

Karim Uddin Barbhuiya
v.
Aminul Haque Laskar & Ors.
(Civil Appeal No. 6282 of 2023)
08 April 2024
[Aniruddha Bose and Bela M. Trivedi*, JJ.]

Issue for Consideration

Whether an election petition alleging corrupt practice in the nature of undue influence and alleging improper acceptance of nomination is to be rejected under Order VII Rule 11 CPC when material facts as required under s. 83 of the Representation of People Act, 1951 (RP Act) are not pleaded and where no grounds as contemplated under s. 100 RP Act are made out.

Headnotes

Representation of People Act, 1951 – Election petition filed under ss. 100(1)(b) and 100(1)(d)(i) RP Act to declare election of Appellant void – Allegation raised regarding false statement, suppression and misrepresentation of facts regarding educational qualification and suppression of fact regarding financial liability – Same amounting to corrupt practice u/s. 100(1)(b) RP Act – Further alleging improper acceptance of nomination u/s. 100(1)(d)(i) RP Act – Application filed by Appellant under Order VII Rule 11 CPC r/w s. 87 RP Act for rejection of petition – High Court dismissed said application.

Held: RP Act is self-contained code – Any rights claimed in relation to election, election dispute must be found therein – If allegations in petition do not set out grounds contemplated by s. 100 RP Act and do not conform to requirement of ss. 81 and 83 RP Act, election petition liable to be rejected under Order VII Rule 11 CPC – Pleadings to be precise, specific, unambiguous – Material facts to be pleaded to show cause of action – When alleging corrupt practice in nature of undue influence, pleadings must state full particulars as required u/s. 83(1)(b) RP Act regarding direct or indirect interference or attempt to interfere by candidate, with free exercise of electoral right as required u/s. 123(2) RP Act – When alleging improper acceptance of nomination, particulars showing how such improper acceptance materially affected result

* Author

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of election must be present – Omission of single material fact leading to incomplete cause of action would entail rejection of election petition under Order VII Rule 11 CPC r/w ss. 83 and 87 RP Act. [Paras 12-15, 19-24]

Case Law Cited

Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi [\[1986\] 2 SCR 823](#) : [\[1986\] 4 SCC 78](#); *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [\[1987\] 3 SCR 369](#) : [\[1987\] Supp SCC 93](#); *Laxmi Narayan Nayak v. Ramratan Chaturvedi & Ors* [\[1989\] Supp. 2 SCR 581](#) : [\[1990\] 2 SCC 173](#); *Kanimozhi Karunanidhi v. A. Santhana Kumar & Ors* [\[2023\] 4 SCR 798](#) : 2023 SCC Online SC 573; *Azhar Hussain v. Rajiv Gandhi* [\[1986\] 2 SCR 782](#) : [\[1986\] Supp. SCC 315](#); *Samant N. Balkrishna & Anr. v. George Fernandez & Ors.* [\[1969\] 3 SCR 603](#) : [\[1969\] 3 SCC 238](#); *Shri Udhav Singh v. Madhav Rao Scindia* [\[1976\] 2 SCR 246](#) : [\[1977\] 1 SCC 511 - relied on.](#)

List of Acts

The Representation of the People's Act, 1951; The Conduct of Election Rules, 1961; Code of Civil Procedure, 1908.

List of Keywords

Corrupt practice; Undue influence; Improper acceptance of nomination; Material facts not pleaded in election petition; Incomplete cause of action; Rejection of election petition.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6282 of 2023
From the Judgment and Order dated 26.04.2023 of the Gauhati High Court in IA(C) No. 1278 of 2021

Appearances for Parties

Kapil Sibal, Dr. Menaka Guruswamy, Sr. Advs., Fuzail Ahmad Ayyubi, Mustafa Khaddam Hussain, Mohammad Nizamuddin Pasha, Ms. Rupali Samuel, Ibad Mushtaq, Ms. Akanksha Rai, Utkarsh Pratap, Lavkesh Bhambhani, Harshvardhan Thakur, Ms. Gurneet Kaur, Advs. for the Appellant.

