



IN THE HIGH COURT OF ORISSA AT CUTTACK

**I.A. No. 132 of 2024 &
I.A. No. 133 of 2024**

(Arising out of ELEPT No. 5 of 2024)

(Applications under Sub-Section(1) of Section 83 of the Representation of the People Act, 1951 read with Rule 94-A of the Conduct of Election Rules, 1961 and Order-VII Rule 11(d) of the CPC, and under Order-VI Rule-16 of the CPC respectively).

AFR

Aswini Kumar Patra

.....

**Petitioner
(Respondent)**

- Versus -

Brajamohan Pradhan

.....

**Opp. Party
(Election Petitioner)**

Advocate(s) appeared in this case:-

**For Petitioner
(Respondent)**

: Mr. Bidyadhar Mishra, Sr. Advocate
with M/s. T.K. Biswa, (Mrs.) R.P. Panda,
P. Bharadwaj & B.S. Panigrahi, Advocates

**For Opp. Parties
(Election Petitioner)**

: Mr. Manas Mohapatra, Sr. Advocate,
with M/s. A.P. Bose, S.K. Mohapatra,
S. Swain, S.K. Routray, D. Sahoo, D.K.
Sethy & S. Satpathy, Advocates

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
11th March, 2025

SASHIKANTA MISHRA, J.

Both these applications have been filed

by the sole respondent of the above election petition. I.A. No.



132 of 2024 has been filed for dismissal of the election petition at the threshold for non-compliance of the provision under Section 83(1) of Representation of the People Act, 1951 (in short, the 'Act') read with Rule 94-A of the Conduct of Election Rules (in short, the 'Rules') and Order-VII Rule 11(d) of CPC. I.A. No. 133 of 2024 has been filed for striking out the pleadings of the election petition as per the provisions under Order-VI Rule -16 of CPC. Both the applications essentially involve the same facts and issues and were therefore, heard together and are being disposed of by this common order.

2. The election petition has been filed by the election petitioner (a) to declare the election of respondent, Aswini Kumar Patra as void and (b) to direct re-election/ fresh poll in respect of 35 Jaleswar Assembly Constituency to the Odisha Legislative Assembly. The election of the respondent has been questioned basically on two grounds, (i) the respondent appointed one Manas Jena as his election agent and counting agent, who is disqualified to act as such as per law and, (ii) the respondent through his election and counting agent has influenced the result of the election by taking advantage of his



position as Chairman of Panchayat Samiti, for which the result of the election was materially affected.

3. Pursuant to notice, the respondent entered appearance and filed his written statement. Additionally, he filed the present applications on grounds that would be highlighted hereinafter. The election petitioner has filed detailed objections to the said applications.

4. In I.A. No. 132 of 2024 it is stated that though the election petitioner has made allegations of corrupt practice, has not filed the required affidavit in Form-25 along with the election petition, which is in violation of the provision under Section 83(1) of the Act read with Rule 94-A of the Rules. It is also stated that the election petitioner has failed to disclose/plead the material facts and material particulars of commission of such corrupt practice, which is in violation of Section 83(1)(a) and (b) of the Act. It is also stated that the challan showing deposit of Rs.2,000/- towards security for cost of the petition as per Section 117 of the Act is defective



and being an incurable defect, the election petition is liable to be rejected.

I.A. No. 133 of 2024 has been filed by stating that the pleadings under Paragraphs-9(A) to (F) are unnecessary, scandalous, frivolous and vexatious and tend to prejudice and embarrass and delay the fair trial of the case. As such, they are liable to be struck out. In this context it is stated that the said paragraphs of the election petition contain allegations with regard to disqualification of Manas Jena as the election/counting agent of the respondent but without referring to the specific provision of law or the latest instruction of the Election Commission of India in this regard. The other allegations made under paragraph-9 of the election petition constitute corrupt practices but are vague and do not make out a cause of action.

