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V. NARAYANASWAMY  
v.  
C.P. THIRUNAVUKKARASU

JANUARY 19, 2000

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[DR. A.S. ANAND, C.J., D.P. WADHWA AND  
S. RAJENDRA BABU, JJ.]

*Representation of the People Act, 1951 :*

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*Sections 123(1)(B) & (2), 100(1)(b) & (d) and 79(d).*

*Election—Corrupt practice—Bribery and undue influence—Election to Rajya Sabha—Allegation that MLAs belonging to a political party other than the election petitioner's were entertained in five star hotels by the Chief Minister—The Chief Minister belonged to the returned candidate's political party—No allegations that the election petitioner was prevented from meeting any of those MLAs—Further allegation that Government appointed Chairmen for five State-owned Corporations after the commencement of the election process—But none of the nominees belonged to the election petitioner's party—Held : In the circumstances of the case, allegation of bribery and undue influence not established.*

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*Section 83(1)(c)–Election—Election petition—Affidavit—Verification of—Held : Has to conform not only to the form prescribed in substance but also must contain particulars as required by Rules—Otherwise petition is liable to be rejected at the threshold—Conduct of Election Rules, 1961, R.94-A.*

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*Sections 81, 83 and 86—Election—Election petition—Pleadings—Requirements of—Held : Cause of action must be disclosed—The court cannot dissect pleadings into several parts and consider whether each one of them discloses a cause of action—Petition has to be considered as a whole—There cannot be a partial rejection of the petition.*

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*Sections 81 and 83—Election—Election petition—Corrupt practice—Requirements—Held : Petition must be supported by affidavit which should disclose source of information—Petitioner must state which allegations are true to his knowledge and which to his belief—Allegation must be clearly and*

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*precisely stated—It should not be open to two equally possible inferences—It has to be specifically alleged that the corrupt practice is committed with the consent of the returned candidate and that a particular electoral right of a person is affected.* A

*Sections 81, 83(1)(c) and 86—Election—Election petition—Material facts and material particulars—Difference between—Held : Failure to plead material facts is fatal to the election petition—Whereas absence of material particulars can be cured subsequently—But despite every opportunity to supply the material particulars the petitioner has not done so, the petition has to be rejected—However, no duty is cast on the High Court to direct suo motu the furnishing of better particulars—In the circumstances of the case, the petition lacked material facts, material particulars, was defective in verification and the affidavit not in the form prescribed.* B C

*Hence, petition liable to be rejected—Code of Civil Procedure, 1908, Or. 6 R. 16 and Or. 7 R. 11.* D

*Doctrines : Doctrine of Substantial Compliance—Doctrine of Curability—Discussed.* D

**The appellant-defeated candidate filed an election petition before the High Court challenging the election of the respondent-returned candidate to the Rajya Sabha. The appellant alleged that the election of the respondent was vitiated due to corrupt practice within the meaning of Section 123(1)(B)(b) and Section 100(1)(d) of the Representation of the People Act, 1951 committed by the respondent, his agents and other persons with the consent of the respondent.** E

**The appellant alleged the following corrupt practices committed by the respondent :-** F

**1. The respondent was proposed by the then Chief Minister belonging to the respondent's political party. For the second set of application the name of the respondent was proposed by the Minister in the Government of the Union Territory. The proposals were seconded respectively by Deputy Speaker and Parliamentary Secretary to the Chief Minister. All these four persons acted as agents for the respondent in the election.** G

**2. After the commencement of the election process the Government of the Union Territory announced appointment of Chairmen for five** H

**A** State-owned Corporations but none of the nominees was from the appellant's party which amounted to exercise of undue influence to secure the votes of the MLAs, particularly the MLAs who were nominated as Chairmen.

**B** 3. After the date of the election was fixed the appellant wanted to meet all the MLAs but the MLAs other than the MLAs of the appellant's party were entertained in five star hotels by the Chief Minister.

**C** 4. The Minister who had proposed the name of the respondent took the Deputy Speaker and the Parliamentary Secretary to the Chief Minister in a Government vehicle to Goa and made to stay in Government Guest House and were entertained there at Government expense as a reward for voting in favour of the respondent.

**D** 5. Another agent of the respondent, who was an MLA and Government whip belonging to the respondent's party, also influenced an MLA belonging to a political party other than the appellant's by keeping him at a hotel and then taking him to several places at Government expense.

**E** In the verification to the election petition the appellant stated "that what all stated in the above paragraphs 1 to 15 are all true to the best of my knowledge, information and belief. In the affidavit the appellant stated as follows :-

**F** (a) "that the statements made in paragraphs 7 to 10 of the accompanying Election Petition about the commission of the corrupt practice of gratification as a motive or reward for securing votes and undue influence as referred under Section 123(1)(B) and (2) of the Representation of the People Act, 1951 and the particulars of such corrupt practice mentioned in paragraphs 7 to 10 of the same petition are true to my knowledge;

**G** (b) that the statements made in paragraphs 7 to 10 of the accompanying Election Petition about the commission of the corrupt practice of gratification as a motive or reward for securing votes and undue influence as referred under Section 123(1)(B) and (2) of the Representation of the People Act, 1951 and the particulars of such corrupt practice mentioned in paragraphs 7 to 11 of the same petition are true to my information;

**H** (c) that the statements made in paragraph 11 of the accompanying Election Petition about the commission of corrupt practice of gratification

as a motive or reward for securing votes and undue influence as referred under Section 123(1)(B) and (2) of the Representation of the People Act, 1951 and the particulars of such corrupt practice mentioned in paragraph 11 of the same petition are true to my information.\*

In the counter-affidavit filed by the respondent he denied all the allegations made against him and submitted that the allegations of corrupt practices alleged in the election petition were vague and unspecific and bereft of material facts and particulars. It was also submitted that the election petition be dismissed under Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure, 1908. On the same day the respondent also filed a miscellaneous application praying for striking out certain paragraphs of the election petition on the ground that material facts were not stated in the election petition and prayed for dismissal of the election petition on that score. The respondent also raised objection to the validity of the verification to the petition and to the affidavit in support of the allegations of corrupt practices. The appellant filed a rejoinder to the counter-affidavit and reply to the miscellaneous application reaffirming what he had said in the election petition. The appellant said that the election petition was duly verified as per law and that the affidavit was legally correct.

The High Court dismissed the election petition without holding any trial. Hence this appeal.

