

L.R. Shivaramagowda Etc vs T.M. Chandrashekar (D) By Lrs. And Ors on 1 December, 1998

Equivalent citations: AIR 1999 SUPREME COURT 252, 1998 AIR SCW 3767, 1999 (1) SCC 666, 1998 (6) SCALE 361, 1998 (9) ADSC 193, 1998 ADSC 9 193, (1998) 8 JT 278 (SC), (1998) 9 SUPREME 193, (1998) 6 SCALE 361

Bench: B.N. Kirpal, M. Srinivasan

CASE NO.:

Appeal (civil) 4272 of 1991

PETITIONER:

L.R. SHIVARAMAGOWDA ETC.

RESPONDENT:

T.M. CHANDRASHEKAR (D) BY LRS. AND ORS.

DATE OF JUDGMENT: 01/12/1998

BENCH:

A.S. ANAND CJ & B.N. KIRPAL & M. SRINIVASAN

JUDGMENT:

JUDGMENT 1998 Supp (3) SCR 241 The Judgment of the Court was delivered by SRINIVASAN, J. These two appeals have been -filed under Section 116A of the Representation of People Act 1951 (hereinafter referred to as the 'Act') against the judgment and order of the High Court of Karnataka at Bangalore dated the 2,7th day of September 1991. in Election Petition No. 15 of 1990, The appellant in Civil Appeal No. 4272 of 1991 is the first respondent in the other appeal and the appellant in Civil Appeal No, 4379 of 1991 is the first respondent in the former appeal. The parties will be referred to in this judgment in accordance with their ranking in Civil Appeal No. 4272 of 1991.

2, The appellant was the successful candidate in the election held in November 1989 to 101 Nagamangala Assembly Constituency in the State of Karnataka having polled 48654 votes as against 17165 votes polled by the first respondent. The appellant contested the election as an independent candidate while the first respondent represented the Congress-I Party. The election was challenged by the first respondent on ground of corrupt practices by the appellants falling within the scope of Section 123 of the Act. In short, the following were the allegations made by the first respondent in the Election Petition :

"The appellant was a member of the Congress Party till he was expelled on 10/15.11.89. But he held out that he was representing the said party and canvassed as such thereby making the voters believe that he was the Congress candidate. The

appellant set up and induced the second respondent to contest in the election with sole intention of dividing the votes of minority community and thereby damaged the prospects of first respondent's success. The appellant held out a promise of securing Congress ticket to one Ramalaingegowda in order to contest Zila Parishad election for the vacancy that might be caused by his election to the Assembly and thus induced him to withdraw his support to the first respondent. The appellant got certain pamphlets printed with national symbol on them to promote his candidature and was guilty of corrupt practice. The appellant was also guilty of publishing pamphlets containing false statements of his achievements with regard to securing of loans to the needy people of the weaker section in loan melas, benefits to coconut growers etc. with a view to promote his candidature. The appellant also got printed and published pamphlets in the name of Kuruba Janangada Vedike arousing communal passion among the voters of other community people making them believe that the first respondent was guilty of issuing such pamphlets. Thus, the prospects of the first respondent in the election were affected. The appellant did not file correct and true accounts of his election expenses with the District Election Officer as required under the Rules and thus, violated the relevant provisions of law. The appellant also spent for the election by way of hiring more than vehicles: between 6.11.89 and 24.11.89 for his election purposes, printing thousands of pamphlets, purchasing thousands of copies of newspaper 'Nagamangala Mitra' and giving advertisements in the newspapers and spending on postage in order to promote his candidature. Thus he was guilty of corrupt practice within the meaning of Section 123 (6) of the Act." On the above allegation the first respondent prayed for a declaration that the appellant had committed corrupt practices under Section 100(1)(b), 100(1)(d)(ii), 100(1)(d)(iv) of the Act and the Rules framed there under and to declare that the first respondent was duly elected to the said Assembly Constituency.

