HARKIRAT SINGH

v.

AMARINDER SINGH

DECEMBER 16, 2005

[Y.K. SABHARWAL, C.J., C.K. THAKKER AND P.K. BALASUBRAMANYAN, JJ.]

Representation of the People Act, 1951: Section 123.

Corrupt Practice—Election petition—Material facts—Disclosure of—Election to State Legislative Assembly—Elector of the constituency filed an election petition challenging election of the returned candidate on ground of corrupt practice—Government servant holding Class I gazetted post allegedly helped the returned candidate immensely during his election campaign—A Press Conference was allegedly organized for the returned candidate for enhancing his election prospects—High Court dismissed the Election Petition on the ground that the petitioner had failed to disclose 'material facts' as to corrupt practice constituting the cause of action—Correctness of—Held: An election petition must contain a concise statement of 'material facts' on which the petitioner relies—It should also contain 'full particulars' of any corrupt practice that the petitioner alleges—It is absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleadings by the party—In the present case, 'material facts' of corrupt practice said to have been adopted by the returned candidate had been set out in the petition with full particulars—It has been expressly stated as to how the named Government servant assisted the returned candidate by doing several acts, as to complaints made against him by the authorities and taking of disciplinary action—hence, High Court was wholly unjustified and rejecting the petition on the ground that material facts had not been set out in the election petition and that the election petition did not disclose a cause of action—Code of Civil Procedure, 1908, O. VI R.2.

Section 83—'Material facts' and 'Particulars'—Distinction between—Explained.

A *Words and Phrases:*

"Material facts"—Meaning of—In the context of S. 83 of the Representation of the People Act, 1951.

The appellant was an elector in the constituency from which the
B **respondent was declared elected to the State Legislative Assembly. The appellant filed an Election Petition in the High Court under Section 81 of the Representation of the People Act, 1951 questioning the election of the respondent on the ground of corrupt practice as enumerated in Section 123 of the Act. It was alleged that a Government Servant holding Class I gazetted post helped the respondent immensely during his election campaign. The said**
C **Government servant allegedly organized a Press Conference for the respondent for enhancing his election prospects.**

High Court dismissed the Election Petition on the ground that the petitioner had failed to disclose 'material facts' as to corrupt practice
D **constituting the cause of action in the election petition. Hence the appeal.**

Allowing the appeal, the Court

HELD: 1. An election petition must contain a concise statement of 'material facts' on which the petitioner alleges including a full statement of
E **the names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice Such election petition 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. It should be accompanied by an affidavit in the prescribed from in support of allegation of such practice and particulars thereof. [835-D, E]**

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2. All material facts, thereof, in accordance with the provisions of the Representation of the People Act, 1951 have to be set out in the election petition. If the material facts are not stated in petition, it is liable to be dismissed on that ground as the case would be covered by Section 83(1)(a) of
G **the Act read with Rule 11(a) of Order VII of the Code. [835-F]**

3. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental,' 'vital, 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or primary. The phrase

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'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts, are facts upon which the plaintiff's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleadings by the party. [835-G. H; 836-A, B]

Phillips v. *Phillips* (1878) 4 QBD 127 and *Bruce* v. *Odhams Press Ltd.*, (1936) 1 KB 697, referred to.

Burrton's Legal Thesaurus, Third Edn. P. 349, referred to.

4. A distinction between 'material facts' and 'particulars' however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, clearer and more informative. 'Particulars', thus, ensure conduct of fair trial and would not take the opposite party by surprise. [836-F, G]

5. All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial. [836-H; 837-A]

Halsbury's Laws of England 4th Edn., Vol. 36, para 38, referred to.

6. In the present case, 'material facts' of corrupt practice said to have been adopted by the respondent had been set out in the petition with full particulars, It has been expressly stated as to how a Gazetted Officer of Class I in the State Government assisted the respondent by doing several acts, as to complaints made against him by the authorities and taking of disciplinary action. It has also been stated as to how a Police Officer, who was holding the post of Superintendent of Police, helped the respondent by organizing a

meeting and by distributing posters. It was also alleged that correct and proper accounts of election expenses have not been maintained by the respondent. The High Court was wholly unjustified in entering into the correctness or otherwise of facts stated and allegations made in the election petition and in rejecting the petition holding that it did not state material facts and thus did not disclose a cause of action. The High Court stepped into prohibited area of appreciating the evidence and by entering into merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable. [849-E, F, G, H; 850-A]

Balwan Singh **v.** *Lakshmi Narain and Ors.,* **[1960] 3 SCR 91,** *R.M. Seshadri* **v.** *G. Vasantha Pai.,* **[1969] 3 SCC 27,** *S.N. Balakrishna* **v.** *George Fernandez.,* **[1969] 3 SCC 238,** *Raj Narain* **v.** *Indira Nehru Gandhi.,* **[1972] 3 SCC 850,** *Pratap Singh* **v.** *Rajinder Singh.,* **[1975] 1 SCC 535,** *D. Venkata Reddy* **v.** *R. Sultan.,* **[1976] 2 SCC 455,** *K.M. Mani* **v.** *P.J. Antony.,* **[1979] 2 SCC 221,** *Azar Hussain* **v.** *Rajiv Gandhi.,* **[1986] Supp. SCC 315,** ***S.A.*** *Sapa* **v.** *singore.,* **[1991] 3 SCC 375,** *Gajanan Krishnaji Bapat* **v.** *Dattaji Raghobaji Meghe.,* **[1995] 5 SCC 347,** *L.R. Shivaramagowda* **v.** *T.M. Chandrashekar.,* **[1999] 1 SCC 666,** *V.S. Achuthanandan* **v.** *P.J. Francis.,* **[1999] 3 SCC 737,** *V. Narayanaswamy* **v.** *C.P. Thirunavukkarasu.,* **[2000] 2 SCC 294,** *Hari Shankar jain* **v.** *Sonia Gandhi.,* **[2001] 8 SCC 233,** *Santosh Yadan* **v.** *Narendra Singh.,* **[2002] 1 SCC 160** and *Mahadeorao Sukaji Shivankar* **v.** *Ramaratan Bapu.,* **[2004] 7 SCC 181, relied on.**