5. Heard Mr. Bidyadhar Mishra, learned Senior Counsel with Mr. T.K. Biswal, learned counsel for the petitioner- respondent and Mr. Manas Mohapatra, learned



Senior Counsel with Mr. A.P. Bose, learned counsel appearing for the opposite party- election petitioner.

6. As has already been stated hereinbefore, the election petition is based on two allegations; (i) Manas Jena, the election and counting agent of respondent was disqualified to act as such under the provisions mentioned in paragraph - 9(C) and 9(E) (ii) the respondent through Manas Jena influenced the result of the election by adopting unfair means and undue influence as highlighted in paragraphs 9(D) and 9(F) of the Election Petition. On the first issue noted above, Mr. Mishra would argue that admittedly, Manas Jena was appointed as the election agent and counting agent of the respondent. There is no dispute that said Manas Jena is also the Chairman of Jaleswar Panchayat Samiti. The election petitioner has referred to Sections 40 and 41 of the Act and Rule 12(1) of the Rules to contend that Manas Jena was not qualified to act as election agent of the respondent. Chapter-VI of the Handbook for Candidates- 2023 issued by the Election Commission of India has also been relied upon by the election petitioner. Mr. Mishra argues that neither Section 40 nor



Section 41 debars a person like Manas Jena to act as election agent or counting agent. In fact, he was duly appointed as per Section 40 as election agent and as per Section 47 as counting agent. The election petitioner has referred to Clause-6.1.2 of the Handbook for Candidate- 2023 but has not referred to the latest instructions issued by the Election Commission of India. Mr. Mishra therefore, argues that the averments made in the election petition relating to the so called disqualification of Manas Jena have no legs to stand and as the same do not disclose a valid cause of action, the election petition is to be dismissed as a whole.

7. In reply, learned Senior Counsel Mr. Mohapatra would argue that Section 41 of the Act provides for disqualification for being an election agent. The Election Commission of India issued Handbook for Candidate-2023 of which Clause-6.1.2 specifically mentions that Chairperson of Panchayat Samiti is disqualified from acting as election agent. The respondent, though mentioned the name of Manas Jena in Form No.18 relating to appointment of counting agent, deliberately did not mention the words 'Chairman of



Panchayat Samiti' against his name as the same would have resulted in rejection of the Form. Being a sitting chairman of the Panchayat Samiti, Manas Jena is disqualified for which the petitioner has filed the election petition questioning the election of the respondent on the grounds set out under Section 100(1)(d)(iv) of the Act.

8. Having heard learned counsel for the parties, this Court deems it proper to refer to the relevant statutory provisions at the outset. Section 100(1)(d)(iv) of the Act reads as follows:

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

xx xx xx
(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

xx xx xx
(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.”

Sections 40 and 41 being also relevant are quoted hereinbelow:

“40. Election agents.—A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when



any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer.

41. Disqualification for being an election agent.—*Any person who is for the time being disqualified under the Constitution or under this Act for being a member of either House of Parliament or the House or either House of the Legislature of a State or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election.”*

Rule-12 of the Conduct of Election Rules, 1961

reads as follows;

“12. Appointment of election agent.—(1) *Any appointment of an election agent under section 40 shall be made in Form 8 and the notice of such appointment shall be given by forwarding the same in duplicate to the returning officer who shall return one copy thereof to the election agent after affixing thereon his seal and signature in token of his approval of the appointment.*

(2) *The revocation of the appointment of an election agent under sub-section (1) of section 42 shall be made in Form 9.”*

9. According to the election petitioner, Manas Jena is disqualified as he is the sitting chairperson of Jaleswar Panchayat Samiti. Be it noted that it has not been disputed that Manas Jena was in fact the serving chairman of Jaleswar Panchayat Samiti at the relevant time. Mr. Mohapatra, learned Senior Counsel has referred to the Handbook for Candidate-2023 issued by the Election Commission of India. Chapter-VI



deals with appointment of election agents. Clause-6.1.1 states as follows:

“6.1.1. A candidate may appoint any person to be his/her election agent. Note that under the law, it is not necessary or incumbent on a candidate to appoint an election agent at the time of filing of his nomination paper. Such appointment may, if the candidate so desires, be made at any time after the nomination as a candidate or not at all. Every such appointment has to be made by a formal communication by the candidate in Form 8 (Under Rule 12 of Conduct of Election Rules, 1961) (Annexure – 7) in duplicate, which has to be submitted to Returning Officer. The Returning Officer will retain one copy thereof and return the second copy to the candidate/election agent after affixing thereon his seal and signature in token of his approval of the appointment.”

