

Urmila(Elected Pradhan) vs State Of U.P. And Ors on 19 November, 2018

Equivalent citations: AIRONLINE 2018 ALL 4790

Author: Salil Kumar Rai

Bench: Salil Kumar Rai

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

RESERVED ON 24.9.2018

DELIVERED ON 19.11.2018

Court No. - 56

Case :- MATTERS UNDER ARTICLE 227 No. - 990 of 2018

Petitioner :- Urmila(Elected Pradhan)

Respondent :- State Of U.P. And Ors

Counsel for Petitioner :- Chandan Kumar,Narendra Kumar Pandey,Pradeep Kumar

Counsel for Respondent :- C.S.C.,Mohd. Shahanshah Khan

Hon'ble Salil Kumar Rai,J.

In view of the office report dated 6.4.2018, service of notice on respondent nos. 7, 9, 10 and 11 is deemed sufficient. However, no one has put in appearance on behalf of the aforesaid respondents.

Heard Sri Narendra Kumar Pandey, counsel for the petitioner and Sri H.N. Singh, Senior Counsel

assisted by Sri Mohd. Shahanshah Khan, counsel for respondent nos. 6 and 8. The counsel for the parties have also filed their written arguments which are part of the records of the case.

The present petition under Article 227 of the Constitution of India has been filed challenging a remand order passed by the Additional District Judge, Court No. 4, Mirzapur (hereinafter referred to as, 'Revisional Court') in Civil Revision No. 48 of 2017 whereby the revisional court has remanded back Election Petition No. 1 of 2015-16, filed by respondent no. 6, to the Prescribed Authority for passing fresh orders in accordance with law. The grounds on which the remand order has been challenged are that the election petition was liable to be dismissed at the very threshold because of improper presentation and also on the ground that the Election Petition was liable to be rejected under Order 7 Rule 11 of The Code of Civil Procedure, 1908 (hereinafter referred to as, 'CPC') and thus the revisional court ought to have dismissed Revision no. 48 of 2017 as well as Election Petition No. 1 of 2015-16.

The facts of the case are that elections for the post of Gram Pradhan in Gram Panchayat, Atrail Raja, Vikas Khand Lalganj, District Mirzapur (hereinafter referred to as, 'Gram Panchayat') were held on 1.12.2015. The petitioner as well as respondent nos. 6 to 11 contested the said elections. Counting of votes was held on 13.12.2015 and after counting of votes, the petitioner was declared to have polled 700 votes while respondent no. 6 was declared to have polled 665 votes. The other candidates had polled less than respondent no. 6 and the number of votes polled by them are not relevant for the present petition. Consequently, the petitioner was declared elected as Gram Pradhan of the Gram Panchayat. On 21.12.2015, the respondent no. 6 filed Election Petition No. 1 of 2015-16 before the Deputy District Magistrate/Prescribed Authority, Lalganj, District Mirzapur (hereinafter referred to as, 'Prescribed Authority') under Section 12-C of the Uttar Pradesh Panchayat Raj Act, 1947 (hereinafter referred to as, 'Act, 1947') challenging the election of the petitioner as Gram Pradhan. In the aforesaid Election Petition No. 1 of 2015-16, the present petitioner was impleaded as defendant no. 1 and respondent nos. 7 to 11 in the present case were impleaded as defendant nos. 2 to 6. The petitioner before this Court shall hereinafter be referred as petitioner and the election petitioner shall hereinafter be referred to as respondent no. 6.

In the election petition instituting Election Petition No. 1 of 2015-16, it was stated that votes for the post of Gram Pradhan of the Gram Panchayat were cast at Booth nos. 81, 82, 83 & 84 and after stating the other preliminary facts relating to the elections, it was alleged in paragraph no. 7 of the election petition that Sri Shiv Shanker Singh i.e. the brother-in-law of the petitioner, who was a Kotedar in the village, was responsible for making arrangements at Polling Booth nos. 81, 82, 83 & 84. It has been alleged in the election petition that the aforesaid Shiv Shanker Singh, taking advantage of his position, entertained the members of the polling party at his residence on the previous evening and won over the members of the polling party. It has been further alleged in the election petition that Sri Shiv Shanker Singh used his position to cast bogus votes at Booth nos. 81, 82, 83 and 84. It has been stated in the election petition that respondent no. 6 complained to the Returning Officer regarding the aforesaid conduct of Sri Shiv Shanker Singh but the Returning Officer took no action on the complaints of the petitioner. In paragraph no. 7 of the election petition, the respondent no. 6 has also alleged that the petitioner caused rioting and stone pelting in the village, as a consequence of which more than 50 voters of respondent no. 6 could not cast their

votes. The other allegations made in different paragraphs of the election petition filed by respondent no. 6 are not relevant for a decision of the present petition or to consider the arguments of the counsel for the parties. The cause of action for filing the election petition was specified in paragraph no. 18 of the election petition and it was stated that the cause of action for the election petition arose on 1.12.2015 due to bogus voting at Booth nos. 81, 82, 83 as well as on 13.12.2015 due to irregularities and illegalities in counting of votes and in preparing Forms 4, 6 and 7. In light of the aforesaid allegations, the respondent no. 6 prayed that she be declared elected as Gram Pradhan of the Gram Panchayat and the election of the petitioner be declared void under the Representation of People Act, 1951 (hereinafter referred to as Act, 1951).

A photocopy of the election petition has been annexed as Annexure No. 2 to the present petition and on the first page of the election petition, there is a scrawl suggesting that the Election Petition was presented by one Raj Kumar Pandey, Advocate. The details regarding the scrawl will be mentioned later while considering its importance in deciding the issue regarding presentation of the election petition.

The Prescribed Authority acknowledged the filing of the election petition on 21.12.2015 itself and in the order-sheet relating to the case, the proceedings on 21.12.2015 have been recorded indicating that the case had been presented on that date and was adjourned to 28.12.2015 to consider the maintainability of the Election Petition. The case was subsequently heard by the Prescribed Authority on 29.12.2015 and the order-sheet of the said date shows that respondent no. 6 was personally heard on the maintainability of the election petition. By order dated 29.12.2015, the election petition was admitted for hearing. The implications of the recitals in the order-sheet of the case shall also be considered later while deciding the issue regarding presentation of the election petition.

In Election Petition No. 1 of 2015-16, the petitioner filed her written statement on 29.2.2016 denying the allegations made in the election petition. In paragraph no. 7 of her written statement, the petitioner stated that the allegations made in paragraph no. 7 of the election petition were not important and were mere babbles which were not required to be controverted. I am referring only to the contents of paragraph no. 7 of the written statement filed by the petitioner as the same would be relevant to consider the arguments of the counsel for the petitioner.

On 18.4.2016, the petitioner filed an application stating that the election petition was liable to be dismissed at the very threshold as the same was contrary to Section 12-C of the Act, 1947 and the petition was liable to be rejected under Order 7 Rule 11 of the CPC. It was stated in the application that the facts stated in the election petition regarding the incidents at polling Booth nos. 81, 82, 83 and 84 and the allegations regarding irregularities in counting of votes were unbelievable. It was also stated in the application that the election petition was frivolous and vexatious and was filed only to harass the petitioner and it was prayed that in view of the aforesaid as also in view of the fact that the election petition was contrary to Rule 4 of the Uttar Pradesh Panchayat Raj (Settlement of Election Disputes) Rules, 1994 (hereinafter referred to as, 'Rules, 1994'), the election petition was liable to be rejected at the threshold. It appears from the records that on the said application filed by the petitioner, the Prescribed Authority passed an order dated 13.5.2016 observing that the said

application shall be decided after final hearing in the case and along with the final judgment to be passed in the case.

