A

U.S. SASIDHARAN

v.

K. KARUNAKARAN & ANR

AUGUST 23, 1989

B [MURARI MOHON DUTT AND T. KOCHU THOMMEN, JJ.]

The Representation of the People Act 1951—Sections 81 and 86—Power of High Court to dismiss Election Petition—Document forms integral part of Election Petition and not furnished to respondent alongwith copy of the Petition—The effect thereof.

C **The appellant was a voter in the Mala constituency of the Kerala Legislative Assembly, election whereof was held on March 23, 1987 and the first respondent, sitting Chief Minister of the State was declared elected from the said constituency.**

D **The appellant challenged the validity of 1st Respondent's election on the ground of various corrupt practices committed by him. It was alleged in the Election Petition that at the instigation of the first respondent, Respondent No. 2 published a notice wherein it was stated that he was withdrawing his candidature. It was further stated in the notice that his purpose of contesting was to highlight the grievances of the** E **Kudumbi Samudayam community with a view to get that community the status of Scheduled Caste and since the Kerala Government under the leadership of the first respondent (returned candidate) had decided to give a favourable consideration in regard to the community's demand for inclusion in the list of Scheduled Castes, it had become necessary for the first respondent to win the election. He thereby** F **offered his support to Respondent No. 1. According to the appellant this act constituted a corrupt practice within the meaning of Section 123 of the Representation of the People Act, 1951.**

It was further alleged by the Election Petitioner that Respondent No. 1, committed corrupt practice by asking Government servants to G **lead processions in support of his candidature. A photograph of a procession was filed.**

Election Petitioner further alleged that at the instigation of the first respondent a video cassette called "Malayude Purogathi" had been used in the constituency wherein persons like Shri Jose P. George, H **Government Pleader, Kerala High Court, Shri Tomas Thottappally,**

Veterinary Doctor spoke in support of the first respondent which is a corrupt practice. The video cassette was filed in a sealed cover. A

The first respondent contested the Election Petition and pleaded that since the copies of the photograph, notice and the video cassette have not been furnished to him alongwith the Election Petition, the same was liable to be dismissed in limine under section 86(1) for non- B compliance with the provisions of section 83(1).

The High Court rejected the contention of the appellant that Respondent No. 1 could obtain copies of the documents from the High Court; and defend his case, and took the view that non-furnishing to the respondent copies of the documents alongwith a copy of the Election Petition was non-compliance with section 81(3) and as such, the election C petition was liable to be dismissed, which the High Court did. Hence this appeal.

Almost identical arguments were advanced before this Court. Counsel for the appellant strenuously contended that the video cassette D etc. do not from an integral part of the petition, on the other hand, they had been filed in the proceedings as evidence of facts and copies of such documents need not be served on the respondent alongwith a copy of the Election Petition. On behalf of the first respondent it was mainly argued that failure to supply the documents violates the provisions of section 81(3) as in the absence of those the Election Petition served E cannot be said to be true copy of the election petition as contemplated by section 81(3) of the Act.

Dismissing the appeal, this Court,

HELD: An election is the democratic method for selecting the F representatives of the people in Parliament or in the Legislative Assembly. When a candidate gets himself elected by adopting or committing any corrupt practice, his election must be set aside on proof of such corrupt practice. At the same time, the procedure prescribed by the Act for challenging an election must be strictly followed. [964H-965A]

G

Satya Narain v. *Dhuja Ram,* [1974] 3 SCR 20.

Whenever there is an allegation of corrupt practice, the election petition shall contain a concise statement as to the material fact on which the petitioner relies and also must set forth full particulars of the corrupt practice alleged by the petitioner. [964F] H

A **When a document forms an integral part of the election petition and a copy of such document is not furnished to the respondent alongwith a copy of the election petition, the copy of the election petition will not be a true copy within the meaning of section 81(3) and, as such, the Court has to dismiss the election petition under section 86(1) for non-compliance with section 81(3). [965F-G]**

B

Section 81(3) which enjoins that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. Section 81(3) however, does not provide for giving of copies of the documents either referred to in the election petition or filed in the C **proceedings. [963D]**

Section 86(1) is a mandate on the Court to dismiss an election petition if there be a non-compliance with the provisions of section 81(3). [963F]

D

The appellant in the instant case, has not served on the first respondent a true copy of the election petition inasmuch as admittedly, a copy of the video cassette which forms an integral part of the election petition, was not served alongwith the election petition. It was non-compliance with the provisions of section 81(3) of the Act. (*M.* E ***Karunanidhi* v. *H.V. Hande,* [1983] 2 SCC 473). [972H-973A]**

