Rejoinder' is a second pleading by defendant in answer to plaintiff's reply i.e. replication.

(2) To reach the avowed goal of expeditious disposal, all interlocutory applications are supposed to be disposed of soon on their filing. A delivery of copy of the I.A. to the counsel for opposite party is a notice of application. Reply, if any, may be filed in between, if the time gap was reasonable enough, enabling reply being filed. (3) I.A.s which do not involve adjudication of substantive rights of parties and / or which do not require investigation or inquiry into facts are not supposed to be contested by filing written reply and certainly not by filing replication.

(4) A replication to written statement is not to be filed nor permitted to be filed ordinarily, much less in routine. A replication is permissible in three situations:

i. when required by law;

ii. when a counter claim is raised or set off is pleaded by defendant;

iii. when the court directs or permits a replication being filed.

(5) Court would direct or permit replication being filed when having scrutinised plaint and written statement the need of plaintiff joining specific pleading to a case specifically and newly raised in written statement is felt. Such a need arises for the plaintiff introducing a plea by way of 'confession and avoidance'.

(6) A plaintiff seeking leave of the Court has to present before it the proposed replication. On applying its mind the court may grant or refuse the leave. (7) A mere denial of defendant's case by plaintiff needs no replication. The plaintiff can rely on rule of implied or assumed traverse and joinder of issue. (8) Subsequent pleadings are not substitute for amendment in original pleadings.

(9) A plea inconsistent with the plea taken in original pleadings cannot be permitted to be taken in subsequent pleadings.

(10) A plea which is foundation of plaintiff's case or essentially a part of cause of action of plaintiff, in absence whereof the suit will be liable to be dismissed or the plaint liable to be rejected, cannot be introduced for the first time by way of replication." (Emphasis supplied)

11. Now we shall have a look at the provisions of the 1951 Act in respect of addressing disputes regarding elections. Part VI of the 1951 Act, which comprises of five Chapters, deals with disputes regarding elections. Chapter I contains the definition clause (i.e., Section 79). Chapter II comprising of Sections 80 to 85 deals with

presentation of election petitions to the High Court. Section 80 provides that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI. Section 80A, inter alia, provides that the High Court shall have jurisdiction to try an election petition. Section 81, inter alia, provides that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-

section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within 45 days from the date of election. Section 829 specifies as to who shall be the parties to an election petition. Whereas, Section 8310, Section 82. Parties to the petition. — A petitioner shall join as respondents to his petition—

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

(b) any other candidate against whom allegations of any corrupt practice are made in the petition. Section 83. Contents of petition.— (1) An election petition— inter alia, specifies as to what an election petition must contain. Section 8411 speaks of the reliefs which an election petitioner may claim. Section 85, which dealt with the procedure on receiving petition, has been omitted with effect from 14.12.1966 by Act No.47 of 1966.

12. Chapter III comprising of Sections 86 to 107 deals with trial of Election Petitions. Section 8612, inter alia, provides

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

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

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

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.] (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

Section 84. Relief that may be claimed by the petitioner.— A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected. Section 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. Explanation. – An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98. (2) As soon as may be after the election petition has been presented to the High Court, it shall be referred to the judge or one of the judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80 A. (3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same judge, who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within 14 days from the date of commencement of the trial and subject to any order as to security for costs, which may be made by the High Court, being entitled to be joined as a respondent. Explanation.— For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondent to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise, as it may deem fit, allow the particular particulars of any corrupt practice, alleged in the petition to be amended or amplified in such manner, as may in its opinion, be necessary for ensuring fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice, not previously alleged in the petition.

that,— (a) the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the 1951 Act; (b) the High Court may allow the particulars of any corrupt practice alleged in the petition to be amended or amplified, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice, not previously alleged in the petition; and (c) the election petition shall be tried as expeditiously as possible and there shall be an endeavour to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. Section 87 provides that every election petition, subject to the provisions of the Act, and of any rules made there under, be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the CPC to the trial of suits. Sections 93 to 99 deal with other procedural aspects which are not relevant for the controversy on hand. (6) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded. (7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. Section 100¹³ enumerates the grounds for declaring election to be void. Section 101 deals with a situation when a candidate other than the returned candidate may be declared to have been elected. Section 102 addresses a situation where during the trial of an election petition, it appears that there is an equality of votes between candidates. Sections 103 to 107 deal with other procedural aspects which are not relevant for the case on hand.