Hardwari Lal **v.** *Kamal Singh.,* **[1972] 1 SCC 214,** *Daulat Ram Chauhan* **v.** *Anand Sharma.,* **[1984] 2 SCC 64 and** *Udhav Singh* **v.** *Madhav Rao Scindia.,* **[1976] 2 SCR 246, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 845 of 2005.

From the Judgment and Order dated 3.11.2004 of the Punjab and Haryana High Court in E.P. No. 26 of 2002.

P.S. Mishra, Randhir Singh Jain, Durgainder Singh, Ms. Savita Singh and Ravi Kataria with him for the Appellant.

R.S. Cheena, D.P. Singh and Sanjay Jain for the Respondent.

The Judgment of the Court was delivered by

C.K. THAKKER, J. The present appeal is directed against the judgment and order dated 3rd November, 2004 passed by the High Court of Punjab & Haryana in Election Petition No. 26 of 2002. By the said Order, the High Court dismissed the Election Petition filed by the appellant-petitioner upholding preliminary objection raised by the respondent that the petitioner had failed to disclose material facts as to corrupt practice constituting the cause of action in the election petition.

To appreciate the controversy raised in the present appeal, few relevant facts may be stated. On December 26, 2001, election for constitution of Punjab Legislative Assembly was announced. On January 16, 2002, Hon'ble the President of India issued a notification calling upon the electors in the State of Punjab to elect their representatives for Punjab *Vidhan Sabha*. Various stages of election were fixed. As per the notification, January 23, 2002 was the last date for filing nominations by candidates aspiring to be elected to Punjab *Vidhan Sabha*. Scrutiny of nomination papers was fixed as January 24, 2002 and the last date of withdrawal of nomination was January 28, 2002. Polling was to take place on February 13, 2002 and February 24, 2002 was the date of the counting of votes and of declaration of result.

The respondent herein filed his nomination from 76, Patiala Town Assembly Constituency as the candidate nominated by Congress (I) Party. The respondent was declared as elected. He was also elected as the leader of the Party and became the Chief Minister of Punjab.

The appellant herein-petitioner before the High Court-was an elector in the constituency from which the respondent contested the election. The petitioner filed an Election Petition in the High Court under Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') questioning the election of the respondent to the Punjab Legislative Assembly from 76, Patiala Town Assembly Constituency on the ground of corrupt practice as detailed in the Election Petition. A prayer was, therefore, made to declare the election of the respondent void and for issuing appropriate consequential directions.

In the Election Petition, it was alleged by the petitioner that the respondent had committed 'corrupt practice' as enumerated in Section 123 of the Act. The particulars of corrupt practices committed by the respondent were mentioned by the petitioner in the petition. In paras 4 and 5 of the Election Petition, the petitioner stated that one Bharat Inder Singh Chahal was

A a Government Servant holding Class I gazetted post as Joint Director, Information & Public Relations Department, Punjab who helped the respondent immensely during the election campaign of the respondent and despite his being holder of a post under the State Government, had actively been organizing, conducting and participating personally in the press conferences addressed by the respondent for the furtherance of respondent's election B prospects. Particulars of corrupt practices committed by the respondent had also been stated. It was asserted that on January 29, 2002, Mr. Chahal organized a Press Conference for the respondent at New Moti Bagh Palace, Patiala along with the respondent for enhancing the election prospects of the latter. An audio-video cassette containing about 12 minutes clipping was recorded C which news appeared in English dailies 'Tribune', 'Indian Express' and 'Times of India'. According to the petitioner, he was able to procure a copy of the cassette from one Mr. Jagdeep Singh Chowhan without any manipulation, dubbing or interpolation.

It was also stated that Mr. G.S. Cheema, Chief Electoral Officer, Punjab D during media briefing on 4th February, 2002 at the office of the Chief Electoral Officer in Sector No.17, Chandigarh disclosed that Mr. Chahal had actively participated in the election process. The Election Commission, therefore, directed Secretary, Punjab Information & Public Relations to take disciplinary action against Mr. Chahal for violating the code of conduct and for actively E participating in Congress' election campaign. Likewise Mrs. Usha R. Sharma, Additional Chief Electoral Officer, during media briefing on February 6, 2002 stated that the Election Commission of India had pulled up the Punjab Government and asked the Chief Secretary of Punjab to look into the matter as to why action had not been initiated against Mr. Chahal for the alleged violation of the Election Code and for assisting the respondent. According F to the petitioner, this had gone long way to show that Mr. Chahal actively participated "to the knowledge of the respondent and with the consent of the respondent" for the furtherance of his election prospects in violation of the provisions of Section 123 of the Act. The Secretary, Information & Public Relations, Government of Punjab issued a show cause notice to Mr. Chahal G over his reported work for the Congress candidate. Mr. Cheema had also written to Mr. N.K. Arora, Chief Secretary, Punjab seeking action against Mr. Chahal for alleged partisan role and for his misconduct. Mrs. Usha R. Sharma further disclosed that a complaint filed by one Mr. J.S. Chowhan had been forwarded to the Election Commission of India as also to the Secretary, Information & Public Relations, Punjab recommending that action should be H taken against Mr. Chahal as complaint had been *prima facie* established. A