The question of exercise of jurisdiction by the Court in permitting the appellant to supply the particulars does not arise at all. [972F]

Sahodrabai Rai v. *Ram Singh Aharwar,* **[1968] 3 SCR 13;** *Thakur* F *Virendra Singh* v. *Vimal Kumar,* **[1977] 1 SCR 525;** *Mithilesh Kumar Pandey* v. *Baidyanath Yadav,* **[1984] 2 SCR 278;** *Azhar Hussain* v. *Rajiv Gandhi,* **[1986] Suppl SCC 315;** *Shri Udhav Singh* v. *Madhav Rao Scindia,* **[1977] 1 SCC 511 and** *A. Madan Mohan* v. *Kalavakunta Chandrasekhara,* **[1984] 2 SCC 289.**

G CIVIL APPELLATE JURISDICTION: Civil Appeal (Election) No.4030 of 1987.

From the Judgment and Order dated 13.11.87 of the Kerala High Court in Election Petition No. 2 of 1987.

H P.S. Poti and T.T. Kunhikannan for the Appellant.

Dr. Y.S. Chitale, A.S. Nambiar, Dileep Pillai, M.A. Firoz and Aseem Mahrotra for the Respondents. A

The Judgment of the Court was delivered by

DUTT, J. This appeal under section 116-A of the Representation of the People Act, 1951 (hereinafter referrd to as 'the Act') is B directed against the judgment of the Kerala High Court dismissing the election petition of the appellant.

The appellant is a voter in the Mala constituency of the Kerala Legislative Assembly. The election of the members of the Assembly was held on March 23, 1987 and the first respondent, who was then the sitting Chief Minister of the State of Kerala, was declared elected from C Mala constituency.

The appellant challenged the election of the first respondent to the Kerala Legislative Assembly on the ground of various corrupt practices alleged to have been committed by the first respondent. In D paragraphs 5(i) and 5(ii) of the election petition, the corrupt practice that was alleged by the appellant was to the effect that the second respondent, who was a candidate for the election, published a notice wherein it was declared that the second respondent was withdrawing from the contest and stated, *inter alia,* that it was to highlight the grievances of his community, namely, the Kudumbi Samudayam which E is a backward community, that he had decided to contest the election, and that one of the demands of the community was that it should be included in the list of Scheduled Castes. Further, the second respondent stated in the notice that the Kerala Government under the leadership of the first respondent had decided to give favourable consideration in regard to his community's demand for inclusion in the list of F Scheduled Castes. Accordingly, the second respondent declared in the notice that for obtaining their rights, it had become necessary that the first respondent should win in the election and for that purpose he was withdrawing his candidature offering full support to the first respondent. It was alleged that the second respondent published the notice at the instigation and with the assistance and initiative and at the cost of G the first respondent and his supporters. Such acts constituted corrupt practice within the meaning of section 123 of the Act.

In paragraph 5(xvi), it is alleged that the first respondent also committed corrupt practice in the course of his election work by asking Government servants including Shri P.M. Shabul Hameed, Teacher, H

A Government Upper Primary School, Kaduppassery, to lead processions in support of his candidature in the constituency. It was submitted by the appellant that he was prepared to prove the allegation by examining the said persons. A photograph of a procession was filed.

In paragraph 5(xi) of the election petition, the appellant *inter* B *alia* stated as follows:

> "5(xi). ..... Besides at the instigation of the first respondent a video cassette called "Malayudé Purogathi" has been used in the constituency. The persons who speak are one Shri Jose P. George, Government Pleader, Kerala High Court, 2. Shri C Thomas Thottappally, Veterinary Doctor, Veterinary Polyclinic, Valiyaparambu. This is also a corrupt practice. The video cassette is produced herewith in a sealed cover."

The first respondent opposd the election petition by filing a writ- D ten statement denying the allegations of corrupt practices. It was submitted by him that as the copies of the said notice, photograph and video cassette were not supplied to the first respondent along with the copy of the election petition, the election petition was liable to be dismissed in *limine* under section 86(1) for non-compliance with section 81(3) of the Act.

E

The High Court came to the findings that the allegations in the election petition would really show that the said documents formed integral part of the election petition and, therefore, it was really necessary to serve copies of the same on the first respondent and overruled the contention of the appellant that as he had filed the documents and F produced the video cassette in Court, the first respondent could very well take copies of the same and defend his case. The High Court took the view that non-furnishing to the first respondent copies of the documents along with a copy of the election petition was non-compliance with section 81(3) and, as such, the election petition was liable to be dismissed under section 86(1) of the Act. In that view of the matter, G the High Court dismissed the election petition. Hence this appeal.

