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NANDIESHA REDDY

v.

MRS. KAVITHA MAHESH
(Civil Appeal No. 5142 of.2011)

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JULY 8, 2011

**[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]**

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REPRESENTATION OF THE PEOPLE ACT, 1951:

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ss. 83, 87 and 100 (1)(c) of the Act and O. 6, r. 16, O. 7, r. 11 CPC – Election petition – Challenging the election of the Returned Candidate – On the ground that nomination of the election petitioner was illegally not accepted by the Returning Officer – Applications for striking off the pleadings and for dismissal of the petition for non-compliance of ss. 33 and 34 and on the ground that the election petition did not contain concise statement of material facts and that the material facts did not disclose any cause of action – “Material facts” – Connotation of – HELD: From a plain reading of the averments made in the election petition, it is evident that the election petitioner has averred that nomination paper was signed by 10 electors, she asked for the latest electoral roll for verifying and extracting the part numbers and serial numbers of the proposers, but it was denied and when she delivered the nomination paper to the Returning Officer, he did not receive the same – These statements at this stage have to be accepted as true – Thus, the election petition does contain material facts and one of the grounds for declaring the election as void in terms of s. 100 (1) (c) was specifically pleaded – Therefore, the election petition is not liable to be dismissed at the threshold and the matter is fit to go for trial – Whether the material facts are true or not is a matter of trial – The High Court has rightly rejected the applications – Code of Civil Procedure, 1908 – O. 6, r. 16 and O. 7, r. 1.

s. 81 – Election petition – Locus – “Candidate” – A
Connotation of – -HELD: An election petition, calling in
question any election can be presented by any candidate at
such election – Candidate would not be only such person
whose nomination has been found valid – In the instant case,
there is clear averment in the election petition that nomination B
paper was subscribed by 10 electors and delivered to the
Returning Officer, but he did not receive the same – Thus,
the election petitioner shall be deemed to be a candidate
entitled to challenge the election of the returned candidate.

s. 33 – Election to the State Legislative Assembly – C
Rejection of nomination – HELD: When a nomination paper
is presented, it is the bounden duty of the Returning Officer
to receive the same, peruse it, point out the defects, if any,
and allow the candidate to rectify the defects and when the
defects are not removed, then alone the question of rejection D
of nomination would arise.

s. 34 – Election to State Legislative Assembly – Deposit
to be made by the candidate – Nomination paper not
received by the Returning Officer – HELD: There was still time E
for presenting the nomination paper and had the same been
accepted for scrutiny the deposit could have been made by
the election petitioner.

The election of the appellant to the State Legislative
Assembly was challenged by the respondent in an F
election petition before the High Court on the ground that
the nomination of the election petitioner was illegally not
accepted by the Returning Officer. According to the
election schedule, the last date for submission of
nomination was 23.4.2008 whereas the scrutiny of the G
nomination papers was to be undertaken on 24.4.2008
and the date of election was 10.5.2008. After de-limitation,
the original constituency was split in three
constituencies. In order to contest the election from the

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A Constituency concerned, according to the election
petitioner, she obtained a set of nomination forms from
the Returning Officer on 19.4.2008 and delivered the same
together with all annexures to the Returning Officer on
23.4.2008 and requested him to furnish the latest electoral
roll of the Constituency concerned in order to extract the
new part numbers of the proposers for incorporating the
same in the appropriate column, but she was not
supplied the latest electoral roll and when she submitted
the nomination papers, the same were not received; and
this rendered the election of the appellant null and void.

The appellant filed two applications – one under O.
6 r.16 CPC for striking off the pleadings from the election
petition and the other u/ss 83 and 86 of the
Representation of the People Act, 1951 read with O 7 r.
11 CPC for dismissal of the election petition. It was
pointed out that the election petitioner was neither a
candidate set up by any recognized political party nor
was her nomination subscribed by ten electors of the
Constituency; that she had not made any deposit as
required u/s 34 of the Act; that there was non-compliance
of s. 81 (3) of the Act as the appellant was not furnished
with the true attested copy of the election petition and its
annexures as presented to the court; and that the
election petition did not contain concise statement of the
material facts on which the election petitioner relied and
the material facts averred did not disclose any cause of
action for the relief sought for. The High Court rejected
both the applications. Aggrieved, the returned candidate
filed the appeal.

