

DHARTIPAKAR MADAN LAL AGARWAL
v.
RAJIV GANDHI

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MAY 11, 1987

[E.S. VENKATARAMIAH AND K.N. SINGH, J.J.]

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Representation of the People Act, 1950: ss. 77, 80 to 87, 100 and 123—Election petition—Allegations of corrupt practice—Not to be vague or general—scrutiny by Court in a strict manner—Jurisdiction of Court to strike out pleadings—Empowered at any stage of proceeding even before filing of written statement—Time limit for enquiry—Desirability for suitable Parliamentary legislation.

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Code of Civil Procedure: O.VI R. 16, O.VII R. 11, Striking out of pleadings—Rejection of election petition—Jurisdiction of the Court.

The election of the respondent, who was returned to the Lok Sabha in a bye election in 1981, was challenged by the appellant under s. 80 of the Representation of the People Act, 1951, on a number of grounds, including the allegations of corrupt practice of undue influence, hiring and procuring of vehicles for carrying voters and obtaining the assistance of Government servants and incurring expenses at the election in excess of the permissible limit. Upon a preliminary objection raised by the respondent the High Court struck off the pleadings as vague, general, unnecessary, frivolous and vexatious within the meaning of Order VI Rule 16 of the Code of Civil Procedure and rejected the petition under Order VII Rule 11 read with s. 87 of the Act on the ground that it did not disclose any cause of action.

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In the appeal under s. 116-A of the Act against the order of the High Court, it was contended for the appellant that the High Court had no jurisdiction to entertain preliminary objections under Order VI Rule 16 or to reject the election petition under Order VII Rule 11 of the Code before the respondent had filed his written statement to the petition, which deprived him of the opportunity of amending the petition by supplying material facts and particulars, that allegations contained in various paragraphs of the petition constituted corrupt practices which disclosed cause of action within the meaning of s. 100 of the Act and the High Court committed error in holding that the petition was defective, on the premise that it did not disclose any triable issue, and that the election petition disclosed primary facts regarding corrupt practice and

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A if there was absence of any particulars or details the High Court should have afforded opportunity to the appellant to amend the petition.

The respondent was subsequently returned to the Lok Sabha in the general election held in 1984 and the validity of that election has been upheld in *Azhar Hussain v. Rajiv Gandhi*, AIR 1986 SC 1253 and

B *Bhagwati Prasad v. Rajiv Gandhi*, [1986] 4 SCC 78. The relief of setting aside the impugned election had thus become infructuous by lapse of time as the subsequent election could not be set aside on the grounds raised in the petition. But since s. 98 read with s. 99 of the Act mandates investigation of charges of corrupt practice, if any, raised against the returned candidate, and as proof thereof entails incurring of disqualification from contesting subsequent election for a period of six years, the Court heard the appeal at length.

On the questions: Whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 of the Code of Civil Procedure and to reject an election petition under Order VII Rule 11 of that

D Code at the preliminary stage, even though no written statement had been filed by the respondent, whether in the instant case in entertaining the preliminary objections and rejecting the election petition the High Court deprived the appellant of an opportunity to amend the petition and to make good the deficiencies by supplying necessary particulars and details of the corrupt practices alleged in the petition, and whether

E the various paragraphs of the said election petition disclosed any cause of action.

Dismissing the appeal,

HELD: 1.1 Right to contest election or to question the election by

F means of an election petition is neither common law nor fundamental right, instead it is a statutory right regulated by the statutory provisions of the Representation of the People Act, 1951, which is a complete and self contained Code. Outside the statutory provisions, there is no right to dispute an election. The provisions of the Civil Procedure Code are applicable to the extent as permissible by s. 87 of the Act. [387H-388B]

1.2. The scheme of the Act shows that an election can be questioned under the statute as provided by s. 80 on the grounds as contained in s. 100. The pleadings are regulated by s. 83, which lays down a mandatory provision in providing that an election petition shall contain H a concise statement of material facts and set forth full particulars of

corrupt practices with exactitude. [388C]

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1.3 Since allegations of corrupt practice are in the nature of criminal charges, it is necessary that each and every corrupt practice must be clearly and specifically pleaded and it should be complete in itself so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings the trial of the election petition cannot proceed for want of cause of action. [388DE]

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N.P. Ponnuswami v. Returning Officer, [1952] SCR 218; *Jagan Nath v. Jaswant Singh*, AIR 1954 SC 210 and *Jyoti Basu v. Debi Ghosal*, [1982] 3 SCR 318, referred to.

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2.1 A combined reading of ss. 81, 83, 86 and 87 of the Act makes it apparent that an election petition is liable to be dismissed *in limine* at the initial stage if it does not disclose any cause of action. Cause of action in questioning the validity of election must relate to the grounds specified in s. 100 of the Act. If the allegations contained in the petition do not set out grounds of challenge as contemplated by s. 100 and if the allegations do not conform to the requirement of ss. 81 and 83 the pleadings are liable to be struck off under Order VI Rule 16 of the Code of Civil Procedure. If after striking out defective pleadings the Court finds that no cause of action remains to be tried it would be duty bound to reject the petition under Order VII Rule 11 of the Code. [382H, 386A-C]

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Azhar Hussain v. Rajiv Gandhi, AIR 1986 SC 1253; *Bhagwati Prasad v. Rajiv Gandhi*, [1986] 4 SCC 78; *Udhav Singh v. Madhav Rao Scindia*, [1976] 2 SCR 246 and *Charan Lal Sahu & Ors. v. Giani Zail Singh & Anr.*, [1984] 2 SCR 6, referred to.

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2.2 In the instant case, the appellant failed to plead complete details of corrupt practices which could constitute a cause of action as contemplated by s. 100 of the Act. He also failed to give the material facts and other details of the alleged corrupt practices. The High Court, therefore, rightly exercised its power in rejecting the election petition under Order VII Rule 11 of the Code. [401G, 403G-H]

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3.1 Order VI Rule 16 of the Civil Procedure Code permits striking out of pleadings which are unnecessary, scandalous, frivolous, or vexatious or which may tend to prejudice, embarrass or delay a fair trial at any stage of the proceedings. It does not admit of any exception that the respondent must file written statement before the

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- A preliminary objections could be entertained. If, therefore, a preliminary objection is raised before commencement of the trial, the court is duty bound to consider the same. It need not wait for the filing of the written statement by the defendant and point out defects. Instead it can proceed to hear the preliminary objection and strike out the pleadings. [387BC, 386D, 383AB, CD]
- B 3.2. The High Court, therefore, had jurisdiction in the instant case to strike out pleadings at the preliminary stage even though no written statement had been filed by the respondent. [382CD]
- C *K.Kamaraja Nadar v. Kunju Thevar & Ors.*, [1959] SCR 583, referred to. *Union of India v. Surjit Singh Atwal*, [1979] 2 SCR 1002, distinguished. *Vidya Charan Shukla v. G.P. Tiwari & Ors.*, AIR 1963 MP 356 overruled.
- D 4.1 The Court did not deprive the appellant of the opportunity to amend the petition and to make good the deficiencies by supplying the necessary particulars and details of the corrupt practices alleged in the petition. He was free to file amendment application, but at no stage did he express any desire to make any amendment application nor he made any application to that effect before the High Court. It was open to him to have made that application but he himself did not make any such application. [387DE]
- E 4.2 The High Court was under no legal obligation to direct the appellant to amend pleadings or to *suo moto* grant time for the same. Moreover, the allegations of corrupt practice as required by Section 83 were not complete and did not furnish any cause of action. [387E]
- F 5.1 The petition was drafted in a highly vague and general manner. Various paragraphs of the petition presented disjointed averments and it is difficult to make out as to what actually the petitioner intended to plead. [401H]
- G 5.2 The allegations contained in paragraphs 1 to 7 contain narration of facts as to when the election took place and the petitioner's desire to file his nomination paper and the obstruction raised by the authorities and the allegation that the police were shadowing the appellant do not make out any ground under s. 100 of the Act. [388H]
- H 5.3 The allegation in para 8 that food was given to the workers of the respondent at some places assuming to be true does not make out a

case of corrupt practice or any other ground of challenge under s. 100 of the Act. A corrupt practice as contemplated by s. 123(6) contemplates incurring or authorising expenditure beyond the prescribed limit. The impugned allegation does not contain any averment that the respondent incurred or authorised expenditure beyond the prescribed limit. [389B-D]