In Election Petition No. 1 of 2015-16, the Prescribed Authority framed thirteen Issues for decision. The issues relevant for the decision of the present petition are Issue nos. 3, 4 and 5. Issue no. 3 framed by the Prescribed Authority was whether the defendant no. 1, i.e., the petitioner in the present case, had indulged in corrupt practices during the elections and during the polling through her acquaintances, relatives and family members and thereby vitiated the polling and the elections, and the effect of such acts committed by the defendant no.1. Issue no. 4 framed by the Prescribed Authority was whether, before and during polling, the defendant no. 1 had threatened the electorates thereby affecting the elections? Issue no. 5 framed by the Prescribed Authority was whether the defendant no. 1 caused rioting at the time of polling and whether, with the help of polling staff, irregularities had been committed during polling and the effect of such acts on the election. The issues framed by the Prescribed Authority in Election Petition No. 1 of 2015-16 have been narrated because a reference to them may be necessary while considering the argument of the counsel for the petitioner that, in her election petition, the respondent no. 6 had not provided the material particulars in support of the allegations made in the election petition. It is relevant to note that no specific issue was framed by the Prescribed Authority as to whether the election petition was presented personally by, or in the immediate presence of, the respondent no. 6.

The Prescribed Authority vide his judgment and order dated 8.6.2017 dismissed Election Petition No. 1 of 2015-16 holding that the petitioner had not been able to prove the allegations made by her in the election petition. There appears to be some contradictions in the findings recorded by the Prescribed Authority on the different issues framed by him but the same are not relevant for a decision of the present case and are, therefore, not being considered here. Aggrieved by the judgment and order dated 8.6.2017 passed by the Prescribed Authority, the respondent no. 6 filed an application for Revision under Section 12-C (6) of the Act, 1947 before the District Judge, Mirzapur which was registered and numbered as Revision No. 48 of 2017 and was transferred for adjudication to the Revisional Court. The Revisional Court, vide its judgment dated 29.1.2018, after noting the contradictions in the findings recorded by the Prescribed Authority held that the judgment passed by the Prescribed Authority was not in accordance with law and, therefore, set-aside the order passed by the Prescribed Authority and remanded back the matter to the Prescribed Authority to pass fresh orders in accordance with law after considering the evidence available on record. The judgment and order dated 29.1.2018 passed by the Revisional Court in Civil Revision No. 48 of 2017 has been challenged in the present petition filed under Article 227 of the Constitution of India with a further prayer that directions be issued to dismiss the Election Petition no. 1 of 2015.

It was argued by the counsel for the petitioner that the order dated 29.1.2018 has been passed by the Revisional Court without considering that the trial of Election Petition No. 1 of 2015-16 would be a mere fishing and roving inquiry as the Election petition did not fulfill the requirements of law and was thus liable to be rejected at the very threshold. It was argued by the counsel for the petitioner that under Section 12-C (3) of the Act, 1947 it was mandatory for respondent no. 6 to have personally presented the election petition before the Prescribed Authority. It was argued that as the

election petition had not been presented personally by the respondent no. 6 but by one Raj Kumar Pandey, Advocate and there was nothing on record to indicate that respondent no. 6 was present before the Prescribed Authority when the election petition was being presented on her behalf, the requirements of Section 12-C (3) of the Act, 1947 had not been fulfilled and therefore the election petition was liable to be dismissed at the very threshold without holding a trial. In support of his argument, the counsel for the petitioner has relied on the recitals in the order-sheet of the Prescribed Authority prepared in Election Petition No. 1 of 2015-16 which does not contain any reference as to who had presented the election petition and has also relied on the scrawl on the first page of the election petition which, according to the counsel for the petitioner, indicated that Sri Raj Kumar Pandey, Advocate had presented the petition. It was further argued by the counsel for the petitioner that the material facts and particulars relating to the alleged corrupt practices had not been given by respondent no. 6 in her election petition and, therefore, the election petition was liable to be rejected under Order 7 Rule 11 of CPC. The argument of the counsel for the petitioner that in her election petition, the respondent no. 6 had not stated the material facts and material particulars in support of her allegation shall be narrated in detail while considering the merits of the argument. It was also argued by the counsel for the petitioner that the relief prayed by respondent no. 6 in her election petition that the election of the petitioner be declared null and void and the respondent no. 6 be declared elected as Gram Pradhan under the Act, 1951, is on the face of it, absurd and not maintainable. It was further urged by the counsel for the petitioner that, under Article 227 of the Constitution of India, this Court has the power to look into the aforesaid questions and this Court is empowered to dismiss and reject the election petition and consequently set-aside the order dated 29.1.2018 passed by the Revisional Court as the effect of the order dated 29.1.2018 is to permit a trial not permissible under the law. It has been argued that for the aforesaid reasons, the order dated 29.1.2018 passed by the Revisional Court is liable to be set-aside and the petition is liable to be allowed. In support of his arguments, the counsel for the petitioner has relied on Bashiruddin Halhipparga vs Rajashekhar Basavaraj Patil AIR 2004 (Kar) 471, Mudi vs State Election Commission, U.P. & Ors. 2001 Allahabad Civil General Page (419), Sopan Sukhdeo Sable vs Assistant Charity Commissioner 2004 (3) SCC 137, K. Kamaraja Nadar vs Kunju Thevar AIR 1958 SC 687, Devendra Yadav vs District Election Officer 2011 (9) ADJ 219, Viresh Kumar Tiwari vs Additional District Judge, Ballia & Ors. 2014 (1) ADJ 486 and G.V. Sreerama Reddy vs Returning Officer AIR 2010 (SC) 133.

Rebutting the arguments of the counsel for the petitioner, the counsel for respondent nos. 6 and 8 has argued that through the order dated 29.1.2018, the revisional court has merely remanded back the matter to the trial court to pass fresh orders in accordance with law after hearing the parties and the contentions of the petitioner raised before this court can also be considered by the trial court. It has been argued that for the aforesaid reason, the impugned order is not adverse to the petitioner and the petition filed under Article 227 of the Constitution of India is not maintainable and is liable to be dismissed as such. It has been further argued by the counsel for respondent nos. 6 and 8 that material facts and particulars regarding allegations of corrupt practices alleged by respondent no. 6 were given in the election petition and, therefore, the election petition was not liable to be rejected under Order 7 Rule 11 of CPC. It was argued that the election petition was presented personally by respondent no. 6 and the respondent no. 6 was personally present in the court when the election petition was being presented to the Prescribed Authority. It has been argued that the scrawl on the

first page of the Election Petition and the recitals in the order sheet of the case prepared by the Prescribed Authority and referred to by the counsel for the petitioner, are not relevant or sufficient to decide whether the election petition was personally presented by respondent no. 6 or not and the said recitals and scrawl do not prove that the petition was not presented personally by the petitioner and, therefore, the election petition cannot be dismissed at the very threshold on the ground that it did not fulfill the requirements of Section 12-C (3) of the Act, 1947. The counsel for respondent no. 6, on the strength of averments made in paragraph nos. 6, 7 and 8 of the counter affidavit filed by respondent nos. 6 and 8, states that the scrawl on the first page of the election petition suggesting that the election petition was presented by one Raj Kumar Pandey, Advocate is a result of manipulation in the documents and made subsequent to the presentation of the election petition and the scrawl is neither an endorsement by the counsel nor an acknowledgment by the Prescribed Authority or his office. It was further argued by the counsel for respondents that a decision on the issue regarding presentation of election petition requires an inquiry into facts which were neither pleaded nor argued by the petitioner in the courts below and, therefore, the petitioner cannot be permitted to raise the issue, for the first time, before this Court under Article 227 of the Constitution of India. It was argued by the counsel for the respondents that the operative part of the order dated 8.6.2017 passed by the Prescribed Authority was not in agreement with the findings recorded by the Prescribed Authority and, therefore, no illegality was committed by the Revisional Court by remanding back the matter to the Prescribed Authority vide its order dated 29.1.2018. It was argued by the counsel for the respondents that for the aforesaid reasons, the petition filed under Article 227 of the Constitution of India challenging the order dated 29.1.2018 lacks merit and is liable to be dismissed.