Dismissing the appeal, this Court

HELD : 1.1. An election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 of the Representation of the People Act, 1951 read with Rule 94-A of the Conduct of Election Rules, 1961 and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. The appellant had every opportunity to supply the material particulars, which admittedly were lacking

**A** and also to amend the verification and to file the affidavit in the form prescribed but for the reasons best known to him, he failed to do so.

[320-B-C]

**B** 1.2. There is a difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition vide Section 83(1)(a). Then under Section 83(1)(b) the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from

**C** material facts on which the petition is founded. [320-D]

**D** 2.1. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person

**E** was affected. It cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unaffirmed under the

**F** verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the court could not take cognizance thereof. The charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations

**G** are clearly and precisely stated in the petition. [320-F-H; 321-A]

**H** 2.2. It is the violation of the provisions of Section 81 of the Act, which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure, 1908. Non-compliance with the provisions

of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7, Rule 11 of the CPC. [321-B]

2.3. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and affidavit in the form prescribed does not suffer from any defect, the allegations of corrupt practice cannot be inquired and tried at all. In such a case the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. Where the petition does not disclose any cause of action it has to be rejected. The court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition. [321-C-E]

*D. Ramachandran v. R.V. Janakiraman*, [1999] 3 SCC 267, referred to.

3. In a petition on the allegation of corrupt practices cause of action cannot be equated with the cause of action as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter. If proved not only that the candidate suffers ignominy, he also suffers disqualification from standing for election for a period that may extend to six years. Reference in this connection may be made to Section 8-A of the Act. It was for this purpose that proviso to Section 83(1) was inserted by Act 4 of 1961 (w.e.f. 20-9-1961) requiring filing of the affidavit in the prescribed form where there are allegations of corrupt practice in the election petition. Filing of the affidavit as required is not a mere formality. By naming a document as an affidavit it does not become an affidavit. To be an affidavit it has to conform not only to the form prescribed in substance but has also to contain particulars as required by the Rules. [322-D-E; 324-A]

4. The High Court has undoubtedly the power to permit amendment of the petition for supply of better material particulars and also to require amendment of the verification and filing of the required affidavit but there is no duty cast on the High Court to direct *suo motu* the furnishing of better

**A** particulars and requiring amendment of the petition for the purpose of verification and filing of proper affidavit. In a matter of this kind the primary responsibility for furnishing full particulars of the alleged corrupt practices and to file a petition in full compliance with the provisions of law is on the petitioner. [323-H; 324-A]

**B** *Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani*, AIR (1955) SC 610, followed.

*Ch. Subbarao v. Member, Election Tribunal, Hyderabad*, [1964] 6 SCR 213; *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*, [1964] 3 SCR 573; *Daulat Ram Chauhan v. Anand Sharma*, AIR [1984] SC 621; *F.A. Sapa v. Singora*, [1991] 3 SCC 375; *K.M. Mani v. P.J. Anthony*, [1979] 2 SCC 221; *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe*, AIR (1995) SC 2284; *T.M. Jacob v. C. Poulouse*, [1999] 4 SCC 274; *Dr. Shipra v. Shanti Lal Kholwal*, [1996] 5 SCC 181; *R.P. Moidutty v. P.T. Kunju Mohammad*, JT (1999) 7 SC 457; *L.R. Shivaramagowda v. T.M. Chandrashekar*, [1999] 1 SCC 666; *H.D. Revanna v. G.Puttaswamy Gowda*, [1999] 2 SCC 217 and *Dharamvir v. Amar Singh*, [1996] 3 SCC 158, relied on.

*Sampat N. Balkrishna v. George Fernandez*, [1969] 3 SCC 238; *Azhar Hussain v. Rajiv Gandhi*, [1986] 2 SCR 782; *A.S. Subbaraj v. M. Muthiah*, 5 ELR 21 and *Balwan Singh v. Lakshmi Narain*, AIR (1960) SC 770, cited.

**F** 5.1. The appellant alleged that the MLAs were "kept" in a hotel but he has not given particulars as to what he meant by the word "kept". "Kept" is certainly not "confined". What entertainment was provided to those MLAs in various places has also not been specified. It is not his case that he was prevented in any way from meeting any of those MLAs. It was a material fact to allege which he failed to do so. This is apart from the fact that the material particulars as to when the MLAs were taken to the hotel and to other places, the names of the MLAs and names of the hotels in these places, who took them there, who paid their bills and who brought them back, are lacking. The appellant does not show as to why he could not meet all these MLAs prior to the election. Apart from one independent MLA other MLAs belonged to various other political parties. Rather it can be assumed that the MLAs voted according to their political affiliations. It has come on record that out of a total number of 29 MLAs who constituted the Legislative Assembly, one political party had taken the decision not to vote

**H** for any candidate and that is how the two MLAs of this party did not

participate in the election and total votes polled were 27. There was only one independent MLA and his casting of vote either way would not have at all affected the result of the election considering the number of votes polled by each of the candidates. It is not the case of the appellant that he was barred from meeting any of the MLAs in order to solicit their votes. There is no allegation if there is any complaint by any MLA that he was kept out of circulation by respondent or with his consent by any other person for the purpose of not being accessible to the appellant. [324-C-D]

5.2. The appellant in his petition stated that the Minister, the Deputy Speaker and the Parliamentary Secretary to the Chief Minister were the agents of the respondent. It is further alleged that one of them took the other two to Goa with a view to influencing them to get their votes in favour of the respondent. But it is paradoxical where one agent influences the other agent to vote in a particular way. It certainly could not be a corrupt practice. Regarding the allegation relating to the MLA who was Government whip it is not the case of the appellant that what the said MLA did was with the consent of the respondent or any of his agent or otherwise. This is a material fact, which the appellant failed to allege. Lastly, the notification regarding to the appointments of Chairmen to various Corporations came out much later after the results were declared. It is correct that none of the nominees belonged to the appellant's party. [324-H; 325-A-C]

Therefore, the election petition not only lacked the material facts, it also lacked material particulars, was defective in verification and the affidavit filed was not in the form prescribed. [325-D]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 3871 of 1999.

From the Judgment and Order dated 18.8.98 of the Madras High Court in O.A. No. 298 of 1998.

M.C. Bhandare, J. Satyanarayana, Ms. C.K. Sucharita and Ranji Thomas for the Appellant.