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Jaideep Gupta, Dilip Majumder, Sr. Advs., Adeel Ahmed, Abdur Razzaque Bhuyan, Ms. Racheeta Chawla, Ms. Sana Parveen, Ms. Anupama Gupta, Ms. Riya Dutta, Piyush Sachdeva, Md Gouse Muddin Khan, Raja Chatterjee, Abhaya Nath Das, Yogendra Kumar Verma, B C Bhatt, Ms. Beena, Budha Deo Prasad, Sandeep Kumar, V K Shukla, Mrs. Leelawati Suman, Satish Kumar, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment****Bela M. Trivedi, J.**

1. The instant Appeal filed by the appellant - Karim Uddin Barbhuiya (Original Respondent No. 1) is directed against the impugned judgment and order dated 26.04.2023 passed by the Gauhati High Court at Guwahati in I.A. (Civil) No. 1278 of 2021 in Election Petition No. 01 of 2021, whereby the High Court has dismissed the said IA filed by the present appellant under Order VII Rule 11 CPC seeking rejection of the Election Petition filed by the respondent No. 1 - Aminul Haque Laskar (Original Election Petitioner).
2. A brief conspectus of relevant facts may be stated as under:
 - (i) On 05.03.2021, General Election to the Legislative Assembly of Assam was notified by the Election Commission of India, whereunder the last date for filing of nomination papers was 12.03.2021.
 - (ii) On 11.03.2021, the appellant filed his nomination papers as a candidate of All India United Democratic Front (AIUDF) along with the Declaration, by way of an affidavit in Form-26 of **The Conduct of Election Rules, 1961** (hereinafter referred to as the Said Rules). The last date for scrutiny of nomination papers was 15.03.2021.
 - (iii) On 01.04.2021, the election for the Legislative Assembly Constituency no. 10, Sonai was concluded and the appellant secured 71,937 votes out of total votes polled, while the respondent no. 1 herein secured 52,283 votes in his favour.
 - (iv) On 04.06.2021, the respondent no. 1 (Election Petitioner) filed the Election Petition being no. 01 of 2021 before the High

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Court under Section 100(1)(b) and Section 100(1)(d)(i) of **The Representation of the People's Act, 1951** (hereinafter referred to as the RP Act) questioning the election of the appellant, mainly making four allegations - (a) false declaration of educational qualification of B.A. (b) suppression of the educational qualification of Diploma in Engineering (c) suppression of bank loan details of M/s. Allied Concern and (d) suppression of unliquidated provident fund dues.

- (v) On 24.06.2021, the High Court issued notice in the said Election Petition.
 - (vi) On 23.08.2021, the appellant herein (Original Respondent No.1-Returned Candidate) filed an application under Order VII Rule 11, CPC read with Section 86 of the RP Act for rejection of the Election Petition, which was registered as I.A (Civil) No. 1278 of 2021 in the said Election Petition.
 - (vii) On 26.04.2023, the High Court passed the impugned judgment dismissing the said I.A. filed by the appellant. Hence, the present Appeal has been filed.
3. The Appeal has been contested by the respondent no. 1 and the respondent no. 13 by filing their respective counter affidavits.
4. We have heard the learned Senior Counsel Mr. Kapil Sibal for the appellant and Mr. Jaideep Gupta for the respondent no.1 at length.
5. Learned Senior Advocate Mr. Kapil Sibal appearing for the appellant vehemently submitted that the respondent no. 1 has sought to upset the election results by filing the baseless, motivated and malafide election petition, based on mere bald allegations that the information disclosed in Form No. 26 filed by the appellant along with his nomination form was inaccurate. None of the allegations made in the Election Petition is supported by either primary documents or reliable source of information. The pleadings in the Election Petition are not the averments of material facts but are facts based speculation and do not disclose any triable issue. He further submitted that the Election Petition does not disclose a complete cause of action, nor does it contain all "material facts" as required under Section 83(1) (a) and also does not plead "full particulars" of the alleged corrupt practice of undue influence, as required under Section 81(1)(b) of the RP Act.