3. The petition was contested by the appellant who denied all the allegations contained therein. The High Court framed as many as eight issues for consideration and after trial decided the first six in favour of the appellant. While answering Issue No. 7 in the affirmative the High Court held that the appellant had not maintained true and correct account of expenditure incurred or authorised by him which amounted to corrupt practices. On issue no. 8, the High Court observed that the expenditure incurred by the appellant was not proved to have crossed the prescribed limit but the appellant was guilty of suppression of true accounts. On the aforesaid findings the High Court declared that the election of the appellant was void and set it aside. However, the High Court found that the prayer of the first respondent that he be declared elected could not be granted in view of the number of votes polled by him being considerably low and that the voters must have a free choice to elect their representative to achieve which, fresh election for the constituency became imperative.

4. Aggrieved by the said judgment and order of the High Court the appellant has preferred the appeal C.A. No. 4272 of 1991. The first respondent has preferred Civil Appeal No. 4379 of 1991 challenging all the findings rendered against him by the High Court. The appeals were heard together.

5. Mr. Javeli senior advocate for the appellant put forward two contentions. One, the High Court is in error in rendering finding that the election is void under Section 100 (1)(d)(iv) read with Section 123(6) of the Act, inasmuch as it has over looked the absence of material facts in the elections petition, which disabled the first respondent from adducing any evidence in that regard. two, the High Court has over looked that the non-maintenance of true and correct accounts would not by itself be sufficient to nullify the election. On the other hand, Mr. Bhat, senior advocate for the first respondent contended that there is no defect in the pleading and in any event it is not open to the appellant to raise a plea in this Court as regards the alleged defect in the pleading. It was argued that failure to maintain true and correct accounts would also fall within the scope of Section 100(1)(d)(iv). He had also challenged the other findings rendered by the High Court as against the first respondent.

6, At first, we will consider the contentions urged by the appellant's counsel. The relevant pleading is found in paragraph 39 of the election petition which reads as follows :-

"It is submitted that the accounts furnished by the 1st respondent to the District Election Officer on 21.12.89 is not pertaining to the election period. He has not given true and correct accounts of expenditure. He has not furnished the details of expenditure from the date of nomination till the date of election. He has not further furnished the expenditure incurred on printing of pamphlets, Badges and advertisement published in newspaper and other amounts paid by him to several printing presses including 'Indivar Printers', Chandramoulesware Printers and Auto Xerox' and 'Nagamangala Mitra' Newspaper. He had hired more than 10 vehicles and had used them on hire from 6.11.89 to 24.11.89. He has incurred an expenditure as expenses of Rs. 500 per day per vehicle. The price of the Nagamangala Mitra is 0.05 ps. per copy and he had got printed and purchased 20,000 copies for distribution to the voters. All these cost incurred by the 1st respondent has not been furnished in his statement of account as required under Section 77 of Representation of Peoples Act and Rule 86,90 of Conduct of Election Rules 1961 and also contravention of S. 123(6) of Representation of People Act. The certified copy of the statement of account of the 1st respondent is produced herewith as Annexure R".

In the affidavit filed by the first respondent along with the election petition, the following averments are found in paragraph (f) :-

"that the statement made in paragraphs 28 and 39 of the said petition about the commission of the corrupt practice of Shri L.R. Shivarama Gowda and the particulars: of such corrupt practice given in paragraphs 28 and 39 refers to suppression of true and correct account of all expenditure in connection with his Election incurred by him between the date on which has been nominated and the date of declaration of the result thereof both date inclusive and incurring expenditure in contravention of Section 77 of Representation of the People Act 1951": Paragraph (g) reads :-

"that the Statement made in paragraphs 1 to 42 of the said petition "are true to the best of my knowledge and belief and information and the Annexures A to B are true copy of the original,"

In the written Statement filed by the appellant paragraphs 41 and 43 read as follows :-

"Para 41. Regarding allegation in para 39 that the accounts furnished by the first respondent to the District Election Officer is not pertaining to the election period is false. The expenditure threat does pertain to the expenses of the election in question. It is also incorrect to say he has not given true and correct accounts of expenditure. The further allegation that there is no detail of expenditure and that he has not furnished the expenditure of printing of pamphlet, badges, advertisement published in newspaper etc., are false. Indeed mere was no payments made to Indivara Printers and Sri Chandramouleswar Printers and Auto Xerox, Nagamangala Mitra and others, since no printing got done by them. That he hired more than 10 vehicles and used them on hire from 6.11.89 to 23.11.89 is false. The further allegation this respondent has incurred an expenditure of Rs; 500 per day per vehicle is false. The allegation that Nagamangala Pathrika is 50 paise per copy and this respondent got printed and purchased 20,000 copies is false. He has not purchased any copy. There is no violation of Section 77 of Representation of People Act nor Rules 86 and 90 of Conduct of Election Rules as alleged. There is no contravention of sub-section 6 of Section 123 of Representation of People Act."