5.4 Paras 9 to 19 merely show that a number of vehicles were plying with party flags of the respondent in the constituency on different dates which by itself do not constitute any corrupt practice. The basic ingredients to make out a ground for challenging the election under s. 100 of the Act in these paras were totally lacking. They, therefore, disclosed no cause of action. [389E-G]

5.5 The allegations in paras 20 and 21 that the mother of the returned candidate, who was the Prime Minister, had toured the constituency alongwith him and in her speeches had appealed to the voters to vote for him do not constitute undue influence or any other corrupt practice. It is always open to a candidate or his supporters to appeal to the electors to vote for a particular candidate for the development and progress of the area. This would be a legitimate appeal. [389H-390A]

5.6 The allegations in paras 22 to 26 of the petition relate to the relationship of the appellant with his agent. These do not make out any ground under s. 100 of the Act. [390BC]

5.7 The statement in para 27 that the appellant as well as his election agent were being followed by police does not refer to any violation of law or rule or commission of any electoral offence by the returned candidate or his workers with his consent. [390C]

5.8 The allegation in para 28 that on the polling day a lady went to the polling booth alongwith a voter where he affixed stamp on ballot paper and returned with her does not amount to any corrupt practice with consent of the returned candidate unless it could be shown that it materially affected the result of the election. [390D]

5.9 The allegation in para 29 that on the polling day drinking water and batashas were being distributed to the voters at the polling station does not show that it was being done with the consent of the respondent or that he spent money over it or that the said action influenced the voters or that it materially affected the result of the election. In the absence of such allegations it disclosed no cause of action. [390F]

A 5.10 The allegations in paras 31 to 35 that workers of the respondent helped voters to cast their votes in favour of the respondent, do not amount to any corrupt practice unless there was further allegation that it materially affected the result of the election. [390G]

B 5.11 The averments made in paras 37 and 38 contain narration of facts which have no bearing on any corrupt practice. [391A]

C 5.12 The allegations in paras 39 to 49 that neither the appellant nor his election agent had appointed any counting agents but a number of persons had acted as his counting agents in an unauthorised manner and that complaints made by him were not considered by the Returning Officer, even if assumed to be true do not make out any case of commission of corrupt practice. [391B]

The High Court, was, therefore, justified in striking out all these paragraphs.

D 6.1 In order to constitute a corrupt practice as contemplated by ss. 77 and 123(6) it is necessary to plead requisite facts showing authorisation or undertaking of reimbursement by the candidate or his election agent. A mere vague and general statement that the candidate and his workers with his consent spent money in election in excess of the permissible ceiling would not be sufficient to constitute corrupt practice. [392G-393A]

Rananjaya Singh v. Baijnath Singh, [1955] 1 SCR 671; *Smt. Indira Gandhi v. Raj Narain*, [1976] 2 SCR 347 and *Kunwar Lal Gupta v. A.N Chawla*, [1975] 2 SCR 259, referred to.

F 6.2 Any voluntary expense incurred by a political party, well-wishers, sympathisers or association of persons does not fall within the mischief of s. 123(6), instead only that expenditure which is incurred by the candidate himself or authorised by him is material for the purpose of s. 77. [392B]

G *Dr. P. Nalla Thamby Terah v. Union of India & Ors.*, [1985] Supp. SCC 189, referred to.

H 6.3 The allegations contained in various sub-paras of para 50 merely allege that a number of vehicles were plying with the flags of the party to which the returned candidate belonged and food was served in connection with the election meetings, distribution of badges and

leaflets. There is no allegation that the returned candidate incurred or authorised incurring of expenditure for the aforesaid purposes. Unless the allegations are specific that the candidate or his election agent authorised the expenses before the money was actually spent and that the candidate or his election agent reimbursed or undertook to reimburse the same the necessary ingredient of corrupt practice would not be complete and it would provide no cause of action to plead corrupt practice. The High Court was justified in striking out the same. [393G-394A]

7.1 If some developmental activity was carried on in the constituency and if it was completed during the election period it could not amount to any gift or promise to the voters. [394G]

7.2 The allegation in para 53(1)(A) does not disclose any material fact or particular regarding the alleged corrupt practice of making gift which may amount to bribery within the meaning of s. 123(1)(A). It merely states that Amethi railway station was being constructed and during the election its work was speeded up which persuaded the voters to cast their votes in favour of the returned candidate. There is no allegation that the returned candidate or his workers with his consent made any gift, offer or promise to any elector to vote or refrain from voting at an election. [394EF]

8.1 A candidate, his workers and supporters have every right under the law to canvass for the success of a particular candidate saying that if elected he would work for the development of the constituency. Such a promise does not in any way interfere with the free exercise of electoral right of the electors. [395E]

8.2 The allegations in paras 53(1)(B) and (C) that the returned candidate, his mother and their workers with their consent made promise through newspapers, pamphlets and speeches that voters should cast their votes in favour of the respondent for the sake of progress and development of the constituency, merely amounts to a representation being made by the party leader and the returned candidate and his workers. Such a statement of promise is a legitimate one and it does not fall within the definition of bribery and undue influence under s. 123(1)(A) or s. 123(2). [395B, D]

8.3 Declaration of public policy or a promise of public action or promise to develop the constituency in general do not interfere with free exercise of electoral rights as the same do not constitute bribery or undue influence. [396B]

A *Shiv Kirpal Singh v. V.V. Giri*, [1971] 2 SCR 197 and *H. V. Kamath v. Ch. Nitiraj Singh*, [1969] 3 SCR 813, referred to.

9.1 Hiring or procuring of a vehicle by a candidate or his agent or by any other person with his consent is the first essential ingredient of the corrupt practice under s. 123(5), the second such ingredient is that the hiring or procuring of the vehicle must be for conveyance of the voters to and from the polling station, and the third that conveyance of electors is free from any charge. If any of the three ingredients is not pleaded to make out a case of corrupt practice under s. 123(5) the charge must fail. [397E, 399C]

C **9.2** The allegations contained in paras 30 and 53(1)(D) conspicuously do not contain any pleading regarding hiring and procuring of the vehicles by the returned candidate or any of his workers with his consent for conveyance of the voters to and from polling station free of cost. No particulars of any kind have been specified. The paras, therefore, do not make out any charge of corrupt practice as contemplated by s. 123(5) and the High Court was justified in striking out the same. [399G-400A]

E *Joshbhai Chunnibhai Patel v. Anwar Beg A. Mirza*, [1969] 2 SCR 97; *Ch. Razik Ram v. Ch. J.S. Chouhan & Ors.*, AIR 1975 SC 667; *Balwant Singh v. Lakshmi Narain*, [1960] 3 SCR 91; *Dadasaheb Datatraya Pawar & Ors. v. Pandurang Raoji Jagtap & Ors.*, [1978] 2 SCR 524; *Dharmesh Prasad Verma v. Faiyazal Azam*, [1985] 1 SCR 11; *Rajendra Singh Yadav v. Chandra Sen & Ors.*, AIR 1979 SC 882 and *Balwan Singh v. Prakash Chand & Ors.*, AIR 1976 SC 1187, referred to.

F **10.1** In order to constitute a corrupt practice under s. 123(7), it is essential to clothe the petition with a cause of action which would call for an answer from the returned candidate and it should, therefore, plead mode of assistance, measure of assistance and all facts pertaining to the assistance. The pleading should further indicate the kind or form of assistance obtained and in what manner the assistance was obtained

G or procured or attempted to be procured by the candidate for promoting the prospect of his election. The petitioner must state with exactness the time of assistance, the manner of assistance and the persons from whom assistance was obtained or procured by the candidate. [400DE]

H **10.2** The allegations in sub-paras 1, 2 and 3 of para 53(1)(E) that though the appellant had not appointed any counting agent but still

certain persons acted as his counting agents and the returning officer did not hold any inquiry into his complaint, in sub-para 4 that there was fear psychosis and it looked as if the police and other government officials wanted to help the returned candidate, in sub-para 5 of certain persons helping the voters to cast their votes on the polling day and that some persons cast votes 100 to 200 times and their signatures were not obtained do not make out any charge of corrupt practice within the provisions of s. 123(7). [400FG]

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11. The allegations in para 53(2) that the presiding officers did not perform their duties in accordance with law inasmuch as they failed in their duty to remove the posters and other propaganda material from the polling booth and that the election symbol of the returned candidate was displayed within 100 metres of the polling booth in violation of the rules do not make out any charge of corrupt practice. If at all, it could be a ground under s. 100(1)(d)(iv) for setting aside election on the ground of its being materially affected but no such plea was raised. [401EF]