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6. Mr. Sibal taking us to the particulars disclosed by the appellant in Form No. 26 submitted that there was neither suppression of educational qualification nor suppression of bank loan details or of un-liquidated provident fund dues, as alleged by the respondent no.1. He further submitted that the respondent no. 1 had admittedly not raised any objection in writing at the time of scrutiny of the nomination papers by the Returning Officer, and therefore it could not be said that there was improper acceptance of nomination of the appellant. He pressed into service various provisions contained in the RP Act, particularly Section 100 and Section 123 to submit that the allegations and averments made in the Election Petition could never constitute “undue influence” much less “corrupt practices” as contemplated in Section 123, for declaring the Election to be void under Section 100 of the RP Act. Much reliance has been placed by him on the decision of this court in case of *Kanimozhi Karunanidhi Vs. A. Santhana Kumar and Others*¹ to submit that the Election Petition filed by the respondent no. 1 be dismissed at the threshold under Order VII Rule 11, CPC read with Section 83 of the RP Act.
7. The learned Senior Advocate Mr. Jaideep Gupta *per contra* submitted that the election of the appellant is liable to be set aside firstly on the ground that the nomination paper of the appellant was improperly accepted, as the affidavit in the Form-26 filed by the appellant along with his nomination paper, contained false statements with regard to his educational qualification and his liability in respect of the loan and his default in the deposit of employer’s contribution of provident fund as the partner of the Partnership firm. He further submitted that the election is also liable to be set aside on the ground of the appellant having indulged into corrupt practices, he having failed to make the disclosures as required by the RP Act and by the judicial pronouncements by this Court. According to him, the RP Act was amended with effect from 24.08.2002 incorporating therein Section 33A in the RP Act and incorporating Rule 4A in the Conduct of Election Rules, 1961 with effect from 03.09.2002, prescribing the form of affidavit to be filed by the candidate at the time of delivering the nomination paper in Form-26 to the said Rules. In *Lok Prahari vs. Union of India & Others*², this Court

1 [2023] 4 SCR 798 : 2023 SCC Online SC 573

2 (2018) 4 SCC 699

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has held that non-disclosure would amount to “undue influence” as defined in the RP Act. Further relying on the decision in case of **Krishnamoorthy vs. Sivakumar and Others**³, he submitted that if the “corrupt practice” is alleged under Section 100(1)(b), it is not necessary to state that the “corrupt practice” has materially affected the outcome of the election. Lastly, he submitted that there are number of triable issues involved in the Election Petition, and the cause of action also having been disclosed in the Election Petition, the High Court has rightly rejected the application of the appellant under Order VII Rule 11, CPC, which order being just and legal, this Court may not interfere with the same.

8. Before advertiring to the rival contentions raised by the learned counsel for the parties, let us glance over the relevant provisions of the RP Act. Part-V of the RP Act deals with the Conduct of Elections, and Chapter-I thereof deals with the Nomination of Candidates. Section 33A contained in the said Chapter pertains to the obligation of the candidate to furnish the information as stated therein, and Section 36 thereof pertains to the scrutiny of nominations. Rule 4A of the said Rules requires the candidate or his proposer, as the case may be, to file an affidavit in Form-26 at the time of delivering nomination paper. The said rule 4A reads as under:

“4A. Form of affidavit to be filed at the time of delivering nomination paper. — The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.”

9. Section 80 of the RP Act states that no election shall be called in question except by an Election Petition presented in accordance with the provisions of Part-VI. Section 81 pertains to the presentation of the Election Petition. Section 82 pertains to the parties to the Election Petition. Section 83 pertaining to the contents of the Election Petition, being relevant for the purposes of this appeal, it is reproduced as under: -

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- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

10. Section 87 lays down the procedure to be followed before the High Court, which *inter alia* states that subject to the provisions of the RP Act and of any Rules made thereunder, every Election Petition shall be tried by the High Court, as nearly as may be, in accordance with procedure applicable under the Code of Civil Procedure, 1908. Section 100 deals with the grounds for declaring the election to be void, which reads as under: -

“100. Grounds for declaring election to be void. —

- (1) Subject to the provisions of sub-section (2) if the High court is of opinion—
 - (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act 5 [or the Government of Union Territories Act, 1963 (20 of 1963)]; or
 - (b) that any corrupt practice has been committed by a returned candidate or his election agent or by

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any other person with the consent of a returned candidate or his election agent; or

- (c) that any nomination has been improperly rejected; or
 - (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
 - (i) by the improper acceptance or any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate 6 [by an agent other than his election agent], or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,
- the High Court shall declare the election of the returned candidate to be void.