Para No 43 : The affidavit of the petitioner contains false statements and it does not contain specific supporting assertion for any of the particular corrupt practice the petitioner may have in his mind. The affidavit is not in the form prescribed by the special law as such in the eye of law it is not an affidavit at all. The affidavit is vague and unacceptable apart from its being false and tailored for the purpose of this case."

7. As stated already the High Court has found against the appellant issue no, 7 and part of issue no.8. Those two issues pertained to the averments in the aforesaid paragraph in the pleadings and they read as follows :-

"(7) Whether the petitioner proves that the 1st respondent has not filed correct and true accounts of his election expenses to the District Election Officer as required under Rules and that itself amounts to corrupt practice?

(8) Whether the petitioner proves that R-1 spent for his election more than the prescribed limit for a candidate for Assembly constituency in the State by way of hiring more than ten-vehicles between 6.11.89 and 24.11.89 for his election purpose, printing thousands of pamphlets. purchasing thousands of Nagamangala Mitra copies and giving advertisements in news papers and postage to promote his candidature and suppressed the true expenses and hence is guilty of corrupt practice?"

8. More than half of the judgment under appeal is devoted to these two issues. The discussion starts with paragraph 43 and ends with paragraph 75 which is the last paragraph of the judgment. It is necessary to extract the following portions in the judgments :-

"Para 43 Issue Nos. 7 & 8 : - whilst Issue No. 7 falls under Section 100 (

1)(d)(iv) Issued No. 8 falls under Section 77 of the Act. In a nut-shell the petitioner has contended that R-I has not maintained proper accounts of his election expenses and has not filed correct account of expenses to the Returning Officer and, secondly, that he has spent nearly Rs. 20,00,000 for his election which is in excess of the limit of Rs, 40,000 prescribed by the Rules applicable to the State of Karnataka (vide Rule 90 of the Conduct of Election Rules 1961). The election of a returned candidate could be declared void under Sec. 100(1)(b) of the Act if any corrupt practice has been committed by a returned candidate or his election agent or by any other person with his or his election agent or as already stated above by his non-compliance with the provisions of the Act. Part V III of Conduct of Election Rules 1961 (the Rules of 1961 for short hereafter) relates to election expenses. In the first instance I take up the alleged breach of the provisions of S.77 by spending more than Rs, 40,000 by R-I."

Para No. 53 " I therefore find that this allegation now made in the evidence cannot be considered and even otherwise it" is not proved that the money was utilised for his election so as to cross the limit of Rs. 40,000".

Para .No. 54 : "That only goes to show the interestedness of the petitioner to add during evidence much more than what he actually pleaded." After extracting Section 77 of the Act, the Court said in para 59 as follows:-

Para No. 59 : "It could thus be seen. that under sub-sec. (1) every candidate is expected to keep separate and correct account of all expenditure in connection with his election, :under sub-sec.(2) the account shall contain such particulars as may be prescribed and the total of such expenditure shall not exceed such amount as may be prescribed under sub- sec.(3). Whether sub-secs.: (I) and (2) bereft of sub-sec. (3) are a distinct. requirement and breach thereof itself is sufficient to bring the case within the mischief of S. 100 is the point. In fact this appears to be approach of the learned counsel for the petitioner. It is urged by him that these pamphlets Exs. P-35 to P-37 and P-39 were got printed by R-I to promote his election prospects and, therefore, it was: his duty to account for them in Ex.P-2(a)."

Para No. 62 : "As I have already found, the account furnished by the respondent in Ex. P-2(a) reveals that he did not spend more than Rs. 13,000 for his election. On the face of it that may sound rather ridiculous but for that reason alone there can be no inference of incurring expenditure of more than Rs.. 40,000".