S. Sivasubramaniam, R. Mohan, S. Thananjayan and M.A. Krishnamurthy for the Respondent.

The Judgment of the Court was delivered by

A **D.P. WADHWA, J.** This appeal is directed against the judgment dated August 18, 1998 of the Madras High Court allowing the miscellaneous application (Original Application No. 298/98) filed by the respondent under Order 6 Rule 16<sup>1</sup> and Rule 11<sup>2</sup> of the Code of Civil Procedure (for short the 'Code') and thus holding that the election petition filed by the appellant under Section 100(1)(b) and (d) of the Representation of the People Act, 1951 (for short the 'Act') stands dismissed under Section 83(1) of the Act read with the Code. In the election petition appellant had challenged the election of the respondent to the Council of States (Rajya Sabha) from the Pondicherry Legislative Assembly.

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C On September 16, 1997 Election Commission issued a notification calling upon the Legislative Assembly of the Union of Territory of Pondicherry to fill up the vacancy on the completion of the term of the appellant in the Rajya Sabha. The notification also stipulated the election schedule. By the same notification the Secretary, Pondicherry Legislative Assembly was appointed as Returning Officer for the election. On September 26, 1997 the

D Election Commission released the list of contesting candidates. These were the appellant belonging to the Indian National Congress (INC) and the respondent belonging to Dravida Munnetra Kazhagam (DMK). On October

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- E 1. *"16. Striking out pleadings* - The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -
- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the Court."
- F 2. *"Rejection of plaint* - The plaint shall be rejected in the following cases :
- (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 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,
- G (d) where the suit appears from the statement in the plaint to be barred by any law;
- H Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

23, 1997 election was held and results declared the same day. Out of the total electorate of 29 members of the Legislative Assembly 27 cast their votes. Respondents polled 15 votes, the appellant 12. On October 7, 1997 notification dated October 6, 1997 to this effect was published in the Government Gazette. On November 17, 1997 appellant filed the election petition in the High Court challenging the election of the respondent. He alleged that election of the respondent was vitiated due to corrupt practice with the meaning of Section 123(1)(B)(b)<sup>3</sup> and Section 100(1)(d)<sup>4</sup> of the Act, committed by the respondent, his agents and other persons with the consent of the respondent.

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3. "123 Corrupt practices. - The following shall be deemed to be corrupt practices for the purposes of this Act;

(1) "Bribery", that is to say -

(A) .....

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward -

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature."

*Explanation.* - For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(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 -

....."

4. "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) .....

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

(c) .....

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

A The appellant alleged the following corrupt practices committed by the respondent -

1. Respondent was proposed by Mr. R.V. Janakiraman, Chief Minister belonging to DMK. For the second set of application the name of respondent was proposed by Mr. C. Jayakumar, Minister in the Government of Pondicherry. The proposals were seconded respectively by Mr. M. B Kandaswamy, Deputy Speaker and Mr. K. Rajasekheran, Parliamentary Secretary to the Chief Minister. All these four persons acted as agents for the respondent in the election. (para 6 of the election petition)

C 2. After the commencement of the election process on September 26, 1997 Government of Pondicherry announced appointment of Chairmen for five State owned corporations. It was published in the daily newspaper Daily Jhanthi on September 27, 1997. None of the nominees was from Congress. This amounted to exercise of undue influence to secure the votes of the MLAs, particularly the MLAs who were nominated as Chairmen. The Government of Pondicherry was headed by Mr. R.V. Janakiraman, who acted as agent of the respondent. Announcement of the notification materially affected the result of the election. (para 11 of the election D petition)

(i) .....

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

(iii) .....

F (iv) .....

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 -

G (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;

(b) Omitted

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

(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,

H then the High Court may decide that the election of the returned candidate is not void."

3. After the date of the election was fixed for October 3, 1997 the appellart wanted to meet all the MLAs at Pondicherry. However, MLAs belonging to DMK, Tamil Manila Congress, Communist Party of India, Pattali Makkal Katchi, Janata Dal and also an independent MLA were not available in Pondicherry. The MLAs were taken out of Pondicherry, entertained there and were brought back to Pondicherry on October 2, 1997. Similarly except two Ministers, Mr. S.P. Sivakumar and Mr. R. Viswanathan, no other Minister was available in Pondicherry. The Chief Minister Mr. R.V. Janakiraman took the MLAs and kept them at Hotel Ashok, Pondicherry by providing all facilities to them from September 25, 1997 to September 27, 1997. Thereafter the MLAs were shifted to Mahabalipuram and entertained in five star hotels. Complaint to this effect was sent by the appellart to the Election Commission on October 2, 1997. (para 7 of the election petition)

4. Mr. C. Jayakumar, who had proposed the name of the respondent, took Mr. Kandaswamy and Mr. K. Rajasekheran to Goa with a view to influence them. They were taken there in a Government vehicle bearing registration No. PY-01-C-2345 and PY-01-D-9289 on September 27, 1998, returning on October 1, 1997. In Goa all the three stayed in Government Guest House. Entire expenses for their travel and stay at Goa were met by the Government of Pondicherry. Both Mr. Kandaswamy and Mr. Rajasekheran were taken to Goa and entertained there as a reward for voting in favour of the respondent. They were influenced to cast their votes in favour of the respondent. This conduct of Mr. C. Jayakumar, who was agent of the respondent, amounted to corrupt practice. Both Mr. C. Jayakumar and Mr. R.V. Janakiraman, the Chief Minister, did the corrupt practice with the consent of the respondent, which materially affected the election result in so far as it concerned the respondent.

5. Mr. N. Keshavan, another agent of the respondent, also influenced Mr. R. Rajaraman, Janata Dal MLA. Mr. N. Keshavan, MLA is the Government whip belonging to DMK. Mr. R. Rajaraman was kept at Ashok Hotel at Pondicherry and then taken to Kovalam, Chengleput District, then to Tirupati in a Government vehicle bearing registration No. PY-01-6667 and then brought back to Pondicherry on October 2, 1997. Entire expenses of this trip were borne by the Government of Pondicherry headed by Mr. R.V. Janakiraman, an agent of the respondent.

A In the counter affidavit filed by the respondent on May 25, 1998 he denied all the allegations made against him. It was submitted that the allegations of corrupt practices alleged in the election petition were vague and unspecific and bereft of material facts and particulars. It was also submitted that the election petition be dismissed under Order 6 Rule 16 and Order 7 Rule 11 of the Code. On the same day the respondent also  
B filed a miscellaneous application (Original Application No. 298 of 1998) praying for striking out the paragraphs 5 to 11, 13 and 14 of the election petition on the ground that material facts were not stated in the election petition and praying for dismissal of the election petition to that score. Respondent also raised objection to the validity of the verification to the  
C petition and to the affidavit in support of the allegations of corrupt practices. The appellant filed rejoinder to the counter affidavit and reply to the miscellaneous application reaffirming what he had said in the election petition. He said the election petition was duly verified as per law and the affidavit legally correct.