G Dismissing the appeals, the Court

HELD: 1.1. From a plain reading of the averments
made in the election petition, it is evident that the election
petitioner has averred that nomination paper was signed

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by 10 electors. It was delivered to the Returning Officer with a request to make available the latest electoral roll of newly created Constituency for filling up the new part numbers and serial numbers of the proposers in the respective columns. However, the Returning Officer stated that he is not in possession thereof and asked the election petitioner to approach the revenue office for verifying and extracting the part number and serial number of the proposers. Attempts made on behalf of the election petitioner to get those details from the revenue office were rendered futile. Thereafter, the election petitioner approached the Returning Officer again for delivering the nomination papers with the explanation. It did not yield any result. These averments at this stage have to be accepted as true. [para 12] [170-F-H; 171-A-D]

1.2. Section 81 of the Representation of the People Act, 1951 makes it clear that an election petition calling in question any election can be presented by any candidate at such election. Candidate would not be only such person whose nomination has been found valid. In the instant case, the election petitioner's plea is that the Returning Officer declined to accept the nomination papers. When a nomination paper is presented it is the bounden duty of the Returning Officer to receive the nomination, peruse it, point out the defects, if any, and allow the candidate to rectify the defects and when the defects are not removed then alone the question of rejection of nomination would arise. Any other view will lead to grave consequences. Section 33(4) of the Act casts a duty on the Returning Officers to satisfy himself that the names and the electoral roll numbers of the candidates and their proposers as entered in the nomination paper are the same as in the electoral rolls. [para 13] [172-B-F]

1.3. As regards failure to subscribe the nomination papers by 10 electors as required under the first proviso

A to s.33 of the Act, there is clear averment in the election
 petition that nomination paper was subscribed by 10
 electors. Whether in fact it was done or not is a matter of
 trial and at this stage this Court has to proceed on an
 assumption that the averments made in the election
 B petition are true. Thus, the election petitioner shall be
 deemed to be a candidate and entitled to challenge the
 election of the Returned Candidate. [para 14] [172-G-H;
 173-A]

C *Mithilesh K. Sinha v. Returning Officer for Presidential
 Election 1992 (1) Suppl. SCR 651 = 1993 Supp. (4) SCC
 386 - distinguished*

*Pothula Rama Rao v. Pendyala Venakata Krishna Rao
 2007 (8) SCR 982 = (2007) 11 SCC 1 – held inapplicable.*

D 2. So far as compliance of s.34 of the Act is
 concerned, there was still time left for presenting the
 nomination paper and in case the same would have been
 accepted for scrutiny, the election petitioner could have
 made deposit within the time. It is only after expiry of the
 E time had the election petitioner not made the deposit, the
 nomination was liable to be rejected. [para 18] [174-D-E]

F 3.1. Section 83(1)(a) inter alia provides that an
 election petition shall contain a concise statement of the
 material facts. Further, s. 87 of the Act provides that
 subject to the provisions of the Act and the Rules framed
 thereunder every election petition shall be tried in
 accordance with the procedure applicable under the
 Code of Civil Procedure to the trial of suits. Order 6 of the
 G Code is devoted to the pleadings generally and r. 2(i)
 thereof, inter alia, provides that every pleading shall
 contain statement in a concise form all the material facts
 on which the party pleading relies for claim. The phrase
 'material fact' as used in s. 83(1)(a) of the Act or O. 6 r. 2
 H of the Code has not been defined in the Act or the Code.

All specific and primary facts which are required to be proved by a party for the relief claimed are material facts. An election petition can be summarily dismissed if it does not furnish the material facts to give rise to a cause of action. However, what are the material facts always depend upon the facts of each case and no rule of universal application is possible to be laid down in this regard. [para 21] [176-B-F]

3.2. In the instant case, the election petitioner has clearly averred that his nomination was subscribed by ten electors and presented before the Returning Officer but the same was not received and rejected. Thus one of the grounds for declaring the election to be void as provided u/s 100(1)(c) of the Act was specifically pleaded. Therefore, the election petition does contain material facts and the same is not liable to be dismissed at the threshold and the matter is fit to go for trial. Whether those material facts are true or false is a matter of trial. [para 16 and 22] [173-E-H; 176-G-H]

Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar, 2009 (14) SCR 10 = (2009) 9 SCC 310; and *Ram Sukh v. Dinesh Aggarwal* 2009 (14) SCR 836 = (2009) 10 SCC 541 - held inapplicable

Case Law Reference:

1992 (1) Suppl. SCR 651 distinguished	para 10
2007 (8) SCR 982	held inapplicable para 10
2009 (14) SCR 10	held inapplicable para 19
2009 (14) SCR 836	held inapplicable para 19

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5142 of 2011.

