V.S. ACHUTHANANDHAN

v.

P.J. FRANCIS AND ANR.

MARCH 22, 1999

[DR. A.S. ANAND, CJ., M. SRINIVASAN AND R.P. SETHI, JJ.]

Election—Representation of the People Act, 1951—Section 83 read with section 123—Disctinction of Material facts and material particulars—Material facts are primary facts disclosing some cause of action—These facts have to be specifically pleaded and failure to do so will result in rejection of the election petition—But defect in material particulars can be cured at a later stage by amendment and petition cannot be dismissed in limine on the ground of such defect—Appellant filed an election petition—High Court failed to draw distinction between material facts and material particulars and dismissed the petition for lack of material particulars regarding corrupt practices—Held, High Court not justified in rejecting the petition—Code of Civil Procedure, Order 7 Rule 11.

Sections 83 and 94—Election petition alleging illegalities in counting of ballot papers—Dismissed in limine on grounds of vagueness—Held, not justified without affording opportunity to the petitioner to substantiate the allegations.

Words and Phrases :

"Reasonable cause of action"—Meaning of.

"Election"—Meaning of in the context of Representation of the People Act, 1951.

Appellant, a candidate in the legislative assembly election, lost the election. He filed an election petition against respondent No. 1, the successful candidate, on grounds of corrupt practices and illegalities in counting of ballot papers. The High Court found the allegations regarding corrupt practices vague in nature and it did not set forth full details and particulars of any corrupt practices. The petition was dismissed under section 83 of the Representation of the People Act, 1951 read with Order 7 Rule 11 of the Code of Civil Procedure. Hence this appeal.

A **Allowing the appeal, this Court**

HELD : 1.1. Material facts are primary facts disclosing some cause of action and failure to plead such '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.
B **But the absence of "material particulars" can be cured at a later stage by an appropriate amendment and petition cannot be dismissed *in limine* on the ground that full particulars of the corrupt practice were not set out.**
[109-C; F-G]

Raj Narain **v.** *Smt. Indira Nehru Gandhi & Anr.*, **[1972] 3 SCC 850;**
C *Balwan Singh* **v.** *Laksmi Narain and Ors.*, **[1960] 3 SCR 91;** *Samant N. Balkrishna and Anr.* **v.** *George Fernandez and Ors.*, **[1969] 3 SCC 238;** *Virendra Kumar Saklecha* **v.** *Jagjiwan and Ors.*, **[1972] 1 SCC 826;** *Shri Udhav Singh* **v.** *Madhav Rao Scindia*, **[1977] 1 SCC 511; F.A.** *Sapa and Ors.* **v.** *Singara and Ors., Gajanan Krishnaji Bapat and Anr.* **v** *Dattaji*
D *Raghobaji Meghe and Ors.*; **[1995] 5 SCC 347;** *L.R. Shivaramagowda etc.* **v.** *T.M. Chandrashekar etc.*, **[1998] 6 Scale 361 and** *Mohan Rawale* **v.** *Damodar Tatyaba @ Dadasheb & Ors.*, **[1934] 2 SCC 392, relied on.**

"The Present importance of Pleadings (1960) Current Legal Problems" by Jacob; Referred to.

E

1.2. The High Court did not distinguish between the material facts and material particulars of allegations regarding corrupt practices as defined under section 123 of the Representation of People Act. [109-C-D]

1.3 The High Court was not justified in rejecting the election petition
F **without affording the appellant opportunity to place on record the circumstances justifying the recount as prayed for by him. It is true that on vague and ambiguous evidence no court can direct recount. But it is equally true that the doors of justice cannot be shut for a person seeking recount without affording him an opportunity of proving the circumstances justifying**
G **a recount. It is settled position of law that the court trying an election petition can direct inspection and recount of votes if the material facts and particulars are pleaded and proved for directing such recount in the interest of justice. [115-A-D]**