I have considered the rival submissions of the counsel for the parties and also perused the written arguments filed by them.

Before considering the rival submissions of the counsel for the parties, it would be appropriate to keep in mind that election is a method devised to ascertain the wishes of the electorate regarding the person who should represent them in the representative body for which the election is held. Thus, a free, fair and fearless election is the bedrock of a representative democracy. It is also important for a properly functioning representative democracy that the elected representative of the people should not be unnecessarily harassed and dragged in frivolous and vexatious litigations as the same would obstruct the successful candidate from performing his duties as the elected representative of the people. However, at the same time, it is also necessary to ensure that the results of the election reflect the will of the electorate. It is also to be remembered, as observed by the Supreme Court in *Jagan Nath vs Jaswant Singh & Ors*. AIR 1954 SC 210, "that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and the courts possess no common law power." (Paragraph 7 of the reports). It was further observed in the aforesaid case that an election petition must strictly conform to the requirements of the law. However, at the same time it is also to be remembered that a hypertechnical approach while considering an Election Petition may frustrate the very purpose of holding the elections. Thus, a balanced judicial approach is required while considering any election petition or any matter relating to an election petition remembering that the election of a successful candidate should not be lightly interfered with but at

the same time no one should get elected by flagrant breaches of election law or by corrupt practices.

The arguments of the counsel for the parties shall be considered in light of the aforesaid judicial approach advised by our courts in their different judgments.

The first argument of the counsel for the petitioner is regarding improper presentation of Election Petition No. 1 of 2015-16. The arguments of the counsel for the parties, have been narrated, in detail, in the earlier paragraphs and are, therefore, not being repeated here.

The provisions regarding filing of an election petition under the Act, 1947 and relevant for the present case are Sections 12-C (3) & 12-C (4) of the Act, 1947. The aforesaid provisions are reproduced below:

"12-C. Application for questioning the elections - (1) The election of a person as Pradhan shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground that -

(3) - The application under sub-section (1) may be presented by any candidate at the election or any elector and shall contain such particulars as may be prescribed.

Explanation. - Any person, who filed a nomination paper at the election, whether such nomination paper was accepted or rejected, shall be deemed to be a candidate at the election.

(4) The authority to whom the application under sub-section (1) is made shall, in the matter of -(i) hearing of the application and the procedure to be followed at such hearing;(ii) setting aside the election, or declaring the election to be void or declaring the applicant to be duly elected or any other relief that may be granted to the petitioner, have such powers and authority as may be prescribed."

The Supreme Court in G.V. Sreerama Reddy (supra) while interpreting Section 81 of Act, 1951, which is similar to Section 12-C(3) of Act, 1947, held that an election petition should be presented personally by the person challenging the results of the election and if the election petition was not presented personally by such a person, the election petition was liable to be dismissed on ground of improper presentation. However, in G.V. Sreerama Reddy (supra), the Supreme Court also referred, with approval, its previous judgement in Sheo Sadan vs Mohan Lal Gautam 1969 (1) SCC 408, wherein it was held that requirement of law would be fully satisfied if the election petition was presented by the Advocate's clerk in the immediate presence of the person filing the election petition. The observations of the Supreme Court in paragraph no. 4 of the judgment reported in Sheo Sadan (Supra) are reproduced below:

"4. The High Court has found as a fact that the election petition was presented to the registry by an advocate's clerk in the immediate presence of the petitioner. Therefore, in substance though not in form, it was presented by the petitioner himself. Hence

the requirement of the law was fully satisfied."

(Emphasis added) It would also be relevant to note that in G.V. Sreerama Reddy (supra), the election petition was not only not presented personally by the petitioner but the election petitioner was not even present while the election petition was presented only by the Advocate and the said fact was recorded by the concerned Registrar of the High court. The Supreme Court noticed the aforesaid fact while holding that the election petition was rightly dismissed due to improper presentation. The relevant observations of the Supreme Court are reproduced below:-

"In view of the endorsement by the Registrar (Judicial) on 07.07.2008 that the election petition was presented only by an advocate and not by the election petitioners, we accept the reasoning of the High Court in dismissing the election petition."

(Emphasis added) However, it would be relevant to note that the judgements of the Supreme Court in Sheo Sadan (Supra) and G.V. Sreerama Reddy (Supra) were in the light of Section 86(1) of Act, 1951 which provides that the High court shall dismiss an election petition which did not comply with the provisions of Section 81 of the Act, 1951. No provision in Act, 1947 or Rules, 1994 similar to Section 86(1) of Act, 1951 has been brought to the notice of this court by the counsel for the parties. Be that as it may, this Court in Viresh Kumar Tiwari (supra), relying on the judgment of the Supreme Court in G.V. Sreerama Reddy (supra), held that under Section 12-C (3) of the Act, 1947, an election petition had to be presented personally by the person challenging the results of the election and non compliance of Section 12-C(3) would be fatal to the election petition. The same view was taken by this Court in Devendra Yadav (supra) regarding election petitions filed under the The Uttar Pradesh Zila Panchayats (Election of Adhyaksha and Up-Adhayaksha and Settlement of Election Disputes) Rules, 1994 (hereinafter in short referred to as "Zila Panchayat Rules 1994'). However, a reading of the judgments of this court in Viresh Kumar Tiwari (supra) and Devendra Yadav (supra) also shows that the election petition would not be dismissed by the the concerned tribunal due to improper presentation if the election petition was presented to the tribunal in the immediate presence of the election petitioner. Relying on the aforesaid judgments of this Court, the counsel for the petitioner has argued that Section 12-C (3) of the Act, 1947 required that the petition had to be presented personally by the respondent no. 6 and non-compliance of the aforesaid requirement would be fatal to the election petition. The counsel for the petitioner has argued that the election petition was not presented personally by respondent no. 6 or in her immediate presence and in support of his aforesaid argument, the counsel for the petitioner, has relied on the recitals in the order sheet of the case and the imprint on the first page of the election petition. The counsel for the respondent nos. 6 and 8 has not disputed the aforesaid proposition of law regarding presentation of election petition under Section 12-C (3) of Act, 1947. Thus the issue in the present case is as to whether the recitals in the order-sheet of the Prescribed Authority and the imprint on the first page of the election petition, prove that the Election Petition was not presented personally by respondent no. 6 or in her immediate presence and, therefore, did not comply with the requirements of Section 12-C (3) of the Act, 1947 inviting dismissal at the very threshold.

Before considering the facts of the present case, it would be appropriate to first consider the judgments of this court in Devendra Yadav (supra) and of the Supreme Court in G.V. Sreerama Reddy (supra) which have been relied upon by the counsel for the petitioner in support of his contention based on the recitals in the order sheet of the tribunal.