Clause-6.1.2 reads as follows;

“6.1.2 Important points to note -

- Any person who currently stands disqualified under the Constitution or under the Representation of the People Act, 1951, for being a member of either House of Parliament or either House of the Legislature of a State or for voting at elections is disqualified for being an election agent so long as the disqualification subsists.
- No person with security cover can be allowed to surrender the security cover to enable him to become an election agent.
- No sitting Minister either of Union Government or of a State Government, sitting Member of Parliament, sitting Member of Legislative Assembly/Legislative Council, Chief/Head/ Chairperson of Urban Local Bodies, viz., Mayor of a Corporation or Chairperson of Municipality/Zila Parishad/Panchayat Union, Chairperson/Vice-Chairperson of District level/Block level/ Mandal Parishad, Panchayat samiti etc., shall be allowed to act as Election agent, Polling Agent, or



*Counting Agent of any candidate during an election.
(Latest instruction to be referred).*

- *Chairpersons and members of Central PSUs/State PSUs, Govt. Bodies/Corporation, Cooperatives.*
- *Persons receiving any honorarium or aid from Government or Persons working on part time in any Govt. / Govt. Aided Institutions shall not act as Election agent.*
- *Para Medical/Healthcare staff working in Govt./Govt. Aided institutions, Fair Price Shop dealers, Anganwadi Employees.”*
- *No person in the service of the Government can act as an Election agent. This is an offence and Under Section 134-A of the R.P. Act 1951, such appointees are punishable with imprisonment for a term which may extend to 3 (three) months, or with fine, or with both.”*

10. Thus, on a plain reading it would be evident that a person serving as Chairperson of the Panchayat Samiti is disqualified to act as election agent. No other statutory provision is cited in this regard. On the contrary, the respondent has argued that Handbook for Candidate-2023 does not have any force of law. There is nothing in the Constitution of India, the Representation of People Act or in the Handbook for Returning Officer-2023 issued by the Election Commission of India to suggest that a Chairman of Panchayat Samiti is disqualified to act as election agent. In the Handbook for Returning Officer, Clause-5.26 deals with appointment of election agents and there is nothing therein to



hold that Chairman of Panchayat Samiti is disqualified. Clause-5.26.4 only provides that Ministers of the Union or States and MP, MLA, MLCs. and any other person provided with security cover by the State shall not be appointed as election agents (and also as polling and counting agents).

11. Mr. Mishra further argues that only the Handbook for Returning Officer-2023 has sanction of law and not the Handbook for Candidate-2023 and therefore, not legally binding. Additionally, Mr. Mishra has argued that even otherwise, Manas Jena was appointed as election agent/counting agent in his individual capacity and not as Chairman of the Panchayat Samiti.

12. From the above discussion, this Court finds that whether Manas Jena was appointed in his personal capacity or the same was in his capacity as the Chairman of Panchayat Samiti and if so, whether he was disqualified to act as such, are matters to be decided during trial on the basis of evidence laid and legal provisions examined. If it is to be held that Manas Jena was disqualified, the same would obviously



have an impact on the candidature of the respondent. Therefore, it cannot be said that the election petition in so far as the point under consideration is concerned, does not raise a valid cause of action so as to be rejected at the threshold and in such light the pleadings made under Paragraph-9(C) and 9(E) refer to a valid cause of action. The contentions raised by the respondent in this regard are not acceptable.