Committee was constituted to look into the audio-video cassette and to examine the role of Mr. Chahal. According to the petitioner, the Committee of Information & Public Relations Department submitted a report that Mr. Chahal was present at the Press Conference of the respondent. The Committee allowed Mr. Chahal to see the cassette following the principles of natural justice and asked him to submit his reply by February 8, 2002 explaining his conduct. The Committee forwarded the report to the Chief Electoral Officer, Punjab as also to the Election Commission of India. The above facts were disclosed by Mr. Cheema, Chief Electoral Officer in a media briefing on February 7, 2002 at Chief Electoral Officer's office at Chandigarh.

On February 8, 2002, the Secretary, Information & Public Relations Department, Punjab recommended to the Cabinet Minister for Information & Public Relations Department to issue charge-sheet to Mr. Chahal for a major penalty on his having worked actively for the election campaign of the Chief of the Punjab Pradesh Congress Committee-respondent herein.

In para 6 of the petition, the petitioner stated that Mr. Chahal played a dominant, significant and active role during the election campaign of the respondent which fact was further corroborated from the fact that Mr. Chahal was suitably rewarded for herculean efforts put up by him with his appointment on February 28, 2002 as Advisor to the Chief Minister-respondent herein.

It was stated that the respondent took oath as Chief Minister of Punjab on February 27, 2002. He accepted the resignation of Mr. Chahal as Joint Director, Public Relations Department, Punjab on February 28, 2002. On the same day, the respondent appointed Mr. Chahal as 'Advisor to the Chief Minister' and an appointment letter was issued. In the 'Indian Express' dated March 1, 2002, it was reported that Mr. Chahal's career in Public Relations Department was marked by 'string of controversies' (para 7).

The petitioner, in the election petition, has also said about other corrupt practices adopted by the respondent. In paras 8 and 9, it was averred that the respondent had procured assistance of one Gurnam Singh Mehra, Superintendent of Police, Patiala for furtherance of the prospects of his election. The details of the corrupt practice had also been specified in para 9 of the petition. It was said that Mr. Mehra belonged to Kashyap Rajput community. Mr. Mehra organized a function on January 26, 2002 in favour of Congress candidate for 76, Patiala Town Assembly Constituency (of the respondent) which was presided over by Smt. Preneet Kaur, Member of

A Parliament, Patiala and wife of the respondent. The meeting was organized at Marriage Palace near Railway *Phatak* No.22, Patiala. For the said meeting, Mr. Mehra used the office of his newly created Mehra Biradri Social Sangathan in which posters were distributed with a photograph of Mr. Mehra as Superintendent of Police in police uniform describing the respondent as *'Garibon Ka Massiha'*. The name of the Sangathan was shown at the bottom. B Mr. Mehra thus canvassed for the respondent in the said meeting. Those facts appeared as a news item in the English edition of the 'Tribune' dated February 5, 2002.

According to the petitioner, the respondent also committed corrupt C practice by indirectly interfering with the free exercise of electoral rights by projecting himself as the 'Maharaja of Patiala' in the posters issued by the respondent and also by his supporters with his consent.

Finally, the petitioner alleged that the respondent had incurred expenses far more than the prescribed limit of Rs.6 lakhs under Rule 90 of the Conduct D of Election Rules, 1961 (hereinafter referred to as 'the Rules') and maintained improper and incorrect accounts of the expenditure incurred and thereby he violated the provisions of Section 77 of the Act. The respondent had not shown the expenses of Press Conference held on January 29, 2002 at New Moti Bagh Palace, Patiala or of the 'heavy tea' served at the said conference in his election return (para 11). E

On the basis of above allegations, the petitioner stated that the election of respondent to 76, Patiala Town Assembly Constituency was liable to be declared void under Section 100 of the Act. The election petition was verified and was filed on April 10, 2002.

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A reply in the form of written statement was filed by the respondent controverting the averments made and denying the allegations levelled by the petitioner in the election petition. Preliminary objections were also raised by the respondent, *inter alia*, contending that the election petition was liable to be dismissed as the petitioner had failed to comply with the mandatory G requirement of filing an affidavit in Form 25 read with Rule 94-A of the Rules as required by Section 83 of the Act. According to the respondent, the affidavit was not legal and valid. An affidavit, under the Rules, was required to be attested either on oath or on solemn affirmation. The affidavit filed by the petitioner was neither sworn nor it was on solemn affirmation. Both the expressions 'sworn' and 'solemn affirmation' were mentioned mechanically. H

The affidavit thus did not conform to the mandatory requirement of Form 25 read with Rule 94-A and the petition was liable to be dismissed on that ground.

It was also stated that the election petition did not contain "material facts" much less "material particulars" of alleged corrupt practices mentioned in the election petition. The so called allegations, stated the respondent, were vague, bald, unnecessary, irrelevant, frivolous and did not disclose any cause of action. The averments were intended to prejudice, embarrass and delay fair trial of the election petition.