The election petition in Devendra Yadav (supra) was filed under Rule 33 of Zila Panchayat Rules, 1994. An election petition filed under Rule 33 of Zila Panchayat Rules, 1994, is presented to the Judge. Judge has been defined in Section 2 (24) of the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter in short referred to 'Act, 1961') as District Judge or any other sub-ordinate Civil Judicial Officer named or designated by the District Judge in this behalf. The proceedings in the civil court and the presentation of any application before the judicial officers of the civil court are regulated by General Rules (Civil) framed by the High Court in exercise of powers conferred by Article 227 of the Constitution of India and Section 122 of CPC. Rule 35 in Chapter III of the General Rules (Civil) provides that at the back of all complaints presented before the civil court, the Munsarim of the civil court shall note the name of the presenter and Rule 27 of the said rule provides that every application or petition shall bear the name and full signature or thumbmark of the person actually presenting the same. Rules 27 and 35 of the General Rules (Civil) are reproduced below:

"27. Person presenting application. - Every application or petition shall at the time of presentation bear the name and also full signature or thumb mark of the person actually presenting the same together with the date of presentation.

35. Munsarim's duty in respect of complaints.-A Munsarim of a Civil Court appointed to receive complaints shall examine each complaint presented to him, and shall report thereon whether the provisions of the Code and the Court-fees Act, have been observed, whether the claim is within the jurisdiction of the Court, constitutes a cause of action, and has been presented within the period prescribed for the institution of such a suit, and whether the complaint is otherwise in proper form including that in suit where a notice under section 80, CPC, is necessary, such a notice has been given. The Munsarim shall see that the actual date of the presentation of the complaint is entered upon the impressed stamp and adhesive label, if any, below the date of purchase endorsed on them.

On the back of all complaints, the Munsarim shall note

(a) date of presentation of the complaint,

(b) name of presenter,

(c) classification of suit, and

(d) Court-fee paid."

It is common knowledge that the civil courts follow the above formalities prescribed in General Rules (Civil) even while acting as tribunal under any Special enactments unless the enactment itself provides for some different procedure to be followed or formalities to be completed at the time of filing any application. Thus, as a matter of practice, the Munsarim of the civil court, records the name of the presenter at the back of any petition filed before the Judge under Rule 33 of the Zila Panchayat Rules 1994. In Devendra Yadav (supra), the election petition was presented before the Munsarim who submitted his report that the petition was presented by the Advocate and relying on the said report, the Judge recorded the fact, as reported by the Munsarim, in the order-sheet of the case. This Court considered the report of the Munsarim and the recital by the Judge in the order-sheet and held that election petition was not presented personally by the petitioner or in his presence. It is evident that in Devendra Yadav (supra), there was a specific report of the Munsarim and a statement of fact in the order sheet of the case recorded by the Judge identifying the person who had presented the election petition.

Similarly in G.V. Sreerama Reddy (Supra) also there was a report by the Registrar (Judicial) of the High Court categorically reporting that "the election petition was presented only by the Advocate and not the election petitioners.' The report contains a statement of fact regarding the person who had presented the election petition.

The order-sheet of 21.12.2015 and 29.12.2015 prepared in Election Petition No. 1 of 2015-16, from which the present petition arises, are reproduced below:-

21-12-2015 vkt i=koyh izkIr gksdj is'k gqvka vr% iks" k.kh;rk ij lquok;h gsrq i=koyh fnukad 28-12-2015 dks is'k gksA gLrk{kj@vifBr 29-12-2015 i=koyh is'k gqbZA ;kfpdk drhZ dks lqk x;kA ;kfpdk fopkjkFkZ Lohdkj djrs gq, iathd`r fd;k tk;A vU; i{kksa dks uksfVl@leu vkfn tkjh gksA i=koyh fnukad 16-7-2016 dks is'k gksA gLrk{kj@vifBr The counsel for the parties have not brought to the notice of this Court any rules framed by the State Government prescribing the procedure to be followed or formalities to be completed by the Prescribed Authority or his office when an election petition is presented to the Prescribed Authority under Section 12-C (3) of Act, 1947. Further, the counsel for the parties have also not brought to the notice of the Court any practice commonly followed by the Prescribed Authorities in the State of Uttar Pradesh when an election petition is presented to the Prescribed Authority. Under Rule 3 of Rules, 1997, the concerned Sub-Divisional Officer has been nominated as the Prescribed Authority to decide the election petitions filed under Section 12-C of the Act, 1947. The Sub-Divisional Officer is part of the executive structure of the State. It is common knowledge that the Sub-Divisional Officers and their ministerial staffs are not necessarily persons having knowledge of law and conscious of the importance and sanctity of the recitals in the order-sheet prepared in any case. The aforesaid explains the careless manner in which the order-sheet for 21.12.2015, i.e., the date on which the election petition was presented to the Prescribed Authority, has been prepared by the Prescribed Authority. The Prescribed Authority acts as Tribunal while hearing an election petition and it is expected that while preparing the order sheets in any election contest the Prescribed Authority and his staff shall act more

responsibly.

An order-sheet of a court or a tribunal is conclusive evidence of the proceedings of the court and cannot be controverted, either through an affidavit or any evidence produced by the parties. The observations of the Supreme Court in paragraph no. 4 of its judgment in *State of Maharashtra vs R.S. Nayak* 1982 (2) SCC 463 are relevant for the purpose and are reproduced below:

"When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." [Per Lord Atkinson in *Somasundaram Chetty v. Subramanian Chetty*, AIR 1926 PC 136 : 99 IC 742] We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. [Per Lord Buckmaster in *Madhu Sudan Chowdhri v. Chandrabati Chowdhrai*, AIR 1917 PC 30 : 42 IC 527] That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

(Emphasis added) It is obvious from the aforesaid observations of the Supreme Court that the recitals in the order-sheets of the court are evidence only of the facts stated in the order-sheet and are not evidence of non-existence of any fact not stated in the order-sheet. The order-sheet of a court or a tribunal is an evidence only of 'statement of facts' regarding what transcribed in the court and recorded in the order-sheet. In other words, the recitals in the order-sheet of a court/tribunal only

proves the facts noted in the order-sheet and no other fact unless the existence or non-existence of any fact can be necessarily implied from the recitals in the order-sheet.

In the present case, the order-sheet dated 21.12.2015 does not contain any reference to the person who had presented the election petition. It merely acknowledges that the records had been produced before the Prescribed Authority. There is no statement in the order sheet regarding the person who had presented the election petition. The order-sheet dated 21.12.2015 is incomplete and is not a complete report of the events in the court of the Prescribed Authority. The recitals in the order sheet of the present case are different from the recitals in the order-sheets in G.V. Sreerama Reddy (supra) and Devendra Yadav (supra). In the aforesaid cases the recitals in the order-sheet of the court identified the persons who had presented the election petition. In these circumstances, it cannot be held that the absence of any reference in the order-sheet dated 21.12.2015 regarding the person who had presented the election petition necessarily implies that the petition was not presented personally by respondent no. 6 or that the respondent no. 6 was not present in the court when the election petition was presented to the Prescribed Authority.

Thus, the argument of the counsel for the petitioner relating to compliance of Section 12-C (3) of the Act, 1947, so far as it is based on the recitals in the order-sheet of the Prescribed Authority can not be accepted.