From the Judgment & Order dated 12.11.2009 of the High

A Court of Karnataka at Bangalore in Misc. Civil No. 15572 of 2009 in Election Petition No. 7 of 2008.

WITH

C.A. No. 5143 of 2011.

B Dushyant Dave, R.C. Hegde, C. Shashikant, Girish Ananthmurthy, P.P. Singh for the Appellant.

Respondent-In-Person.

C The Judgment of the Court was delivered by

CHANDRMAULI KR.PRASAD, J. 1. Nandiesha Reddy got elected to the Karnataka Assembly in the general election from K.R.Pura Assembly Constituency held on 10th of May, 2008. His election was challenged by Kavitha Mahesh, inter alia, on the ground that her nomination was illegally not accepted by the Returning Officer which rendered Nandiesha Reddy's election void. Nandiesha Reddy (hereinafter to be referred to as 'the Returned Candidate') filed two applications; one under Order VI Rule 16 of the Code of Civil Procedure for striking out pleading from the election petition and another under Sections 83 and 86 of the Representation of the People Act, 1951 (hereinafter to be referred to as 'the Act') read with Order VII Rule 11 of the Code of Civil Procedure, 1908 for dismissal of the election petition. The Karnataka High Court by the impugned orders dated 8th October, 2009 and 12th November, 2009 dismissed the aforesaid applications.

2. The Returned Candidate assails aforesaid orders in the present Special Leave Petitions.

G 3. Leave granted.

4. Short facts giving rise to the present appeals are that the Election Commission of India on 16th of April, 2008 notified its intention to hold General election to the Karnataka State

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Legislative Assembly and announced the election schedule. A
According to the schedule, the last date for submission of the
nomination was 23rd of April, 2008 whereas the scrutiny of the
nomination papers was to be undertaken on 24th of April, 2008.
The date of election fixed was 10th of May, 2008. Kavitha
Mahesh (hereinafter referred to as 'the Election Petitioner') was B
an electorate in the combined Varthur Assembly Constituency
prior to de-limitation. After de-limitation the said constituency
has been split into three constituencies, namely (i)
Mahadevapura (ii) C.V.Raman Nagar and (iii) K.R.Pura. After
the de-limitation, the Election Petitioner's name appeared in C
the electoral roll of C.V.Ramana Nagar Constituency. In order
to contest the election from K.R.Pura Assembly Constituency,
according to the Election Petitioner, on 19th of April, 2008 she
obtained a set of nomination forms from the Returning Officer.
It is her case that on 23rd of April, 2008 at about 2.00 P.M. D
she delivered the nomination papers together with all annexures
to the Returning Officer and requested him to furnish the latest
electoral roll of K.R.Pura Assembly Constituency in order to
extract the new part number and serial number of the proposers
who had signed on the nomination papers for incorporating the
same in the appropriate column against their respective names. E
It is alleged that the Returning Officer instead of furnishing the
latest electoral roll of K.R.Pura Assembly Constituency, asked
the Election Petitioner to approach the Revenue Office to obtain
those details. It has specifically been averred by the Election
Petitioner that she went to the Revenue Office but could not get F
those details from the Revenue Officer and therefore, she went
to file the nomination papers, presented the same before the
Returning Officer but it was not received. It is her allegation that,
thereafter, she attempted to give a handwritten representation
to the Returning Officer but the same was also not accepted. G
Hence she left the place without filing the nomination. It is also
her allegation that on 28th of April, 2008, she filed a complaint
in this regard before the Chief Election Commissioner.

5. The election was held on 10th of May, 2008 and its H

A result was published on 27th of May, 2008 in which the Returned Candidate was declared elected from K.R.Pura Assembly Constituency. This was challenged by the Election Petitioner in an election petition before the Karnataka High Court. The Election of the Returned Candidate was sought to be declared null and void on the ground of illegal rejection of nomination paper at threshold by the Returning Officer.

6. As usual, the Returned Candidate filed applications for striking out various paragraphs from the election petition. This was registered as Misc. Civil No. 15204 of 2009. Another application for dismissal of the election petition was filed which was registered as Misc. Civil No. 15772 of 2009. In this application it was pointed out that as the Election Petitioner was not a candidate set up by any recognised political party, for valid nomination according to first proviso of Section 33 (1) of the Act the nomination paper was required to be subscribed by ten electors of the constituency. It was further pointed out that the Election Petitioner shall not be deemed to be duly nominated for election from the constituency as she had not made any deposit as required under Section 34 of the Act. The Returned Candidate further alleged non-compliance of Section 81(3) of the Act and contended that he has not been furnished with the true attested copy of the election petition and its annexures as presented to the Court. The Returned Candidate also sought dismissal of the election petition on the ground that the same did not contain concise statement of the material facts on which the Election Petitioner relied and the material facts averred did not disclose any cause of action for the relief sought for.