D On the pleadings of the parties High Court framed the issues. However, by the impugned judgment dated August 18, 1998 High Court allowed the miscellaneous application of the respondent and dismissed the election petition without holding any trial. Aggrieved appellant got leave to appeal and this is how the matter is before us.

E Mr. Murli Bhandare, learned senior counsel for the appellant, confined his submissions to corrupt practices alleged in paras 6, 7, 8, 9 & 11 of the election petition, which have been noted above. He submitted that High Court was in error in dismissing the election petition without trial on  
F the ground that material facts were not set out when High Court itself had framed issues on the basis of the material facts set out in the election petition. He said High Court failed in appreciating the crucial distinction between material facts and material particulars and that High Court also failed to take notice of the decision of this Court in *D. Ramachandran v. R.V. Janakiraman and Others*, [1999] 3 SCC 267, holding that the court  
G cannot dissect the pleadings into several parts to consider whether each of them disclosed a cause of action Mr. Bhandare said following questions arose for consideration by this Court :-

H (i) Whether the High Court was justified in dismissing the election petition without trial although material facts were set out

in the petition and issues were framed for trial. A

- (ii) Whether the High Court was justified in entertaining a miscellaneous application on behalf of the returned candidate for striking out paragraphs 5 to 11, 13 and 14 of the election petition after framing issues for trial on the basis of the pleadings and after hearing the parties. B
- (iii) Whether the High Court was justified in dissecting the pleadings into several parts to consider whether each one of them discloses a cause of action.
- (iv) Whether the High Court was justified in rejecting the election petition without trial without appreciating the crucial distinction between material facts and material particulars. C

We may refer to the verification to the election petition and also to the affidavit, which is required to be filled, in the form prescribed, by the appellant : D

#### "VERIFICATION

I, Mr. V. Narayanasamy, son of Sri Velu, residing at No. 5, Ellaiamman Koil Street, Pondicherry-1, the petitioner herein do hereby declare that what all stated in the above paragraphs 1 to 15 are all true to the best of my knowledge, information and belief. E

Verified at Chennai this 17th day of November, 1997.

Petitioner." F

#### "AFFIDAVIT OF V. NARAYANASAMY

I, Mr. V. Narayanasawamy, son of Velu, Hindu aged about 50 years, residing at No. 5, Ellaiamman Koil Street, Pondicherry-1 now temporarily come down to Chennai, the petitioner in the Election Petition calling in question the Election of Shree C.P. Thirunavukkarasu, the respondent in the Election Petition, makes solemn affirmation/Oath and say :- G

- (a) that the statements made in paragraphs 7 to 10 of the accompanying Election Petition about the commission of the cor- H

- A rupt practice of gratification as a motive or reward for securing votes and undue influence as referred under Section 123(1)(B) and (2) of the particulars of such corrupt practice mentioned in paragraphs 7 to 10 of the same petition are true to my knowledge.
- B (b) That the statements made in paragraphs 7 to 10 of the accompanying Election Petition about the Commission of the corrupt practice of gratifications a motive or reward for securing votes and undue influence as referred under Section 123(1)(b) and (2) of the Representation of the People Act, 1951 and the particulars of such corrupt practice mentioned in paragraphs 7 to 11 of the same petition are true to my information :
- C (c) That the statements made in paragraph 11 of the accompanying Election Petition about the Commission of corrupt practice of gratification as a motive or reward for securing votes and undue influence as referred under Section 123(1)(B) and (2) of the Representation of the People Act, 1951 and the particulars of such corrupt practice mentioned in paragraph 11 of the same petition are true to my information.\*
- D
- E Both the verification and the affidavit do not meet the requirement of law.

F In the counter affidavit filed to the election petition, the respondent had specifically prayed for striking out paras 5 to 11, 13 and 14 of the election petition on the ground that in those paragraphs there were no material facts and that material facts necessary to constitute cause of action had not been pleaded. He had also prayed for dismissal of the election petition under Order 6 Rule 16 and Order 7 Rule 11 of the Code. Appellant, it appears, filed his rejoinder denying that the material facts had not been stated or that the petition had not been verified properly or the affidavit in support of corrupt practice did not conform to the requirements of law. In the miscellaneous application (Original Application No. 298/98), the respondent had again prayed for striking out the paragraphs 5 to 11, 13 and 14 of the election petition as well for dismissal of the election petition on the grounds that the averments pleaded in those paragraphs

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H did not give rise to (i) any triable issue and (ii) the election petition

suffered from lack of valid verification and the affidavit. Again in reply to this, the appellant denied that there were no material facts and that the verification in the petition was not proper or that the affidavit was not in accordance with the Rules. A

The question, therefore, before us, is what is the effect of lack of material facts, material particulars, proper verification to the election petition and the defective affidavit required to be filed in the form prescribed? The respondent says that when the petition lacked even material facts and since the petition did not disclose cause of action for having committed any corrupt practice, for all these reasons High Court was justified in dismissing the petition at the threshold without going for a trial. B C

In support of their rival contentions various decisions of this Court were cited at the Bar. We may refer to some of them.

In *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*, [1964] 6 SCR 213 (CB) election petition was type written and the copies which accompanied the petition were carbon copies of the type written script, so there was no question of the copies being other than true copies. The copies bore two signatures in original of the petitioner authenticating both the contents of the petition as well as the verification thereof. The petitioner, however, did not insert the word "true copy" before or above the signatures. High Court considered that this rendered the petition filed not in accordance with Section 81(3) of the Act and on that ground the petition was dismissed. The view of the High Court was challenged before this Court. While explaining the proposition that an election petition was not to be equated to an action at law or in equity but that as the rights were purely the creature of statute, if the statute rendered any particular requirement mandatory, the courts possessed and could exercise no dispensing power to waive non-compliance. This Court held that the alleged defect in the petition did not constitute non-compliance with the provisions of Section 81(3) of the Act as there was substantial compliance with those provisions. In coming to this conclusion, the Court relied on its earlier Constitution Bench decision in the case of *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore & Ors.*, [1964] 3 SCR 573. D E F G

In *Murarka Radhey Shyam Ram Kumar's case* [1964] 3 SCR 573 (CB) this Court held that defect in verification which is to be made in the manner H

A laid down in the Code of Civil Procedure, 1908 for the verification of pleadings as required by clause (c) of Section 81(3) is not fatal to the maintainability of the election petition. The Court then considered the arguments relating to the affidavit which accompanied the election petition in respect of corrupt practice alleged in the petition. The argument was that the affidavit was neither in the prescribed form nor was it properly sworn as required by the Rules under the Conduct of Election Rules, 1961. Therefore, there was a failure to comply with the provisions of Section 83(1) of the Act. Further argument was that an election petition under Section 81 must comply with the provisions of Section 83 and unless it complies with those provisions, it is not an election petition under Section 81. The Court approved the view of the Election Tribunal that the affidavit was in the prescribed form but due to inexperience the Oath Commissioner had made a mistake in the verification portion of the affidavit. This Court did not think that the defect in the verification due to the inexperience of the Oath Commission was such a fatal defect as to require the dismissal of the election petition.