- (2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—
 - (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;
 - Clause (b) omitted by Act 58 of 1958, s. 30 (w.e.f. 30-12-1958).
 - (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

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

11. Section 123 deals with the "Corrupt Practices", which covers the "undue influence" as the corrupt practice for the purposes of the RP Act. The relevant part of Section 123 reads as under: -

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

- (1)
- (2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 7 [with the consent of the candidate or his election agent], with the free exercise of any electoral right:

Provided that—

- (a) 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 an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste 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;
- (b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal

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right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) to (8)

12. At the outset, it may be noted that as per the well settled legal position, right to contest election or to question the election by means of an Election Petition is neither common law nor fundamental right. It is a statutory right governed by the statutory provisions of the RP Act. Outside the statutory provisions, there is no right to dispute an election. The RP Act is a complete and self-contained code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of Civil Procedure Code are applicable to the extent as permissible under Section 87 of the RP Act.
13. It hardly needs to be reiterated that in an Election Petition, pleadings have to be precise, specific and unambiguous, and if the Election Petition does not disclose a cause of action, it is liable to be dismissed *in limine*. It may also be noted that the cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the RP Act. As held in *Bhagwati Prasad Dixit 'Ghorewala' vs. Rajeev Gandhi*⁴ and in *Dhartipakar Madan Lal Agarwal vs. Rajiv Gandhi*⁵, if the allegations contained in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the pleadings are liable to be struck off and the Election Petition is liable to be rejected under Order VII, Rule 11 CPC.
14. A beneficial reference of the decision in case of *Laxmi Narayan Nayak vs. Ramratan Chaturvedi and Others*⁶ be also made, wherein this Court upon review of the earlier decisions, laid down following principles applicable to election cases involving corrupt practices: -

“5. This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being:

4 [1986] 2 SCR 823 : (1986) 4 SCC 78

5 [1987] 3 SCR 369 : (1987) Supp SCC 93

6 [1989] Supp. 2 SCR 581 : (1990) 2 SCC 173

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- (1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93] and *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442] .
- (2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh v. Surinder Singh* [(1973) 2 SCC 599: (1974) 1 SCR 52], *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442] and *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93] .
- (3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide *Jumuna Prasad Mukhariya v. Lachhi Ram* [(1955) 1 SCR 608 : AIR 1954 SC 686] and *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660] .
- (4) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh* [(1984) 4 SCC 649] .
- (5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660] , *M. Narayana Rao v. G. Venkata Reddy* [(1977) 1 SCC 771: (1977) 1 SCR 490] , *Lakshmi Raman Acharya v. Chandan Singh* [(1977)

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1 SCC 423: (1977) 2 SCR 412] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260].

- (6) The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660], Mohan Singh v. Bhanwarlal [(1964) 5 SCR 12 : AIR 1964 SC 1366] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260]."
15. The legal position with regard to the non-compliance of the requirement of Section 83(1)(a) of the RP Act and the rejection of Election Petition under Order VII Rule 11, CPC has also been regurgitated recently by this Court in case of Kanimozhi Karunanidhi vs. A. Santhana Kumar and Others (supra): -

"28. The legal position enunciated in afore-stated cases may be summed up as under: —

- i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.
- ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.
- iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.
- iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election

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petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

- v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.
 - vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.”
- 16.** Bearing in mind the aforestated legal position, let us consider the averments and allegations made by the respondent no. 1 in the Election Petition in which the election of the Appellant is sought to be challenged basically on two grounds: (1) that the appellant has committed corrupt practice and (2) the result of the election in so far as it concerned the appellant, was materially affected by the improper acceptance of his nomination. In short, the respondent no. 1 has invoked Section 100(1)(b) and Section 100(1)(d)(i) of the Act, for declaring the election of the Appellant as void.
- 17.** As transpiring from the Election Petition, the respondent no.1 along with 13 other candidates including the present appellant had submitted their nomination papers for LA - 10 Sonai LAC, however according to the respondent no. 1, the affidavit in Form 26 filed by the appellant along with his nomination paper was invalid and defective as the same contained false statements, and suppression and misrepresentation of facts with regard to the educational qualification and suppression of facts with regard to his liability in respect of the loan availed by him by way of a Cash Credit Limit (CCL) for a partnership firm namely M/s. Allied Concern of which he was an active partner, and suppression of facts with regard to his default in deposit of employer's contribution of provident fund in respect of