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12. The allegation in para 52 that the returned candidate had polled cent per cent votes in his favour in certain villages of the constituency do not make out any corrupt practice or any ground of challenge under s. 100 and it was rightly struck off by the High Court. [394B]

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13. Order VI Rule 17 of the Code of Civil Procedure permits amendment of an election petition but the same is subject to the provisions of the Act. Section 81 prescribes a period of 45 days from the date of the election for presenting election petition calling in question the election of the returned candidate. After the expiry of that period no election petition is maintainable and the High Court or this Court has no jurisdiction to extend the period of limitation. An order of amendment permitting a new ground to be raised beyond the time specified in s. 81 would amount to contravention of these provisions and is beyond the ambit of s. 87 of the Act. A new ground cannot, thus, be raised or inserted in an election petition by way of amendment after the expiry of the period of limitation. [402CD]

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In the instant case, the election petition was presented to the Registrar of the High Court on the last day of the limitation. The amendments claimed by him are not in the nature of supplying particulars instead those seek to raise new grounds of challenge. Various paras of the election petition which are sought to be amended do not disclose

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A any cause of action. Therefore, it is not permissible to allow amendment after expiry of the period of limitation. [402A, E]

14.1 Court should not undertake to decide an issue unless it is a living issue between the parties, for if an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it. [380D]

Sun Life Assurance Company of Canada v. Jervis, [1944] AC 111, referred to.

C 14.2 Election is the essence of democratic system and purity of elections must be maintained to ensure fair election. Election petition is a necessary process to hold inquiry into corrupt practice to maintain the purity of election. But there should be some time limit for holding this inquiry. [381E]

D 14.3 Parliament should consider the desirability of amending the election law to prescribe time limit for inquiry into the allegations of corrupt practice or to devise means to ensure that valuable time of this Court is not consumed in election matters which by afflux of time are reduced to mere academic interest. [381D]

E 15. A large number of independent candidates contest the election for the mere sake of contesting, with a view to make out grounds for challenging the election. They poll only paltry number of votes. Parliament should devise ways and means to meet the onslaught of such independent candidates who are not quite serious about their business. [402G, 403B, G]

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 430 of 1982.

From the Judgment and Order dated 12.10.1981 of the Allahabad High Court in E.P. No. 1 of 1981.

G Appellant in person

Dr. Y.S. Chitale, N. Nettar, G.S. Narayan Rao and R.B. Datar for the Respondent.

The Judgment of the Court was delivered by

H SINGH, J. This appeal under Section 116-A of the Representa-

tion of the People Act 1951 is directed against the order of the High Court of Allahabad (Lucknow Bench) dated 12.10.1981 rejecting the election petition filed by the appellant questioning the election of the respondent as member of the Lok Sabha. A

A bye election was held on June 14, 1981 to fill up the vacancy to the Lok Sabha caused by the death of Sanjay Gandhi in the 25th Amethi Constituency in District Sultanpur in the State of Uttar Pradesh. The appellant, the respondent and 13 other candidates contested the election. On 15th June 1981 Rajiv Gandhi was declared elected having polled 258884 votes while the appellant polled 2728 votes only. The appellant filed an election petition under Section 80 of the Representation of the People Act 1951 (hereinafter referred to as the Act) questioning the validity of the election of the respondent on a number of grounds, including the allegations of corrupt practice of undue influence, hiring and procuring of vehicles for carrying voters and obtaining the assistance of Government servants and incurring expenses at the election in excess of the permissible limit. The High Court issued notice to the respondent who appeared before it and made an application under Order VI Rule 16 of the Code of Civil Procedure for striking out the pleadings contained therein as the same were vague, general, unnecessary, frivolous and vexatious which did not disclose any cause of action. Respondent further prayed that the election petition be rejected under Order VII Rule 11 of the Civil Procedure Code read with Section 87 of the Act. B

A learned Single Judge of the High Court before whom the preliminary objections were raised caused service of the copy of the objections on the appellant who was appearing in person and granted time to him to submit his reply. The appellant, however, did not submit any reply to the preliminary objections and in spite of date being fixed for hearing arguments in his presence he did not appear before the Court on the date fixed for arguments. The learned Judge after hearing the arguments advanced on behalf of the respondent passed an order on 12th October 1981 holding that the various paragraphs contained in the petition were vague and the same did not contain sufficient averments to constitute any corrupt practice and the various paragraphs of the petition were unnecessary, frivolous and vexatious within the meaning of Order VI Rule 16 of the Code of Civil Procedure. The learned Judge struck off paragraphs 2 to 53, 55 to 57 and rejected the petition under Order VII Rule 11 read with Section 87 of the Act on the ground that the election petition did not disclose any cause of action. The appellant has preferred this appeal against the said order. C D E F G H

A The election under challenge relates to 1981, its term expired in 1984 on the dissolution of the Lok Sabha, thereafter another general election was held in December, 1984 and the respondent was again elected from 25th Amethi Constituency to the Lok Sabha. The validity of the election held in 1984 was questioned by means of two separate election petitions and both the petitions have been dismissed. The

B validity of respondent's election has been upheld in *Azhar Hussain v. Rajiv Gandhi*, AIR 1986 SC 1253 and *Bhagwati Prasad v. Rajiv Gandhi*, [1986] 4 SCC 78. Since the impugned election relates to the Lok Sabha which was dissolved in 1984 the respondent's election cannot be set aside in the present proceedings even if the election petition is ultimately allowed on trial as the respondent is a continuing member of the Lok Sabha not on the basis of the impugned election held in 1981 but on the basis of his subsequent election in 1984. Even if we allow the appeal and remit the case to the High Court the respondent's election cannot be set aside after trial of the election petition as the relief for setting aside the election has been rendered infructuous by lapse of time. In this view grounds raised in the petition for setting

D aside the election of the respondent have been rendered academic. Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it. Lord Viscount Simon in his speech in the House of Lords in *Sun Life Assurance Company of Canada v. Jervis*, [1944] AC 111 observed; "I do not think that it would be a proper exercise of the Authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. It is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties

F a matter in actual controversy which the House undertakes to decide as a living issue." These observations are relevant in exercising the appellate jurisdiction of this Court.

G The main controversy raised in the present appeal regarding setting aside of the respondent's election has become stale and academic, but precious time of the apex Court was consumed in hearing the appeal at length on account of the present state of law. Section 98 read with Section 99 indicates that once the machinery of the Act is moved by means of an election petition, charges of corrupt practice, if any, raised against the returned candidate must be investigated. On conclusion of the trial if the Court finds that a returned candidate or any of

H his election agent is guilty of commission of corrupt practice he or his

election agent, as the case may be, would be guilty of electoral offence incurring disqualification from contesting any subsequent election for a period of six years. In this state of legal position we had to devote considerable time to the present proceedings as the appellant insisted that even though six years period has elapsed and subsequent election has been held nonetheless if the allegations made by him make out a case of corrupt practice the proceedings should be remanded to the High Court for trial and if after the trial the Court finds him guilty of corrupt practice the respondent should be disqualified. If we were to remand the proceedings to the High Court for trial for holding inquiry into the allegations of corrupt practice, the trial itself may take couple of years, we doubt if any genuine and bona fide evidence could be produced by the parties before the Court, in fact, during the course of hearing the appellant himself stated before us more than once, that it would now be very difficult for him to produce evidence to substantiate the allegations of corrupt practice but nonetheless he insisted for the appeal being heard on merits. Though the matter is stale and academic yet having regard to the present state of law, we had to hear the appeal at length.

Before we consider the submissions on merit, we would like to say that Parliament should consider the desirability of amending the law to prescribe time limit for inquiry into the allegations of corrupt practice or to devise means to ensure that valuable time of this Court is not consumed in election matters which by efflux of time are reduced to mere academic interest. Election is the essence of democratic system and purity of elections must be maintained to ensure fair election. Election petition is a necessary process to hold inquiry into corrupt practice to maintain the purity of election. But there should be some time limit for holding this inquiry. Is it in public interest to keep sword of Damocles hanging on the head of the returned candidate for an indefinite period of time as a result of which he cannot perform his public duties and discharge his obligations to his constituents? We do not mean to say that the returned candidate should be permitted to delay proceedings and to plead later on the plea of limitation. Ways and means should be found to strike a balance in ascertaining the purity of election and at the same time in preventing waste of public time and money and keeping the sword of Damocles hanging on the head of returned candidate for an indefinite period of time.