M.R. Gopalkrishnan **v.** *Thachady Prabhakaran and Ors.*, **[1995] Supp.**
H **2 SCC 101, relied on.**

Bhabi v. *Sheo Govind,* **[1976] 1 SCC 687 and** *Satyanarain Dudhani* v. *Uday Kumar Singh* **[1993] suppl. 2 SCC 82, cited.** A

2.1. A reasonable cause of action means a cause of action with some chances of success when only the allegations in the pleadings are considered. So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. [111-E-F] B

2.2 The word 'election' cannot be restricted only to the electoral process which commences with the issusance of the notification and ends with the casting of votes at the Polls. The word 'election' as used in the Representation of the People Act, means "that every stage from the time the notification calling for elections is issued till the declaration of the result". [112-G-H; 113-A] C

Mohinder Singh Gill & Anr. v. *The Chief Election Commissioner & Ors.,* **AIR (1978) SC 851 and** *The Election Commission of India* v. *Shivaji & Ors.,* **AIR (1988) SC 64, relied on.** D

Ashraf Ali Khan v. *Tika Ram and Ors.,* **20 E.L.R. 470, approved.**

Dharamvir v. *Amar Singh & Ors,* **[1996] 3 SCC 158, referred to.**

N.P. Ponnuswami v. *Returning Officer, Namakkal,* **AIR (1952) SC 64, cited.** E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1808 of 1997.

From the Judgment and Order dated 8.1.97 of the Kerala High Court in E.P. No. 11 of 1996. F

Dr. A.M. Singhvi, K. Sudhakaran, Ms. Malinl Poduval, P.K. Bansal, R. Satish and Ms. Kamini Jaiswal for the Appellant.

Ram kumar, (Roy Abraham) and Ms. Baby Krishnan for the Respondents. G

The Judgment of the Court was delivered by

SETHI, J. The appellant a candidate of the C.P.I. (M) party contested and lost election from No.99 Mararikulam Legislative Assembly Constitutency in the State of Kerala by a margin of 1965 votes. The successful H

A candidate was the respondent No. 1 belonging to the Indian National Congress. Not satisfied with the result of the election, the appellant filed Election Petition No. 11/1996 in the High Court of Kerala mainly on the grounds of corrupt practices and illegalities in the counting of ballot papers. He prayed for declaration that the election of the 1st respondent was void and that he was duly elected. Instead of filling any written statement, the respondent No.1 B filed preliminary objections which were made the basis of framing the following issues :

1. Whether the petition has been presented in compliance with the provisions of the Representation of the People Act?

C

2. Whether the absence of an affidavit in support of the allegations of corrupt practices in the petition is fatal to the maintainability of the petition?

3. Whether there is a proper affidavit under Rule 94-A of the Conduct of Election Rules?

D

4. Whether the allegations make out a cause of action at all warranting trial of the election petition?

5. Whether the allegations for recount are sufficient to hold a trial on that issue?

E

6. Whether the failure to attest as true copy of the annexure produced along with the election petition is fatal?

7. Whether the election petition is liable to be dismissed as not properly framed and filed?

F

Issues No 1 and 4 were decided against the appellant holding that allegations made in paragraphs 11(E), (F), (H), (J), (K), (M), and (P) lacked material facts and particulars and being vague and ambiguous required no trial. Issues No. 2,3, and 6 were decided in favour of the appellant. Issue No. G 5 was decided against the appellant holding that he had failed to establish that there existed a case where the recounting could be ordered. Ultimately, the election petition was rejected under Section 83 of the Representation of People Act read with Order VII Rule 11 (a) of the Code of Civil Procedure with costs assessed at Rs. 1,500. Feeling aggrieved by the judgment of the High Court, the appellant has preferred this appeal under Section 116-A of the H Representation of People Act, 1951 (hereinafter referred to as 'the Act').