7. All these pleas raised by the Returned candidate were considered and have been overruled by the High Court by the impugned orders. While rejecting the application (Civil Misc. No. 15204 of 2009) for striking out the pleading from the election petition by order dated 8th October, 2009, the High Court observed as follows:

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"53. It is for this reason, I am of the view that the pleadings in the petition does not warrant striking off and assuming that some pleadings are really not necessary, ultimately if the retaining or permitting the pleading to exist does not result in any prejudice or embarrassment to the respondent and at any rate, if at all there being certain complaint or allegation against the returning officer and his failure to adhere to the duties in terms of the statutory provisions and that being a relevant plea in the context of wrongful rejection of a nomination paper, I am of the view that there is no occasion to strike out the pleadings as is sought to be made out in the application."

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8. The High Court rejected Civil Misc. No. 15772 of 2009 by order dated 12th of November, 2009 and while considering the plea that the averments in the election petition did not disclose any cause of action for granting the relief in terms of the prayer the High Court observed as follows:

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" 55. Whether the nomination as was delivered to the returning officer by the petitioner as a candidate at 1400 hours on 23-4-2088 in fact, did amount to a valid nomination within the scope of the provisions of Section 33 or not, is not a question that surfaces itself for examination at this stage, but later and for the purpose of applying the drastic penal provision of Order VII Rule 11(a) CPC, we have to necessarily accept the plea at its face value and not by seeking for further elaboration or for the proof for the same.

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56. in my considered opinion, the petition averments contain sufficient plea to disclose a cause of action and for granting relief in terms of the prayer. It is, therefore, in my opinion, that the election petition cannot be dismissed on the application [filed by the respondent-returned candidate] applying the test of the provisions of Order VII Rule 11 (a) CPC."

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A 9. As regards the plea of non-deposit as required under Section 34 of the Act, the High Court observed as follows:

B “ 105. Responding to this contention, petitioner has submitted that while the deposit is a requirement in law, a deposit can be made till the last moment; that there was still time for presenting the nomination paper, that when the petitioner attempted to present the nomination paper, time for presentation had not yet come to an end; that even assuming that there was no deposit, it was the bounden duty of the returning officer to point out the requirement of deposit fee and enable the candidate to arrange for deposit and it is only thereafter if the deposit is not made before the expiry of time of filing of nomination, then alone, the provisions of Section 34 of the Act can be said to come into play; that the provisions of sub-section (4) of Section D 36 of the Act takes care of the situation and such a situation will arise only when the returning Officer having consciously and deliberately avoided even scrutinizing the nomination papers, by not even receiving the nomination paper, the argument is only hypothetical and is of no consequence in determining the validity of the election E petition nor the validity of the nomination paper.

F 106. I have bestowed my attention to the submission made at the bar and I find that the argument is really hypothetical, particularly as the returning officer had not even cared to look into the nomination paper, as was presented by the petitioner-candidate or on her behalf by her supporters.”

G As regards the plea of the Returned Candidate that the Election Petitioner did not furnish the copy of the election petition and its annexures as was presented to the Court and that the copies were not duly attested, the High Court answered the same in the following words:

H “. . . What had been filed as election petition and annexures with the registry at the time of initial presentation

have all been, without dispute, furnished to the respondent. Even a discrepancy with regard to the so-called index, which has to be construed as a list of documents, in my considered opinion, does not make any difference for the understanding of the contents of the petition and the manner in which the election petitioner has sought for relief in the election petition and the grounds and materials relied upon by the petitioner, as copies of all original documents are provided to the respondent and even on a comparative perusal of the papers in the court, with the copies as received by the respondent—returned candidate made available by the learned counsel for the respondent, I do not find any additional papers having been filed by the petitioner copies of which are not made available to the respondent in the sense, which can make a material difference to the respondent to understand the precise case of the petitioner, which is not given by the election petitioner and therefore I am of the view that this is not a situation warranting dismissal of the election petition under Section 86 of the Act, on the premise of non-compliance with the requirement of the provisions of Section 81 of the Act.”