It was further argued by the counsel for the petitioner that the imprint on the first page of the election petition shows that the election petition was presented by the Advocate and not by respondent no. 6 herself. The imprint referred to by the counsel for the petitioner is reproduced below:

izLrqdrkZ jktdqekj ik.Ms;] ,MoksdsV 21-12-2015 It is not certain and there is no evidence on record nor any evidence has been referred by the counsel for the petitioner to show that the scribble 'Raj Kumar Pandey' is the signature of the counsel for respondent no. 6. In her counter affidavit, the respondent no. 6 has categorically stated that the aforesaid imprint is a result of manipulation in the documents made after the filing of the election petition. I am not expressing any opinion on the rival contentions regarding the genuineness of the aforesaid imprint as it requires an inquiry into disputed questions of fact which can not be decided on the basis of records filed before this Court. It is sufficient to note that the aforesaid imprint on the first page of the election petition has not been acknowledged by the Prescribed Authority or any staff of the Prescribed Authority through any official signature or stamp. The said imprint cannot be treated as part of the proceedings of the court and no sanctity can be attached to the imprint as is attached to the records prepared by the courts describing the proceedings in the court. Further, the said endorsement does, at the most, prove that the petition was presented by the counsel for respondent no. 6 and does not in any way establish that respondent no. 6 was not personally present in the court when the petition was being presented to the Prescribed Authority. In view of the judgment of the Supreme Court in Sheo Sadan (supra) as well as of this Court in Devendra Yadav (supra) and Viresh Kumar Tiwari (supra), it

can be held that even if respondent no. 6 had not personally presented the petition to the Prescribed Authority, the said fact would not itself be fatal for the election petition and would not invite a dismissal on ground of improper presentation if respondent no. 6 was present in the court when the petition was being presented to the Prescribed Authority. Thus, the imprint on the first page of the election petition also does not help the petitioner and the argument of the counsel for the petitioner that the said imprint shows that the election petition did not comply with the requirements of Section 12-C (3) of the Act 1947 is not acceptable and is rejected.

It is evident that the issue regarding compliance of Section 12-C (3) of the Act, 1947 required an inquiry into disputed questions of fact and cannot be decided on the basis of documents referred to by the counsel for the petitioner. In her written statement filed before the Tribunal, the petitioner did not specifically allege that the election petition was not presented personally by respondent no. 6 or in her immediate presence. No such allegation was specifically made by the petitioner in her application filed before the Prescribed Authority praying that the Election Petition be rejected under Order 7 Rule 11 CPC. A bald and vague allegation was made before the Prescribed Authority that the election petition was contrary to Section 12-C of the Act, 1947 and Rule 4 of Rules, 1994. There is no categorical averment by the petitioner in any pleadings or application filed before the Prescribed Authority that the petition was not presented personally by respondent no. 6 or in her immediate presence. Further, no specific issues were framed by the Tribunal on the dispute regarding presentation of the petition and compliance of Section 12-C (3) of the Act, 1947 and there is no averment in the petition filed in this court that the petitioner had insisted before the Tribunal that an issue be framed regarding compliance of Section 12-C (3) of the Act, 1947. It is evident that the argument regarding compliance of Section 12-C (3) of the Act, 1947 is being raised by the counsel for the petitioner for the first time in this Court merely on the basis of recitals in the order-sheet and the imprint on the first page of the election petition. Further, under Section 114 (e) of The Indian Evidence Act, 1872 all judicial and official acts are presumed to have been regularly performed. The said presumption is rebuttable and the petitioner was entitled to rebut the same by producing evidence after getting an Issue framed on the controversy. The petitioner could have demanded an Issue to be framed on the said controversy only after clearly stating, as a fact, in his written statement that the election petition was not presented personally by respondent no. 6 or in her immediate presence. The petitioner failed to take any such steps. The petitioner cannot now be permitted to raise any dispute regarding presentation of the election petition. For the aforesaid reasons, the argument of the counsel for the petitioner that the election petition was liable to be dismissed for improper presentation and non-compliance of Section 12-C (3) of the Act, 1947 is not acceptable and is rejected.

The next argument of the counsel for the petitioner was that the material facts and material particulars in support of the charges made in the election petition were not stated in the election petition and, therefore, the election petition was liable to be

rejected under Order 7 Rule 11 of CPC. The counsel for the petitioner has submitted that it was the duty of the Prescribed Authority to consider, at the very threshold, as to whether the petition was liable to be rejected under Order 7 Rule 11 (a) of CPC and as the power under Order 7 Rule 11 can be exercised at any stage, therefore, the Prescribed Authority should have considered and decided the application filed by the petitioner for rejecting the Election petition under Order 7 Rule 11, before deciding the case on merits. It was argued that the Prescribed Authority, while passing the order dated 13.5.2016 had erred in law, by holding that the application would be considered at the time of final decision to be passed in the case. It was argued that in case the election petition did not disclose a cause of action, it would be futile to remand back the matter to the trial court and unnecessarily push the petitioner to participate in a frivolous and vexatious trial. It has been argued by the counsel for the petitioner that assuming that there was some error in the findings of the Prescribed Authority, the matter was not liable to be remanded back to the Prescribed Authority as a remand would only restore frivolous proceedings and, therefore, the remand order was liable to be set-aside and the present petition was liable to be allowed.

It would serve no purpose to consider the legality of the order dated 13.5.2016. The matter is now before this Court and the argument of the counsel for the petitioner in relation to Order 7 Rule 11 can be decided only by perusing the election petition, and therefore, I have considered as to whether the Election petition was liable to be rejected under Order 7 Rule 11 of CPC.

In paragraph no. 7 of the election petition, respondent no. 6 has alleged that the petitioner i.e. the elected candidate had caused rioting and stone pelting because of which 50 voters of respondent no. 6 could not cast their votes. In paragraph no. 7 of her election petition, the respondent no. 6 has also alleged that Sri Shiv Shanker Singh, i.e. the brother-in-law of the petitioner and a kotedar, was officially given the charge of managing the polling booths and using his aforesaid position entertained the Polling Officers at his residence in the evening before the day of polling. It has been alleged that the aforesaid Shiv Shanker Singh, taking advantage of his position as the person in charge of managing the polling booths, indulged in bogus voting with the assistance of the Polling Officers posted at the polling booths. In relation to stone pelting and rioting caused by the petitioner, it was argued by the counsel for the petitioner that, in her election petition the respondent no. 6 has not given the name of the persons who had allegedly refrained from casting their votes in the election as a result of stone pelting and rioting caused by the petitioner, i.e. the elected candidate, and their serial number in the voters list has also not been given in the election petition and therefore the material facts and material particulars regarding the said allegation have not been provided in the election petition. In her petition filed in this court, the petitioner has raised the ground that the consent of the candidate in regard to the alleged corrupt practice is a material fact which has not been pleaded in the election petition filed by respondent no. 6. It has been argued that for the aforesaid reasons the election petition was liable to be rejected under

Order 7 Rule 11 CPC.

Before considering the arguments of the counsel for the petitioner, it would be appropriate to first examine the law, statutory as well as precedential, defining the essentials of pleadings in an election petition and also the definition of corrupt practice provided in the Act, 1947 because what would constitute a material fact relating to any charge made in an election petition filed under the Act, 1947 would depend on the ingredients of corrupt practice as defined in the Act, 1947.

The Rules, 1994 govern the procedure to be followed in the trial of election petitions filed under Section 12-C of the Act, 1947. Rule 3 (1) and 4 (1) of Rules, 1994 which are relevant for the present purpose are reproduced below:

"3. Election Petition.-(1) An application under sub-section (1) of Section 12-C of the Act shall be presented before the Sub-Division Officer, within whose jurisdiction the concerned Gram Panchayat lies, within ninety days after the day on which the result of the election questioned is announced and shall specify the ground or grounds on which the election of the respondent is questioned and contain a summary of the circumstances alleged to justify the election being questioned on such ground: Provided that no such application shall be entertained unless it is accompanied by a treasury challan to show that the amount of rupees fifty has been deposited in the Personal Ledger Account of the Gram Panchayat concerned as security.