13. It is next stated that though the election petitioner has alleged commission of corrupt practices by the respondent, the material facts thereof have not been pleaded and the pleadings have not been supported by affidavit in Form-25. Particular reference has been made in this context to the pleadings under paragraphs 9(D) and 9(F). In this context, Mr. Mishra, learned Senior Counsel for the respondent would argue that if the pleadings under the above paragraphs are to be read, it would be clear that the same relate to the allegations of corrupt practice committed by the respondent. Mr. Mishra submits that the election petitioner is duty bound to plead material facts and full particulars of such corrupt practice that he alleges including as full statement as



possible of the names of the parties alleged to have committed such corrupt practices and the date and place of commission of each such corrupt practice. But if the pleadings under the aforementioned paragraphs are read as a whole, it would be apparent that the full material facts and particulars have not been pleaded at all. Besides, the election petition is not accompanied by the affidavit in Form-25.

14. Per contra, learned Senior Counsel Mr. Mohapatra would argue that the election petitioner has not alleged any corrupt practice whatsoever. His entire case is based on Section 100(1)(d)(iv). Since no corrupt practice has been alleged, the requirement of specific pleading and filing of affidavit in Form No.-25 does not arise.

15. Having heard learned counsel on the point it would be useful to first reproduce the concerned paragraphs of the election petition for better appreciation.

“9(D). That as per the provisions contained in Section 47 of the Representation of the People Act, 1951 and the Rule 52(1) of the Conduct of Election Rules 1961 the Respondent has appointed Manas Jena as one of the Counting Agent for counting of votes of 35-Jaleswar Legislative Assembly held on 04.05.2024. In the



prescribed Form 18 the name of Manas Jena has been mentioned as counting agent.

In exercise of the power conferred under Article 324 of the Constitution of India an several judgments passed by the Hon'ble High Courts and Hon'ble Supreme Court of India the Election Commission of India has issued the guidelines and circulars and the same has got the effect of law. As per the circulars the Chairman of the Panchayat Samiti will not be allowed to act as Election Agent/Polling Agent or Counting Agent

Chapter -14 of the Hand Book of candidate 2023 issued by the Election Commission of India elaborately stated about counting of votes. Clause 14.9 elaborately deals with qualification of counting agents. The relevant provisions are contained in clauses 14.9.2 of the Chapter 14 and the same are quoted here under:

Chapter -14 of the Hand Book of candidate 2023 issued by the Election Commission of India elaborately stated about counting of votes. Clause 14.9 elaborately deals with qualification of counting agents. The relevant provisions are contained in clauses 14.9.2 of the Chapter 14 and the same are quoted here under:

14.9.2. However, sitting Minister either of the Union Government or of the State Government, Member of Parliament or State Legislature, Mayor of a corporation or Chairperson of Municipality / Zila Parishad/Panchayat Union, etc, Chairperson and Members of Central PSUs/State PSUs, Govt Bodies/Corporation, Persons receiving any honorarium from Government or Persons working on part time in any Govt/Gost Aided Institutions and Para Medical/Healthcare staff working in Govt Govt Aided institutions, Fair Price Shop dealers. Anganwadi Employees shall not be appointed as a counting agents.

During the time of counting the Returning Officer (Additional Sub-Collector of Balasore) and the staff of Jaleswar Block were engaged for counting of votes. The Respondent through his election agent who is also a counting agent influenced the persons who were engaged for counting of votes. The Respondent intentionally, deliberately and consciously appointed Manas Jena the Chairman of Jaleswar Panchayat Samiti as his counting agent in order to influence his position, power and authority over the counting staff for the furtherance of the prospect of the Respondent election. The certified copy of Form 18 is annexed herewith as Annexure-3.



The object of the law and to ensure free and fair election is to keep the public servant aloof from politics and also protect them from being used by those with influence or in position or authority and power and to prevent the machinery of the Govt. from being used to influence of a particular candidate and success in election. Therefore the result of the election, in so far as it concerns the Respondent in so far as it relates to 35-Jaleswar Assembly Constituency has been materially affect and aside.