Assailing the judgment impugned in this appeal, the learned counsel appearing for the appellant has vehemently argued that the High Court has adopted hypertechnical approach in the matter and that the election petition has been dismissed finally on merits without affording the appellant any opportunity to prove his case. It is contended that the issues decided in fact did not arise and that the High Court did not properly appreciate the difference between the 'material facts' and the material particulars' as referred to in Section 123 of the Act. It is contended that there were sufficient facts brought on record for proving the corrupt practices by way of evidence and that the circumstances existed which justified re-count in the case under the provisions of the Act. It is further submitted that the provisions of Section 83 of the Act and Order VII Rule 11 of the Code of Civil Procedure have wrongly been relied upon for rejecting the election petition, as according to the learned counsel for the appellant, none of those provisions was applicable in the instant case. It is contended that the High Court committed a mistake of law by holding that the process of election ended on the date of the poll and any illegality or mal-practices committed after the date of the poll but before the declaration of the result was not a mal practice or corrupt practice. It is submitted that election process continues till the result is declared and that action of the parties to an election is relevant from the date of the commencement of the election till the declaration of the result. The High Court is alleged to have not taken note of its own verdict in C.M.P. No 2867/96 by which amendment was allowed for correcting the Section of the Act under which the allegations of corrupt practices already made in the petition were to fit in.

Supporting the impugned judgment, the learned counsel for respondent No.1 has submitted that in the absence of material facts and details of corrupt practices, the High Court was justified in holding that as no cause of action is disclosed, the election petition deserved dismissal under Order VII Rule 11 of the Code of Civil Procedure. He has contended that the appellant had failed to place on record sufficient material justifying the recount. Relying upon the observations of this Court in *Dharamvir v. Amar Singh and Ors.*, [1996] 3 SCC 158 it has been contended that Sections 123(2) and 123(7) of the Act deal with corrupt practices indulged at a stage prior to the casting of votes and not thereafter and as the appellant had referred to the alleged corrupt practices after the date of poll, but before the date of declaration of the result, no cause existed for the trial of the case.

Before dealing with the rival contentions of the learned counsel for the parties it has to be kept in mind that free fair, fearless and impartial elections

A are the guarantee of a democratic policy. Effective mechanism is the basic requirement for having such elections. For conducting, holding and completing the democratic process, a potential law based upon requirements of the society tested on the touchstone of the experience of times is concededly of paramount importance. A balanced judicial approach in implementing the laws relating to franchise is the mandate of this Court. Law relating to the B accomplishment of the democratic process by holding the elections is not required to be so liberally construed as to frustrate the will of the people expressed at the elections and not too rigidly applied which may result in shaking the confidence of the common man in the institution entrusted with the noble task of establishment of the rule of law. It has always to be kept C in mind that the law relating to elections is the creation of the statute which has to be given effect to strictly in accordance with the will of the Legislature.

It may further be noticed, as observed by this Court in *Raj Narain* v. *Smt. Indira Nehru Gandhi and Anr.*, [1972] 3 SCC 850 that rules of pleadings. are intended as aids for a fair trial and for reaching a just decision. An action D at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it. The purpose of Section 86 of the Act is to ensure that every charge of corrupt practice is brought before the E Court within the prescribed period of limitation and not thereafter, so that the trial of the case is not converted into a persecution by adding more and more charges or by converting one charge into another as the trial proceeds.

It is also necessary to have in mind some of provisions of the laws relevant for the purpose of deciding this appeal.

F

The Act was enacted to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualification and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections G and the decision of doubts and disputes arising out of or in connection with such elections. Part II of the Act provides for qualifications and disqualifications for membership of Parliament and the State Legislatures. Part IV provides for the administrative machinery for the conduct of elections and part IV-A deals with the registration of political parties. Under Section 30 the Election Commission is obliged to appoint last date for making nomination H after the notification calling upon a constituency to elect a member is issued.