In *Daulat Ram Chauhan v. Anand Sharma*, AIR (1984) SC 621 = [1984] 2 SCC 64 (2J), this Court laid two propositions :

"1. A person may, due to sympathy or on his own, support the candidature of a particular candidate but unless a close and direct nexus is proved between the act of the person and the consent given to him by the candidate or his election agent, the same would not amount to a pleading of corrupt practice as contemplated by law. It cannot be left to time, chance or conjecture for the court to draw an inference by adopting an involved process of reasoning. In fine, the allegation must be so clear and specific that the inference of corrupt practice will irresistibly admit of no doubt or qualm.

2. Where the allegation of fraudulent practice is open to two equal possible inferences the pleadings of corrupt practice must fail. For instance, A, or in this case Sood or Batish, joined or participated or was present in an election rally or crowd and may have shouted slogans on his own without taking the consent of the candidate concerned, this would not be a corrupt practice within the meaning of Section 123(2) because the element of consent is wholly wanting."

In *F.A. Sapa & Ors. v. Singora & Ors.*, [1991] 3 SCC 375 (3J) the question before the High Court was whether the election petition was in conformity with the requirements of Sections 81<sup>5</sup> and 83<sup>6</sup> of the Representation of the People Act, 1951 and the Rules framed thereunder. Preliminary objection raised by the appellant, the successful candidate, about the maintainability of the petition, was negatived by the High Court. Against that order he came to this Court. One of the questions before this Court was if the election petition was liable to be dismissed under Section 83 of the Act primarily on the ground that the affidavit filed by the original petitioner was not strictly in conformity with Form 25, inasmuch as the verification as regards the averments based on knowledge and the averments based on information had not been made separately as required by the said Form prescribed by Rule 95-A of the Rules. This Court considered various provisions of the Act, particularly Part VI entitled "Disputes Regarding Elections" and said that it constituted a self-contained code. It

5. *81. Presentation of petitions* - (1) An election petition calling in question any election may 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 candidate at such election or any elector within forty-five 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 election are different, the later of those two dates.

*Explanation* - In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) ..... (omitted by Act 47 of 1966, s. 39 (w.e.f 14.12.1966))

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

6. *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:

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.

A was submitted by the appellant in that case that there was failure to comply with even the basic requirements of an affidavit and as a matter of fact it was a case of no compliance. This Court held that where several paragraphs of the election petition remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the Court could not take cognizance thereof. It was further submitted in that case that proof of allegation of corrupt practice would visit the returned candidate with certain serious consequences and must, therefore, be viewed seriously. It was further held by this Court that inquiry being quasi-criminal in nature, the Court must always insist on strict compliance with the provisions of law in that behalf and failure to do so must prove fatal. This Court said :

D "It is fairly well settled that our election law being statutory in character must be strictly complied with since an election petition is not guided by ever changing common law principles of justice and notions of equity. Being statutory in character it is essential that it must conform to the requirements of our election law. But at the same time the purity of election process must be maintained at all costs and those who violate the statutory norms must suffer for such violation. If the returned candidate is shown to have secured his success at the election by corrupt means he must suffer for his misdeeds."

F This Court observed that where the petitioner has alleged corrupt practice that is not enough, proviso to Section 83 demands that the petition shall be accompanied by an affidavit in the prescribed form supporting the allegation of such corrupt practice and particulars thereof. The Court said :

G "Therefore, an election petition in which corrupt practice is alleged stands on a different footing from an election petition which does not carry such an allegation. The legislature has taken special care to ensure that ordinary verification will not suffice, it must be supported by an affidavit in the prescribed form. Form 25 has been prescribed for such an affidavit under Rule 94-A of the Rules. That rule says that the affidavit referred to in the proviso to Section 83(1) shall be in Form 25. The form of the affidavit requires the deponent to state which of the paragraphs of the election petition

in which allegations of corrupt practice are made are based on his own knowledge and which are based on his information. Section 86(1) then mandates that the High Court "shall" dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the R.P. Act. The language of this sub-section is quite imperative and commands the High Court, in no uncertain terms, to dismiss an election petition which does not comply with the requirements of Section 81 or Section 82. This mandate is, however, qualified by section 86(5)<sup>7</sup> referred to earlier."

The Court then observed that the procedural precautions intended to ensure that the person making the allegation of corrupt practice realizes the seriousness thereof as such a charge would be akin to a criminal charge since it visits the party indulging in such practice with a twofold penalty and that is why this Court described it as quasi-criminal in nature. It is, therefore, equally essential that the particulars of the charge or allegation are clearly and precisely stated in the election petition to afford a fair opportunity to the person against whom it is levelled to effectively counter the same (see *K.M. Muni v. P.J. Anthony*, [1979] 2 SCC 221. This Court then said :

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

7. 86. Trial of election petitions - (1) to (4) ....

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) .....

(7) .....

A founded and are intended to afford to the returned candidate an adequate opportunity to effectively meet with such an allegation. The underlying idea in requiring the election petitioner to set out in a concise manner all the 'material facts' as well as the 'full particulars' where commission of corrupt practice is complained of is to delineate the scope, ambit and limits of the inquiry at the trial of the election petition."

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Then the Court held as under :

C "From the text of the relevant provisions of the R.P. Act, Rule 94-A and Form 25 as well as Order 6 Rule 15 and Order 19 Rule 3 of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, under Section 81(3) as indicated earlier. Similarly, the court would have to decide in each individual case whether the schedule or annexure referred to in Section 83(2) constitutes an integral part of the election petition or not; different considerations will follow in the case of the former as compared to those in the case of the latter."