The appellant appeared in person and argued the case vehemently for a number of days. He made three submissions: (i) The High Court had no jurisdiction to entertain preliminary objections under

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- A Order VI Rule 16 or to reject the election petition under Order VII Rule 11 of the Code of Civil Procedure before the respondent had filed his written statement to the petition. In rejecting the petition under Order VII Rule 11 the High Court deprived the appellant opportunity of amending the petition by supplying material facts and particulars.
(ii) Allegations contained in various paragraphs of the election petition
- B petition constituted corrupt practice which disclosed cause of action within the meaning of Section 100 of the Act. The High Court committed error in holding that the petition was defective on the premise that it did not disclose any triable issue. (iii) The election petition disclosed primary facts regarding corrupt practice and if there was absence of any particulars or details the High Court should have afforded opportunity to the appellant to amend the petition.
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- The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 of the Code of Civil Procedure and to reject the election petition under Order VII Rule 11 of the Code at the preliminary stage
- D even though no written statement had been filed by the respondent. Section 80 provides that no election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in Section 100 by an elector or by a candidate questioning
- E the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement 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. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Sections 81 and 82 or Section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, Order VI Rule 16 and Order VII Rule 11 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of
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action, are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11.

In *K. Kamaraja Nadar v. Kunju Thevar and Ors.*, [1959] SCR 583 the Election Tribunal and the High Court both refused to consider preliminary objections raised by the returned candidate at the initial stage on the ground that the same would be considered at the trial of the election petition. This Court set aside the order and directed that the preliminary objection should be entertained and a decision reached thereupon before further proceedings were taken in the election petition. Bhagwati, J. speaking for the Court observed thus:

“We are of opinion that both the Election Tribunal and the High Court were wrong in the view they took. If the preliminary objection was not entertained and a decision reached thereupon, further proceedings taken in the Election Petition would mean a full fledged trial involving examination of a large number of witnesses on behalf of the 2nd respondent in support of the numerous allegations of corrupt practices attributed by him to the appellant, his agents or others working on his behalf; examination of a large number of witnesses by or on behalf of the appellant controverting the allegations made against him; examination of witnesses in support of the recrimination submitted by the appellant against the 2nd respondent; and large

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A number of visits by the appellant from distant places like Delhi and Bombay to Ranchi resulting in not only heavy expenses and loss of time and diversion of the appellant from his public duty in the various fields of activity including those in the House of the People. It would mean unnecessary harassment and expenses for the appellant which could certainly be avoided if the preliminary objection urged by him was decided at the initial stage by the Election Tribunal."

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C In *Udhav Singh v. Madhav Rao Scindia*, [1976] 2 SCR 246 this Court held that failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order VI Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In *Charan Lal Sahu & Ors., v. Giani Zail Singh & Anr.*, [1984] 2 SCR 6 an election petition challenging the election of Giani Zail Singh, President was rejected summarily at the initial stage by a Constitution Bench of this Court on the ground that the pleadings contained in the election petition even assuming to be true and correct did not disclose any cause of action for setting aside the election of the returned candidate. The precise question as raised by the appellant was considered at length by this Court in *Azhar Hussain v. Rajiv Gandhi* and this Court held that the High Court while dealing with the election petition has power to strike out pleadings under Order VI Rule 16 and to reject the election petition under Order VII Rule 11 if the petition does not disclose essential facts to clothe it with complete cause of action. Failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) and election petition could therefore be and must be dismissed if it suffers from any such vice. The Court repelled the submission that the power to reject an election petition summarily under the Code of Civil Procedure should not be exercised at the threshold. The Court observed as under:

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G "In substance the argument is that the Court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to compreh-

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hend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point of purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleadings. The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matters pertaining to ordinary civil litigation, there is greater reason for taking the same in regard to matters pertaining to elections."

In *Bhagwati Prasad Dixit 'Ghorawala' v. Rajiv Gandhi*, this Court again reiterated that in an election petition pleadings have to be precise,

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A specific and unambiguous and if the election petition does not disclose a cause of action it should be rejected *in limine*. These authorities have settled the legal position that an election petition is liable to be dismissed *in limine* at the initial stage if it does not disclose any cause of action. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. If the allegations contained in the petition do not set out grounds of challenge as contemplated by Section 100 of the Act and if the allegations do not conform to the requirement of Sections 81 and 83 of the Act, the pleadings are liable to be struck off and the election petition is liable to be rejected under Order VII Rule 11. A pleading if vague and general is embarrassing. If the allegations contained in the election petition even assuming to be true and correct do not make out any case of corrupt practice or any ground under Section 100 of the Act, the pleading would be unnecessary, frivolous and vexatious. It is always open to strike out the same. If after striking out defective pleadings the Court finds that no cause of action remains to be tried it would be duty bound to reject the petition under Order VII Rule II of the Code of Civil Procedure. If a preliminary objection is raised before the commencement of the trial, the court is duty bound to consider the same it need not postpone the consideration for subsequent stage of the trial.

E The appellant placed reliance on the decision of this Court in *Union of India v. Surjit Singh Atwal*, [1979] 2 SCR 1002 in support of his submission that unless a plea is raised by the respondent in the written statement it is not open to the Court to strike out pleadings contained in the election petition. In *Surjit Singh Atwal's* case plaintiff had filed a suit for recovery of certain amount of money which he claimed to be due to him from the Union of India under a contract. The Union of India filed a written statement five years after the filing F of the suit wherein they raised no plea that the contract between the parties was hit by failure to comply with the provisions of Section 175(3) of the Government of India Act, 1935. More than a dozen years after the institution of the suit and eight years after the filing of the written statement, an application for amendment of the written statement was filed on behalf of the Union of India raising a plea that the G contract was hit by the failure to comply with the provisions of Section 175(3) of the Government of India Act, 1935. The trial court dismissed the suit in view of the additional plea raised in the written statement, but the High Court decreed the suit. On appeal by the Union of India this Court upheld the order of the High Court, and in that connection it observed that the illegality of the contract should have been specifically pleaded as required by Order VI Rule 8 and Order VIII Rule 2 of

the Code of Civil Procedure. The decision has no relevance to the question under consideration. The appellant then placed reliance on a Division Bench decision of Madhya Pradesh High Court in *Vidya Charan Shukla v. G.P. Tiwari and Ors.*, AIR 1963 MP 356. In that case a Division Bench of the High Court held that the preliminary objections relating to non-maintainability of an election petition should not be allowed to be raised by mere applications without filing a complete written statement. We do not find any justification to uphold this view. As discussed earlier Order VI Rule 16 of Civil Procedure Code permits striking of pleadings at any stage of proceedings. It does not admit of any exception that the respondent must file written statement before the preliminary objections could be entertained. In view of this Court's decisions as discussed earlier the view taken by the Madhya Pradesh High Court in *Vidya Charan Shukla's* case is no longer a good law.

The appellant's grievance that in entertaining the preliminary objections and rejecting the election petition under Order VII Rule 11 the High Court deprived the appellant's opportunity to amend the petition and to make good the deficiencies by supplying the necessary particulars and details of the corrupt practice alleged in the petition, is devoid of any merit. Firstly, the appellant was free to file amendment application, but at no stage he expressed any desire to make any amendment application nor he made any application to that effect before the High Court. It was open to the appellant to have made that application but he himself did not make any such application. The High Court was under no legal obligation to direct the appellant to amend pleadings or to *suo moto* grant time for the same. Secondly, the allegations of corrupt practice as required by Section 83 were not complete and the same did not furnish any cause of action, any amendment made after the expiry of the period of limitation could not be permitted which would amount to raising a new ground of challenge. The question, however, does not arise as the appellant did not file any amendment application. During the course of hearing of this appeal before us the appellant has made applications for amendment of the election petition which we shall deal later.