Paras 6 and 7 of the election petition were liable to be struck off being unnecessary. The averments in those paras did not pertain to the period from the date of filing of the nomination papers, had no relevance and did not fall within the ambit and scope of Section 100 read with Section 123 of the Act. Contents of para 4 did not disclose material facts but the language of Section 123(7)(a) of the Act had been mechanically reproduced by the petitioner. According to the respondent, para 4 did not contain material facts as to how and in what manner the help of Mr. Chahal was sought or obtained for furtherance of the election result of the respondent, in what form the so called assistance was rendered and how it affected the electoral rights of the voters of 76, Patiala Town Assembly Constituency. Para 5 similarly did not disclose material particulars required by law. The reference to organizing, conducting and participating personally in press conferences by Mr. Chahal addressed by the respondent was vague, scandalous and frivolous. The contents failed to disclose essential ingredients of corrupt practice as contemplated by Section 123(7)(a) of the Act. The so called press conference dated January 29, 2002 was organized and addressed by the respondent as President of the Punjab Pradesh Congress Committee and it had absolutely no connection with his election to 76, Patiala Town Assembly Constituency. The respondent has also stated that it was not disclosed by the petitioner as to who was the author of the audio-video cassette, how the copy of the cassette came to the hands of Jagdeep Singh Chowhan and how the said copy was free from any manipulation, dubbing and interpolation particularly when the original audio-video cassette was not on record. Even the transcript in English of the cassette had not been produced.

Regarding assistance of Mr. Mehra, Superintendent of Police, Patiala, it was contended by the respondent that in the absence of basic ingredients of Section 123(7)(d) of the Act that the function held on January 26, 2002 was

A with the consent of the respondent or his election agent, there was nothing to show how it could connect the respondent with the said function.

As to the allegation of respondent projecting himself as 'Maharaja of Patiala', it was stated that no such poster had been placed on record nor the contents of the poster had been reproduced. Thus, no material facts had come
B on record of undue influence.

Regarding election expenses, the averments were totally vague, unnecessary and frivolous. The averments had been made with a view to prejudice and embarrass, with the object of delaying fair trial of the election
C petition. The provisions of Section 77 were not attracted.

On merits also, it was contended by the respondent that no corrupt practice had been adopted by him and the allegations levelled against him were incorrect. It was, therefore, submitted that the election petition was liable to be dismissed.

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A replication to the written statement of the respondent was filed by the petitioner contending that the preliminary objections raised by the respondent were incorrect and false. Regarding affidavit and verification, it was stated that if the Court comes to the conclusion that there were some defects in the affidavit, permission may be granted to the petitioner to file a
E fresh affidavit. So far as corrupt practices are concerned, according to the petitioner, material facts and particulars had already been stated in the election petition. The allegations were clear, precise and disclosed a cause of action. The averments made in the election petition have been reiterated in the replication by giving several instances. It was repeated that corrupt practice
F had been adopted by the respondent. The election petition was thus required to be allowed by setting aside the election of the respondent.

On the basis of rival contentions of the parties, the High Court framed nine issues. It was contended on behalf of the respondent that the election petition was liable to be dismissed as preliminary objections raised by the
G respondent were well founded. The Court, accordingly ordered to treat issue Nos. 5 to 8 as preliminary issues which were as under:

> 5. Whether the election petition is liable to be dismissed as the allegations of corrupt practice are not supported by a valid and legal affidavit as mentioned in preliminary objection No.1 and 2

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of the written statement? OPR

6. Whether the election petition lacks material facts and particulars and discloses no cause of action as mentioned in preliminary objection No.3 to 10 of the written statement? OPR

7. Whether the election petition is liable to be dismissed being incomplete as mentioned in para no.11 of the preliminary objections of the written statement? OPR

8. Whether the election petition is not verified as required under Order 6 Rule 15 of C.P.C., if so its effect? OPR

Issues 5 and 8 related to the affidavit and verification of election petition. After considering the submissions of both the sides and referring to the relevant provisions of law in the light of decisions of this Court, the High Court held that the election petition was not liable to be dismissed on the ground of defect, if any, in verification and affidavit. Even if there was some defect, it was 'curable' and not fatal to the election petition. The Court also observed that along with the replication, the petitioner had placed on record an affidavit which was in conformity with the provisions of Rule 94-A and From 25 appended to the Rules. The affidavit was allowed to be placed on record without any objection by the other side. The issues were thus decided in favour of the election petitioner.

So far as issues 6 and 7 are concerned, the Court was called upon to consider whether the election petition lacked 'material facts' and 'particulars' and did not disclose a cause of action and was liable to be dismissed being incomplete as contended by the respondent. The Court stated that it was well established that an election petition was supposed to disclose all 'material facts' to constitute a complete cause of action. According to the Court, an election petition should contain concise statement of material facts and it was necessary 'to disclose *fullest possible particulars'*. The Court stated that the counsel cited several judgments showing the distinction between 'material facts' and 'material particulars'. Referring to a decision of the Supreme Court in *Hardwari Lal* v. *Kamal Singh,* [1972] 1 SCC 214 : [1972] 2 SCR 742, the Court said that the material facts are facts which if established would give the petitioner the relief asked for. If the respondent would not appear, the Court would give verdict in favour of the petitioner. The said view was reiterated by the Court in subsequent cases also. Then referring to para 4 of the election petition, the Court observed that the said para only contained 'reproduction

A of the wording of Section 123(7)(a) of the Act'. In the opinion of the Court, therefore, para 4 of the petition could not be treated as the statement of material facts regarding corrupt practice.