Para No, 63 : "As far as expenditure incurred for the use of vehicle is concerned. I have come to the conclusion. that there is no clinching evidence and; therefore, not possible to find what could have been the amount that. he spent on vehicles. The benefit of such infirmity in the evidence has gone to the respondent to find that the expenditure is not proved to have crossed the limit of Rs. 40,000 but at the same time it is patently Clear that this is a device adopted only to suppress true expenditure,"

Para NO 66 : "What constitutes corrupt practice for the purpose of the Act have been enumerated under Sec. 123. Therefore income of the cases coming up before various High Courts. the question was whether mere non-furnishing of correct account amounts to corrupt practice and the counts found in tire negative. The allegation in the instant case is not that .corrupt practice has been practised by non-furnishing of correct accounts but that itself renders the election void as it constitutes breach of the provisions of the Act within Sec, 100".

Para No: 70 .: "It therefore follows that even though the Election Commission has power to. disqualify a candidate for .corrupt practices during election and also for failure to lodge accounts of election expenses it does not necessarily Follow that the Election Tribunal has no jurisdiction to enquire whether Sec. 100 is attracted or not to void an election on the ground of non-compliance with the relevant provisions of the Act, When an election could be voided on the ground of corrupt-practice there is no reason why it should not be and could not be voided for not furnishing correct and true accounts of the election expenditure when it is mandatory under S. 77(1)& (2) and S. 100 intends to embrace non-compliance with the provisions of the Act as also committing of the corrupt practices. There is absolutely no reason to exclude non-compliance with sub-sections (1) &(2) of S.77 simply because sub-sec. (3) also falls under the same Sec.

77. Sub sec, (3) no doubt covers expenditure of more than the prescribed limit and that is a self-contained provision of S.77. If the argument that non-compliance with sub-sections (1)&(2) are not attracted by S.100 is accepted then it puts a premium over non-compliance of proper accounts only to avoid attraction of sub-sec. (3). If only respondent-1 had accounted for the printing and publication of various pamphlets, advertisement published in Nagamangala Mitra. badges like Ex. P-38, posters like Ex.P 45, model ballot papers like Exs. P-46 &P-47. and the postage the Tribunal could have been in a position to know whether the expenditure incurred has crossed the limit .of Rs.40,000. To say the least, this is another dishonest way of suppressing true expenditure for ulterior motive. Unless there is honesty in maintaining and presenting the correct and true accounts it would be impossible to; judge if the requirement of sub-sec. (3) is met or not: In my view therefore simply because the Election Commission is also empowered to disqualify a candidate for riot maintaining correct and true account it does not necessarily mean that the Election Tribunal is not called upon to consider if the election could be voided for that reason under S.100 of the Act. What is a corrupt practice is defined under S. 123 of the Act and incurring of expenditure of more than the prescribed limit is one of the such corrupt practices. Therefore, non- furnishing of true and proper accounts is .a distinct breach under sub- sections (I) and (2) of S. 77 attracting the consequences under S. 100 of the Act. It is apparently clear that respondent- I has invented an ingenious method

of soliciting votes by getting printed pamphlets to promote his candidature by printing or getting printed them under the names of: different persons who have not come forward to own their publication:"

Para No. 72 ': "From the discussion of various factors and aspects detailed above the irresistible conclusion is that respondent-1 is not honest in keeping the accounts of the election expenses. There is substance and merit in the contention of the petitioner that what he spent for postage is not accounted for. It is established that the pamphlets bearing the postal seals were in fact posted by him or by his consent, In such case it is rather unthinkable that he did not spend a single pie on postage. Again irresistible conclusion is that the pamphlets responsible for his success were got printed by him or by his consent but the expenditure must be his because none has come forward to state about to spending for their printing and circulation by post or otherwise. The manner of preparation of Ex. P-2(a) and accompanying vouchers show that they were quite casual only to follow technical requirements of Sec. 77(1) & (2) of the Act. This is only a drab formality and giving an impression that it is make believe. The Election Tribunal which is entrusted with the task of enquiring into the conduct of the candidates in election to maintain and safeguard its purity cannot ignore the dishonest conduct and wilful suppression of expenditure to bring the expenditure within the prescribed limit. It is perhaps for that reason that the Parliament enacted that breach or violation of the provisions of the Act should result in voiding the election of the successful candidate. Oral as well as documentary evidence now adduced has established beyond any controversy that respondent-I suppressed wilfully the expenditure that he incurred or authorised towards printing of various pamphlets, badges and advertisements in Nagamangala Mitra and also suppressed the expenditure incurred towards purchase of postal stamps for despatching them to the voters. Witnesses for petitioner have deposed that such pamphlets were received by post by some of them and from these instances it can be inferred that a large number of pamphlets, badges or leaflets had been circulated by post."