On the issue of a notification under Section 30, the Returning Officer is under statutory duty to give public notice of the intended election in such form and manner as may be prescribed. notifying nominations of candidates for such election and specify the place, and date where nominations papers are to be delivered. Scrutiny of nominations is conducted under Section 36 and list of contesting candidates is issued under Section 38 of the Act. Procedure at election is provided under Chapter III and Chapter IV deals with, the Poll. Section 64 provides that at every election where a poll is taken, vote shall be counted, by or under the supervision and direction of, the Returning Officer and each contesting candidate, his election agent and his counting agent shall have a right to be present at the time of counting. Result of the election is declared under Section 66 of the Act. Part VI deals with the disputes regarding elections. No election can be called in question except by an election petition presented in accordance with the provision of Part IV which shall be tried by the High Court having jurisdiction in the area where the election is held. An election petition calling in question any election has to be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidates at such election or any elector within 45 days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their elections are different, the later of those two dates. Section 83 provides what the contents of an election petition should be. An election petition is required to setforth 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 commission of each of such practice which is required to be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for verification of the pleadings. The petition based upon corrupt practices is required to be accompanied by an affidavit in the prescribed form in support of the allegations of such practice and the particulars thereof. Any schedule or annexure to the petition is required to be signed by the petitioner and verified in the same manner as the petition. Chapter III of Part VI deals with the trial of election petitions. Section 87 provides that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure for the trial of suits.

Section 100 of the Act provides :-

Grounds for declaring election to be void.—(1) Subject to the

A 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 {or the Government of Union Territories Act, 1963 (20 of 1963) }; or

B (b) that any corrupt practice has been committed by a returned candidates or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected ;

C (d) or that the result of the election, in so far as it concerns a returned candidates, has been materially affected -

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

(ii) by any corrupt practice committed in the interests of the returned candidate, [by an agent other than his election D 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 E 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 F 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 of the candidate of his election agent ;

G

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

(d) that in all other respects the election was free from any H 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. A

Similarly Section 101 of the Act provides :-

Grounds for which a candidate other than the returned candidate may be declared to have been elected. If any person who has lodged a petition in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion- B

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or C

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, [the High Court] shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected. D

At the time of presenting an election petition, if the petitioner fails to deposit in the High Court the sum of security of costs as quantified under Section 117 of the Act, the [election petition is liable to be dismissed Section 123 specifies] the corrupt practices for the purposes of elections. Chapter III of Part VI deals with other electoral offences. E

Issues are framed under Order XIV of the Code of Civil Procedure when a material proposition of a fact or law is affirmed by one party and denied by another. Material propositions are such proposition of law or fact which the plaintiff must allege in order to show the right to sue or a defendant must allege in order to constitute his defence. There is no dispute that issues are framed on the basis of the pleadings which according to Order VI Rule 1, Code of Civil Procedure include plaint or written statement. Pleadings can be struck out under Rule 16 of Order VI which are unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or which is otherwise an abuse of the process of the court. The plaint or the petition can also be rejected in the following cases:- F G

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time H

A to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

B (d) where the suit appears from the statement in the plaint to be barred by any law :

There is no gain-saying that the powers of superintendence, direction and control of election vests in the Election Commission under Part XV of the Constitution of India. The orders of the Election Commission are however C subject to judicial review where they are found to be contrary to the law enacted under Article 327 or are otherwise arbitrary, mala fide or unfair. The High Court may also exercise the power of judicial review if it is found that the orders of the Election Commission were in excess of its jurisdiction, being contrary to any electoral law or rule made thereunder by the competent D legislature or any provision of the Constitution itself. However, no court is entitled to entertain the questions coming under Articles 327 and 328 of the Constitution or orders made by the Election Commission and the matters which may be the subject of an election petition. Article 329 (b) provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election E petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. Election as mentioned in Article 329 (b) of the Constitution has been interpreted to mean the entire process culminating in a candidate being declared elected and not confined to the final result. Such an interpretation is inconsonance F with the provision of the Act as contained in Part V thereof particularly Section 30, dealing with the appointment of date for nominations and Section 66 dealing with the declaration of the result.