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The Returned Candidate’s pleas that the election petition does not contain concise statement of material facts as contemplated under Section 83 (1) of the Act and has not been verified in the manner as laid down under Order VI Rule 15 (1) of the Act have also been rejected by the High Court. The High Court reproduced the verification in its impugned judgment and found the same to be in three parts and observed as follows:

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“..... part-I is within the knowledge of the petitioner, para-II based on the information and belief and part-III on the information that the petitioner believes to be true etc. In my considered view, the verification even as it stands as of now, and with reference to the manner of presentation of the petition and having trifurcated or separated the petition to parts, sufficiently and in

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A substantial manner complies with the requirement of
 verification, In terms of clause –c of sub-section (1) of
 Section 83 of the Act and therefore this argument cannot
 be one to reject the election petition at the threshold, on
 the premise that certain requirements in law are not
 B fulfilled.”

10. Mr. Dushyant Dave, learned Senior Counsel appearing
 on behalf of the appellant points out that from the averments in
 the election petition it is apparent that Election Petitioner was
 C not a candidate set up by a recognised political party and her
 nomination was not subscribed by 10 electors. Accordingly he
 submits that the Election Petitioner cannot be considered to be
 a candidate so as to maintain the election petition. He draws
 our attention to the first proviso of Section 33 of the Act and
 D points out that for a valid nomination it has to be subscribed
 by 10 electors. In support of the submission learned counsel
 for the appellant relies on a Constitution Bench judgment of this
 Court in the case of *Mithilesh K. Sinha v. Returning Officer*
for Presidential Election 1993 Supp. (4) SCC 386 and our
 attention is drawn to paragraphs 30 and 31 of the judgment
 E which read as under:

“30. To be entitled to present an election petition calling
 in question an election, the petitioner should have been a
 ‘candidate’ at such election within the meaning of Section
 F 13(a) for which he should have been “duly nominated as
 a candidate” and this he cannot claim unless the
 mandatory requirements of Section 5-B(1)(a) and Section
 5-C were complied by him. Where on undisputed facts
 there was non-compliance of any of these mandatory
 requirements for a valid nomination, the petitioner was not
 G a ‘candidate’ within the meaning of Section 13(a) and,
 therefore, not competent according to Section 14-A to
 present the petition.

H 31. It is also settled by the decisions of this Court that in
 order to have the requisite locus standi as a ‘candidate’

within the meaning of Section 13(a) for being entitled to present such an election petition in accordance with Section 14-A of the Act the petitioner must be duly nominated as a candidate in accordance with Section 5-B(1)(a) and Section 5-C. Unless it is so the petitioner cannot even claim to have been duly nominated as a candidate at the election as required by Section 13(a). The above conclusion in respect of the nomination paper of the petitioner, Mithilesh Kumar Sinha, from the facts set out by him in the petition, stated by him at the hearing and evident from the documents filed by him makes it clear that the petitioner, Mithilesh Kumar Sinha, has no locus standi to challenge the election of the returned candidate, Dr Shanker Dayal Sharma as he is not competent to present the election petition in accordance with Section 14-A of the Act read with Order 39 Rule 7 of Supreme Court Rules. Even otherwise the ground under Section 18(1)(c) of the Act of wrongful rejection of his nomination paper urged in the election petition does not give rise to a triable issue on the above facts and the irresistible conclusion therefrom. The material facts to make out a prima facie case of existence of that ground are lacking in the pleadings and squarely negated by petitioner's own statement."

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Reliance has also been placed on a decision of this Court in the case of *Pothula Rama Rao v. Pendyala Venakata Krishna Rao* (2007) 11 SCC 1 and reference has been made to paragraphs 7 and 8 of the judgment which read as follows:

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"7. The first respondent was the official candidate of TDP, as he was issued the B-Form by TDP. Atchuta Ramaiah's nomination was not subscribed by 10 proposers but by only one proposer. The nomination of Atchuta Ramaiah was rejected by the Returning Officer, not on the ground that he was a "dummy candidate" but because his nomination was not subscribed by ten voters of the

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A constituency, and thus there was non-compliance with the first proviso to Section 33(1). The rejection is under sub-section (2)(b) of Section 36 which provides for rejection of any nomination on the ground that there has been a failure to comply with provision of Section 33 or Section 34.

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8. If an election petitioner wants to put forth a plea that a nomination was improperly rejected, as a ground for declaring an election to be void, it is necessary to set out the averments necessary for making out the said ground.