Section 81 of the Act provides as follows:

> "81. Presentation of petitions. (1) An election petition calling in question any election may be prsented on one or H more of the grounds specified in sub-section (1) of section

100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

(2) [Omitted by Act 47 of 1966.]

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

We are concerned with section 81(3) which enjoins that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. Section 81(3), however, does not provide for giving of copies of the documents either referred to in the election petition or filed in the proceedings. We may now refer to section 86(1) of the Act which reads as follows:

"86(1). The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117."

Section 86(1), therefore, is a mandate on the court to dismiss an election petition if there be a non-compliance with the provision of section 81(3). In other words, both section 81(3) and section 86(1) are mandatory in nature and if there be any non-compliance with the mandatory provision of section 81(3), the court will be bound to dismiss the election petition.

Before considering whether a copy of the document referred to in the election petition or filed in the proceedings should be furnished to the elected candidate, whose election is under challenge, along with a copy of the election petition, we may refer to section 83 of the Act providing as to the contents of an election petition.

Section 83 provides as follows:

"83. Contents of petition.—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

It is apparent from clauses (a) and (b) of section 83 that an election petition shall contain a concise statement of the material facts and also set forth full particulars of any corrupt practice. These two requirements are also mandatory in nature. So, whenever there is an allegation of corrupt practice, the election petition shall contain a concise statement as to the material fact on which the petitioner relies and also must set forth full particulars of the corrupt practice alleged by the petitioner.

As has been held in *Satya Narain* v. *Dhuja Ram,* [1974] 3 SCR 20, the right to challenge an election is not a common law right, but a special right as conferred by the Act. The provision for setting aside the election on the grounds mentioned in section 100 of the Act including the ground of corrupt practice has been made for the purpose of maintaining purity of elections. An election is the democratic method for selecting the representatives of the people in Parliament or in the Legislative Assembly. When a candidate gets himself elected by adopting or committing any corrupt practice, his election must be set aside on proof of such corrupt practice. At the same time, the proce-

dure prescribed by the Act for challenging an election must be strictly followed. So, if there be any deviation from or non-compliance with the provision of section 81(3), the court will have no other alternative than to dismiss the election petition.

It has been already noticed that the High Court dismissed the election petition as the appellant has not furnished to the first respondent copies of the notice, photograph and the video cassette referred to above along with a copy of the election petition. So far as the copies of the notice and the photograph are concerned, we do not think that the High Court was justified in holding that these should have also been furnished to the first respondent along with the copy of the election petition. Dr. Chitale, learned Counsel appearing on behalf of the first respondent, also has not urged that the copies of these two documents should have been served upon the first respondent. What has, however, been vehemently urged on behalf of the first respondent is that he should have been served along with the election a copy of the video cassette. This contention will be considered presently.

We have already referred to section 83 relating to the contents of an election petition. The election petition shall contain a concise statement of material facts and also set forth full particulars of any corrupt practice. The material facts or particulars relating to any corrupt practice may be contained in a document and the election petitioner, without pleading the material facts or particulars of corrupt practice, may refer to the document. When such a reference is made in the election petition, a copy of the document must be supplied inasmuch as by making a reference to the document and without pleading its contents in the election petition, the document becomes incorporated in the election petition by reference. In other words, it forms an integral part of the election petition. Section 81(3) provides for giving a true copy of the election petition. When a document forms an integral part of the election petition and a copy of such document is not furnished to the respondent along with a copy of the election petition, the copy of the election petition will not be a true copy within the meaning of section 81(3) and, as such, the court has to dismiss the election petition under section 86(1) for non-compliance with section 81(3).

On the other hand, if the contents of the document in question are pleaded in the election petition, the document does not form an integral part of the election petition. In such a case, a copy of the document need not be served on the respondent and that will not be non-compliance with the provision of section 81(3). The document

may be relied upon as an evidence in the proceedings. In other words, when the document does not form an integral part of the election petition, but has been either referred to in the petition or filed in the proceedings as evidence of any fact, a copy of such a document need not be served on the respondent along with a copy of the election petition.