In the instant case, as noted earlier, the election petition has been rejected by invoking the powers of Section 83 of the Act read with Order VII G Rule 11(a) of the Code of Civil Procedure. After referring to some judgments, the learned trial Judge of the High Court has concluded :-

"Read as a whole, the averments contained in the Election Petition do not satisfy the requirements of Section 83 of the Act. No *prima face* case is made out to hold that the first respondent has committed H corrupt practices or that it is a fit case where recounting is to be

ordered. On a perusal of the Election petition, it is seen that the petitioner has not pleaded the material facts with necessary particulars which would enable the Court to grant the prayer made in the petition. Pleadings in the Election Petition do not make out a cause of action for ordering recount, as prayed for in the petition. So, the Election Petition is liable to be rejected under Section 83 of the Act read with order 7 rule 11(a) C.P.C.''

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 '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 by the learned trial Judge. After referring to various pronouncements of this Court including cases in *Balwan Singh* v. *Lakshmi Narain and Ors.*, [1960] 3 SCR 91, *Samant N. Balakrishna and Anr.* v. *George Fernandez and Ors.*, [1969] 3 SCC 238. *Virendra Kumar Saklecha* v. *Jajiwan and Ors.*, [1973] 1 SCC 826, *Shri Udhav Singh* v. *Madhav Rao Scindia,* [1977] 1 SCC 511, *F.A. Sapa and Ors.* v. *Singera and Ors. and Gajanan Krishnaji Bapat and Anr.* v. *Dattaji Raghobaji Meghe and Ors.*, [1995] 5 SCC 347 and host of other authorities, this Court in *L.R. Shivaramagowda etc.* v. *T.M. Chandrashekar etc.* [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 appropriate amendment. An election petition was not liable to be dismissed is 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 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 (supra) the Court held :-

''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).

A "Particulars" on the other hand are " details of the case set up by the party". "Material particulars" within 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 drawn, to make it full, more detailed and more informative".

The appellant had specified the alleged corrupt practices in paragraphs 11(E), (F), (H), (J), (K), (M) and (P). It was alleged that Sri Ayyappan Pillai, the Election Tehsildar of the Constituency was close associate and friend of the 1st respondent who played a pivotal role in the manoeuvring relating to ballot papers which were not distributed to the polling stations and ultimately used for the benefit of the successful candidate. He was alleged to have been helping the 1st respondent in violation of the provisions of the Act, the Rules, Orders and instructions issued thereunder. He was admittedly a gazetted officer who was alleged to have acted as an agent of the 1st respondent. The trial Judge found that allegations made in paragraphs 11(E), (F), (H), (J), (K), (M) and (P) of the election petition were vague in nature and did not setforth full particulars of any corrupt practice. Lacking of full particulars could not be made a basis for rejecting the election petition as the appellant had the right to amend the pleadings. The Trial judge found that, "details of corrupt practice are wanting in the election petition." The absence of the details appears to have persuaded the learned Judge to reject the election petition apparently under a misconception of the legal position regarding the difference between the 'material facts' and 'material particulars'. The learned trial Judge rejected the election petition on his being satisfied that :-

"Though as per the amended affidavit, the corrupt practice will attract Section 123(7) of the Act, it is not stated in the Election Petition that either the candidate or his agent or any other person with the consent of the candidate or his election agent, obtained, procured, abetted or attempted to obtain or procure the service of any person under the Government for the furtherance of the prospects of the candidate's election. Though it is stated that Sri Ayyappan Pillai is a gazetted Officer, it is not stated anywhere in the petition that the first respondent or his agent directly or by any other person with his consent or that of his election agent obtained or procured the assistance of a gazetted officer."