Before we consider various paragraphs of the election petition to determine the correctness of the High Court order we think it necessary to bear in mind the nature of the right to elect, the right to be elected and the right to dispute election and the trial of the election petition. Right to contest election or to question the election by means of an election petition is neither common law nor fundamental right

A instead it is a statutory right regulated by the statutory provisions of the Representation of the People Act, 1951. There is no fundamental or common law right in these matters. This is well-settled by catena of decisions of this Court in *N.P. Ponnuswami v. Returning Officer*, [1952] 1 SCR 218; *Jagan Nath v. Jaswant Singh*, AIR 1954 SC 210 and *Jyoti Basu v. Debi Ghosal*, [1982] 3 SCR 318. These decisions have

B settled the legal position that outside the statutory provisions there is no right to dispute an election. The Representation of the People Act is a complete and self contained code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of the Civil Procedure Code are applicable to the extent as permissible by Section 87 of the Act. The scheme of the Act as noticed earlier would show that an election can be questioned under the statute as provided by Section 80 on the grounds as contained in Section 100 of the Act. Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the

C election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under Section 100 of the Act it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet.

D If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner.

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F Now we would consider the various paragraphs of the election petition to determine as to whether the allegations contained therein disclosed any cause of action. The election petition runs into 58 paragraphs containing allegations of various corrupt practices known to the law. The averments contained in the various paragraphs are in disjointed form and in order to ascertain true intention of the election petitioner, one has to read several paragraphs and connect the same with the other to ascertain the correct import of the allegations. The allegations contained in paragraphs 1 to 7 contain narration of facts as to when the election took place and the petitioner's desire to file his nomination paper by wearing only a "langot" and the obstruction raised by the authorities and the allegation that the police were

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shadowing the appellant and two of them always kept company to him. These paragraphs do not make out any ground under Section 100 of the Act. In paragraph 8, the appellant alleged that on 5th, 6th and 10th June he saw a number of jeeps plying in the Parliamentary constituency of Amethi bearing flags of Congress (I) which were being used for electioneering purposes in support of Rajiv Gandhi. The allegations further state that the appellant noticed that food was being given to the workers of Rajiv Gandhi at the kothi of Sanjay Singh at Amethi. Assuming the allegations to be true, these do not make out any case of corrupt practice or any other ground of challenge under Section 100 of the Act. During the course of arguments the appellant urged that the allegations contained in paragraph 8 indicate that Rajiv Gandhi had been using a large number of vehicles and feeding workers and thereby he had been incurring expenses beyond the permissible limit. This inference is not permissible as each and every corrupt practice must be clearly and specifically pleaded and it should be complete in itself. No corrupt practice can be inferred from reading one sentence here and the other sentence there. A corrupt practice as contemplated by Section 123(6) contemplates incurring or authorising expenditure beyond the prescribed limit. The allegations contained in paragraph 8 do not contain any averment that the respondent incurred or authorised expenditure beyond the prescribed limit. Neither any details of incurring expenses or authorising have been stated therein. Paragraph 9 of the petition stated that on 5th June 1981 the appellant had seen a number of cars mentioned therein carrying Congress (I) flags. Similarly, allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 stated that on the dates mentioned in those paragraphs the election petitioner namely the appellant has seen a number of vehicles plying in the constituency carrying Congress (I) flags. These allegations merely show that a number of vehicles were plying with Congress (I) flags in the constituency which by itself do not constitute any corrupt practice. It appears that the appellant intended that the returned candidate had spent money over the plying of vehicles and thereby he exceeded the limit prescribed by Section 123(6) read with Section 77 of the Act. In the absence of requisite allegations in the aforesaid paragraphs the basic ingredients to make out a ground for challenging the election under Section 100 of the Act was totally lacking. These paragraphs therefore disclosed no cause of action.

In paragraphs 20 and 21 the appellant stated that Smt. Indira Gandhi toured the constituency along with the respondent and in her speeches she appealed to the voters to vote for Rajiv Gandhi. We fail to appreciate how these allegations constitute any corrupt practice. It

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A is always open to a candidate or his supporter to appeal to the electors to vote for a particular candidate for the development and progress of the area. This would be a legitimate appeal and in any view, it could not constitute undue influence or any other corrupt practice. The appellant further stated that the Station Officer of Amethi took him in a jeep to Munshi Ganj crossing on the pretext that Smt. Indira Gandhi B had given time to see the appellant but later on the Station Officer left him there. These allegations are wholly irrelevant.

Allegations contained in paragraphs 22 to 26 relate to the relationship between the appellant and one Ram Pai Singh whom he had appointed his election agent. These allegations refer to matters which do not make out any ground under Section 100 of the Act. In paragraph 27 the appellant stated that he as well as his election agent both were being followed by police but it does not refer to any violation of law or rule or commission of any electoral offence by the returned candidate or his workers with his consent. In paragraph 28 the appellant alleged that on the polling day a lady went to the polling booth D along with a person, and the accompanying person affixed stamp on the ballot paper and returned with her. Even if that be so, we fail to understand as to how those facts would amount to any corrupt practice with consent of the returned candidate. Even assuming that this constitutes violation of provisions of the Act and the Rules framed thereunder, there is no pleading that it materially affected the result of the E election. In fact the difference of votes between the petitioner and the returned candidate was of such great magnitude that there could be no question of election being materially affected on the basis of the aforesaid incident. In paragraph 29 the appellant stated that on the polling day drinking water and 'batashas' were being distributed to the voters at the polling station in Amethi. There is no allegation that the F water and batashas were being distributed with the consent of Rajiv Gandhi or that he spent money over it or that the said action influenced the voters or that it materially affected the result of the election. In the absence of any such allegations paragraph 29 disclosed no cause of action.

G Allegations contained in paragraphs 31 to 35 relate to alleged irregularities committed on the polling day. According to these allegations, workers of the respondent helped voters to cast their vote in favour of the respondent. The averments contained therein do not amount to any corrupt practice, instead if at all these allegations relate to irregularities and illegalities alleged to have been committed on the H polling day which would at best be relevant if there was further allegation.

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tion that it materially affected the result of the election. Since respondent's term has already expired, and as his election cannot be set aside, these allegations do not survive and it is not necessary to consider them in detail. Similarly averments contained in paragraphs 37-38 contain narration of facts which have no bearing on any corrupt practice. Allegations contained in paragraphs 39 to 49 relate to the appointment of counting agents. In substance the appellant has alleged that neither he nor his election agent had appointed any counting agents but a number of persons had acted as the appellant's counting agents in an unauthorised manner and complaints made by him were not considered and the Returning Officer failed to perform his duty. These allegations even if assumed to be true do not make out any case of commission of corrupt practice.

Allegations contained in paragraphs 50, 51 and 53 (1)(F) of the election petition purport to state that Rajiv Gandhi and his workers with his consent spent money on the election in excess of the ceiling limit and major portion of which was not shown by him in his election expenses return. It was alleged that in all Rs.3,15,500 had been spent

by Rajiv Gandhi in his election but he did not include the same in his return. Details of the expenditure are mentioned in the sub-paragraphs (a) to (g) of paragraph 50. In these paragraphs the appellant alleged that Rajiv Gandhi used at least 100 jeeps for thirty days and his workers with his consent used 40 jeeps and spent money on propaganda badges, leaflets, making arrangements for holding meetings for Smt. Indira Gandhi throughout the Amethi constituency and money was spent in providing food to 100 workers of Rajiv Gandhi, in all the returned candidate and his workers with his consent spent a sum of Rs.3,15,500 but the same was not accounted for in the election return.

The allegations contained in these paragraphs relate to the corrupt practice under Section 123(6) of the Act read with Section 77. Section 123(6) provides that incurring or authorising of expenditure in contravention of Section 77 is a corrupt practice. Section 77 lays down that every candidate at the election shall keep a correct and separate account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of nomination and the date of declaration of result. The account shall contain such particulars as prescribed by Rules. Sub-section (3) lays down that expenditure shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Election Rules, 1961 prescribed that the expenses shall not exceed a sum of Rs. 1 lakh for Lok Sabha election in the State of Uttar Pradesh. Section 77 and the Rules therefore prescribed a ceiling limit for election expenses and if any candidate incurs or

- A authorises expenses in excess of the ceiling limit, he would be guilty of corrupt practice under Section 123(6) of the Act. The allegations contained in various paragraphs of para 50 merely allege that a number of vehicles were plying with Congress (I) flags and food was served in connection with the election meetings, distribution of badges and leaflets. There is, however, no allegation that Rajiv Gandhi incurred
- B or authorised incurring of expenditure for the aforesaid purposes. Any voluntary expense incurred by a political party, well-wishers, sympathisers or association of persons does not fall within the mischief of Section 123(6) of the Act, instead only that expenditure which is incurred by the candidate himself or authorised by him is material for the purpose of Section 77. In *Rananjaya Singh v. Baijnath Singh*, [1955] 1 SCR 671 this Court pointed out that expenses must be incurred or authorised by the candidate or his election agent. In that case the Manager, the Assistant Manager, 20 Ziladars and their peons were alleged to have worked for the election of the returned candidate. This Court held that the employment of extra persons and the incurring or authorising of extra expenditure was not by the candidate or his election agent. It was further pointed out that persons who volunteer to work cannot be said to be employed or paid by the candidate or his election agent. In *Smt. Indira Gandhi v. Raj Narain*, [1976] 2 SCR 347 Ray, C.J. observed "Authorisation means acceptance of the responsibility. Authorisation must precede the expenditure. Authorisation means reimbursement by the candidate or election agent of the person who has been authorised by the candidate or by the election agent of the candidate to spend or incur. In order to constitute authorisation the effect must be that the authority must carry with it the right of reimbursement."