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G In *Gajanan Krishnaji Bapat and Another v. Dattaji Raghobaji Meghe and Others*, AIR (1995) SC 2284 = [1995] 5 SCC 347, this Court again said :

H "1. Section 83 of the Act provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must set forth full particulars of the corrupt practice that he alleges including as full a statement as possible of the name of the parties alleged to have committed

such corrupt practices and the date and place of the commission of each of such corrupt practice. This section has been held to be mandatory and requires first a concise statement of material facts and then the full particulars of the alleged corrupt practice, so as to present a full picture of the cause of action.

2. A petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise. (see : *Sampat N. Balkrishna v. George Fernandez*, [1969] 3 SCC 238.

In *T.M. Jacob v. C. Poullose and Others*, [1999] 4 SCC 274 a Constitution Bench of this Court was considering a judgment in the case of *Dr. Shipra v. Shanti Lal Kholwal*, [1996] 5 SCC 181, wherein on the basis of non-compliance of Section 81(3) the election petition was dismissed at the threshold under Section 86(1) of the Act. Then Considering the provisions of Sections 81, 82, 83, 86(1) and 86(5) of the Act the Court said :

"(That apart), to our mind, the legislative intent appears to be quite clear, since it divides violations into two classes - those violations which would entail dismissal of the election petition under Section 86(1) of the Act like non-compliance with Section 81(3) and those violations which attract Section 83(1) of the Act, i.e., non-compliance with the provisions of Section 83. It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*, [1964] 3 SCR 573 and *Ch. Subbarao v. Member Election Tribunal, Hyderabad*, [1984] 6 SCR 213, cases. The defect of the type provided in Section 83 of the Act, on the hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure."

In *D. Ramachandran v. R.V. Janakiraman and Others*, [1999] 3 SCC 267, a three Judge Bench of this Court observed :

- A "It is well settled that in all cases of preliminary objection, the test to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter."
- B

- The Court said that under Order 7, Rule 11 of the Code the court is to reject the plaint where it does not disclose the cause of action. But there is no question of striking out any portion of the pleadings under this Rule. The Court said :
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- "The application filed by the first respondent in OA No. 36 of 1997 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order 7 Rule 11 (a), learned Senior Counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some to the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition."
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- The case of *Dr. Shipra (Smt.) and Others v. Shanti Lal Kholwal and Others*, [1996] 5 SCC 181, was considered by the Constitution Bench in the case of *T.M. Jacob v. C. Poulouse and Others*, [1999] 4 SCC 274. In *Dr. Shipra's* case a preliminary objection was raised that copy of the notice together with the affidavit in support of the election petition on the allegation of corrupt practices did not contain the verification by the Notary and hence the election petition was not maintainable in accordance
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with Section 83(1)(c) of the Act. The objection was upheld by the High Court and appeal against that was dismissed by this Court. The question thus raised before this Court for its consideration was whether the copy of the election petition accompanied by supporting affidavit served on the respondent along with Form 25 prescribed under Rule 94-A of the Conduct of Election Rules, 1961 without attestation part duly verified by the District Magistrate/Notary/Oath Commissioner could be said to be "true and correct copy" of the election petition as envisaged in Section 81(3) of the Act. Explaining the judgment in *Dr. Shipra's* case the Constitution Bench in *T.M. Jacob's* case observed :

"The defect found in the 'true copy' of the affidavit in *Dr. Shipra's* case was not merely the absence of the name of the Notary or his seal and stamp but a complete absence of "notarial endorsement" of the verification as well as absence of an "affirmation" or "oath" by the election petitioner. It was in that context that the Bench had found in *Dr. Shipra* case that the returned candidate would have got the impression, on a perusal of the "true copy" of the affidavit, that there was no duly sworn and verified affidavit filed in support of the allegations of corrupt practice by the election petitioner. It was precisely on account of this "fatal" defect that K. Ramaswamy, J. opined that "the principle of substantial compliance cannot be accepted in the fact situation" Thus the judgment in *Dr. Shipra* case is confined to the 'fact situation' as existing in that case....."

In *Dr. Shipra's* case this Court held :-

"Sections 81, 83(1)(c) and 86 and with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read, if the court finds on an objection, being raised by the returned candidate, as to the maintainability of the election petition, the court is required to go into the question and decide the preliminary objection. In case the court does not uphold the same, the need to conduct trial would arise. If the court upholds the preliminary objection, the election petition would result in dismissal at the threshold, as the court is left with no option except to dismiss the same."

In *R.P. Moidutty v. P.T. Kunju Mohammad & Anr.*, JT (1999) 7 SC H

A 457 (3J) this Court was considering the question regarding nature of particulars required to be pleaded in support of an averment of corrupt practice. It said that heavy onus lies on the petitioner seeking setting aside of the election of a successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people is one as has been truly, freely and purely expressed. And further that "as the consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same". In this case, the corrupt practice alleged was screening of a video film by the successful candidate which according to the petitioner materially affected the result of the election and vitiated by the commission of corrupt practice within the meaning of sub-section (3) and (3A) of Section 123 of the Act. It was alleged that the film was exhibited throughout the constituency during the election. The photo-contents of the video film as also the speeches contained therein were highly objectionable and inflammatory. This Court also referred to the verification to the election petition as well as to the affidavit required to be filed in Form No. 25 appended to the Rules. The verification was as under :

E "1. R.P. Moidutty, S/o Abubakker Haji, aged 54, petitioner in the above election petition do hereby declare that the averments in para 1 to 17 are true and made from personal knowledge and on the basis of personal enquiry I believe that all the averments made in para 1 to 17 are true.

Signed and verified on this the 21st day of June, 1996.

F PETITIONER"

This Court then said :

G "Application of the abovenoted well settled principles to the case at hand raises a gloomy picture indeed. The petition is bereft of some material facts and particulars. It does not set out names of even a few persons who viewed the film and/or in whose presence it was exhibited though it was not necessary for the petitioner to have alleged the names of each and every person who had viewed the video film. However, the names of a few persons who had viewed the film and in whose presence it was exhibited were

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expected to have been alleged in the election petition so as to put respondent No. 1 on notice that these were the persons who were proposed to be examined by the petitioner in support of his averments. The petitioner's pleading in this regard fails to satisfy the requirements of proviso to sub-section (1) of Section 83 of the Act as explained in *Azhar Hussain v. Rajiv Gandhi*, [1986] 2 SCR 782.<sup>3</sup>

"The affidavit filed by the petitioner in support of the election petition as required by Rule 94-A also does not satisfy the requirement of proviso to sub-section (1) of Section 83 of the Act and Form No. 25 appended to the Rules. The several averments relating to commission of corrupt practice by the first respondent as contained in paragraphs 4 to 12 and 16 of the petition have been verified as true to the best of "my knowledge and information" - both, without specifying which of the allegations were true to the personal knowledge of the petitioner and which of the allegations were based on the information of the petitioner believed by him to be true. Neither the verification in the petition nor the affidavit gives any indication of the source of information of the petitioner as to such facts as were not in his own knowledge."