It appears that he lost sight of allegations of the petitioner made in paragraph 9 of the election petition wherein it was stated :-

> "The result of election, in so far as it concerns the returned candidate, the 1st respondent in this case, has been materially affected by (i) corrupt practice committed in the interest of the returned candidates by his agents, election agent and the returned candidate (ii) by the improper reception of votes which is void and (iii) by the non-compliance with the provision of the Constitution and the provisions of the Representation of People Act, 1951 as also rules and orders made under the Act."

It was, therefore, wrongly, found that in the absence of specific pleading and full particulars of corrupt practices, the election petition deserved rejection as it allegedly did not disclose any cause of action. The trial Judge appears to have equated the cause of action with proof and thus committed an illegality of law requiring interference by us.

This Court in *Mohan Rawale* v. *Damodar Tatyaba @ Dadasheb & Ors.*, [1994] 2 SCC 392 held that a reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleadings are considered. So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more know than clearly understood. It was further held that the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. The distinctions among the ideas of the "grounds" in Section 81(1); of "material facts" in Section 83 (1) (a) and of "full particulars" in Section 83(1)(b) are obvious. The provisions of Section 83(1)(a) and (b) are in the familiar pattern of Order VI Rules 2 and 4 and Order 7, Rule 1(e) Code of Civil Procedure. There is a distinction amongst the 'grounds' in Section 81(1); the 'material facts' in Section 83 (1)(a) and "full particulars" in Section 83(1)(b).

The Court approved the observations of Jacob in "The Present Importance of Pleadings" (1960) Current Legal Problems at pp 175-176 :-

> "Pleadings do not only define the issues between the parties for the final decision of the Court at the trial, they manifest and exert their importance throughout the whole process of the litigation..... They

A show on their face whether a reasonable cause of action or defence is disclosed. They provide a guide for the proper mode of trial and particularly for the trial of preliminary issues of law or fact. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They act as a measure for comparing the B evidence of a party with the case which he was pleaded. They determine the range of the admissible evidence which the parties should be prepared to adduce at the trial. They delimit the relief which the court can award...."

Looking at the averments made in the election petition, it cannot be said C that it suffered from lack of disclosure of material facts. The absence of material particulars, if any, could be rectified by resort to amendment of the pleadings in terms of Order VI Rule 17 of the C.P.C.

The reliance of the learned counsel for respondent No. 1 on the observations of this Court in *Dharamvir* v. *Amar Singh and Ors.*, (1996) 3 D SCC 158 (supra) is also of no help to him for the purpose of upholding the judgment of the High Court. The observations in that case, that the corrupt practices mentioned in Sections 123 (2) and (7) referred to only such practices done for furtherance of the election only to pre-voting stage and not post voting stage cannot be termed to be the verdict of this Court inasmuch as E the Bench itself observed, "*prima facie* these two sub-sections will apply only to pre-voting stage and not post-voting stage." (underlined by us). The aforesaid observations were neither relevant nor necessary for the disposal of Dharamvir Case and appear to have been made without noticing the earlier judgment of this Court wherein it was held that the election process ended F with the declaration of the result of the candidates and not only after the voting.

The corrupt practices referred to in the aforesaid two sub-sections are deemed to be corrupt practices if such practices are committed, "for the furtherance of the prospects of that candidate's election." The word 'election' G cannot be restricted only to the electoral process which commences with the issuance of the notification and ends with the casting of votes at the Polls. The word 'election' as used in the Representation of the People Act has been interpreted by this court to mean "that every stage from the time the notification calling for elections is issued till the declaration of the result."

H Relying upon the judgment of this Court in *N.P. Ponnuswami* v.

Returning Officer, Namakkal, AIR (1952) SC 64, the Allahabad High Court in *Ashraf Ali Khan* v. *Tika Ram and Ors.*, (20 E.L.R. 470) rightly explained the position of law in this behalf as under :-

"The question is when does an election begin and end ?