4. Hearing of the petition.- (1) Subject to the provisions of the Act and these rules, every election petition shall be tried by the Sub-Divisional Officer, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, for the trial of suits:"

A reading of Rule 3 of Rules, 1994 shows that the election petition has to specify the ground or grounds on which the election of the Gram Pradhan was being questioned and shall also contain a summary of the circumstances alleged to justify the election being questioned on such ground. Further, a reading of Rule 4 of Rules, 1994 shows that the trial of election petition shall be conducted, so far as possible, according to the procedure prescribed in CPC. The provisions in CPC, relating to pleadings and rejection of plaint, apply as guidelines to the trial of election petitions filed under the Act, 1947.

Rule 3 of Rules, 1994 provides that an Election petition shall contain the summary of the circumstances justifying the grounds on which the election was being questioned. The phrase "summary of circumstances' used in Rule 3 does not mean a casual and incomplete statement of facts. The phrase "summary of circumstances alleged to justify the election being questioned' used in Rule 3 of Rules 1994 has the same meaning as the phrase "a statement in a concise form of the material facts on which the party pleading relies for his claim' used in Order 6 Rule 1 CPC.

Under Order 7 Rule 11 (a) of CPC, a plaint is liable to be rejected if it does not disclose a cause of action. Before considering whether, in the present case, the election petition did not disclose a cause of action and was thus liable to be rejected under Order 7 Rule 11 of CPC, it would be relevant to state, in short, the law relating to pleadings and what would constitute material facts and material particulars in an election petition.

It is a sacred rule that the court is not to dictate to the parties how they should frame their case provided the parties do not offend against the rules of pleading which have been laid down by law. Every plaint shall contain the facts constituting the cause of action and when it arose [Order 7 Rule 1(e) CPC]. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit and for the said purpose the material facts and not the evidence are required to be stated in the plaint. Whether a plaint discloses a cause of action or not is a question of fact and whether a cause of action is disclosed or not is to be found out from a reading of the plaint itself and for the said purpose the averments made in the plaint in their entirety must be held to be correct. The veracity of the averments made in the plaint or the chances of the allegations made in the plaint being proved are not relevant while deciding an application under Order 7 Rule 11 of CPC. Even though under the election laws, a corrupt practice has got to be strictly proved but the aforesaid does not lead to the conclusion that pleadings in an election petition should also receive a strict construction. If a pleading on a reasonable construction could sustain the action, the court should accept that construction and should not adopt a pedantic approach to defeat the ends of justice on hair-splitting techniques. The intention of the party concerned has to be gathered primarily from the tenor and terms of the plaint read as a whole. There cannot be a partial rejection of the plaint and, while deciding whether the plaint was liable to be rejected under Order 7 Rule 11, the court would not dissect the pleadings into several parts and consider whether each one of them discloses a cause of action.

The observations of the Supreme Court in paragraph no. 16 of *Raj Narain vs India Nehru Gandhi* 1972 (3) SCC 850 are relevant for the present purpose and are reproduced below:

"16. Reference to Yashpal Kapur as an election agent on a date prior to the date when he was appointed as such-his nomination as an election agent could not have been done before February 1, 1971 is clearly a misnomer but that is irrelevant. The mention in paragraph 5 of the election petition that Yashpal Kapur organised the electioneering work in the constituency at the direction of the respondent even before her nomination and again the reference to her candidature in January in paragraph 6 shows that according to the petitioner the respondent was a "candidate" even before her nomination and further that she obtained the assistance of Yashpal Kapur when he was still a gazetted officer. There is no gainsaying the fact that the election petition was not artistically drawn up. That unfortunately is the case with most of our pleadings. But if the petition is read reasonably, as it should be, it is clear that the allegation of the petitioner is that the services of Yashpal Kapur were obtained by the respondent when she had already become a candidate and when she so obtained his assistance, Yashpal Kapur was still a Gazetted Officer. It is true that one of the ingredients of the corrupt practice alleged i.e., that when the respondent obtained the

assistance of Kapur, she was a candidate is not specifically set out in the petition but from the allegations made, it flows as a necessary implication. While a corrupt practice has got to be strictly proved but from that it does not follow that a pleading in an election proceeding should receive a strict construction. This Court has held that even a defective charge does not vitiate a criminal trial unless it is proved that the same has prejudiced the accused. If a pleading on a reasonable construction could sustain the action, the court should accept that construction. The courts are reluctant to frustrate an action on technical grounds. The charge of corrupt practice in an election is a very serious charge. Purity of election is the very essence of real democracy. The charge in question has been denied by the respondent. It has yet to be proved. It may or may not be proved. The allegations made by the appellant may ultimately be proved to be wholly devoid of truth. But the question is whether the appellant should be refused an opportunity to prove his allegations? Should the court refuse to enquire into those allegations merely because the appellant or someone who prepared his brief did not know the language of the law. We have no hesitation in answering those questions in the negative. The implications of the rule of law are manifold."

(Emphasis added) Material particulars are different from material facts. Material facts are those facts which are necessary to constitute a cause of action and have to be necessarily stated in the pleading. Material particulars are those facts by means of which the material facts are proved. The function of particulars is to make the defendant understand the case that has been set-up against him and which he is required to meet at the trial. In case material particulars are not stated in the plaint, the court can allow the plaintiff to supply the required particulars and the defendant can file an application before the court asking the court to direct the plaintiff to file better particulars of the case. The absence of particulars does not justify the dismissal of a petition under Order 7 Rule 11 of CPC. A plaint cannot be dismissed for want of material particulars if the parties went to trial even though full particulars of corrupt practices alleged had not been given in the plaint. Even in appeal against the order of the trial court, the appellant will have to show that he was materially prejudiced in the trial by reason of the fact that the plaint did not contain full particulars of the allegations made in the same and in considering whether material prejudice has resulted to the defendant, the appellate court shall also consider the failure of the defendant to raise and press any objections about the absence of particulars.

The effect of absence of material particulars in an Election petition was considered by the Supreme Court in Balwan Singh vs Lakshmi Narain, AIR 1960 SC 770 and in Paragraph no. 8 of the said judgment, the Supreme Court observed as follows:-

"8. ... The practice to be followed in cases where insufficient particulars of a corrupt practice are set forth in an election petition is this. An election petition is not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged in the petition, are not set out. Where an objection is raised by the respondent that a petition is defective because full particulars of an alleged corrupt practice are not set out, the Tribunal is bound to decide whether the objection is wellfounded. If the

Tribunal upholds the objection, it should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged; and in the event of non-compliance with that order the Tribunal may strike out the charges which remain vague. Insistence upon full particulars of corrupt practices is undoubtedly of paramount importance in the trial of an election petition, but if the parties go to trial despite the absence of full particulars of the corrupt practice alleged, and evidence of the contesting parties is led on the plea raised by the petition, the petition cannot thereafter be dismissed for want of particulars, because the defect is one of procedure and not one of jurisdiction of the Tribunal to adjudicate upon the plea in the absence of particulars. The appellate court may be justified in setting aside the judgment of the Tribunal if it is satisfied that by reason of the absence of full particulars, material prejudice has resulted; and in considering whether material prejudice has resulted failure to raise and press the objection about the absence of particulars before going to trial must be given due weight."

(emphasis added) Before I advert to the pleadings in the election petition, it would be appropriate to consider the definition of corrupt practice as given in Section 12-C (2) of the Act, 1947. Section 12-C (2) (B) is relevant for the present case and defines 'undue influence' as any direct or indirect interference or attempt to interfere on the part of a candidate or of any person with the connivance of the candidate with the free exercise of any electoral right, which obviously includes the right to vote. The proviso to Section 12-C (2) (B) of the Act, 1947 states that if any such person, as has been stated in the main clause, threatens any candidate or any elector or any person in whom a candidate or any elector is interested with injury of any kind, such person shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector.