It would be crystal clear that the Respondent and the Returning Officer are hand in glove to ensure Respondent's success in the election and they have made a mockery of statutory provisions of law, instead of strictly observing them.

9(F) *That the Respondent with a pre-conceived notion appointed the Chairman of Jaleswar Panchayat Samiti (Jaleswar Block) as his election agent. The Chairman of the Block is a public servant holding a high position in the Block and by utilizing his position, power and authority was canvassing the voters of 35-Jaleswar Assembly Constituency to vote in favour of the Respondent who is the returned candidate. That apart said Manas Jena was also a counting agent. The staff of Jaleswar Block were engaged for counting of votes. Since Manas Jena the Chairman of the Block was the counting agent he has influenced the staff of the Block to show favour to the Respondent. It's another instance, which has vitiated the counting process and election result in which the Respondent is declared to have been elected. Both in electronic media and print media it was declared that the election petitioner has won the election but after some time it has been declared that the Respondent has won the election, such declaration is absolutely wrong as no notice was given to the election petitioner and Manas Jena Chairman of Jaleswar Block though prohibited in law to act as election agent and counting agent of the Respondent in the general election 2024 in respect of 35-Jaleswar Assembly Constituency has appointed as election agent and counting agent and influenced the voters and counting staff in furtherance of the prospects of the returned candidate. The Respondent has adopted the unfair means of undue influence and procuring and obtaining assistance from the Chairman of the Block for furtherance of his prospect. Hence the election of 35-Jaleswar Assembly*



Constituency be declared as void and the same is liable to be set aside.”

[Emphasis added]

16. Whether these allegations would amount to corrupt practice or not can be determined with reference to Section 123 of the Act, which defines ‘corrupt practice’. From the tone and tenor of the pleadings quoted above, it is apparent that according to the Election petitioner, the respondent through his election agent resorted to unfair practices and undue influence to further his prospects in the election. The relevant provision, that is, sub-Section(2) of Section 123 is quoted hereinbelow:

“123. Corrupt practices.—

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xx

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

xx

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xx”

If the allegations made in the paragraphs in question are considered as a whole they would certainly be treated as undue influence within the meaning of Sub-Section (2) of Section 123 of the Act. The election petitioner has made allegations but stopped short of designating them as corrupt practice. It is immaterial if the election petitioner specifically designates his allegations as corrupt practices or not, for it is for the Court to test the same on the touch-stone of statutory provisions quoted above. Having done so, this Court is left with no doubt that the pleadings under paragraphs 9 (D) and 9(F) are nothing but allegations of corrupt practice. Having held so, it is to be seen whether the pleadings satisfy the requirements of Section 83(1) of the Act. For reference, Section 83 is quoted hereinbelow:



“83. Contents of petition.—*(1) An election petition— (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: 6 [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.”*

It is undisputed that the required affidavit in Form-25 has not been filed. This has been held to be an incurable defect. Therefore, the statutory provision is clearly violated.

17. Even accepting for the sake of argument that the pleadings in paragraphs 9(D) and 9(F) cannot be treated as allegations of corrupt practices then also the same need to be considered to ascertain as to whether the strict requirement of pleadings in election cases is satisfied. In this regard law is well settled that all the material facts have to be specifically pleaded and that omission to state even a single material fact would be fatal to the election petitioner. The Supreme Court in



the case of **Harishankar Jain v. Sonia Gandhi**¹ held as follows:

"Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez 18, Jitendra Bahadur Singh v. Krishna Behari¹⁹.) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

¹ (2001) 8 SCC 233



It is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose the cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

18. If we look at paragraph-9(D) quoted earlier, the same strikes as vague as it does not state as to what assistance was obtained by the respondent from his election agent for furtherance of the prospects of the election. There can be no presumption raised in this regard. It is only stated that because the election agent was the Chairman, the respondent procured his assistance. Further, it is alleged that the respondent influenced the persons who were engaged for counting of votes and the respondent intentionally appointed Manas Jena as his counting agent to influence his position, power and authority over the counting staff. How such influence was exerted, who were the persons engaged for counting of votes, how many persons were engaged for counting of votes, what was the manner of influence allegedly exerted by Manas Jena on them are woefully lacking. Again, it



is alleged that the respondent and returning officer were hand in glove to ensure respondent's success in the election. This is again a vague pleading, inasmuch as what was the commission or omission by the returning officer to help the respondent that led the election petitioner to make such an allegation has not been stated.