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the employees of the said M/s. Allied Concern. As regards the false claim of educational qualification, the respondent no.1 has alleged in the Election petition *inter alia* that the appellant had mentioned in Column no. 9 of his affidavit in Form 26 appended to his nomination paper that his educational qualification was Bachelor of Arts (B.A.) which he passed from Chaudhary Charan Singh University, Meerut in Uttar Pradesh in the year 2019, but the appellant had never passed B.A. from the said University or from any other Institution or University. It is further alleged in the Election petition that the appellant did not mention about his so-called technical qualification of diploma in Civil Engineering in the nomination paper, which he had mentioned in the affidavit in Form 26 when he contested 2016 General Election. The respondent no. 1 has also alleged that though the appellant was a partner in M/s. Allied Concern, which availed a loan from United Bank of India (PNB), Tarapur Branch at Silchar, the appellant had deliberately suppressed the details of the CC Limit Loan Account with the said bank and also the defaults made in repayment of the said loan. The respondent no. 1 has also alleged that the appellant had deliberately not mentioned about the liabilities of the appellant as the partner of M/s. Allied Concern with regard to the employer's contribution of provident fund for its employees. According to the respondent no. 1 he had raised an objection before the returning officer on the date of scrutiny that is on 15.03.2021 that the appellant did not possess the educational qualification of B.A. from Chaudhary Charan Singh University, Meerut and therefore his nomination paper was liable to be rejected. According to him, another independent candidate Karim Uddin Barbhuiya, (the respondent no. 8 in the Election petition) had also raised an objection by submitting a written complaint dated 15.03.2021 before the returning officer, however the returning officer had failed to exercise his jurisdiction and authority under Section 36 of the RP Act and refused to make even a summary enquiry by calling upon the appellant to meet with the objections raised by him. Thus, according to the respondent no. 1, there was an improper acceptance of the nomination paper of the appellant. He also alleged that the misrepresentation and false representation of educational qualification by the appellant in the affidavit in Form 26 and suppression and misrepresentation of the liability of the appellant in the said affidavit in respect of the cash credit facility, and non-disclosure of the default of the appellant in respect of his liabilities towards employer's contribution to the provident fund

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tantamount to commission of “Corrupt practice” of undue influence within the meaning of Section 123(2) of the RP Act. The respondent no. 1 therefore has filed the Election Petition under Section 100 of the Act seeking declaration that the election of the appellant - the returned candidate, was void.

18. The appellant, who is respondent no. 1 in the Election petition before the High Court, had submitted an I.A. being no. 1278 of 2021 seeking rejection of the Election petition under Order VII Rule 11 of CPC read with Section 87 of the RP Act. It was contended by the appellant in the said application that the paragraphs alleging “Corrupt practices” of undue influence contained in the Election petition do not constitute “material facts” of alleged Corrupt practices so as to give rise to a cause of action for filing the Election Petition. None of the statements made in the various paragraphs of the Election petition could be said to be a Concise statement of “material facts” or “material particulars” to give rise to a cause of action with triable issues on falsity in nomination papers, improper acceptance of nomination paper and commission of corrupt practice.
19. Now, from the bare reading of the Election petition, it emerges that the respondent no. 1 has made only bald and vague allegations in the Election Petition without stating the material facts in support thereof as required to be stated under Section 83(1)(a) of the RP Act. Apart from the fact that none of the allegations with regard to the false statements, and suppression and misrepresentation of facts allegedly made by the respondent no. 1 with regard to his educational qualification or with regard to his liability in respect of the loan availed by him for his partnership firm or with regard to his default in depositing the employer’s contribution to provident fund, would fall within the definition of “Corrupt practice” of “undue influence” as envisaged in Section 123(2) of the RP Act, the Election petition also lacks concise statement of “material facts” as contemplated in Section 83(a), and lacks “full particulars” of the alleged Corrupt practice as contemplated in Section 83(b) of the RP Act.
20. So far as the allegations of “Corrupt practice” are concerned, the respondent no. 1 was required to make concise statement of material facts as to how the appellant had indulged into “Corrupt practice” of undue influence by directly or indirectly interfering or attempted to interfere with the free exercise of any electoral right. Mere bald

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and vague allegations without any basis would not be sufficient compliance of the requirement of making a concise statement of the “material facts” in the Election Petition. The material facts which are primary and basic facts have to be pleaded in support of the case set up by the Election petitioner to show his cause of action. Any omission of a single material fact would lead to an incomplete cause of action entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) of CPC read with Section 83(1)(a) of the RP Act. The said legal position has been well settled by this Court in *Azhar Hussain vs. Rajiv Gandhi*⁷, wherein this Court after referring to the earlier pronouncements in *Samant N. Balkrishna and Another vs. George Fernandez and Others*⁸ and *Shri Udhav Singh vs. Madhav Rao Scindia*⁹, observed that the omission of a single material fact would lead to incomplete cause of action, and that an Election petition without the material facts is not an Election petition at all. It was further held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an Election petition can be and must be dismissed, if it suffers from any such vice.