Para No. 75 : "For the reasons aforesaid I hold that the petitioner has proved that true and correct account or expenditure incurred or authorised was not maintained by respondent-] which amounts to corrupt practice and for that reason his election deserves to be voided. Accordingly allowing the petition I declare that the election of respondent-1 L.R. Shivaramagowda is void and the same, is set aside."

9. From the above passages it is clear that the High Court has found against the contention of the first respondent that the appellant had spent for his election more than the prescribed limit for a candidate for Assembly Constituency. However, the High Court has taken the view that the accounts of election expenses filed by the appellant before the District Election Officer were not correct or true and, consequently, the appellant had not complied with the provisions of Section 77(1) & (2) of the Act with the result, he fell within the scope of Section 100(1)(d)(iv) of the Act. It has to be mentioned here that while discussing issue Nos. 7 & 8, the High Court has forgotten its own findings

rendered on issues 4, 5 & 6. While under the earlier issues, the High Court has not accepted the case of Respondent No-1 that the pamphlets mentioned therein were printed by or at the instance of the appellant, the Court has erroneously assumed for the purpose of issues 7 & 8 that the said pamphlets were printed by the appellant.

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 paragraph 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 no 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.

11. This court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between "Material facts"

and "Material particulars," While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment. In *Shri Balwan Singh v. Shri Lakshmi Narain & Ors.*, [1960] 3 SCR 91 the Constitution Bench held that an election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. On the facts of the case, the Court found that the alleged corrupt practice of hiring a vehicle for the conveyance of the voters to the polling station was sufficiently set out in the pleading. The Court pointed out that the corrupt practice being hiring or procuring of the vehicle for the conveyance of the electors, if full particulars of conveying by a vehicle of electors to or from any polling stations were given, Section 83 was duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring were not given.

12. In *Samant N. Balakrishna & Anr v. George Fernandez and Ors.*, [1969] 3 SCC 238 the Court said that if the material facts of the corrupt practice are stated, more or better particulars of the charge may be given later, but where the material facts themselves are missing, it is impossible to think that the charge has been made and later amplified and that would tantamount to making of a fresh petition.

12A. In *Virendra Kumar Saklecha v. Jagjiwan and Ors.*, [1972] 1 SCC 826, this Court stressed the importance of disclosure of sources of information in the affidavit filed along with the election petition. The relevant passage reads thus :-

"The respondent filed an affidavit along with the election petition. The affidavit did not disclose the source of information in respect of the speeches alleged to have been made by the appellant. Section 83 of the Act requires an affidavit in the prescribed form in support of allegations of corrupt practice. Rule 94-A of the Conduct of Election Rules, 1961, requires an affidavit to be in Form No. 25, Form No. 25 requires the deponent to State which statements are true to knowledge and which statements are true to information. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of civil Procedure to the trial of suits. Under Section 102 of the Code, the High Court may make rules regulating their own procedure and the procedure of the Civil Courts subject to their supervision and may by such rules vary, alter or add to any of the rules in the First Schedule to the Code." [Para 10] "The importance of setting out the source of information in affidavits came up for consideration before this Court from time to time. One of the earliest decisions is State of Bombay -v. Parshottam Jog Naik, where this Court endorsed the decision of the Calcutta High Court in Padmabati Dost v. Rasik Lai Dhar, and held that the sources of information should be clearly disclosed. Again in Barium Chemicals Ltd. and Another V. Company Law Board and Others., this Court deprecated 'slip shod verifications' in an affidavit and reiterated the ruling of this Court in Bombay case (Supra) that verification should invariably be modelled on the lines of Order 19, Rule 3 of the Code 'Whether the Code applies in terms or not'. Again, in A.K.K. Nambiar v. Union of India. this Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations". [Para13] "Counsel on behalf of the appellant contended that non-disclosure of the sources of information in the affidavit was a fatal defect and the petition should not have been entertained. It is not necessary to express any opinion on that contention in view of the fact that the matter was heard for several months in the High Court and thereafter the appeal was heard by this Court. The grounds or sources of information are to be set out in an affidavit in an election petition. Counsel on behalf of the respondent submitted that the decisions of this Court were not on election petitions. The rulings of this Court are consistent. The grounds or sources of information are to be set out in the affidavit whether the Code applies or not. Section 83 of the Act states that an election petition shall be verified in the manner laid down in the Code. The verification is as to information received. The affidavit is to be modelled on the provisions contained in Order 19 of the Code. Therefore, the grounds or sources of information are required to be stated." [Para 14] "The non-disclosure of grounds or sources of information in a election petition which is to be filed within forty-five days from the date of election of the returned candidate, will have to be scrutinised from two points of view. The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the