19. Coming to paragraph-9(F), it is stated that the Chairman of the Panchayat Samiti by utilizing his position, power and authority was canvassing the voters to vote in favour of the respondent but what was the manner of such canvassing, how many persons were canvassed etc. have not been specifically pleaded. It is also stated that Manas Jena being the Chairman of the Panchayat Samiti influenced the staff of the Block to show favour to the respondent. Who were such staff, how many such staff were deputed to duty, what were their names, who among them were influenced and in what manner have not been pleaded at all. Again it has been generally alleged that Manas Jena influenced the voters and counting staff without stating anything else. It is further stated that the respondent adopted unfair means of undue



influence by procuring and obtaining assistance of the Chairman of the Block for furtherance of his prospects but what constituted such unfair means has not been spelt out at all.

20. The petitioner has raised another ground - that the verification appended to the election petition is not in consonance with Order-VI Rule-15 of CPC read with Section 83(1)(c) of the RP Act. In this regard, Mr. B. Mishra, learned Senior Counsel would argue that the statutory requirement requires the affidavit to be placed after verification because the affidavit is in respect of the facts verified. In the instant case, the affidavit is placed before the verification, which is not in consonance with law. In reply, Mr. Mohapatra, learned Senior Counsel would submit that the requirement being to furnish both affidavit and verification and the same having been complied with it is immaterial as to which is to be placed at what place.

21. Order-VI Rule-15 of CPC reads as follows:

“15. Verification of pleadings.—(1) Save as otherwise provided by any law for the time being in



force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”

Thus, the statutory requirement is that both verification and affidavit must accompany the pleadings. Sub-Rule-4 of Rule-15 simply states that the persons verifying the pleading shall also furnish an affidavit in support of his pleadings. Reference to the election petition shows that the election petitioner has furnished the required affidavit as well as verification. Since the requirement of the statute as referred above has been complied with, this Court is of the considered view that the placement of the affidavit and verification in the election petition is immaterial. The objection raised in this regard is therefore, unacceptable.

22. From a conspectus reading of the pleadings under paragraphs 9(D) and 9(F), this Court, firstly, holds that the same being allegations of corrupt practices do not satisfy the



requirement of stating the material facts. The Supreme Court in the case of **Senthibalaji V. v. A.P. Geetha & Ors.**², observed as follows:

13. Section 123 of the RP Act of 1951 defines corrupt practices. In paragraphs 6 and 7, even bare particulars of any of the corrupt practices covered by Section 123 have not been pleaded. What is the nature of corrupt practice is also not described except for making a bald allegation that in the representations mentioned in paragraph 6, the first respondent has set out electoral misconduct, corrupt practice, and bribery on the part of the appellant. Clause (a) of sub-section (1) of Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 Section 83 mandates that an election petition must contain a concise statement of material facts. When the allegation is of corrupt practice, the basic facts constituting corrupt practice must be pleaded in order to make compliance with Clause (a) of sub-section (1) of Section 83. In this case, such concise facts are not at all pleaded. Basic facts cannot be pleaded only by stating that the same find place in the documents relied upon. The first respondent has merely stated that the contents of representations may be read as a part of the petition. This does not satisfy the requirement of incorporating a concise statement of material facts. Moreover, when the allegation is of corrupt practice, the proceedings virtually become quasi-criminal. Therefore, the elected candidate must get adequate notice of what is alleged against him. That is why material facts concerning the ground of corrupt practice must be pleaded. The outcome of such a petition is very serious. It can oust a popularly elected representative of the people. Therefore, non-compliance with the requirement of stating material facts must result in the rejection of the petition at the threshold.