21. It is also pertinent to note at this juncture that a charge of “Corrupt practice” is easy to level but difficult to prove because it is in the nature of criminal charge and has got to be proved beyond doubt. The standard of proof required for establishing a charge of “Corrupt practice” is the same as is applicable to a criminal charge. Therefore, Section 83(1)(b) mandates that when the allegation of “Corrupt practice” is made, the Election Petition shall set forth full particulars of the corrupt practice that the Election Petitioner alleges, including as full a statement as possible of the names of parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The pleadings with regard to the allegation of corrupt practice have to be precise, specific and unambiguous whether it is bribery or undue influence or other corrupt practices as stated in Section 123 of the Act. If it is corrupt practice

7 [1986] 2 SCR 782 : (1986) Supp. SCC 315

8 [1969] 3 SCR 603 : (1969) 3 SCC 238

9 [1976] 2 SCR 246 : (1977) 1 SCC 511

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in the nature of undue influence, the pleadings must state the full particulars with regard to the direct or indirect interference or attempt to interfere by the candidate, with the free exercise of any electoral right as stated in Section 123(2) of the Act. We are afraid, Mr. Gupta has failed to point out from the pleadings of the Election petition as to how the appellant had interfered or attempted to interfere with the free exercise of any electoral right so as to constitute “undue influence” under Section 123(2) of the Act.

22. So far as the ground contained in clause (d) of Section 100(1) of the Act, with regard to improper acceptance of the nomination of the Appellant is concerned, there is not a single averment made in the Election Petition as to how the result of the election, in so far as the appellant was concerned, was materially affected by improper acceptance of his nomination, so as to constitute a cause of action under Section 100(1)(d)(i) of the Act. Though it is true that the Election Petitioner is not required to state as to how corrupt practice had materially affected the result of the election, nonetheless it is mandatory to state when the clause (d)(i) of Section 100(1) is invoked as to how the result of election was materially affected by improper acceptance of the nomination form of the Appellant.
23. As transpiring from the Election Petition, the respondent no. 1 himself had not raised any objection in writing against the nomination filed by the Appellant, at the time of scrutiny made by the Returning Officer under Section 36 of the Act. According to him, he had raised oral objection with regard to the education qualification stated by the Appellant in the Affidavit in Form-26. If he could make oral objection, he could as well, have made objection in writing against the acceptance of nomination of the Appellant, and in that case the Returning Officer would have decided his objection under sub-section (2) of Section 36, after holding a summary inquiry. Even if it is accepted that he had raised an oral objection with regard to the educational qualification of the Appellant before the Returning Officer at the time of scrutiny, the respondent no. 1 has failed to make averment in the Election Petition as to how Appellant's nomination was liable to be rejected by the Returning Officer on the grounds mentioned in Section 36(2) of the Act, so as to make his case fall under clause (d)(i) of Section 100(1) that there was improper acceptance of the nomination of the Appellant. The non-mentioning of the particulars as to how such improper acceptance

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of nomination had materially affected the result of the election, is apparent on the face of the Election Petition.

24. As stated earlier, in Election Petition, the pleadings have to be precise, specific and unambiguous. If the allegations contained in Election Petition do not set out grounds as contemplated in Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the Election Petition is liable to be rejected under Order VII, Rule 11 of CPC. An omission of a single material fact leading to an incomplete cause of action or omission to contain a concise statement of material facts on which the Election petitioner relies for establishing a cause of action, would entail rejection of Election Petition under Order VII Rule 11 read with Section 83 and 87 of the RP Act.
25. In that view of the matter, we are of the opinion that the Election Petition being No. 1 of 2021 filed by the Respondent No. 1 (Election Petitioner) before the High Court deserves to be dismissed and is accordingly dismissed.
26. The Appeal stands allowed accordingly.

Headnotes prepared by:

Aandrita Deb, Hon. Associate Editor

(Verified by: Liz Mathew, Sr. Adv.)

Result of the case:

Appeal allowed.