"All the averments made in parts 1 to 17 of the petition have been stated to be true to the personal knowledge of the petitioner and in the next breath the very same averments have been stated to be based on the information of the petitioner and believed by him to be true. The source of information is not disclosed. As observed by the Supreme Court in *F.A. Sapa Etc. Etc. v. Singora and Others*, JT (1991) 2 SC 503, the object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time discouraging wild and irresponsible allegations unsupported by facts. However, the defeat of verification is not fatal to the petition, it can be cured (see *Murarka Radhey Sham Ram Kumar v. Roop Singh Rathore and Ors.*, AIR (1964) SC 1545. *A.S. Subbaraj v. M. Muthiah*, 5 ELR 21. In the present case the defect in verification was pointed out by raising a plea in that regard in the written statement. The objection was pressed and pursued by arguing the same before the Court. How-

A ever, the petitioner persisted in pursuing the petition without proper verification which the petitioner should not have been permitted to do. In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in required form and also for lack of particulars, the  
 B allegations of corrupt practice could not have been enquired into and tried at all. In fact, the present one is a fit case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings."

C In *L.R. Shivaramagowda & Ors. v. T.M. Chandrashekar (Dead) By Lrs. & Ors.*, [1999] 1 SCC 666 (3J) this Court again considered the importance of pleadings establishing in an election petition alleging corrupt practice falling within the scope of Section 123 of the Act and said :

D "This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage  
 E by an appropriate amendment. In *Balwan Singh v. Lakshmi Narain*, AIR (1960) SC 770 = [1960] 3 SCR 91 the Constitution Bench held that an election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. On the facts of the case, the Court found that  
 F the alleged corrupt practice of hiring a vehicle for the conveyance of the voters to the polling station was sufficiently set out in the pleading. The Court pointed out that the corrupt practice being hiring or procuring of the vehicle for the conveyance of the electors, if full particulars of conveying by a vehicle of electors to or from any polling stations were given, Section 83 was duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring were not given."

H Then this Court referred to the various judgments of this Court drawing distinction between the "material fact" and "material particulars" holding that if petition suffers from lack of material facts, it is liable to be sum-

marily rejected for want of cause of action and if the deficiency is only of material particular, the Court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation. With regard to the affidavit to be filed along with the election petition in the prescribed Form No. 25, the Court observed that the defect in such affidavit could be cured unless it formed the integral part of the petition in which case, the defect concerning material facts will have to be dealt with subject to limitation under Section 81 of the Act. In this case, the Court observed that "if the above well settled principles are applied in this case, there is no doubt whatever that the election petition suffers from a very serious defect of failure to set out material facts of the alleged corrupt practice. The defect invalidates the election petition in that regard and the petitioner ought not to have been permitted to adduce any evidence with reference to the same." The affidavit filed along with the petition does not disclose the source of information. Nor does it set out which part of the election petition was personally known to the petitioner and which part came to be known by him on information. The Court said that the affidavit was not in conformity with the prescribed Form No. 25 and, thus, there was a failure to comply with Rule 94-A of the Conduct of Elections Rules and that it is a very serious defect.

In *H.D. Revanna v. G. Puttaswamy Gowda and Other*, [1999] 2 SCC 217 (2J) appeal was filed by the candidate who had succeeded in the election and whose application for dismissal of the election petition in limine was rejected by the High Court. This Court noticed that it has been laid down by this Court that non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Two of the grounds on which dismissal of the election was sought were that (1) allegations of corrupt practice were vague and did not contain material facts or particulars and (2) affidavit in support of the allegations of corrupt practice was not in conformity with Rule 94A or Form 25 as prescribed. On facts, this Court held that contents were not vague and that there had been substantial compliance with the provisions of law. The Court noticed that the body of the petition itself mentioned the matters which were within the knowledge of the petitioner himself and the matters of which he got information from others and believe them. The Court distinguished the judgments of this Court in *Dr. Shipra (Smt.) & Ors. v. Shanti Lal Kholwal and Ors.*, [1996] 5 SCC 181; *L.R. Shivaramagowda & Ors. v. T.M.*

- A *Chandrashekar (dead) by Lrs. & Ors.*, [1999] 1 SCC 666 and *Dharamvir v. Amar Singh & Ors.*, [1996] 3 SCC 158.

It will be thus seen an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the Court could not take cognizance thereof. Charge of corrupt practice being

quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particular of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6, Rule 16 and Order 7, Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of duty of the court *suo moto* even to direct furnishing of better particulars when objection is raised by other side. Where the petition does not disclose any cause of action it has to be rejected. Court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. Petition has to be considered as a whole. There cannot be a partial rejection of the petition.

We may also note Rule 2 of the Rules of the Madras High Court, 1967, which is as under :

"2. Every Election Petition shall be in the form of Original Petition, in the English Language and shall be verified in the manner provided for under the Code of Civil Procedure, 1908."

Clause (d) of Section 79 of the Act defines "electoral right" to mean the right of a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate, or to vote or refrain from voting at an election. Under Section 123 "corrupt practice" in so far it is relevant in the present case means "Bribery", that is to say - The receipt of, or agreement to receive, any gratification, whether as a motive or a reward by (any person whomsoever for himself or any other person) - (a) for voting or refrain

A from voting, or (b) inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature. The term gratification has been explained and it includes all forms of entertainment.

B Exercise of undue influence is also deemed to be a corrupt practice. Under sub-section (2) of Section 123 "undue influence" means 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.

C Material facts and material particulars certainly connote two different things. Material facts are those facts which constitute the cause of action. In a petition on the allegation of corrupt practices cause of action cannot be equated with the cause of action as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter. If proved not only that the candidate suffers ignominy, he also suffers disqualification from standing for election for a period that may extend to six years. Reference in this connection may be made to Section 8A<sup>8</sup> of the Act. It was for this purpose that proviso to sub-section (1) of Section 83 was inserted by Act 40 of 1961 (w.e.f. September 20, 1961) requiring filing of the affidavit in the prescribed form where there are

8. *8A Disqualification on ground of corrupt practices.* - (1) The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted as soon as may be after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period :

F Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect.

G (2) Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.