- F Section 77 requires a candidate to keep a separate and correct account of all expenditure "in connection with the election incurred or authorised by him or by his election agent" between the date of his nomination and the date of declaration of the result of the election. The candidate is required to maintain account of only that expenditure which he or his election agent may have authorised before the expenditure was actually incurred, which would imply that the candidate or his election agent undertook to reimburse the expenses which may have been authorised by him or his election agent to be spent at the election. In order to constitute a corrupt practice as contemplated by Sections 77 and 123(6) it is necessary to plead requisite facts showing authorisation, or undertaking of reimbursement by the candidate or his election agent. A mere vague and general statement that the candidate and his workers with his consent spent money in election in

excess of the permissible ceiling would not be sufficient to constitute corrupt practice. A

In *Kunwar Lal Gupta v. A.N. Chawla*, [1975] 2 SCR 259 this Court held that what Section 77(1) prescribed was not only the incurring but also the authorising of excessive expenditure and that such authorisation may be implied or express. The Court held that when a political party sponsoring a candidate incurs expenditure in connection with his election as distinguished from expenditure on a general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or consents to it or acquiescence to it, it would be reasonable to infer that he impliedly authorised the political party to incur such expenditure and he could not escape the rigour of the ceiling by saying that he had not incurred the expenditure and the political party had done so. The result of the judgment was that the expenditure incurred by political party in connection with the general party propaganda was deemed to have been incurred by the candidate himself. The Parliament amended Section 77 by the Representation of the People (Amendment) Act, 1974 by adding two explanations to the Section. Explanation 1 lays down that any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any association or body of persons or by any individual other than the candidate or his election agent, shall not be deemed to be incurred or authorised by the candidate or his election agent. The validity of the Amending Act was upheld by a Constitution Bench of this Court in *Dr. P. Nalla Thampy Terah v. Union of India & Ors.*, [1985] Supp. SCC 189. After the amendment of Section 77(1) any expenditure at the election by a political party, sympathisers or friends cannot be held to have been incurred by the candidate or his election agent unless it is shown that the money which they spent belonged to the candidate or his election agent or that he reimbursed the same. It is thus evident that unless the allegations are specific that the candidate or his election agent authorised the expenses before the money was actually spent and that the candidate or his election agent reimbursed or undertook to reimburse the same the necessary ingredient of corrupt practice would not be complete and it would provide no cause of action to plead corrupt practice. In the instant case paragraph 50 and its various sub-paragraphs contain mere assertion of facts relating to expenditure but there is no allegation that the expenditure was incurred or authorised by Rajiv Gandhi or that he undertook to reimburse the same. The appellant made an attempt to jumble up various allegations regarding incurring of expenditure by the returned candidate and his workers. The allegations B C D E F G H

A contained therein do not make out any case of corrupt practice and the High Court was justified in striking out the same.

Allegations contained in paragraph 52 disclose that the appellant had come to know that the villages in the constituency of Amethi, Rajiv Gandhi polled cent percent votes in his favour. This statement does

B not make out any corrupt practice or any ground of challenge under Section 100 of the Act, it was rightly struck off by the High Court.

Paragraph 53 of the election petition stated that Rajiv Gandhi committed corrupt practice as set out in sub-paragraphs (A) to (F). These paragraphs are under the heading of "Grounds". It appears the

C appellant intended to challenge the election of the returned candidate on the grounds mentioned in various sub-paragraphs of paragraph 53, it is therefore necessary to consider the allegations contained in each of the sub-paragraphs to ascertain as to whether any corrupt practice was pleaded which could disclose cause of action to maintain the petition. Paragraph 53(1)(a) stated that Rajiv Gandhi "*tried to make gift*"

D to the voters in the following manner to make them vote in his favour which is illegal under Section 123(1)(A) of the Representation of the People Act. After making this general statement the appellant stated that on 15th June 1981 prior to the declaration of election and also during the election period workers of Rajiv Gandhi with his consent speeded up the construction work of Amethi Railway Station, and this

E was done only to persuade the voters to cast their vote in his favour. This was a gift to the voters of the constituency. Besides that certain other works were also done which fall within the definition of gift to the voters of the constituency. The petition does not disclose any material fact or particular regarding the alleged corrupt practice of making gift which may amount to bribery within the meaning of Section

F 123(1)(A) of the Act. The allegations merely disclose that Amethi Railway Station was being constructed and during the election its work was speeded up which persuaded the voters to cast their vote in favour of the returned candidate. There is no allegation that Rajiv Gandhi or his workers with his consent made any gift, offer or promise to any elector to vote or refrain from voting at an election. If some

G developmental activity was carried on in the constituency and if it was completed during the election period it could not amount to any gift or promise to the voters.

It would be noticed that the allegations contained in sub-paragraph 53(1)(A) open with the qualification "*Respondent No. 1 (Rajiv Gandhi) tried to make gift to the voters,*" which means that attempt was

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made to make gift to the voters and not that it was actually done. It indicates that the appellant who made the allegations was himself not sure that any corrupt practice had been committed. Sub-paragraphs (A) and (C) of paragraph 53 (I) of the election petition alleged that Rajiv Gandhi and Smt. Indira Gandhi and their workers with the consent of Rajiv Gandhi and Smt. Indira Gandhi made promise through newspapers, pamphlets and speeches that voters should cast their vote in favour of Rajiv Gandhi for the development of Amethi because his victory will ensure progress and development. Further Rajiv Gandhi and Smt. Indira Gandhi and the workers of Rajiv Gandhi in all their speeches and particularly Smt. Indira Gandhi in her speech of 11.6.1981 said that for the development of Amethi Constituency they should vote for Rajiv Gandhi. On account of these speeches voters could not cast their vote impartially, instead they cast their vote in favour of Rajiv Gandhi. Since Rajiv Gandhi and Smt. Indira Gandhi both attended the meetings together voters got the impression that as Smt. Indira Gandhi was Prime Minister and her son Rajiv Gandhi was a candidate, there was bound to be development of Amethi area if Rajiv Gandhi was elected. These allegations merely amount to representation being made by Smt. Indira Gandhi and the returned candidate and his workers that if Rajiv Gandhi was elected the constituency would be developed. Such a statement of promise is a legitimate one and it does not fall within the definition of bribery or undue influence under Section 123(1)(A) or 123 (2) of the Act. A candidate, his workers and supporters have every right under the law to canvass for the success of a particular candidate saying that if elected he would work for the development of the constituency. Such a promise does not in any way interfere with the free exercise of electoral right of the electors. Smt. Indira Gandhi who was the leader of the party was entitled to ask the electors to vote for Rajiv Gandhi and the fact that she was the Prime Minister made no difference to her to make an appeal of that nature. There is no allegation that there was any element of bargaining or undue influence in making appeal to the voters for casting their vote in favour of Rajiv Gandhi. Section 123(2)(b) itself provides that a declaration of public policy, or a promise of public action or the mere exercise of a legal right without intent to interfere with the electoral right shall not be deemed to be interference with the exercise of electoral right.