In respect of material facts and particulars given in para 5(i) regarding corrupt practice adopted by the respondent, the Court opined that though it B had been stated that Mr. Chahal, a Gazetted Officer of the State of Punjab had helped the respondent immensely during his election and had actively been organizing and conducting personally, press conferences addressed by the respondent for the furtherance of his election prospects, no date, time and place of organizing any press conference had been mentioned by the petitioner.

C The Court then observed;

> "Whether by the use of words actively organizing, conducting and participating in press conferences without any further detail will constitute a material fact, which may lead towards formation of a D complete cause of action or not. *This Court feels that the answer is in the negative".* (emphasis supplied)

The Court observed that in sub-para (ii) of para 5, one instance of press conference which was allegedly held on January 29, 2002 by Mr. Chahal had been given. It was stated that Mr. Chahal organized the press conference in E New Moti Bagh Palace *i.e.* residence of the respondent. Mr. Chahal was personally present with the respondent and meticulously organized each and every affair for better result with the object of enhancing the prospect of the respondent. In sub-para (iii), it was stated that the petitioner was able to procure a copy of the cassette without any manipulation.

F As to the allegations in sub-paras (i), (ii) and (iii) of para 5, this is what the Court had to say;

> "A reading of sub-paras (i), (ii) & (iii) clearly demonstrate that the petitioner has failed to disclose as to what was the purpose of press G conference, what was agenda for the same, who were the press correspondents invited and who invited them and whether any press note was prepared at the time of press conference or not, what was addressed to the press correspondents, it has nowhere been stated that whether any voter of the constituency, in dispute, was present at the time of press conference".

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The Court also stated that the petitioner had not stated as to whether any proceedings of the press conference were published in the news paper on the next day, what were the contents of those publications and what was its effect on the general electorate in the constituency. The Court went on saying that the petitioner had failed to give the name of a single person who had read the reporting regarding press conference, which was allegedly conducted on January 29, 2002. It was no where stated as to how the will of the electorate was affected and how the press conference was an attempt for the furtherance of electoral prospects of the returned candidate.

It appears that at the time of hearing of arguments, in the presence of counsel for the parties, video cassette was seen by the Court. The Court stated;

> "At the time of arguments, in the presence of counsel for the parties, video cassette was played in Court. The Press Conference, as referred to above, was being addressed by the respondent. He along with Press Correspondents was seen sitting on chairs around a table. Bharat Inder Singh Chahal was seen sitting on the back side in second row. In between, he got up and had a half circle of the conference hall i.e., Library Room of the house of the respondent. At the time of press conference, as was evident from the video cassette, light snacks were served to the press correspondents. Shri Chahal was not seen uttering a single word either to the respondent or to any of the press correspondents. At the time of arguments, Shri Saggar read over a transcript of video cassette, which clearly demonstrated that at the time of press conference, no appeal was made to the electorate of the constituency of the respondent. Conference was conducted with respect to expulsion of rival candidates from the congress party. It has nowhere been pleaded as to what was the object and method of assistance provided by Bharat Inder Singh Chahal."

Then relying on a decision of the Supreme Court in *Daulat Ram Chauhan* v. *Anand Sharma,* [1984] 2 SCC 64 : AIR (1984) SC 621, the Court observed that the allegations made in the election petition could not be said to be in the nature of 'material facts' as no details were given. The Court stated that in the replication, all details were given but they were "material facts" which the petitioner was required to state in his election petition and not in the replication which was filed beyond the period of limitation. Since in the election petition material facts had not been stated, the petition did not

A disclose a cause of action and was, therefore, liable to be dismissed.

Regarding a complaint made by Jagdeep Singh Chowhan to the Chief Electoral Officer, the Court observed that in the election petition it was stated that a Committee was constituted in view of allegation that Mr. Chahal had violated the code of conduct and disciplinary action was required to be taken
B against him. It was recommended to issue notice to Mr. Chahal for major penalty, but the petition was silent whether such notice was issued or not. During the arguments, it transpired that no such notice was issued despite recommendation made by the Chief Electoral Officer. In connection with news items, the Court noted that those news items no where indicated as to what
C was the *quantum* of help sought from and rendered by Mr. Chahal to the respondent.

In paras 6 and 7 of the petition, a reference was made regarding acceptance of resignation of Mr. Chahal by the respondent and his appointment as Advisor to the Chief Minister. According to the Court, facts mentioned in
D those paras would have been a 'corroborative piece of evidence' if the petition was capable to be proceeded with but as the petitioner had failed to state material facts in that regard, he could not get the benefit of the subsequent development.

On the allegation of assistance of Mr. Mehra, Superintendent of Police,
E according to the Court, no material fact had been disclosed by the petitioner in the petition. On the meeting held at the Moti Bagh Palace near *Railway Phatak* No.22 in which posters were distributed with photograph of Mr. Mehra in police uniform, describing the respondent as *"Garibon Ka Massiha"* showing the name of Mehra Biradari Social Sangathan, the Court stated;

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> "This Court feels that averments made in this paragraph are very vague. It has not been stated as to what was the purpose of that meeting, who were participants, whether any voter from the constituency in dispute had come there, what was said by Mr. Mehra and how he tried to influence the voters."

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The Court went on to observe that it had no where been stated as to what were the contents of that poster, who published it, whether it was circulated and who read it. The Court, therefore, felt that the petitioner had failed to disclose material facts as required by law.