petitioner will not be able to make any departure from the sources or grounds, if there is any embellishment of the case it will be discovered." [Para 15]

13. In *Shri Udhav Singh v. Madhav Rao Scindia*, [1977] 1 SCC 511, a Division Bench of this Court explained the distinction between material facts and material particulars as follows :

"All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts." In the context of a charge of corrupt practice material facts"

would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short all those facts which are essential to clothe the petitioner with a complete cause of action are "material facts" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83 "Particulars" on the other hand are "the details of the case set up by the party." "Material particulars" within the contemplation of clause (b).of Section 83 (i) would therefore mean all the details which are necessary to amplify, refine and embellish. The material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative."

The Bench held that if a petition suffers from lack of material facts it is liable to be summarily rejected for want of cause of action and if the deficiency is only of material particulars, the Court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

14. In *F.A. Sapa and Others V. Singora and Others*, [1991] 3 SCC 375, the Court considered the relevant Sections and the Rules at length and reiterated difference between material facts and material particulars. The Court said:

"Section 83(1)(a) stipulates that every election petition shall contain a concise statement of the 'material facts' on which the petitioner relies. That means the entire bundle of facts which would constitute a complete cause of action must be concisely stated in an election petition. Section 83 (1)(b) next requires an election petitioner to set forth full 'particulars' of any corrupt practice alleged against a returned candidate:

These 'particulars' are obviously different from the 'material facts' on which the petition is founded and are intended to afford to the returned candidate an adequate opportunity to effectively meet with such an allegation. The underlying idea in requiring the election petitioner to set out in a concise manner all the 'material facts'

as well as the 'full particulars', where commission of corrupt practice is complained of, is to delineate the scope, ambit and limits of the inquiry :at the trial of the election petition."

With regard to the affidavit to be filed along with the election petition in the prescribed form 25, the Court observed that the defect in such affidavit could be cured unless it formed the internal part of the petition in which case the defect concerning material facts will have to be dealt with subject to limitation under Section 81 of the Act.

15. In *Gajanan Krishanaji Bapat & Anr. v. Dattaji Raghobaji Meghe & Ors.*, [1995] 5 SCC 347 a Division Bench of which one of us (Anand. J. as he then was) a member dealt with this aspect of the matter in extenso and held that allegations of corrupt practice must be properly alleged and both material facts and particulars should be provided in the petition itself so as to disclose the complete cause of action. The relevant passage in the judgment reads thus :-

"The election law insists that to unseat a returned candidate, the corrupt practice must be specifically alleged and strictly proved to have been committed by the returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or by his election agent. Suspicion, however strong, cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence. Since, pleadings play an important role in an election petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts and particulars provided in the petition itself so as to disclose a complete cause of action.

Section 83 of the Act provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must set forth full particulars of the corrupt practice that he alleges including as full a statement as is possible of the name of the parties alleged to have committed such corrupt practices and the date and place of the commission of each of such corrupt practice. This section has been held to be mandatory and requires first a concise statement of material facts and then the full particulars of the alleged corrupt practice, so as to present a full picture of the cause of action.

A petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge he has made and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise."

As regards amendment of pleadings in an election petition, the Bench held that there is a complete prohibition against any amendment being allowed which may have the effect of introducing either material facts not already pleaded or of introducing particulars of a corrupt practice not previously

alleged in the petition. The Court pointed out that in that case the High Court ought not to have allowed evidence to be led by the election petitioner which was beyond the pleadings of the parties for no amount of evidence can cure a defect in the pleadings but it was all the more improper for the trial court to have allowed the pleadings to be amended so as to be brought in Conformity with the evidence already led in the case.

16. If the above well settled principles are applied in this case, there is no doubt whatever that the election petition suffers from a very serious defect of failure to set out material facts of the alleged corrupt practice. The defect invalidates the election petition in that regard and the petitioner ought not to have been permitted to adduce any evidence with reference to the same.

16A. We have already extracted paragraphs (f) & (g) of the affidavit filed along with the election petition. It does not disclose the source of information. Nor does it set out which part of the election petition was personally known to the petitioner and which part came to be known by him on information. Significantly, paragraphs (a) to (e) of the affidavit state that the averments therein are true to his information. Paragraph (f) is silent on this aspect of the matter. Paragraph (g) refers to all the 42 paragraphs in the petition. The affidavit is not in conformity with the prescribed Form No. 25. Thus there is a failure to comply with Rule 94-A of the Conduct of Election Rules. It is a very serious defect which has been overlooked by the High Court.

17. Learned counsel for the first respondent made an attempt to show that the pleading contains the relevant material facts. According to him, paragraph 39 of the election petition sets out the expenses incurred by the appellant per vehicle per day and the total number of vehicles used by him. It was also contended that the price of the newspaper Nagamangala Mitra per copy was mentioned and the total number of copies purchased for distribution to the voters was also mentioned. It was argued that those were the material facts and by themselves they proved that the appellant had incurred an expenditure exceeding the prescribed limit. We are unable to accept this contention. After setting out those figures, the averment found in the election petition is only to the effect that said cost incurred by the appellant had not been furnished in his statement of account. The fact that in the last part of the said sentence, it was alleged that there was contravention of Section 123 (6) of the Act, would not come to the aid of the first respondent to contend that the relevant material fact of excessive expenditure over and above the prescribed limit had been pleaded. We must also refer to the fact that for the purpose of Section 100(1)(d)(iv), it is necessary to aver specifically that the result of the election insofar as it concerns a returned candidate has been materially affected due to the said corrupt practice. Such averment is absent in the petition.

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 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 Election Rules, 1961 sets out the particulars to be contained in the account of election expenses. Sub-sections (1) & (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 Election 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 Section 77 (1) & (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 that 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 Section 77 (1) & (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 and Anr.*, [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-section (1) & (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 CA. No. 1321 of 1967 dated 22.3.1968.

20. Learned counsel for the first respondent invited our attention to the judgment in *Om Prabha Jain v. Charan Das and Anr.*, [1975] Supp. S.C.R. 107. There is nothing in that judgment to support the contention of the first respondent. It was held that the charge of a corrupt practice was of criminal nature and must be proved beyond reasonable doubt. On the facts, it was held that allegation of corrupt practice against the returned candidate had not been proved beyond reasonable doubt.

21. The judgment in *Gajanan's* case referred to earlier has reiterated the view set out above. It was held that the provisions of Section 123 (6) related only to Section 77 (3) of the act and not to violation of sub-sections (1)&(2) of Section 77.

22. It was argued by learned counsel for the first respondent that the aforesaid view would enable any successful candidate at an election to snap his Fingers at the law prescribing the maximum limit of expenditure and escape from the provisions of Section 77(3) by filing false