There may be another situation when a copy of the document need not be served on the respondent along with the election petition. When a document has been filed in the proceedigs, but is not referred to in the petition either directly or indirectly, a copy of such document need not be served on the respondent. What section 81(3) enjoins is that a true copy of the election petition has to be served on the respondents including the elected candidate. When a document forms an integral part of an election petition containing material facts or particulars of corrupt practice, then a copy of the election petition without such a document is not complete and cannot be said to be a true copy of the election petition. Copy of such document must be served on the respondents.

Keeping in view the above principles, let us consider whether the video cassette, as mentioned in paragraph 5(xi) in the election petition, forms an integral part of the election petition. It is not disputed that a copy of the video cassette was not served on the first respondent along with the copy of the election petition. Indeed, the same was submitted by the appellant in a sealed cover with an application praying for keeping the video cassettee in the sealed cover till the stage of examination of witnesses. It is, therefore, apparent that not only the copy of the video cassette was not served on the first respondent, but also the appellant had no intention of serving a copy of the same on the first respondent.

It is urged by Mr. Poti, learned Counsel appearing on behalf of the appellant, that the video cassette is only an evidence of the fact stated in paragraph 5(xi) of the election petition, relevant portion of which has been extracted above. It has been alleged in paragraph 5(xi) that at the instigation of the first respondent, a video cassette called "Malayude Purogathi" has been used in the constituency. The expression "Malayude Purogathi" means progress of Mala, which is the constituency in question. Further, it has been alleged that the persons whose speeches have been recorded in the video cassette regarding progress of Mala are two Government officers named in paragraph 5(xi), and that the cassette has been used in the constituency at the

instigation of the first respondent. This has been averred as a corrupt practice. It is also mentioned in the same paragraph that the video cassette is produced with the election petition in a sealed cover. It is not disputed that by corrupt practice as referred to in paragraph 5(xi) of the election petition, the appellant is referring to the corrupt practice within the meaning of section 123(7) of the Act. Section 123 enumerates the different corrupt practices for the purposes of the Act. One of the corrupt practices, as contained in section 123(7), is the obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent, or by any other person, with the consent of a candidate or his election agent, any assistance other than the giving of vote for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the classes as mentioned in clauses (a) to (g) of the section. The significant ingredient of corrupt practice, as mentioned in section 123(7), is that the assistance which is obtained or procured from a Government servant of the classes mentioned in clauses (a) to (g) must be for the furtherance of the prospect of the election of the candidate who or on whose behalf such assistance has been obtained or procured. It is not disputed that the two Government servants mentioned in paragraph 5(xi) of the election petition whose speeches have been recorded in the video cassette, are Government servants within the meaning of section 123(7).

The speeches of the two Government servants relating to "Malayude Purogathi", that is, the progress of Mala, simpliciter will not constitute a corrupt practice within the meaning of section 123(7). In order to be a corrupt practice within the meaning of section 123(7), the speeches of the said Government servants as recorded in the video cassette and alleged to have been used in the constituency at the instigation of the first respondent, must be with a view to obtaining or procuring or abetting or attempting to obtain or procure the assistance for the furtherance of the prospects of the first respondent's election. It is urged by the learned Counsel for the appellant that as no such allegation has been made in paragraph 5(xi), the allegations in that paragraph do not constitute a corrupt practice within the meaning of section 123(7) and, accordingly, the video cassette does not form an integral part of that paragraph.

We are unable to accept the contention. It is true that there is no allegation in paragraph 5(xi) that the video cassette was used by the first respondent for the purpose of any assistance for the furtherance of the prospects of his election. But, in our opinion, it is apparent that

such an allegation is implied in the paragraph. After alleging that the video cassette was used in the constituency at the instigation of the first respondent, it is alleged that the same constituted a corrupt practice which points to the only fact that the video cassette containing the speeches of the Government servants was used for the purpose of some assistance for the furtherance of the prospects of the election of the first respondent. It is implied that the video cassette is referred to in paragraph 5(xi) in regard to the alleged assistance for the furtherance of the prospects of the election of the first respondent and, accordingly, the contents of the cassette are incorporated in that paragraph by reference. In other words, the cassette forms an integral part of paragraph 5(xi). In this connection, we may refer to Item No. 1 of the List of Documents which reads as follows:

> "1. Video Cassette by Kala Audio & Video, Kallettumkara, Tricur District titled "Malayude Purogathi" prepared at the instance of the first respondent for election propaganda, as stated in paragraph 5(xi) of the election petition."