14. At this stage, we may make useful reference to a well-known decision of this Court of a Bench of

² Civil Appeal no.-3895-3896 of 2023, DOJ-19/05/2023, Citation-2023 INSC 571



three Hon'ble Judges in the case of V.S. Achuthanandan⁴ which is in fact relied upon by the first respondent. Paragraph 15 of the said decision reads thus:

Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 “15. It would thus appear that the election petition was rejected mainly on the ground that it did not disclose the cause of action as according to the learned trial Judge the allegations regarding corrupt practice were vague and did not disclose “material facts and full particulars” of the corrupt practice alleged. It is evident that the learned trial Judge did not distinguish between the “material facts” and the “material particulars” of allegations regarding corrupt practices as defined under Section 123 of the Act. The law on the point is well settled which appears to have not been taken note of or appreciated by the learned trial Judge. After referring to various pronouncements of this Court including cases in *Balwan Singh v. Lakshmi Narain* [AIR 1960 SC 770 : (1960) 3 SCR 91], *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238] , *Virendra Kumar Saklecha v. Jagjiwan* [(1972) 1 SCC 826], *Udhav Singh v. Madhav Rao Scindia* [(1977) 1 SCC 511], *F.A. Sapa v. Singora* [(1991) 3 SCC 375] and *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe* [(1995) 5 SCC 347] and a host of other authorities, this Court in *L.R. Shivaramagowda v. T.M. Chandrashekar* [(1999) 1 SCC 666 : (1998) 6 Scale 361] held that while failure to plead “material facts” is fatal to the election petition and no amendment of the pleading is permissible to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of “material particulars” can be cured at a later stage by an Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 appropriate amendment. An election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact or not, and as such, required



to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon, and in the light of the special circumstances of the case. In Udhav Singh case [(1977) 1 SCC 511] the Court held: (SCC p. 523, paras 42-43) “In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are ‘material facts’ which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

‘Particulars’, on the other hand, are ‘the details of the case set up by the party’.

‘Material particulars’ within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). ‘Particulars’ serve the purpose of finishing touches to the basic contours of a picture already Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 drawn, to make it full, more detailed and more informative.” (emphasis added)

15. *The consensus of judicial opinion is that the failure to plead material facts concerning alleged corrupt practice is fatal to the election petition. The material facts are the primary facts which must be proved on trial by a party to establish the existence of a cause of action. In the present case, taking the averments made in the petition as it is, not a single material fact is pleaded making out an allegation of corrupt practice covered by Section 123 of the RP Act of 1951. All that the first respondent has pleaded is that he made representations to the Returning Officer and other authorities complaining about the corrupt practice on the part of the appellant. What is the nature of the corrupt practice is not mentioned even in brief. Therefore, material facts, which according to the first respondent constitute corrupt practice were not pleaded in the Election Petition.*

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17. This Court held that Section 83 makes it obligatory for the election petitioner to give requisite facts, details, and particulars of each corrupt practice with exactitude. In this case, requisite facts are completely missing. The allegations are very vague Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 and general in nature and, therefore, there is no cause of action to proceed on the ground of corrupt practice. Therefore, in our view, the averments made in paragraphs 6 and 7 do not constitute a cause of action available to proceed on the ground of corrupt practices contemplated by Section 123. Paragraph 8 contains the details of the result of the election. Paragraphs 2 to 4 and 8 are formal in nature and not at all relevant.

18. In paragraph 9, again there are vague and general allegations that the appellant and 6th respondent committed electoral misconduct and corrupt practice. Even this paragraph is bereft of material facts. Paragraph 9 (a) has been added which contains only one sentence that acceptance of nomination of the appellant and 6th respondent is illegal. Not a single material fact is pleaded in support of the plea that the acceptance of the nomination paper is improper.”