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As to allegation of projecting himself as *'Maharaja of Patiala'* in a poster issued by the respondent, the Court stated that the petitioner had failed to disclose material facts as there was nothing to show that the poster was issued by the respondent or by his supporters with his consent. A

Regarding election expenses, the Court observed that mere non disclosure of expenditure would not be a corrupt practice. It is incurring of expenditure in excess of the prescribed limit which will amount to a corrupt practice. According to the Court, very vague averments had been made simply by stating that the respondent had incurred the expenses more than the prescribed limit, but no details had been given. According to the Court, in the election petition, it was stated that the respondent had not shown expenses of press conference held on January 29, 2002 in his return of expenses but nothing had been stated as to what was the total expenditure and the details had been given only in the replication. Then referring to the video-cassette, the Court observed that only light snacks, tea and cold drinks were served to the press correspondents. The Court stated; B C D

> "By taking judicial note of the same, it can be said that even if those expenses are ordered to be included in the election expenses of the respondent, the total expenses still shall remain much below the prescribed limit".

In view of the above findings, the Court dismissed the petition by passing the following order; E

> "Despite decision on issues No.5 and 8 in favour of the petitioner, this petition, in view of findings on issues No.6 and 7, cannot proceed further as the petitioner has failed to disclose material facts regarding corrupt practice, as alleged, to constitute a complete cause of action, on the basis of which any relief can be granted to him. Accordingly, this election petition fails and the same is dismissed. No order as to costs". F

On February 28, 2005, after hearing the learned counsel for the appellant, the appeal was admitted. In view of the fact that the election petition was dismissed at the threshold on the ground that it did not disclose cause of action, the matter was placed for final hearing. We have heard Mr. P.S. Mishra, senior Advocate for the appellant and Mr. R.S. Cheena, Senior Advocate for the respondent. G H

A Before we deal with the respective contentions of the learned counsel for the parties, it would be appropriate if we refer to the relevant provisions of the Act. The Preamble of the Act declares that the Act has been enacted "to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and B other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections".

Part I is Preliminary. Part II deals with qualifications and disqualifications for membership of Parliament and of State Legislatures. While Part III provides C for issuance of notifications for elections, Part IV relates to administrative machinery for the conduct of elections. Conduct of elections has been dealt with in Part V. Part VI relates to 'Disputes regarding elections'. Section 80 requires any election to be questioned only by way of election petition. Under Section 80A, it is the High Court which can try election petitions. Section 81 provides for presentation of election petition and prescribes the period of D limitation. Section 82 declares as to who shall be joined as respondents to such election petition. Section 83 deals with contents of petition and reads thus-

> 83. *Contents of petition.* (1) An Election petition
>
> E (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 F practice and the date and place of the commission of each such practice; and
>
> (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:
>
> G
>
> 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.

H

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

Section 84 deals with relief that can be claimed by the petitioner in an election petition. Section 86 relates to trial of election petitions. It mandates the High Court to dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. (Section 117 requires the election B petitioner to deposit certain amount as security for costs of the petition). Sub-section (5) of Section 86 is an enabling provision and reads as under;

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

D

Section 100 enumerates grounds on which election of a returned candidate may be challenged and declared void. Commission of corrupt practice by a returned candidate is one of the grounds for declaring an election to be void. The relevant part of Section 100 reads thus;

100. *Grounds for declaring election to be void*–(1) Subject to the E provisions of sub-section (2) if the High Court is of opinion

(a) ... ...

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

... ...

the High Court shall declare the election of the returned candidate to be void.

G

... ...

Section 123 declares certain practices as 'deemed to be corrupt practices'. The material part of the said section reads as under:-

"123. Corrupt practices. The following shall be deemed to be H

A corrupt practices for the purposes of this Act:

(1) ... ...

(2) *Undue influence*, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that —

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who —

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of publication, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) ... ...

(4) ... ...

(5) ... ...

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) 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 following classes, namely:—

(a) gazetted officers;

(b) ... ...

(c) ... ...

(d) members of the police forces;

Section 77 speaks of election expenses and maximum amount which can be spent. Section 78 enjoins every candidate at an election to lodge account with the District Election Officer.

From the above provisions, it is clear that an election petition must contain a concise statement of 'material facts' on which the petitioner relies. It should also contain 'full particulars' of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.

All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order VII of the Code.

The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus, (Third edn.); p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In

A other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts
B and must be stated in the pleading by the party.

In the leadings case of *Phillips* v. *Phillips*, (1878) 4 QBD 127 : 48 LJ QB 135, Cotton, L.J. stated:

C

> "What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial."

D In *Bruce* v. *Odhams Press Ltd.*, (1936) 1 KB 697 : [1936] 1 All ER 287, Scott, L.J. referring to *Phillips* v. *Phillips* observed:

> "The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one
E 'material' statement is omitted, the statement of claim is bad; it is 'demurrable' in the old phraseology, and in the new is liable to be 'struck out' under R.S.C. Order 25 Rule 4 (see *Phillips* v. *Phillips*); or 'a further and better statement of claim' may be ordered under Rule 7."

F A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They
G amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.

All 'material facts' must be pleaded by the party in support of the case
H set up by him. Since the object and purpose is to enable the opposite party

to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.

In *Halsbury's Laws of England*, (4th edn.); Vol.36; para 38, it has been stated;

> "The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been variously stated, namely either to limit the generality of the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required. Each party is entitled to know the case that is intended to be made against him at the trial, and to have such particulars of his opponent's case as will prevent him from being taken by surprise. Particulars enable the other party to decide what evidence he ought to be prepared with and to prepare for the trial. A party is bound by the facts included in the particulars, and he may not rely on any other facts at the trial without obtaining the leave of the court."