accounts. According to him, if the aforesaid construction of Sections 77 and 123 (6) is to be adopted, there will be no sanction against a candidate who incurs an expenditure exceeding the maximum prescribed limit. Referring to Section 10(A) of the Act, which enables the Election Commission to disqualify a person who had failed to lodge an account of election expenses within the time and in the manner required by or under the Act and had no good reason or justification for the failure, he contended that the said Section provides only for a situation arising out of failure to lodge an account and not a situation arising from a failure to maintain true and correct accounts. We are unable to accept this contention. In our opinion, sub- section (a) of Section 10 (A) takes care of the situation inasmuch as it provides for lodging an account of election expenses in the manner required by or under the Act. Section 77(2) provides that the accounts shall contain such particulars as may be prescribed. Rule 86 of the conduct of Election Rules provides for the particulars to be set out in the account. The said Rule prescribes that a voucher shall be obtained for every item of expenditure and for lodging all vouchers along with the account of election expenses. Rule 89 provides that the District Election Officer shall report to the Election Commission, the name of each contesting candidate, whether such candidate has lodged his account of election expenses and if so the date on which such account has been lodged and whether in his opinion such account has been lodged within the time and in the manner required by the Act and the rules. That Rule enables the Election Commission to decide whether a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act after adopting the procedure mentioned therein. If an account is found to be incorrect or untrue by the Election Commission after enquiry under Rule 89, it could be held that the candidate had failed to lodge his account within the meaning of Section 10(A') and the Election Commission may disqualify the said person. Hence, we do not find any substance in the argument of learned counsel for the first respondent.

23, We have no hesitation to hold that the findings rendered by the High Court as against the appellant on issues 7 and 8 are therefore unsustainable and deserve to be set aside.

24. Learned counsel for the first respondent took us through the records in support of his contention that the appellant was guilty of corrupt practices as alleged in the election petition. In particular learned counsel laid emphasis on the alleged corrupt practices falling within the scope of Section 123 (3A) and Section 123 (6) of the act. As regards the latter he argued that the evidence on record is sufficient to establish the fact that the appellant had incurred an expenditure far in excess of the maximum prescribed limit. He took us through the relevant evidence on record. He was not successful in persuading us to agree with him. We find after pursuing the records that the factual finding rendered by the High Court that the evidence fell short of proving excessive expenditure over and above the prescribed maximum limit by the appellant is correct. There is no justification for interfering the same.

25. The allegation regarding the corrupt practice falling within the ambit of Section 123 (3A) is the subject matter of issue no. 6. It reads as follows:-

"Whether the 1st respondent got printed and published pamphlets in the name of "Kurba Janangada Vedike" arousing communal passion among the voters of other community people making them believe that the petitioner was guilty of arousing such communal feelings and such pamphlets

prejudicially affected the prospects of the petitioner at the last moment ?" The High Court has dealt with the matter in paragraphs 39 to 42 of the judgment. The evidence of the witnesses has been discussed fully by the High Court and the material discrepancies have been highlighted. The finding of the High Court is in the following terms:-

"There is sufficient force in the argument advanced on behalf of the respondent that, firstly, there is no evidence worthy of acceptance to hold successfully that it was R-1 who was responsible to get such pamphlets printed. Secondly, there is no clear evidence when exactly they were flooded among the electorate while the case of the petitioner is that from 21.11.1989 onwards when such pamphlets were distributed the trend changed. There is evidence as pointed out above that they were being distributed even from 16.11.1989. At any rate it is the case of the petitioner that in order to mar his election prospects R-1 played mischief by getting such pamphlets printed in his name. He has failed to prove that it was R-1 who did it. My finding on this issue for these reasons is in the negative".

We do not find any reason whatever to differ from the view expressed by the High Court.

26. The arguments advanced by learned counsel for the first respondent in issues 1 to 5 were of no substance as the materials on record do not in any way support them. We are entirely in agreement with the findings rendered by the High Court on those issues in favour of the appellant.

27. In the result me judgment of the High Court insofar as they are against the appellant are set aside and, consequently, the judgment of the High Court is Upset. The first respondent has failed to prove any of the allegations made by him against the appellant that the latter was guilty of corrupt practice. Hence the appeal C.A.No.4272/91 is allowed and the election petition RP. 15 of 90 on the file of the High Court of Karnataka is dismissed. C.A. No. 4379/91 is dismissed.

The appellant is entitled to get his costs form the first respondent in these proceedings both in the High Court and this Court. Counsel's fee in this court Rs. 5,000.

R.P. C.A. No. 4272/91 allowed.

C.A. No. 4379/91 dismissed.