Now, it has been held in *Yeshavantrao Balwantrao Chavan* v. *K.T. Mangalmurti* and Another that-

"In the case of an election there are certain steps to be taken until poll is taken. In the first place, there is an announcement about the holding of an election. This is followed by nomination of candidates. After the nominations are made, a scrutiny of the nominations is held. After the nominations are scrutinized a list of validity nominated candidates is prepared. After the list of validly nominated candidates is prepared, there is a stage of withdrawal enabling a candidate to withdraw his candidature. After the withdrawal, if any a candidate may retire from contest, and finally, there is the poll, indeed, an election is one continuous process involving these steps. In this connection. I may refer to what has been pointed out in the case of *Shankar* v. *Returning Officer, Kolaba.* With regard to the express 'election,' it was stated as follows :

'The expression 'election' in article 329 (b) of the Constitution of India bears a wider meaning than the very limited restricted meaning of the result of an election or the counting of votes. "Election" has the same meaning as the expression used in articles 327 and 328 viz., matters relating to or in connection with election. Therefore, nomination of candidates, scrutinizing of nominations, and decisions as to whether a nomination paper is valid or not, are all part and parcel of an election.

"Election' is not merely the ultimate decision or the ultimate result. 'Election is every stage from the time the notification is issued till the result is declared, and even perhaps if there is an election petition, till the decision of the Election Tribunal. It is one whole continuous integrated proceeding and every aspect of it and every stage of it and every step taken in it is a part of the election, and what is prohibited by article 329 (b) is calling in question any one aspect or stage of the election. The expression 'except by an election petition' in the article does not point to the period when it can be called in question; it

A rather points to the manner and the mode in which it can be called in question; and article 329 (b) provides that the only way any matter relating to or in connection with an election can be called in question is by an election petition, which could be presented to such authority and in such manner as may be provided for by law passed by the appropriate Legislature.''

B

It may be observed that in this cited case the court was considering article 329 (b) of the Constitution of India. But, in our view, what has been stated in that case with regard to the wide meaning of the term "election'' may be also applied to an election contemplated under the Representation of the People Act, 1951. Section 2(i)(d) of the Act defines election as ''an election to fill a seat or seats in *inter alia* either House or the Legislature of a State.''

C

We may also on this point refer to two Supreme Court rulings-*N.P. Pommuswami* v. *Returning Officer, Namkkal* and *Hari Vishnu Kamath* v. *Ahmad Ishaque and others*, on which the aforesaid Bombay ruling is based.''

D

The position of law on this point was again reiterated in *Mohinder Singh Gill and Anr.* v. *The Chief Election Commissioner & Ors.*, AIR (1978) SC 851 holding :-

E

''As already pointed out, it is well settled that election covers the entire process from the issue of the notification under Section 14, to the declaration of the result under Section 66 of the Act. When a poll that has already taken place has been cancelled and a fresh poll has been ordered, the order therefore, with amended date, is passed as an integral part of the electoral process.''

F

and further approved in *The Election Commission of India* v. *Shivaji & Ors.*, AIR (1988) SC 61.

G It appears that while interpreting the provisions of Order VII Rule 11 of the Code of Civil Procedure and Section 83 read with Section 123 of the Act, the learned trial Judge has taken a hypertechnical view in the matter which if approved would frustrate the purpose of the purity of the elections which has been held to be mechanism devised to ascertain the true wishes and will of the people in the matter of choosing their political leaders in a democratic system.