In connection with election matters, this Court has considered the question in several cases. In *Balwan Singh* v. *Lakshmi Narain and Ors.*, [1960] 3 SCR 91 : AIR (1960) SC 770, in an election petition, an allegation of corrupt practice of hiring or procuring vehicles by returned candidate had been made. It was contended on behalf of the respondent that full particulars as to contract of hiring vehicles had not been set out in the election petition. The petition was, therefore, liable to be dismissed. The Constitution Bench of this Court was called upon to consider the requirement of Sections 83 and 123 of the Act in the light of the allegation in the election petition. Speaking for the majority, Shah, J. (as his Lordship then was) observed that neither in the petition as originally filed nor as amended, the date and place of hiring of vehicle alleged to have been used for conveying the voters, and the names of the persons between whom the contract of hiring was settled were set out. The question, however, was whether the election petition was liable to be rejected because it did not set forth particulars of date and place of hiring the vehicle alleged to have been used in conveying voters? The Court answered the question in the negative and stated;

"The corrupt practice being the hiring or procuring of a vehicle for the conveyance of the electors, if full particulars of conveying by a vehicle of electors to or from any polling station are given, Section 83 is duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring, are not given. Normally, the arrangement for hiring or procuring a vehicle, is within the special knowledge of the parties to that agreement and it is difficult to assume that it as intended to require the petitioner in an election dispute to set out the particulars of facts within the special knowledge of the other party, and expose the petition to a penalty of dismissal if those particulars could not b given. If particulars in support of the plea of the vehicle being hired or procured by the candidate or his agent or by another person was used for conveying voters to or from the polling station are set out, failure to set out particulars of the contract of hiring or arrangement of procuring will not render the petition defective".

The Court proceeded to observe;

"The practice to be followed in cases where insufficient particulars of a corrupt practice are set forth in an election petition is this. An election petition is not liable to be dismissed *in limine* merely because full particulars of a corrupt practice alleged in the petition, are not set out. Where an objection is raised by the respondent that a petition is defective because full particulars of an alleged corrupt practice are not set out, *the Tribunal is bound to decide whether the objection is well founded. If the Tribunal upholds the objection, it should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged; and in the event of noncompliance with that order the Tribunal may strike out the charges which remain vague.* Insistence upon full particulars of corrupt practices is undoubtedly of paramount importance in the trial of an election petition, but if the parties go to trial despite the absence of full particulars of the corrupt practice alleged, and evidence of the contesting parties is led on the plea raised by the petition, the petition cannot thereafter be dismissed for want of particulars, because the defect is one of procedure and not one of jurisdiction of the Tribunal to adjudicate upon the plea in the absence of particulars". (emphasis supplied)

In *R.M. Seshadri* v. *G. Vasantha Pai,* [1969] 1 SCC 27, allegation as to corrupt practice had been made in the election petition. It was alleged that the returned candidate was responsible for employing cars, hired and procured for the conveyance of the voters to the polling booths. It was contended by the returned candidate that the allegation was vague and the petition was liable to be dismissed. Rejecting the contention, the Court held that it had been sufficiently pleaded and proved that cars were in fact used. The connection with the returned candidate with the use of the cars had been specifically pleaded. In the opinion of the Court, *"the rest were matters of evidence which did not require to be pleaded and that plea could always be supported by evidence* to show the source from where the cars were obtained, who hired or procured them and who used them for the conveyance of voters." (emphasis supplied)

In *S.N. Balakrishna etc.* v. *George Fernandez & Ors. etc.,* [1969] 3 SCC 238 : AIR (1969) SC 1201, the Court again considered a similar question. Referring to the relevant provisions of the Act, the Court held that Section 83 which provides that the election petition must contain a concise statement of material facts on which the petitioner relies and further that he must also 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 is mandatory. Then, drawing the distinction between 'material facts' and 'particulars', the Court observed;

> "What is the difference between material facts and particulars? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus the material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned.

A The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of thecause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated
B and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to
C disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information".

Referring to sub-section (5) of Section 86 of the Act which allows the Court the amendment in the petition, the Court stated;

D

"The power of amendment is given in respect of particulars but there is a prohibition against an amendment "which will have the effect of introducing particulars if a corrupt practice not previously alleged in the petition." One alleges the corrupt practice in the material facts and they must show a complete cause of action. If a petitioner has omitted
E to allege a corrupt practice, he cannot be permitted to give particulars of the corrupt practice. The argument that the latter part of the fifth sub-section is directory only cannot stand in view of the contrast in the language of the two parts. The first part is enabling and the second part creates a positive bar. Therefore, if a corrupt practice is
F not alleged, the particulars cannot be supplied. There is however a difference of approach between the several corrupt practices. If for example the charge is bribery of voters and the particulars give a few instances, other instances can be added; if the charge is use of vehicles for free carriage of voters, the particulars of the cars employed may be amplified. But if the charge is that an agent did something, it
G cannot be amplified by giving particulars of acts on the part of the candidate or vice versa. In the scheme of election law they are separate corrupt practices which cannot be said to grow out of the material facts related to another person. Publication of false statements by an agent is one cause of action, publication of false statements, by the
H candidate is quite a different cause of action".