In an earlier case, the three Judge Bench of the Supreme Court in the case of **C.P. John vs. Babu M. Palissery and Others**³ held as follows:

“19. To put it differently, when the election petition is taken up for consideration, the Court which deals with such an election petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place, etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for

³ (2014) 10 SCC 547



any speculation. In that context, both Sections 83(1)(a) and (1)(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94-A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of the First Class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in Form 25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statements of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.”

[Emphasis added]

Secondly, even if the pleadings are held to be not constituting corrupt practice then also, the same are vague and non-specific, and hence, are to be treated as frivolous and not constituting a valid cause of action. This Court is therefore, of the view that the pleadings in paragraphs-9(D) and 9(F) need to be struck out.

23. It is stated that the challan appended to the election petition has not been made in the manner as prescribed under



Chapter-XXII, Rule-1 of the Rules of the High Court of Orissa, 1948 read with Section 117 of the Act. In this context, Mr. Mishra would argue that though a sum of Rs.2,000/- was deposited by the election petitioner, yet the same was through his lawyer and secondly, the challan does not contain the signature of the Deputy Registrar of this Court as required. In reply, Mr. Mohapatra would submit that the Challan contains the seal of the Deputy Registrar and signature of the cashier, which implies that the amount was duly paid. Non-availability of the signature of the Deputy Registrar can be treated as an official mistake not attributable to the election petitioner.

24. Section 117 of the Act provides that the petitioner shall deposit in the High Court a sum of Rs.2,000/- as security for the costs of the petition 'in accordance with the Rules of the High Court of Orissa, 1948'. Rule-1 under Chapter-XXII reads as follows:

“Chapter –XXII Rule-1-Deposit and Repayment of Money

(1)When money is required to be paid or deposited in the office of the Court, it shall be accompanied by triplicate challans which shall be delivered to the Accountant of the Court. If the challans are in order, the Accountant shall sign and return the three challans to the person making the payment or



deposit for presentation with the money to the Cashier of the Court. The Cashier shall thereupon receive the money, sign each challan and send the challans to the Accountant. The Accountant shall then enter the amount in his register of receipts, issue one copy of the challan to the person making the payment or deposit as a receipt for the money, send the second copy to the office to be filled with the record concerned and keep the third copy serially in a guard file. When the amount exceeds Rs.500, the copy of the challan intended as a receipt for the money shall be signed by the Deputy Registrar before it is issued. The Cashier shall remit the money, he has received to the Treasury with the Treasury Pass Book after verification by the Deputy Registrar, or in his absence by the Officer-in-Charge, on the next day on which the Treasury is open following the day of payment.”

25. It is thus, provided that ordinarily, the Accountant is to accept the deposit but when the amount exceeds Rs.500/- the copy of the challan intended as a receipt shall be signed by the Deputy Registrar. Reference to the challan appended to the election petition shows that the Cashier has signed accepting the deposit. The seal of the Deputy Registrar has been endorsed but there is no signature of the Deputy Registrar. Since the requirement of the Statute is payment of money, which has already been done largely in compliance of the Rules of the High Court of Orissa, mere non-signing of the challan by the Deputy Registrar cannot nullify the same. At best it can be treated as an act of inadvertence or mistake by



the Deputy Registrar, for which the election petitioner cannot obviously be blamed. The objection raised in this regard is therefore, not acceptable.

26. Thus, from a conspectus of the analysis of facts, law, contentions raised and the discussion made, this Court is of the view that I.A. No. 132 of 2024 filed with the prayer to reject the election petition bears no merit. However, I.A. No. 133 of 2024, for the reasons indicated, deserves to be allowed in the manner narrated earlier.

27. For the foregoing reasons therefore, I.A. No. 132 of 2024 being devoid of merit is rejected. I.A. No. 133 of 2024 is allowed in part by striking out the pleadings under Paragraphs 9(D) and 9(F) of the election petition.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack.
The 11th March, 2025/ A.K. Rana, P.A.

Signature Not Verified

Digitally Signed
Signed by: AJAYA KUMAR RANA
Designation: Personal Assistant
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 11-Mar-2025 19:28:28