Section 12-C of the Act, 1947 is reproduced below:

"12-C. Application for questioning the elections -

(1) The election of a person as Pradhan shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground that -

(a) the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election, or

(b) that the result of the election has been materially affected -

i- by the improper acceptance or rejection of any nomination or;

ii- by gross failure to comply with the provisions of this Act or the rules framed thereunder.

(2) The following shall be deemed to be corrupt practices of bribery or undue influence for the purposes of this Act.

(A) Bribery, that is to say, any gift, offer or promise by a candidate or by any other person with the connivance of a candidate of any gratification of any person whomsoever, with the object, directly, or indirectly of including -

(a) a person to stand or not to stand as, or withdraw from being, a candidate at any election; or

(b) an elector to vote or refrain from voting at an election; or as a reward to -

(i) a person for having so stood or not stood or having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting.

(B) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or of any other person with the connivance of the candidate with the free exercise of any electoral right;

Provided that without prejudice to the generality of the provisions of this clause any such person as is referred to therein who -

(i) threatens any candidate, or any elector, or any person in whom a candidate or any elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any cast or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause."

A comparative reading of Sections 12-C (1) (a) and 12-C (1) (b) of the Act, 1947 shows that the election of a Gram Pradhan can be set-aside on ground of improper acceptance or rejection of any nomination or by gross failure to comply with the provisions of the Act or the Rules framed thereunder if such incidents had materially affected the results of the election. However, there is no requirement to prove that the results of the elections had been materially affected if the elections are challenged on the ground that corrupt practice of bribery or undue influence had extensively prevailed at the elections.

In Ram Dial vs Sant Lal AIR 1959 SC 855, the Supreme Court while dealing with Section 123 (2) of the Representation of the People Act, 1951, which is similar to Section 12-C (2) (B) of the Act, 1947, distinguished the Indian Law from the English Law and held that the Indian Law did not emphasize the individual aspect of the exercise of such undue influence but pays regard to the use of such influence as has the tendency to bring about the result contemplated. It was held by the Supreme Court in the aforesaid case that under the Indian Law, the actual effect produced by the prohibited act is not material but what is material is doing of such acts as are calculated to interfere with the free exercise of any electoral right. The relevant observations of the Supreme Court in paragraph no.

8 of the aforesaid judgment are reproduced below:

"8. It should be observed, at the outset, that the law in England, relating to undue influence at elections, is not the same as the law in India, as will appear from the following definition of " undue influence" contained in S. 2 of 46 and 47 Vic. c. 51, which substantially re-enacted the former S. 5 of 17 and 18 Vict. c. 102:

"Every person who shall directly or indirectly by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence".

The words of the English statute, quoted above, lay emphasis upon the individual aspect of the exercise of undue influence. It was with reference to the words of that statute, that Bramwell, B., made the following observations in North Durham (*supra*).

"When the language of the Act is examined it will be found that intimidation to be within the statute must be intimidation practised upon an individual."

The Indian law, on the other hand, does not emphasize the individual aspect of the exercise of such influence, but pays regard to the use of such influence as has the tendency to bring about the result contemplated in the clause. What is material under the Indian law, is not the actual effect produced, but the doing of such acts as are calculated to interfere with the free exercise of any electoral right. Decisions of the English Courts, based on the words of the English statute, which are not strictly in *pari materia* with the words of the Indian statute, cannot, therefore, be used as precedents in this country."

(Emphasis added) It flows from the aforesaid observations of the Supreme Court, that any act which has the tendency to or is calculated to threaten any candidate, or any elector or any person in whom a candidate or an elector is interested, with injury of any kind if such persons exercise or attempt to exercise their electoral rights or exercise it in a particular manner, would amount to interference in the free exercise of electoral rights of such a person and if such act is committed by a candidate or any person in connivance with the candidate, the same shall amount to undue influence and corrupt practice as defined under Section 12-C (2)(B) of the Act, 1947. In other words, doing of any act which has the tendency to or is calculated to create fear in the minds of the electorate that harm would be caused to them if they exercise or attempt to exercise their electoral rights, which includes the right to vote, or exercise their electoral rights in a particular manner would be an interference with the free exercise of the electoral rights of the electorate and thus doing of such an act would

amount to exercising undue influence under Section 12-C(2)(B) of Act, 1947. It is not possible to specify all such acts but it is obvious that stone pelting and rioting, especially at the time of polling and at the polling booths, are acts which have the tendency to and are calculated to instill such fear in the electorate deterring them from freely exercising their right to vote. Thus, stone pelting and rioting on the part of any candidate or any person either with the consent of or with the connivance of the candidate during elections, especially during polling of votes, would amount to exercise of undue influence by such person and a corrupt practice under Section 12-C (2) (B) of the Act, 1947.

Stone pelting and rioting at the polling booth and at the time of polling would also amount to booth capturing as the said acts threaten and intimidate the electors and prevent them from going to the polling booth to cast their votes.

Booth capturing has not been defined in the Act, 1947 but has been specified as an electoral offence under Section 135-A of Act, 1951. Section 135-A of Act, 1951 is reproduced below:-

"135-A. Offence of booth capturing.--[(1)] Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine].

Explanation.--For the purposes of this sub-section and Section 20-B], "booth capturing" includes, among other things, all or any of the following activities, namely:--

- (a) seizure of a polling station or a place fixed for the poll by any person or persons making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections;
- (b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from free exercise of their right to vote];
- (c) [coercing or intimidating or threatening directly or indirectly] any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;
- (d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;
- (e) doing by any person in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the

prospects of the election of a candidate."

Bogus voting is an act where a person forcibly and illegally puts into the ballot box a ballot paper which he is not authorized to put in the same with the intention to get a particular result in the election. Apparently bogus voting is an interference in the free exercise of their electoral rights by the electors whose ballots have been put in the ballot box by person other than the said elector, whether those persons had decided to abstain from casting their votes in the election or they had decided to cast their votes in favour of any person. Thus, it is evident that bogus voting by any candidate or any person with the connivance of the candidate would also be an act of undue influence and corrupt practice as defined in Section 12-C (2) (B) of the Act, 1947.

The charge against any candidate of practicing undue influence in the elections as defined in Section 12-C(2)(B) of Act, 1947 would be complete if it is stated in the election petition that the candidate, or any other person with the consent of or in connivance with the candidate, indulged in the acts, specified in the election petition, and such acts have the tendency to or are calculated to create fear in the minds of the electorate that harm would be caused to them if they exercise their electoral rights, which includes the right to vote. As observed earlier, stone pelting and rioting have the tendency to and are calculated to create such fear in the minds of the electorate. Proof that there was rioting and stone pelting on the polling day and at the polling booth which deterred the voters from exercising their right to vote and such rioting and stone pelting was caused by the candidate declared elected or any person with the connivance of such a candidate, would in itself be sufficient to set-aside the election and the election petitioner would not be required to prove that such acts had materially affected the elections. The names of the persons who allegedly did not cast their votes as a result of stone pelting and rioting is not a material fact necessary to complete the charge of undue influence but are evidence to prove the charge and can at best be termed as material particulars.

The argument of the counsel for the petitioner that the election petition was liable to be rejected under Order 7 Rule 11 would be considered in the light of law stated above. In paragraph 7 of her election petition the respondent no. 6 has stated that on the polling day, the petitioner had caused stone pelting and rioting at the polling booths because of which fifty of her voters could not cast their votes. In her election petition, the respondent no. 6 has alleged that stone pelting and rioting were caused by the petitioner herself, i.e., the candidate. The material facts relating to the charge have been stated in the election petition and the name of the fifty voters who did not cast their vote as a result of stone pelting and rioting or their serial number in the voter list are not a material facts required to be stated in the election petition. Allegation of exercising undue influence is a charge of corrupt practice and respondent no. 6 was not required to plead in her election petition that the act of petitioner had materially affected the elections. The charge of practising undue influence would have been complete even if, in her election petition, the respondent no. 6 had only stated that, on the polling day, the petitioner had caused stone pelting and rioting at the polling booths which deterred the voters from casting their votes.