H

Similarly the learned trial Judge was not justified in rejecting the election petition without affording the appellant opportunity to place on record the circumstances justifying the recount as prayed for by him. It is true that on vague and ambiguous evidence no court can direct recount. But it is equally true that the doors of justice cannot be shut for a person seeking recount without affording him an opportunity of proving the circumstances justifying a recount. In his petition the appellant had given details of the alleged illegalities and irregularities committed by the respondent No. 1 which according to him justified the holding of a recount. The learned trial Judge relied upon some judgments where recount was not allowed after trial and wrongly dismissed the election petition filed by the appellant without affording him the opportunity to substantiate the allegations made in the petition or to bring on record the evidence justifying a recount. It is settled position of law that the court trying an election petition can direct inspection and recount of votes if the material facts and particulars are pleaded and proved for directing such recount in the interest of justice. In doing so, the provisions of Section 94 of the Act have to be kept in mind and given due weight before directing inspection and recount. In *M.R. Gopalkrishnan* v. *Thachady Prabhakaran and Ors.*, [1995] Supp. 2 SCC 101 it was held :-

> "After a cursory glance of the relevant provisions discussed above it is thus abundantly clear that the rules provides adequate opportunity to a candidate, his election agent and counting agent to have a watch over the counting process before the result is declared and if they raise any objection as to the validity or otherwise or any ballot paper and if the said objection is improperly rejected the candidate, his counting and election agent are well informed of the nature of the objection that was raised with regard to the ballot papers and make a concise statement of material facts in the election petition in relation thereto. It is for these reasons that this court has repeatedly held that the secrecy of the vote has to be maintained and a demand of recount should not ordinarily be granted unless the election petitioner makes out a prima facie case with regard to the errors in the counting and is able to show that the errors are of such magnitude that the result of the election of the returned candidate is materially affected. The election petitioner, in order to seek an order of recount, has to place material and make out a prima facie case on the threshold and before an order of recount is actually made. The demand of a defeated candidate for recount of votes has to be considered keeping in view that secrecy of the ballot is sacrosanct in a democracy, and, therefore,

A unless the election petitioner is able not only to plead and disclose the martial facts but also substantiate the same by means of evidence of reliable character that there existed a prima facie case for the recount, no tribunal or court would be justified in directing the recount.

This Court in *Bhabi* v. *Sheo Govind,* [1976] 1 SCC 687 while dealing B with the question of direction for inspection and recount, on a close and careful consideration of various authorities of this court laid down certain guidelines and conditions which are imperative before a court can grant inspection of the ballot papers. The said conditions and guidelines are set out below :- [SCC pp. 693-694, para 15]

C (1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;

(2) That before inspection is allowed the allegations made against the elected candidate must be clear and specific and must be supported D by adequate statements of material facts :

(3) the court must be *prima facie* satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;

E (4) That the court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties;

(5) That the discretion conferred on the court should not be exercised in such a way so as to enable the applicant to indulge in a roving F inquiry with a view to fish materials for declaring the election to be void; and

(6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, G and not for the purpose of fishing out materials."

In a recent decision in *Satyanarain Dudhari* v. *Uday Kumar Singh,* [1993] Suppl. 2 SCC 82 this Court again reiterated the similar view by observing that the secrecy of the ballot papers cannot be permitted to be tinkered with lightly and an order of recount cannot H be granted as a matter of course. It is only when the High Court is

satisfied on the basis of material facts pleaded in the petition and supported by the contemporaneous evidence that recount can be ordered. When there is no contemporaneous evidence to show any irregularity or illegality in the counting, ordinarily it would not be proper to order recount on the basis of bare allegations in the election petition.''

Without commenting upon the merits of the case, lest it may prejudice the rights of the parties we feel that the trial Judge was not justified in rejecting the election petition at the initial stage without affording the appellant an opportunity to prove the existence of circumstances *prima facie* justifying the existence of grounds requiring recount.

In the light of what has been noticed hereinabove, we are of the opinion that the judgment impugned is not sustainable in the eyes of law. Accordingly, this appeal is allowed by setting aside the judgment impugned and remitting the case back to the High Court for trial of the same on merits after affording the respondent No. 1 to file his detailed written statement and the parties an opportunity to lead evidence. The High Court is requested to finally dispose of the election petition expeditiously preferably within a period of one year. The appellant is also held entitled to costs which are directed to be paid by respondent No.1 and assessed at Rs. 10,000/-

N.J. Appeal allowed.