In *Shiv Kirpal Singh v. V.V. Giri*, [1971] 2 SCR 1971, a Constitution Bench of this Court held that the expression "free exercise of the electoral right" does not mean that voter is not to be influenced. This expression has to be read in the context of an election in a democratic

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- A society and the candidates and their supporters must naturally be allowed to canvass support by all legitimate and legal means. This exercise of the right by a candidate or his supporters to canvass support does not interfere or attempt to interfere with the free exercise of the electoral right. What does amount to interference with the exercise of an electoral right is "tyranny over the mind". Declaration of public
- B policy or a promise of public action or promise to develop the constituency in general do not interfere with free exercise of electoral rights as the same do not constitute bribery or undue influence. In *H.V. Kamath v. Ch. Nitiraj Singh*, [1969] 3 SCR 813 the State Government during the election period issued an Ordinance granting exemption to certain agriculturists from payment of land revenue and during the
- C election the Chief Minister announced increased dearness allowance to Government employees. Referring to these facts the election petitioner therein alleged that the same amounted to corrupt practice under Section 123(1)(A) of this Act. This Court repelled the contention and held that the Ordinance did not amount to a gift, offer or promise of any gratification within the meaning of Section 123(1)(A).
- D Similarly, increase in dearness allowance could not be regarded as a gift, offer or promise of any gratification within the meaning of Section 123(1)(A). A general promise made by the Prime Minister or Minister to redress public grievance or to provide for public amenities for developing the constituency if elected, does not amount to corrupt practice. In paragraph 53(1)(B) and (C) material facts relating to
- E alleged "gift and promise and undue influence" have not been stated in the petition and for that reason also paragraphs 53(1)(B) and (C) were rightly struck off.

Paragraph 53(1)(D) stated "the workers of Rajiv Gandhi with his consent on 14th June 1981 at about 2 p.m. *tried* to bring voters in truck

- F for casting votes and dropped them back at their houses. The appellant noted the number of such truck which is mentioned in the paragraph. This truck had brought about 20-22 voters to the Junior High School Polling Centre of Amethi constituency and took them back without charging fare from them. The truck was used by Rajiv Gandhi and this amounted to corrupt practice. This paragraph contains substantially the
- G same allegations as contained in paragraph 30 of the petition, it purports to convey that Rajiv Gandhi and with his consent his workers "*tried to bring voters*". In substance the allegation amounts to saying that Rajiv Gandhi and his workers made attempt to carry voters in a truck. He further alleged that they carried the voters. It appears that the appellant intended to lay charge of corrupt practice against Rajiv
- H Gandhi under Section 123(5) of the Act for hiring or procuring of a

truck for the use of same for free conveyance of electors to and from the polling station. The necessary particulars with regard to corrupt practice as contemplated by Section 123(5) are however, totally lacking. The petition does not contain any material facts with regard to hiring or procuring of the vehicle. Further there is no allegation as to when the vehicle was hired or procured, by whom, and at what place or that the said vehicle in furtherance of hiring or procuring was used for free conveyance of electors to and from polling station. The allegations made in paragraphs 30 and sub-paragraph (D) of paragraph 53(1) merely show that some voters were brought to the polling station Amethi in a truck without charging any fare from them and the truck was used by the workers of Rajiv Gandhi. Does this make out a corrupt practice under Section 123(5)? Section 123(5) reads as under:

“The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person (with the consent of a candidate or his election agent) (or the use of such vehicle or vessel for the free conveyance) of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under Section 25 or a place fixed under sub-section (1) of Section 29 for the poll”

It would be noticed that hiring or procuring of a vehicle by a candidate or his agent or by any other person with his consent is the first essential ingredient of the corrupt practice, the second essential ingredient is that the hiring or procuring of the vehicle must be for conveyance of the voters to and from the polling station and the third necessary ingredient is that conveyance of electors is free from any charge. All the three ingredients must be pleaded to make out a case of corrupt practice under Section 123(5). If any of the three ingredients is not pleaded there would be no pleading of corrupt practice. In *Joshbhai Chunnibhai Patel v. Anwar Beg A. Mirza*, [1969] 2 SCR 97. Hidayatullah, C.J. speaking for the Court analysed this Section and observed: “it will therefore, appear that the Section requires three things, (i) hiring or procuring of a vehicle; (ii) by a candidate or his agent etc, and (iii) for the free conveyance of an elector. It will be noticed that the Section also speaks of the use but it speaks of the use of such vehicle which connects the two parts, namely, hiring or procuring of vehicle and its use. The requirement of the law therefore is that in addition to proving the hiring or procuring and the carriage of electors to and from any polling station, should also be proved that the electors used the vehicle free of cost to themselves.” In *Ch. Razik Ram v. Ch. J.S.*

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A *Chouhan & Ors.*, AIR 1975 SC 667 the Court considered the decision of this Court in *Balwan Singh v. Lakshmi Narain*, [1960] 3 SCR 91 and the effect of 1966 amendment and thereupon it held as under:

“On analysis, clause 5 of Section 123 falls into two parts.

The requirements of the first part are: (i) the hiring or

B procuring whether on payment or otherwise, of any vehicle or vessel for the free conveyance of voters, (ii) such hiring or procuring must be by a candidate or his election agent or by any other person with the consent of a candidate or of his election agent. The second part envisages the “use of such vehicle or vessel for the free conveyance of any elector

C (other than the candidate himself, the members of his family, or his election agent) to or from any polling station.” The two parts are connected by the conjunction “or” which is capable of two constructions. In one sense it is a particle coordinating the two parts of the clause and creating an alternative between them. In the other sense which

D is akin to the sense of “and”—it can be construed as conjoining and combining the first part of the clause with the second. The latter construction appears to comport better with the aim and object of the amendment of 1966. In this connection, it is noteworthy that even before the amendment, this Court in *Shri Balwan Singh v. Lakshmi Narain*,

E [1960] 3 SCR 91 held that in considering whether a corrupt practice described in Section 123(5) is committed, conveying of electors cannot be dissociated from the hiring of a vehicle.

Even if the word “or” is understood as a coordinating conjunction introducing alternatives, then also a petitioner in

F order to succeed on the ground of a corrupt practice under the second part of the clause, must prove in addition to the use of the vehicle or vessel for the free conveyance of any elector to or from any polling station, the hiring or procuring of that vehicle or vessel. This is so because the word

G “such” in the phrase introduced by the 1966 amendment, expressly imports these elements of the first into the second part of the clause.”

Same view was taken by this Court in *Dadasaheb Dattatraya Pawar & Ors. v. Pandurang Raoji Jagtap & Ors.*, [1978] 2 SCR 524 and the

H Court emphasised that it was necessary for an election petitioner to

prove (i) that any vehicle or vessel was hired or procured, whether on payment or otherwise, by the returned candidate or by his election agent or by any other person with the consent of the candidate or of his election agent; (ii) that it was used for the conveyance of the electors to or from any polling station, and (iii) that such conveyance was free of cost to the electors. Failure to substantiate any one of these ingredients leads to the collapse of the whole charge. Standard of proof required to establish a corrupt practice is strict, as imputation of corrupt practices is quasi-criminal and the charge of corrupt practice under Section 123(5) has to be scrutinised in a strict manner. In *Dharmesh Prasad Verma v. Faiyazal Azam*, [1985] 1 SCR 11 this Court again reaffirmed the aforesaid view. There is thus good authority for holding that if any of the three ingredients as noted earlier is not pleaded the charge of corrupt practice must fail. In the absence of any of the three ingredients being pleaded it would not be open to the election petitioner to adduce evidence to sustain the charge of corrupt practice as was held by this Court in *Rajendra Singh Yadav v. Chandra Sen & Ors.*, AIR 1979 SC 882.

The appellant placed strong reliance on the decision of this Court in *Balwan Singh v. Lakshmi Narain*. This case was decided prior to the amendment of Section 123(5) but even in that case this Court observed that the corrupt practice under Section 123(5) being the hiring or procuring of a vehicle for the conveyance of the electors, full statement of the hiring or procuring must be given by the election petitioner. *Balwan Singh*'s case was considered and discussed in *Ch. Razik Ram v. Ch. J.S. Chouhan & Ors.* The appellant then placed reliance on the observations of this Court in *Balwan Singh v. Prakash Chand & Ors.*, AIR 1976 SC 1187. We have perused the decision but we do not find any support for the appellant's contention that the pleadings contained in paragraphs 30 and 53(1)(D) are sufficient to constitute charge of corrupt practice. In *Balwan Singh v. Prakash Chand & Ors.*, this Court interpreted the word "procure" to mean "to obtain, as by request, loan, effort, labour, or purchase, get, gain, come into possession of". Thus the hiring of a vehicle must be to procure the same for the purpose of conveyance of the voters free of cost. The hiring and procuring the vehicle is a necessary ingredient which must be pleaded before the charge can be tried. The allegations contained in paragraphs 30 and 53(1)(D) conspicuously do not contain any pleading regarding hiring and procuring of the vehicles by Rajiv Gandhi or any of his worker with his consent for conveyance of the voters to and from polling station free of cost. No particulars of any kind have been specified in the paragraphs under consideration. The paragraphs as

A they stand do not make out any charge of corrupt practice as contemplated by Section 123(5) of the Act and the High Court was therefore justified in striking out the same.