H (3) Before giving his decision on any question mention in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.

allegations of corrupt practice in the election petition. Filing of the affidavit as required is not a mere formality. By naming a document as an affidavit it does not become an affidavit. To be an affidavit it has to conform not only to the form prescribed in substance but has also to contain particulars as required by the Rules.

It is contended by Mr. Bhandare that all the material facts have been stated in the election petition and that for lack of material particulars, the petition could not have been thrown out at the threshold. He said opportunity should have been given to the appellant to supply the material particulars. It is really of strange proposition to advance. Till the date of the impugned judgment, appellant had persisted that the petition did not lack material particulars and that the verification was in accordance with the code and the affidavit in support of the corrupt practice in the form prescribed. Admittedly, the petition lacked material particulars, verification to the petition was not in accordance with the Code and the affidavit did not conform to the form prescribed. At the first opportunity, the respondent raised objection that the petition lacked both material facts and the material particulars and that the verification to the petition and the affidavit were not in accordance with law. This was repeated in the miscellaneous application (Original Application No. 298/98). In the counter affidavit and in the reply to the miscellaneous application, the appellant persisted in his stand and termed the objections raised by the respondent as irrelevant. It is not that the appellant did not have opportunity to correct his mistake which he could have easily done in the rejoinder filed by him to the counter affidavit of the respondent or even his reply to the miscellaneous application (O.A. No 298/98). He had every opportunity even at that stage to supply the material particulars which admittedly were lacking and also to amend the verification and to file the affidavit in the form prescribed but for the reasons best known to him, he failed to do so. The existence of material facts, material particulars, correct verification and the affidavit are relevant and important when the petition is based on the allegation of corrupt practice and in the absence of those, the Court has jurisdiction to dismiss the petition. High Court has undoubtedly the power to permit amendment of the petition for supply of better material particulars and also to require amendment of the verification and filing of the required affidavit but there is no duty cast on the High Court to direct *suo moto* the furnishing of better particulars and requiring amendment of petition for the purpose of verification and filing of proper affidavit. In a

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- A matter of this kind the primary responsibility for furnishing full particulars of the alleged corrupt practices and to file a petition in full compliance with the provisions of law is on the petitioner. (See in this connection Constitution Bench decision in *Bhikaji Keshao Joshi & Anr. v. Brijlal Nandlal Biyani & Ors.*, AIR (1955) SC 610 = [1955] 2 SCR 428 (444).
- B Grievance of the appellant is that he wanted to meet the MLAs other than MLAs of the Congress party to which he belonged but those MLAs were kept first in Hotel Ashoka at Pondicherry and then taken to five star hotels at Mahabalipuram. Appellant alleged that MLAs were "kept" in Hotel Ashoka but he has not given particulars as to what he meant by the word "kept". "Kept" is certainly not "confined".
- C What entertainment was provided to those MLAs in Hotel Ashoka, Pondicherry or in five star hotels in Mahabalipuram has also not been specified. It is not his case that he was prevented in any way from meeting any of those MLAs. It was a material fact to allege which he failed to do so. This is apart from the fact that the material particulars as to when the MLAs were taken to Hotel Ashoka and to other places, the names of the MLAs and names of the hotels in Mahabalipuram, who took them there, who paid their bills and who brought them back are lacking. Appellant does not show as to why he could not meet all those MLAs on October 2, 1997. Apart from one Independent MLA other MLAs belonged to various other political parties like DMK, TMC, CPI, PMK and Janata Dal. Rather it can be assumed that the MLAs voted according to their political affiliations. It has come on record that out of total number of 29 MLAs who constituted Legislative Assembly of Pondicherry, two belonged to AIDMK, another political party. AIDMK had taken decision not to vote for any candidate and that is how the two MLAs of this party did not participate in the election and total votes polled were 27. There was only one independent MLA and his casting of vote either way would not have at all affected the result of the election considering the number of votes polled by each of the candidates. It is not the case of the appellant that he was barred from meeting any of the MLAs in order to solicit their votes. There is no allegation if there is any complaint by any MLA that he was kept out of circulation by respondent or with his consent by any other person for the purpose of not being accessible to the appellant.
- G

H Appellant in his petition said that when C. Jayakumar, Minister and K. Kandasamy, Deputy Speaker and K. Rajasekheran, Parliamentary

Secretary to the Chief Minister, were the agents of the respondent. He then alleged that C. Jayakumar took Kandasamy and Rajasekheran to Goa with a view to influence them to get their votes in favour to the respondent, is it not paradoxical where one agent influences the other agent to vote in a particular way? It certainly could not be a corrupt practice. Appellant then alleged that N. Kesav, MLA belonging to DMK and also a Government whip kept independent MLA Rajaraman first in Hotel Ashoka, Pondicherry and then took them to Kovalam, Chingleput District, then to Tirupathi in a Government vehicle and then brought back to Pondicherry on October 2, 1997. It is not the case of the appellant that N. Kesav did so with the consent of the respondent or any of his agent or otherwise. This is a material fact which the appellant failed to allege. Lastly, notification regarding appointments of Chairmen to various committees came out much later after the results were declared. It is correct that none of the nominees belonged to the Congress party.

It will be thus seen that election petition not only lacked the material facts, it lacked material particulars, defective verification and the affidavit filed was not in the form prescribed. Moreover, ingredients of corrupt practices, as defined in Section 123(1)(B) and 123(2) of the Act are also lacking. It is also not the case of the appellant that any MLA whom the appellant could not meet, received any gratification, as defined, whether as a motive or a reward for voting or refraining from voting, or there was any inducement or attempt to induce any such MLA to vote or refrain from voting. Also it is not the case of the appellant that any undue influence was exercised with the free exercise of any electoral right of any MLA which right, as noted above, has been defined in clause (d) of Section 79 of the Act. There is no allegation if any particular MLA was induced to vote or not to vote in a particular way because he was entertained or otherwise. The allegation is that appellant himself could not meet the MLAs and he believed if he had been given a chance to meet them he would have influenced their vote in his favour and against their party of affiliations. There is no allegation that the MLAs were prevented or influenced from freely exercising their electoral right. As stated earlier appellant did not show as to why he could not meet the MLAs on October 2, 1997 when they were available in Pondicherry. Material fact must be that the appellant was prevented from meeting the MLAs which he did not allege and as to how he was so prevented would constitute material particulars.

**A** The election petition read as a whole did not disclose any cause of action or triable issue. Considering the facts of the case and the principles of law applicable, the election petition was rightly dismissed by the High Court in limine.

The appeal is accordingly dismissed with costs.

**B**

V.S.S.

Appeal dismissed.