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

(a) that on the date of his election, returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(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

(c) that any nomination has been properly rejected; or

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

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent; or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(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 return candidate to be void. (2) If in the opinion of the High Court, returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied –

(a) that no such practice was committed at the election by the candidate or his election agent, and every such correct practice was committed contrary to the orders, and without the consent, of the candidate, or his election agent;

(b) ***** (omitted by Act 58 of 1958)

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practises at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the return candidate is not void.

13. Chapter IV deals with withdrawal and abatement of election petition, whereas Chapter IVA deals with appeals. Chapter V deals with costs and security of costs.

14. Part VII of the 1951 Act enlists corrupt practices and electoral offences.

15. A plain reading of Section 87 of the 1951 Act would indicate that, subject to the provisions of the 1951 Act and of any rules made thereunder, an election petition is to be tried, as nearly as may be, in accordance with the procedure applicable under the CPC to the trial of suits. Order VI Rule 1 of CPC defines pleading as a plaint and a written statement. The object and purpose of pleadings is to ensure that the litigants come to trial with all issues clearly defined. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. A case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case, and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon (see *Bachhaj Nagar v. Nilima Mandal and Anr.*¹⁴).

16. Replication, though not a pleading as per Rule 1 of Order VI, is permissible with the leave of the Court under Order VIII Rule 9 of the CPC, which gives a right to file a reply in defence to set-off or counter-claim set up in the written statement. However, if filing of replication is allowed by the Court, it can be utilised for the purposes of culling out issues. But mere non-filing of a replication would not mean that there has been admission of the facts pleaded in the written statement (see *K. Laxmanan v. Thekkayil Padmini and Ors.*¹⁵).

17. Section 83 of the 1951 Act mandates that an election petition must contain a concise statement of the material facts on which the petitioner relies. Additionally, an election petition should set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of (2008) 17 SCC 491, paragraphs 13 and 17 (2009) 1 SCC 354, paragraph 29 the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Since, an election petition is to be dismissed under sub-section (1) of Section 86 if not filed within the time specified in Section 81, such material facts and particulars as to commission of corrupt practice are required to be given in the election petition and not in the replication filed much after the expiry of the period of limitation for filing election petition. The material facts and particulars alleged for the first time in the replication and not forming part of the averment made in the election petition cannot be tried and cannot be made the subject matter of issues framed by the court (See *Jeet Mohinder Singh v. Harminder Singh Jassi*¹⁶).

18. Though the High Court while dealing with an election petition exercises powers under the CPC, those powers are subject to the provisions of the 1951 Act and of any rules made thereunder. In consequence, the general power of amendment of a pleading or of grant of leave to file replication, as is (1999) 9 SCC 386, paragraph 45 otherwise available to a Court under Order VI Rule 17 and Order VIII Rule 9 of the CPC, is limited by the provisions of the 1951 Act and the rules made thereunder. For example, sub-section (5) of Section 86 of the 1951 Act provides that the High Court may allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may, in its opinion, be necessary for ensuring a fair and effective trial of the petition, but it shall not allow any amendment of the petition which will have the effect of

introducing particulars of a corrupt practice not previously alleged in the petition. The significance of sub-section (5) of Section 86 of the 1951 Act has been considered by a three- Judge Bench of this Court in *F.A. Sapa and others v. Singora and others*¹⁷ in the following terms:

“19.Section 86 (5) as it presently stands empowers the High Court to allow the ‘particulars’ of any corrupt practice alleged in the petition to be amended or amplified provided the amendment does not have the effect of widening the scope of the election petition by introducing particulars in regard to a corrupt practice not previously alleged or pleaded within the period of limitation in the election petition. In other words the amendment or amplification must relate to particulars of a corrupt practice already pleaded and must not be an effort to expand the scope of the enquiry by introducing particulars regarding a different corrupt practice not earlier pleaded. Only the particulars of that corrupt practice of which the germ exists in the election petition can be amended or amplified and there (1991) 3 SCC 375 can be no question of introducing a new corrupt practice. It is significant to note that Section 86 (5) permits ‘particulars’ of any corrupt practice ‘alleged in the petition’ to be amended or amplified and not the ‘material facts’. It is, therefore, clear from the trinity of clauses (a) and (b) of Section 83 and sub-section (5) of Section 86 that there is a distinction between ‘material facts’ referred to in clause (a) and ‘particulars’ referred to in clause (b) and what Section 86 (5) permits is the amendment / amplification of the latter and not the former. Thus, the power of amendment granted by section 86 (5) is relatable to clause

(b) of Section 83 (1) and is coupled with a prohibition, namely, the amendment will not relate to a corrupt practice not already pleaded in the election petition. The power is not relatable to clause (a) of Section 83 (1) as the plain language of Section 86 (5) confines itself to the amendments of ‘particulars’ of any corrupt practice alleged in the petition and does not extend to ‘material facts’.....”

19. As to what meaning is to be ascribed to the expression ‘material facts’, and what a pleading must contain, a three- Judge Bench of this Court in *Harkirat Singh v. Amrinder Singh*¹⁸ observed as under:

“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 Edition), 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.

(2005) 13 SCC 511

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.”

20. In light of the analysis above, we are of the view that by virtue of the provisions of Section 87 (1) of the 1951 Act, the High Court, acting as an Election Tribunal, subject to the provisions of the 1951 Act and the rules made thereunder, is vested with all such powers as are vested in a civil court under the CPC. Therefore, in exercise of its powers under Order VIII Rule 9 of the CPC, it is empowered to grant leave to an election petitioner to file a replication.

21. However, such leave is not to be granted mechanically. The Court before granting leave must consider the averments made in the plaint/election petition, the written statement and the replication. Upon consideration thereof, if the Court feels that to ensure a fair and effective trial of the issues already raised, the plaintiff/election petitioner must get opportunity to explain/clarify the facts newly raised or pleaded in the written statement, it may grant leave upon such terms as it deems fit. Further, while considering grant of leave, the Court must bear in mind that,— (a) a replication is not needed to merely traverse facts pleaded in the written statement; (b) a replication is not a substitute for an amendment; and (c) a new cause of action or plea inconsistent with the plea taken in original petition/plaint is not to be permitted in the replication. Grant of leave justified

22. In the instant case, the material facts alleged in the election petition, inter alia, were that while filing nomination papers the returned candidate had failed to disclose: (a) details of some of his bank accounts (i.e. six in number); (b) ownership of a motor vehicle, which stood registered in his name; (c) details of his spouse’s profession or occupation; (d) the investment made by him on the land, by way of development, construction etc.; and (e) the details of his liability owed to the Bank.