C The reason given by the Returning Officer for rejection and the facts necessary to show that the rejection was improper, should be set out. If the nomination had been rejected for non-compliance with the first proviso to sub-section (1) of Section 33, that is, the candidate's nomination not being subscribed by ten voters as proposers, the election petition should contain averments to the effect that the nomination was subscribed by ten proposers who were electors of the constituency and therefore, the nomination was valid. Alternatively, the election petition should aver that the candidate was set up by a recognised political party by issue of a valid B-Form and that his nomination was signed by an elector of the constituency as a proposer, and that the rejection was improper as there was no need for ten proposers. In the absence of such averments, it cannot be said that the election petition contains the material facts to make out a cause of action."

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11. Election Petitioner appears in person. She submits that her nomination paper was subscribed by ten electors of the Constituency and presented before the Returning Officer but the same was not accepted. We have bestowed our consideration to the rival submissions. The Election Petitioner, in the election petition, has stated that she had "obtained TEN PROPOSERS signatures in Part II of Annexure 'A' together with their true copies of their Elector Photo Identity Cards". Her further plea

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in the election petition is that "as per the given new part number, when we checked for the names of the proposers in the concerned Electoral Roll, their names were not found". The relevant pleadings in this regard are at paragraphs 9, 10 and 11 of the election petition and we deem it expedient to reproduce the same as under:

"9. It is most respectfully submitted that the petitioner on realizing the time factor to submit the nomination before the 4th respondent by 1500 hours and since the day being the last day for filing nomination papers, has presented her nomination papers together with all necessary enclosures before the 4th Respondent with sole intention to comply the requirements of new part number and serial number in respect of the proposers at the time of scrutiny of nomination paper, which is scheduled for next day the 24th April, 2008 wherein a clear 24 hours time would be available before the Petitioner to make good the requirements in her nomination paper. The petitioner also explained the reason and the actual position prevailing in the revenue office and also requested the 4th respondent to receive her nomination paper and allow time till scrutiny to comply the requirement whatsoever.

10. It is most respectfully submitted that to the petitioners surprise the 4th respondent spontaneously reacted and commented "I do not want to listen to all your stories and I will not receive your nomination paper without complying with the requirement of new part number and serial number against the proposers in Part-II of Annexure 'A' and if you compel me to receive now and tomorrow I will reject it". At that point of time the petitioner on realizing the language of the 4th respondent, his uncalled for, unwarranted comments, which clearly indicated pre-determined ulterior motive, has decided to submit the nomination paper together with a written representation addressed to Respondent No. 4, requesting him to receive the

A petitioners nomination papers, since true copies of Elector Photo Identity Cards issued prior to delimitation duly self attested by the respective proposers and true copy of enumeration details are being enclosed to prove the identity, address and authenticity of the proposers beyond any doubt. The Representation handwritten by the Petitioner and typed copy is marked as Annexure-'P', and requested him for time till scrutiny for complying with the requirements whatsoever as per law.

C 11. It is most respectfully submitted that the Respondent No. 4 once again reacted in the same manner and bluntly refused to receive petitioner's nomination papers and further adding insult to injury, he has commented "I will not receive your nomination paper or your representation or acknowledge any receipt and continued to say "for your negligence you cannot blame other people". The petitioner on observing 4th respondents illegal and improper rejection in violation of statutory law and election commission's guidelines, was left with no option but to presume the existence of prejudice and predetermined ulterior motive behind the fourth respondents illegal attitude and misuse of power. As such the petitioner left the premises humiliated, insulted by the illegal and improper rejection of her nomination paper by none other than a responsible neutral official like Returning Officer."

F 12. From a plain reading of these averments it is evident that the Election Petitioner has averred that nomination paper was signed by 10 electors. It was delivered to the Returning Officer with a request to make available latest electoral roll of K.R. Pura Constituency for filling up the new part number and serial number of the proposers in the respective columns. However, the Returning Officer stated that he is not in possession thereof and asked the Election Petitioner to approach the revenue office located at the ground floor for verifying and extracting the part number and serial number of

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the proposers. Attempts made on behalf of the Election Petitioner to get those details from the revenue office were rendered futile. Thereafter, the Election Petitioner approached the Returning Officer again for delivering the nomination paper with the explanation. It did not yield any result and the Returning Officer stated that he "will not receive your nomination paper without complying the requirement of new part number and serial number against the proposers in Part-II of Annexure 'A' and if you compel me to receive now, tomorrow I will reject it". These averments at this stage have to be accepted as true and, therefore, the question is as to whether Election Petitioner can be said to be a candidate so as to maintain the election petition and further the Returning Officer was right in refusing to accept the nomination paper on the purported ground that it did not contain the serial number and part number of the proposers. Section 81 of the Act inter alia provides for presentation of election petition. It reads as follows:

"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 the 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.