In her charge relating to bogus voting by Sri Shiv Shanker Singh, the respondent no. 6 has not specifically averred that Sri Shiv Shanker Singh had indulged in the aforesaid act with the consent

and connivance of the candidate, i.e., the petitioner. However, as observed earlier, the pleadings in an election petition have to be read as a whole and while construing the pleadings the intention of the parties has to be gathered from the tenor and terms of the pleadings taken as a whole. In *Raj Narain* (Supra) the Supreme Court, while observing that the pleadings in an Election petition do not have to be strictly interpreted, held the charge of corrupt practice alleged in the election petition to be complete even though one of the ingredients of corrupt practice was not specifically mentioned in the petition but flowed, as a necessary implication, from the allegations already made. In paragraph no. 7 of the election petition, it has been stated by the respondent no. 6 that she had complained to the Returning officers about the conduct of Shiv Shanker Singh in carrying out bogus voting but her complaints were ignored by the Returning officers. It has been alleged in the election petition that Shiv Shanker Singh is the brother-in-law of the petitioner. If the Election petition filed by respondent no. 6 is read in the light of law stated hereinbefore and the observations of the Supreme Court in *Raj Narain* (Supra) it would be clear that the allegation that bogus voting was carried out at Booth nos. 81, 82, 83 and 84 by Sri Shiv Shanker Singh with the consent and connivance of the petitioner flows as a necessary implication from the pleadings of the petitioner. In any case, the charge of stone pelting and rioting allegedly caused by respondent no. 6 herself, which is part of paragraph no. 7 of the election petition filed by respondent no. 6, is complete and, as held earlier, all material facts regarding the said charge have been stated in the election petition.

As a plaint cannot be rejected in part and even if one of the allegation made in the plaint is sufficient to permit a trial of the case and not to reject the plaint under Order 7 Rule 11 of CPC, I have refrained from expressing any opinion regarding other allegations made in the election petition and have also not referred to the argument of the counsel for the petitioner in relation to other allegations made in the election petition.

In light of the aforesaid reasons, it is evident that the election petition filed by respondent no. 6 is not liable to be rejected under Order 7 Rule 11 of CPC. Whether the respondent no. 6 has been able to prove the allegations made in her election petition would be a different issue and is not for this Court to record any findings on the said issue. As a consequence of the remand order passed by the Revisional court, the matter is pending before the Prescribed Authority who shall record his findings after considering the evidence on record.

The next question that arises for consideration before this court is whether the election petition filed by respondent no. 6 should fall because the material particulars in support of the charges have allegedly not been given in the election petition. A perusal of the written statement filed by the petitioner in Election Petition No. 1 of 2015-2016, shows that the petitioner did not raise any grievance in her written statement that the election petition filed by respondent no. 6 did not contain the material particulars in support of the allegations made in the election petition and because of absence of material particulars, the petitioner was not able to understand the allegations of respondent no. 6 and was also not able to effectively reply to the said allegations. Replying to the allegations made in paragraph 7 of the election petition, the petitioner in paragraph 7 of her written statement merely pleaded that the allegations in paragraph no. 7 of the election petition were babbles and baseless. In her application filed for rejecting the election petition under Order 7 Rule 11 of CPC also, the petitioner did not raise any objections that the election petition did not contain

material particulars in support of the allegations made in paragraph 7 of the election petition. In the said application, the petitioner has merely stated that the allegations are not important and can not be believed. In the petition filed before this court, the petitioner has not stated that any application was filed by her praying that respondent no. 6, i.e. the election petitioner, be directed to provide better particulars in support of the allegations made in paragraph no. 7 of the election petition. It has also not been stated in the present petition that the petitioner had insisted for better particulars at the time the issues were being framed by the trial court. The petitioner went to trial and led his evidence fully understanding the case he had to meet and was charged with. The issues framed by the Prescribed Authority have been stated earlier and a perusal of the issues framed in the case shows that the petitioner had notice of the case that was being taken up by the respondent no. 6. The petitioner has also not stated in the petition filed before this court that any material prejudice was caused to her due to the absence of material particulars in support of charges made in paragraph no. 7 of the election petition. Thus, even if the contention of the counsel for the petitioner regarding absence of material particulars in support of the allegations made in the election petition is accepted, no material prejudice has been caused to the petitioner and therefore the election petition filed by respondent no. 6 can not be dismissed at this stage on the ground that it allegedly does not contain material particulars in support of the allegations made in the election petition. For the same reasons, I am not expressing any opinion as to whether the election petition filed by respondent no. 6 contains material particulars in support of the allegations made in paragraph no. 7 of the election petition.

The third argument that was raised by the counsel for the petitioner was that the election petition was not maintainable as, in her election petition, the respondent no. 6 had prayed for a declaration that the election of the petitioner was void and had further prayed to declare the respondent no. 6 elected as Gram Pradhan of the Gram Panchayat under the Act, 1951. It was argued that the election of a Gram Pradhan in the State of Uttar Pradesh is held under the Act, 1947 and the relief sought by respondent no. 6 could be granted under the Rules, 1994 and not the Act, 1951. It was argued that the relief sought by respondent no. 6 in her election petition, was on the face of it, not maintainable and thus the election petition was liable to be rejected at the threshold. In paragraph 16 of *Sopan Sukhdeo Sable* (supra), the Supreme Court observed that there was a difference between statement of facts disclosing a cause of action and the reliefs sought for in the plaint. The reliefs claimed do not constitute the cause of action. It is also settled law that considerations of form do not override the considerations of substance and it is not the form of relief but the substance of the relief that is relevant. The relief prayed in any plaint depends upon the pleadings of the plaintiff. An erroneous reference to a statutory provision in the relief clause may indicate ignorance of the plaintiff regarding the legislative enactment applicable in the case but cannot be a reason to reject the plaint as such. The pleadings in the election petition filed by respondent no. 6 clearly showed that her grievance was regarding the irregularities committed in the elections held for the post of Gram Pradhan and the petitioner filed her written statement and went to trial knowing that the election petition was filed for setting aside the election of the petitioner and for declaring the respondent no. 6 the elected Gram Pradhan of the Gram Panchayat. For the aforesaid reason, the argument of the counsel for the petitioner based on the wordings in the relief clause of the election petition is also not acceptable.

No other arguments were raised by the counsel for the petitioner on the legality of the remand order passed by the revisional court.

In view of the reasons given above, it is held that the election petition filed by respondent no. 6 was not liable to be rejected either on ground of improper presentation or under Order 7 Rule 11 CPC or because of an erroneous reference to Act, 1951 in the relief clause of the election petition. Consequently, the respondent no. 6 is entitled to a judgment on merits in Election Petition No. 1 of 2015-16.

For the aforesaid reasons, the present petition under Article 227 lacks merit and is liable to be dismissed.

However, as the election petition is pending before the Prescribed Authority since 2015, the Prescribed Authority i.e. the Deputy District Magistrate, Lalganj, District Mirzapur is directed to decide Election Petition No. 1 of 2015-16 within a period of three months from the date a certified copy of this order is produced before him. In order to decide the election petition within the aforesaid period, the Prescribed Authority may also, if necessary, hold a day-to-day hearing in the case.

With the aforesaid directions, the present petition under Article 227 is dismissed.

Order Date :- 19.11.2018 Satyam