It is clear from Item No. 1 of the List of Documents that it is the specific case of the appellant that the video cassette was prepared at the instance of the first respondent for election propaganda, as stated in paragraph 5(xi) of the election petition. Whether it was so stated in Item No. 1 of the List of Documents or not it is, as stated already, apparent on the face of the allegation in paragraph 5(xi) that it was used by the first respondent by way of assistance in furtherance of the prospects of his election and so the video cassette formed an integral part of paragraph 5(xi). Unless a copy of the video cassette was given to the first respondent, he would not know how the speeches of the said Government servants could assist the furtherance of the prospects of his election and would not be in a position to deal with the allegations made in paragraph 5(xi). The copy of the election petition which was served on the first respondent without a copy of the video cassette was not, therefore, a true copy of the election petition within the meaning of section 81(3) of the Act.

Much reliance has been placed on behalf of the appellant on a decision of this Court in *Sahodrabai Rai* v. *Ram Singh Aharwar*, [1968] 3 SCR 13. In that case, the appellant filed an election petition challenging the election of the first respondent on four grounds, one of which was corrupt practice inasmuch as the first respondent had appealed to religion through a pamphlet marked Annexure A. In the

body of the election petition a translation in English of the Hindi pamphlet was incorporated. The original pamphlet was attached to the election petition and was marked Annexure A. The election petitioner, thereafter, stated in the petition that the pamphlet formed part of the petition. The first respondent raised an objection that a copy of the pamphlet had not been annexed to the copy of the election petition served on him and, therefore, the election petition was liable to be dismissed under section 86 of the Act. The High Court accepted the objection and dismissed the election petition. On an appeal to this Court by the appellant, this Court set aside the judgment of the High Court holding that the pamphlet must be treated as a document and not as a part of the election petition in so far as the averments were concerned.

The decision in *Sahodrabai's* case does not, in our opinion, lend any assistance to the contention of the appellant that the video cassette is only evidence and does not form part of the election petition. In that case, the election petition reproduced the whole of the pamphlet and, accordingly, it was held that it was only an evidence and not a part of the election petition. What has been stressed in that case is that each and every document does not form part of the election petition. Moreover, the Court was considering the scope of section 83(2) of the Act before it was amended. We are unable to accept the contention made on behalf of the appellant that a document, in no circumstances, can form an integral part of the election petition. As has been noticed already, the pamhlet in that case was fully reproduced in the election petition and, therefore, it was merely an evidence and did not form a part of the election petition.

In *Thakur Virendra Singh* v. *Vimal Kumar,* [1977] 1 SCR 525, the question was whether a leaflet, a copy of which was Annexure A to the election petition and referred to in paragraph 13 thereof, constituted a part of the election petition and, accordingly should have been served on the elected candidate. This Court overruled the contention of the elected candidate that the petition was liable to be dismissed as the copy of the petition meant to be served on the appellant was not accompanied by a copy of Annexure A on the ground that the allegation of corrupt practice and particulars thereof, as given in paragraph 13 of the election petition, were sufficiently clear and precise. This decision is, therefore, of no help to the contention of the appellant that the video cassette is not a part of the election petition.

The most important case for our purpose is the decision of this

A Court in *M. Karunanidhi* v. *H.V. Hande*, [1983] 2 SCC 473. In that case, in paragraph 18(b) of the election petition it was alleged as follows:

> "18(b). The first Respondent erected fancy banners throughout the constituency and the number of such
> B banners is about 50. A photograph of one such banner is filed herewith. The cost of each such banner will be not less than Rs.1,000. The expenditure involved in erecting these fifty banners is about Rs.50,000. It is submitted that the first Respondent has incurred the above said expenditure which added to the amount disclosed in the Return of Elec-
> C tion Expenses exceeds the amount fixed under Section 77(3) of the Act thus amounting to a corrupt practice under Section 123(6) of the Act."

Admittedly, a copy of the photograph as referred to in paragraph 18(b) was not furnished to the appellant along with a copy of the
D election petition. This Court took the view that the averment contained in paragraph 18(b) would be incomplete without a copy of the photograph being supplied with a copy of the election petition. The reason being that it was not possible to conceive of the dimension of the large fancy banner unless one had a look at the photograph. In that view of the matter, it was held by this Court that the photograph
E formed an integral part of the petition and a copy of it should have been served along with the election petition. Accordingly, this Court reversed the judgment of the High Court in so far as it held that the photograph of the fancy banner adverted to in paragraph 18(b) could not be treated to be an integral part of the election petition, but was merely a piece of evidence as to the nature and type of fancy banner
F erected by the appellant and, therefore, failure to supply a copy of the photograph to the appellant did not amount to a violation of the provision of sub-section (3) of section 81 of the Act.