1. * * * * *

[(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

A by the petitioner under his own signature to be a true copy
of the petition.]”

13. From a plain reading of the aforesaid provision it is
evident that an election petition calling in question any election
B can be presented by any candidate at such election. Candidate,
in our opinion, would not be only such person whose nomination
form has been accepted for scrutiny or whose name appears
in the list of validly nominated candidate, that is to say,
C candidates whose nominations have been found valid. Here,
in the present case, the Election Petitioner’s plea is that the
Returning Officer declined to accept the nomination paper. We
are of the opinion that when a nomination paper is presented
it is the bounden duty of the Returning Officer to receive the
nomination, peruse it, point out the defects, if any, and allow
D the candidate to rectify the defects and when the defects are
not removed then alone the question of rejection of nomination
would arise. Any other view, in our opinion, will lead to grave
consequences and the Returning Officers may start refusing to
accept the nomination at the threshold which may ensure victory
to a particular candidate at the election. This is fraught with
E danger, difficult to fathom. Section 33(4) of the Act casts duty
on a Returning Officers to satisfy himself that the names and
the electoral roll numbers of the candidates and their proposers
as entered in the nomination paper are the same as in the
electoral rolls and, therefore, in our opinion, the Election
F Petitioner for the purpose of maintaining an election petition
shall be deemed to be a candidate.

14. As regards failure to subscribe the nomination papers
by 10 electors as required under the first proviso to Section 33
G of the Act, the plea of the Election Petitioner is that it was so
subscribed. Whether in fact was done or not is a matter of trial
and at this stage we have to proceed on an assumption that
the averments made in the election petition are true. There is
clear averment in the election petition that nomination paper
was subscribed by 10 electors. In the face of aforesaid there
H

is no escape from the conclusion that the Election Petitioner shall be deemed to be a candidate and entitled to challenge the election of the Returned Candidate. A

15. Now we revert to the authority of this Court in the case of *Mithilesh K. Sinha* (supra). In the said case election of the President was challenged and it was found that the subsequently delivered nomination paper filed by the petitioner of the said case was not subscribed by at least ten electors as proposers and at least ten electors as seconders as required by Section 5(B)(1)(a) of the Presidential and Vice-Presidential Elections Act, 1952 and in that background it was held that he was not a candidate competent to present the petition. Here, in the present case, as stated earlier, the Election Petitioner has averred that her nomination was subscribed by ten electors and that averment at this stage has to be treated as correct and, therefore, this distinguishes the case in hand from the case of *Mithilesh K. Sinha* (supra). B C D

16. In the case of *Pothula Rama Rao* (supra) the Election Petitioner's averment was that his nomination was rejected on the untenable ground that he was a dummy or substitute candidate set up by the TDP. However, there was no averment that he was set up as a candidate by TDP in the manner contemplated in paragraph 13 of the Symbols Order, that is, by issuing a valid B-Form in his favour. Nor did the election petition aver that his nomination paper was subscribed by ten electors. In the face of it this Court came to the conclusion that the election petition was lacking in material facts necessary to make out a cause of action. Here, in the present case, as stated earlier, the Election Petitioner has clearly averred that his nomination was subscribed by ten electors and presented before the Returning Officer but the same was not received and rejected. Thus one of the grounds for declaring the election to be void as provided under Section 100(1)(c) of the Act was specifically pleaded. Thus, the decision of this Court in the case of *Pothula Rama Rao* (supra) in no way supports the plea of the appellants. E F G H

A 17. Mr. Dushyant Dave, then contends that the Election
 Petitioner has nowhere averred that he had made the deposit
 as required under Section 34 of the Act. According to him
 Election Petitioner shall not be deemed to be duly nominated
 for election unless he deposits the amount provided therein. In
 B answer thereto Election Petitioner submits that the deposit as
 contemplated under Section 34 of the Act can be made till the
 time of scrutiny of the nomination. According to her after
 accepting the nomination it was the bounden duty of the
 Returning Officer to point out the requirement of deposit and
 C enable the candidate to arrange for deposit and it is only
 thereafter if the deposit is not made, the nomination can be
 rejected.

D 18. We have considered the rival submissions and we find
 substance in the submission of Mrs. Mahesh. We are of the
 opinion that there was still time left for presenting the nomination
 paper and in case the same would have been accepted for
 scrutiny, the Election Petitioner could had made deposit within
 the time. It is only after expiry of the time had the Election
 Petitioner not made the deposit, the nomination was liable to
 E be rejected.