23. In his written statement, the returned candidate (appellant herein) before giving a para-wise reply to the averments made in the election petition, made certain explanatory/preliminary averments in paragraph 1. Thereafter, in paragraph 10, it was averred that the returned candidate had filed two nomination papers along with form 26 affidavits and both were accepted after proper scrutiny on 9.2.2022. In paragraph 12, the returned candidate gave an explanation for bank account number 920010008072418 maintained with the Axis Bank. The explanation was to the effect that this account was of a self-help group for the purposes of providing aid to those who were affected by COVID-19 pandemic. In paragraph 13 a similar explanation was offered in respect of another bank account number 920010008661144 maintained with the Axis Bank. In paragraph 14, it was averred that the aforesaid bank accounts actually did not belong to the returned candidate, his spouse or dependents, but were for social and charitable purpose, and that the returned candidate was associated with those accounts in a fiduciary capacity. It was alleged that those accounts were actually of self-help groups therefore, the returned candidate was under no obligation to disclose the amounts of money available in those accounts. In paragraph 15 of the written statement, an explanation was offered in respect of Axis Bank account number 910010004837498. It was claimed that the account had a zero balance and was lying dormant at the time of filing nomination papers, therefore no disclosure was warranted. The returned candidate also denied that there was an existing liability against that account. Similarly, in paragraph 16 of the written statement it was stated that Axis Bank account number 915020012865061 had zero balance and was lying dormant at the time of filing nomination paper, therefore no disclosure was warranted. In paragraph 18 of the written statement, fact with regard to filing of a writ petition to protect rights of forest dwellers was disclosed, and in paragraph 18.1, in respect of ICICI Bank account number 264301001639, explanation was offered to the effect that it was a joint bank account for the benefit of victim families dwelling in the forest, and that the account was in the name of certain other persons whereas the returned candidate had signed in the account opening form as a patron. In paragraph 18.2, a further statement was made that the bank account did not belong to the returned candidate, his spouse, or dependents, and that the account was for social/charitable use wherein the returned candidate had associated in a fiduciary capacity of a coordinator/facilitator. Further, to substantiate the said plea, the details of the 56 affected poor families were given. In paragraph 18.3, another defence in respect of those accounts was taken. In paragraph 19, it was averred that the motor vehicle of which disclosure was not made by the returned candidate had been gifted to one person in the year 2012, therefore there was no concealment in respect of that vehicle. In paragraph 21 of the written statement, it was stated that since value of immovable property was disclosed, there was no separate disclosure as regards the amount spent in the construction of residential house standing thereupon. Thus, there was no concealment. In paragraph 30 of the written statement, apart from a denial of the averments made in the paragraph of the election petition under reply, there was a statement with regard to filing of two nomination papers along with two affidavits.

24. In the application seeking leave to file replication, the election petitioner stated that the returned candidate had, in paragraphs 1 (I) to (x), 10, 12, 13, 14, 15, 16, 18, 18.1, 18.2, 18.3, 19, 21 and 30, stated new facts of which a reply was required, therefore leave to file a replication be granted. In the replication, in paragraph 15, the election petitioner dealt with account number 920010008072418 maintained with the Axis Bank. Paragraph 16 of the replication dealt with account number 920010008661144, whereas paragraph 17 dealt with account numbers 920010008072418,

920010008661144. Similarly in paragraph 18 account number 910010004837498 was discussed and a report in respect of demand analysis and recoverability status was provided in a tabular form. In paragraph 19 account number 915020012865061 was discussed. Likewise, in paragraph 22, account number 264301001639 of the ICICI bank was discussed. In paragraph 23 again, account number 264301001639 was discussed. In paragraph 24, the registration of the vehicle in the name of the returned candidate was reiterated, and the claim that the vehicle was gifted in the year 2012 was denied. In paragraph 25, it was stated that whether the disclosure already made in respect of profession or occupation of spouse was proper or not, is for the Court to decide. Similarly, in paragraph 26 it was stated that the returned candidate was obliged to disclose the amount invested in the construction of residential house.

25. It is clear from above that the non-disclosure of bank accounts, alleged in the election petition, was sought to be explained by the returned candidate in his written statement. The replication only sought to meet that explanation. Similarly, the reply in the written statement in respect of other material facts pleaded in the election petition was sought to be dealt with, by way of explanation, in the replication. The replication does not seek to incorporate any new material facts or a new cause of action to question the election. It only seeks to explain the averments made in the written statement. Thus, in our view, leave to file replication was justified and well within the discretionary jurisdiction of the High Court.

26. We, therefore, find no merit in this appeal. The same is dismissed. There is no order as to costs.

.....CJI.

(Dr. D.Y. Chandrachud)J. (J.B. Pardiwala)
.....J. (Manoj Misra) New Delhi;

May 8, 2024