In paragraph 53(I) (E) of the election petition the appellant stated "that as per Section 123(7) of the Representation of the People Act, Rajiv Gandhi's workers with his consent took help from the Government officers and high police officers and people of Government departments for securing votes of the electors. These officials flouted all rules and laws particulars of which are as under." Thereafter particulars of the help taken from the Government officers are detailed in sub-paragraphs (I) to (8). A corrupt practice as contemplated by Section 123(7) contemplates obtaining or procuring by a candidate or his election agent, assistance from the Government servants belonging to the classes specified in sub-section (7) of Section 123 for the furtherance of the prospect of the candidate's election. In order to constitute a corrupt practice under Section 123(7), it is essential to clothe the petition with a cause of action which would call for an answer from the returned candidate and it should therefore plead mode of assistance, measure of assistance and all facts pertaining to the assistance. The pleading should further indicate the kind or form of assistance obtained and in what manner the assistance was obtained or procured or attempted to be procured by the candidate for promoting the prospect for his election. The election petitioner must state with exactness the time of assistance, the manner of assistance and the persons from whom assistance was obtained or procured by the candidate as held by this Court in *Hardwari Lal v. Kanwal Singh*, [1972] 2 SCR 743 and *Azhar Hussain v. Rajiv Gandhi*. Allegations contained in sub-paragraphs 1, 2 and 3 of the paragraph 53(1) (E) raise a grievance that though the appellant had not appointed any counting agent but still certain persons acted as his counting agents and the Returning Officer did not hold any inquiry into his complaint. Sub-paragraph 4 states that in the Amethi Constituency, there was fear psychosis and "it looked as if the police and other Government officials wanted to help Rajiv Gandhi". Sub-paragraphs 5 to 8 refer to certain illegalities and irregularities alleged to have been committed by certain persons on the polling day in helping voters to cast their votes and it further alleged that some persons cast votes 100 to 200 times and their signatures were not obtained. These allegations do not make out any charge of corrupt practice within the provisions of Section 123 (7) of the Act. As regards paragraph 53(1)(G) it purports to allege a corrupt practice under Section 123(6) of the Act on the ground that Rajiv Gandhi spent Rs.3,15,500 in excess of the amount permitted under the law. We have

already discussed this matter earlier.

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Paragraph 53(2) of the petition is as under:

“That Presiding Officer is duty bound under Sections 27, 28 and 139 of the Representation of the People Act to ensure that the polling is fair, but it has not been so in this case. According to the rules, the Presiding Officer should have not removed the posters and other propaganda material from the polling booth. But the hand symbol was being displayed by every Presiding Officer, and other persons and the agents of the candidates and voters. By reason of this, the voters were influenced and Rajiv Gandhi got very many votes. The hand symbol influenced the voters to a great extent because Rajiv Gandhi's workers were trying to display the hand symbol in the polling booth as well as within 100 meters of the polling booth. The hand symbol was visible to every voter everywhere. This influenced the voters very much and they cast votes in favour of Rajiv Gandhi.”

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The aforesaid allegations do not amount to any corrupt practice as contemplated by Section 123 of the Act. At best these allegations raise a grievance that the Presiding Officers did not perform their duties in accordance with law in as much as they failed in their duty to remove the posters and other propaganda material from the polling booth and the hand which was the election symbol of Rajiv Gandhi and the same was displayed within 100 meters of the polling booth in violation of the rules. The allegations do not make out any charge of corrupt practice. If at all the allegations could be a ground under Section 100(1)(d)(iv) of the Act for setting aside election on the ground of its being materially affected but no such plea was raised. Paragraphs 54 to 58 do not deal with any corrupt practice.

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The above scanning of the election petition would show that the appellant failed to plead complete details of corrupt practice which could constitute a cause of action as contemplated by Section 100 of the Act and he further failed to give the material facts and other details of the alleged corrupt practices. The allegations relating to corrupt practice, even if assumed to be true as stated in the various paragraphs of the election petition do not constitute any corrupt practice. The petition was drafted in a highly vague and general manner. Various paragraphs of the petition presented disjointed averments and it is

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A difficult to make out as to what actually the petitioner intended to plead. At the conclusion of hearing of the appeal before us appellant made applications for amending the election petition, to remove the defects pointed out by the High Court and to render the allegations of corrupt practice in accordance with the provisions of Section 83 read with Section 123 of the Act. Having given our anxious consideration to

B the amendment applications, we are of the opinion that these applications cannot be allowed at this stage. It must be borne in mind that the election petition was presented to the Registrar of the High Court, at Lucknow Bench on the last day of the limitation prescribed for filing the election petition. The appellant could not raise any ground of challenge after the expiry of limitation. Order VI Rule 17 no doubt permits amendment of an election petition but the same is subject to the provisions of the Act. Section 81 prescribes a period of 45 days from the date of the election for presenting election petition calling in question the election of a returned candidate. After the expiry of that period no election petition is maintainable and the High Court or this Court has no jurisdiction to extend the period of limitation. An order

D of amendment permitting a new ground to be raised beyond the time specified in Section 81 would amount to contravention of those provisions and is beyond the ambit of Section 87 of the Act. It necessarily follow that a new ground cannot be raised or inserted in an election petition by way of amendment after the expiry of the period of limitation. The amendments claimed by the appellant are not in the nature

E of supplying particulars instead those seek to raise new grounds of challenge. Various paragraphs of the election petition which are sought to be amended, do not disclose any cause of action, therefore it is not permissible to allow their amendment after expiry of the period of limitation. Amendment applications are accordingly rejected.

F Before we close we would like to express our anxiety on a feature which of late has assumed great proportion. In Parliamentary form of democracy political parties play vital role and occasionally they sponsor candidates for the election. But under the existing law it is open to any elector to contest election from any parliamentary constituency in the country and it is not necessary that the candidate should be sponsored by a political party. It is permissible for an elector to

G contest election on his own as an independent candidate. Some independent individuals contest election genuinely and some of them have succeeded also but experience has shown that a large number of independent candidates contest the election for the mere sake of contesting, with a view to make out grounds for challenging the election. Presence of a number of independent candidates results in confusion, for the millions of the illiterate and ignorant electors who exercise

their electoral right on the basis of 'symbols' printed on the ballot papers. The presence of large number of independent candidates makes the ballot paper of unmanageable size and ordinary elector is confused in the election booth while exercising his franchise. This leads to confusion. In the instant case out of 14 candidates who contested the election 11 of them including the appellant contested as independent candidates and they all polled only paltry number of votes. This shows the genuineness of the candidature of independent candidates. The appellant is a resident of Gwalior in Madhya Pradesh and he is a lawyer by profession. He contested election as an independent candidate and on the date of filing of nomination paper he insisted to file his nomination paper by stripping off himself completely and by putting on only a 'langot'. This caused consternation in the office of the Returning Officer, and it has also been raised as a ground of attack in the election petition. In fact the appellant has filed certain photographs before us showing himself in a 'langot' only. When this appeal came up for hearing before us the appellant insisted that he should be allowed to argue the case by putting on a crown (an artificial one) on his head. According to him without the crown he would not be able to make his submissions in a satisfactory manner. We refused to grant the permission to the great dissatisfaction of the appellant. A court of law is a solemn place where proceedings are held in a solemn manner and the time of the court especially in the apex court is precious time which belongs to the people and it would be wholly abnoxious to judicial propriety to allow a litigant to appear in court wearing a crown to argue the case. The court cannot be converted into a dramatic or theatrical stage. We accordingly refused to grant the permission to the appellant to wear his crown. During the arguments the appellant glibly stated that he had contested the election for the offices of President and Vice-President and that he would be contesting each and every election as an independent candidate with a view to reform the society and the election law. This is not uncommon as a number of other persons have been contesting elections as independent candidates for the high office and some of them filed election petition disputing the election. These factors have given cause for anxiety to us and we hope that the Parliament will take these matters into consideration to devise ways and means to meet the on-slaught of independent candidates who are not quite serious about their business.

In view of our discussion, we are of the opinion that the High Court rightly exercised its power in rejecting this petition under Order VII Rule 11. The appeal fails and accordingly dismissed with costs which we quantify at Rs.2,000.

P.S.S.

Appeal dismissed.