F 19. Mr. Dushyant Dave, lastly submits that the election
 petition does not contain material facts and on this ground
 alone the election petition deserves to be rejected at the
 threshold. Reliance has been placed on a decision of this Court
 in the case of *Anil Vasudev Salgaonkar v. Naresh Kushali*
Shigaonkar, (2009) 9 SCC 310 and our attention has been
 drawn to paragraph 50 of the judgment which reads as follows:

G "50. The position is well settled that an election petition can
 be summarily dismissed if it does not furnish the cause of
 action in exercise of the power under the Code of Civil
 Procedure. Appropriate orders in exercise of powers
 under the Code can be passed if the mandatory
 requirements enjoined by Section 83 of the Act to
 H incorporate the material facts in the election petition are
 not complied with."

Yet another decision on which reliance is placed is the decision of this Court in the case of *Ram Sukh v. Dinesh Aggarwal* (2009) 10 SCC 541 and our attention has been drawn to paragraphs 24 and 25 of the judgment which read as follows:

"24. It needs little reiteration that for the purpose of Section 100(1)(d)(iv), it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the first respondent was materially affected due to the said omission on the part of the Returning Officer. Unfortunately, such averment is missing in the election petition.

25. In our judgment, therefore, the Election Tribunal/High Court was justified in coming to the conclusion that statement of material facts in the election petition was completely lacking and the petition was liable to be rejected at the threshold on that ground. We have, therefore, no hesitation in upholding the view taken by the High Court. Consequently, this appeal, being devoid of any merit, fails and is dismissed accordingly. Since the first respondent remained unrepresented, there will be no order as to costs."

20. Mrs. Mahesh has taken us through the averments made in the election petition including the paragraphs which we have reproduced in the preceding paragraphs of this judgment and contends that the election petition does contain a concise statement of material facts on which she had relied seeking the relief of declaration of the election of the Returned Candidate to be void.

21. We have considered the submission and the submission advanced by Mrs. Mahesh commend us. It is trite that if an Election Petitioner wants to put forth a plea that a nomination was improperly rejected to declare an election to be void it is necessary to set out the averments for making out

A the said ground. The reason given by the Returning Officer for refusal to accept the nomination and the facts necessary to show that the refusal was improper is required to be set out in the election petition. In the absence of the necessary averments it cannot be said that the election petition contains the material

B facts to make out a cause of action. Section 83(1)(a) inter alia provides that an election petition shall contain a concise statement of the material facts. Further, Section 87 of the Act provides that subject to the provisions of the Act and the Rules framed thereunder every election petition shall be tried in

C accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. Order VI of the Code of Civil Procedure is devoted to the pleadings generally and Rule 2(i) thereof, inter alia, provides that every pleading shall contain statement in a concise form all the material facts on which the

D party pleading relies for claim. In an election petition, which does not contain material facts, no relief can be granted. The phrase 'material fact' as used in Section 83(1)(a) of the Act or Order VI Rule 2 of the Code of Civil Procedure has not been defined in the Act or the Code of Civil Procedure. In our opinion

E all specific and primary facts which are required to be proved by a party for the relief claimed are material facts. It is settled legal position that all material facts must be pleaded by the party on which the relief is founded. Its object and purpose is to enable the contesting party to know the case which it has to

F meet. An election petition can be summarily dismissed if it does not furnish the material facts to give rise to a cause of action. However, what are the material facts always depend upon the facts of each case and no rule of universal application is possible to be laid down in this regard.

G 22. Bearing in mind the aforesaid legal position when we proceed to consider the facts of the present case we are of the opinion that the Election Petitioner had disclosed material facts and the matter is fit to go for trial. Whether those material facts are true or false is a matter of trial. As regards authorities

H of this Court in the case of *Anil Vasudev Salgaonkar (supra)*

and Ram Sukh (supra) we are of the opinion that the same do not lend support to the contention of the appellant. In both the cases this Court on fact came to the conclusion that the election petition did not contain statement of material facts and accordingly the election petitions were dismissed at the threshold. However, in the present case, on facts we have found that the election petition does contain material facts and it is not liable to be dismissed at the threshold.

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23. Any observation made by us in this judgment is for the purpose of disposal of these appeals and shall have no bearing at the final decision of the election petition.

C

24. Accordingly, we dismiss both the appeals with costs of Rs.25,000/- to be paid by the appellant to the respondent.

R.P.

Appeals dismissed.

D