The decision in *Karunanidhi's* case fully supports the view which we take, namely, the video cassette formed an integral part of the
G election petition because without a copy of the video cassette the first respondent was not in a position to know whether the video cassette recording the speeches of the two Government servants could be said to have been used by the first respondent for the purpose of any assistance in furtherance of the prospects of his election. *Karunanidhi's* case was referred to and approved in a subsequent decision
H of this Court in *Mithilesh Kumar Pandey* v. *Baidyanath Yadav*, [1984] 2 SCR 278.

Mr. Poti has, however, urged that if the averments in paragraph 5(xi) of the election petition are full and complete or, in other words, if they do not give particulars of the corrupt practice, in that case the said averments may be struck out under the provisions of Order VI Rule 16 of the Code of Civil Procedure, but the entire election petition cannot be dismissed. It has already been noticed that under clauses (a) and (b) of section 83(1) of the Act, an election petition shall contain a concise statement of the material facts and shall set forth full particulars of any corrupt practice. The material facts and the full particulars of corrupt practice will constitute cause of action for the election petition. If the material facts are not supplied or full particulars of corrupt practice are not given in the election petition, as a consequence of which the election petition does not disclose any cause of action, it is liable to be dismissed under the provision of Order VII, Rule 11(a) of the Code of Civil Procedure. See *Azhar Hussain* v. *Rajiv Gandhi,* [1986] Suppl. SCC 315.

Apart from the striking out the whole of the election petition when it does not disclose a cause of action, the court can strike out any statement which is irrelevant, scandalous or has nothing to do with the cause of action under the provision of Order VI, Rule 16 of the Code of Civil Procedure. It is submitted by Mr. Poti that if the averments in paragraph 5(xi) of the election petition are irrelevant or do not disclose any cause of action, at the most the said paragraph can be struck out by the court under the provision of Order VI, Rule 16 of the Code of Civil Procedure. We are afraid, we are unable to accept the contention. We are not concerned with whether paragraph 5(xi) can be struck out by the court under the provision of Order VI, Rule 16 of the Code of Civil Procedure as not disclosing any cause of action, but really we are concerned with the question as to whether the copy of the election petition which has been served on the first respondent without a copy of the video cassette is a true copy of the election petition or not within the meaning of section 81(3) of the Act. We have come to the conclusion that the appellant has not served on the first respondent a true copy of the election petition inasmuch as, admittedly, a copy of the video cassette which forms an integral part of the election petition, was not served along with the election petition. There is, therefore, no substance in the contention which is rejected.

Mr. Poti has drawn our attention to the observations made by this Court in *Shri Udhav Singh* v. *Madhav Rao Scindia,* [1977] 1 SCC 511 which reads as follows:

"Like the Code of Civil Procedure, this section also envisages a distinction between *"material facts"* and *"material particulars"*. Clause (a) of sub-section (1) corresponds to Order 6, Rule 2, while clause (b) is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. 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 6, 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 the case of a petition suffering from a deficiency of *material particulars,* the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."

On the basis of the above observations, it is submitted that if paragraph 5(xi) of the election petition suffers from a deficiency of material particulars, the court has a discretion to allow the appellant to supply the required particulars even after the expiry of limitation. The above observations have been made in a different context and are quite inapplicable to the facts and circumstances of the instant case which, as noticed already, relate to the question as to whether the video cassette is an integral part of the election petition and whether non-furnishing of a copy of the video cassettee to the first respondent along with a copy of election petition is non-compliance with the mandatory provision of section 81(3) and, as such, liable to be dismissed under section 86(1) of the Act. The question of exercise of discretion by the court in permitting the appellant to supply the particulars does not arise at all.

Lastly, the decision of this Court in *A. Madan Mohan* v. *Kalavakunta Chandrasekhara,* [1984] 2 SCC 289 has been relied upon by the learned Counsel for the appellant. We fail to understand how this case is of any assistance to the appellant, for in this case also this Court once more approved of the decision in *Karunanidhi's* case. No other point has been urged by either party in this appeal.

In view of the discussion made above, we affirm the judgment of the High Court dismissing the election petition of the appellant on the

ground that as the copy of the video cassette was not served on the first respondent along with a copy of the election petition, it was non-compliance with the prvision of section 81(3) of the Act. A

The appeal is, accordingly, dismissed. There will, however, be no order as to costs. B

Y. Lal Appeal dismissed.