In *Raj Narain* v. *Indira Nehru Gandhi & Anr.*, [1972] 3 SCC 850, some of the principles had been elaborated which are relevant and they are as under; A

"(i) While a corrupt practice has got to be strictly proved, it does not follow that a pleading in an election proceeding should receive a strict construction. Even a defective charge does not vitiate a criminal trial unless it is proved that the same has prejudiced the accused. If a pleading on a reasonable construction could sustain the action, the court should accept that construction. The courts are reluctant to frustrate an action on technical grounds. B

(ii) The charge of corrupt practice in an election petition is a very serious charge and has to be proved. It may or may not be proved. The allegations may be ultimately proved or not proved. But the question for the courts is whether a petitioner should be refused an opportunity to prove those allegations merely because the petition was drafted clumsily. Opportunity to prove should not be refused. C D

(iii) If the allegations made in an election petition regarding a corrupt practice do not disclose the constituent parts of the corrupt practice alleged, the same will not be allowed to be proved and those allegations cannot be amended after the period of limitation for filing an election petition, but the court may allow particulars of any corrupt practice alleged in the petition to be amended or amplified. E

"Material facts" in Section 83 of the Representation of People Act, 1951 shows that the ground of corrupt practice and the facts necessary to formulate a complete cause of action must be stated. The function of the particulars is to present a full picture of the cause of action so as to make the opposite party understand the case he has to meet. Under Section 86(5) of the Representation of People Act if the corrupt practice is alleged in the petition the particulars of such corrupt practice may be amended or amplified. F

(iv) An election petition is not liable to be dismissed *in limine* because full particulars of corrupt practice alleged were not set out. If an objection was taken and the Tribunal was of the view that full particulars have not been set out, the petitioner has to be given an opportunity to amend or amplify the particulars. It is only in the event of non-compliance with such order to supply the particulars, that the G H

A charge which remained vague could be struck down".

The Court stated that rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated with a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking there B lies a juristic principle. It is the duty of the Court to ascertain that principle and implement it.

Strong reliance was placed by learned counsel for the respondent on *Hardwari Lal before* the High Court as well as before us. The High Court also passed the impugned order on the basis of the said decision. In *Hardwari* C *Lal,* an election petition was filed by the petitioner alleging corrupt practice against the successful candidate. The corrupt practice as adopted by the returned candidate had been set out in paragraph 16 of the petition which read as under-

D *"That the respondent committed the corrupt practice of obtaining and procuring or attempting to obtain and procure the assistance* for the furtherance of the prospects of his election from the following persons who are in the service of the Government and belong to the prohibited classes within the meaning of Section 123 (7) of the Act:

E 1. Shri Chand Ram Rathi, Lecturer in Political Science, Government College, Gurgaon.

2. Shri Gulab Singh, B.A., B.Ed., Government High Court (School) Jaharsa (Gurgaon).

F 3. Pt. Bhim Singh, Assistant Sub-Inspector, Police Security Lines, Lyton Road, New Delhi.

4. Ch. Chhattar Singh, M.A., B.T. Teacher V and P.O. Bharai via Bahadurgarh, District Rohtak.

G 5. Ch. Mukhtiar Singh, Inspector of Police, Delhi.

6. Ch. Raghbir Singh, M.A., B.T., Chandigarh.

The respondent has written letters under his own signatures to the above Government servants soliciting their help and assistance in H furtherance of the prospects of his election." (emphasis supplied)

A preliminary objection was raised by the returned candidate that paragraph 16 did not give necessary particulars about the nature of assistance, the place and date where and when such assistance was sought or received from the persons named in the petition.

Upholding the preliminary objection and reproducing sub-section (7) of Section 123 of the Act, the Court stated that 'obtaining', 'procuring', abetting', or 'attempting to obtain or procure' assistance are different forms of corrupt practice. The Court stated;

> "It has to be noticed that the different expressions obtaining, procuring, abetting or attempting to obtain or procure are various forms of corrupt practices. It has to be found as to whether the allegation of obtaining assistance amounted to an allegation of fact. It is well settled that general expression like 'fraudulently', 'negligently' or 'maliciously' in pleadings do not amount to any allegation of fact. *A fact is after all not a mere word".* (emphasis supplied)

According to the Court, the provisions of the section indicate various heads of corrupt practice, such as, obtaining by a candidate or his agent or by any other person, any assistance, or procuring such assistance or abetting of such assistance or attempting to obtain or procure such assistance. The material facts, therefore, were required to be alleged as to whether the candidate obtained or procured or abetted or attempted to obtain or procure such assistance.

The Court stated;

> *"Reading Paragraph 16 of the election petition one will search in vain to find out as to whether the allegations against the appellant are in regard to the assistance under both heads or either head from each of the six persons mentioned there.* One will speculate as to whether the appellant obtained and procured or attempted to obtain and procure assistance from each or some of the persons mentioned there. Obtaining or procuring or attempting to obtain or procure assistance are separate and independent forms of corrupt practice. One will guess as to whether the allegations are that the appellant committed all or one or more of the corrupt practices of obtaining, procuring, attempting to obtain or procure assistance from each of the persons mentioned there. One will also conjecture and hazard as to

A what assistance was obtained or procured or attempted to obtain or procure from each of the persons mentioned there, for the furtherance of the prospects of that candidate's election." (emphasis supplied)

Merely alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute and it B will have no meaning unless and until facts are stated to show what that assistance was and how the prospect of election was furthered by such assistance. According to the Court, material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared could the Court have given a verdict in favour of the election C petitioner? In the opinion of the Court, the answer was in the negative because the allegations in the petition did not disclose any cause of action.

Reference was made to another leading decision of this Court in *Udhav Singh* v. *Madhav Rao Scindia,* [1976] 2 SCR 246: [1977] 1 SCC 511. As we have already seen above, both the Code and the Act employ the expression D 'material facts'. Whereas Rule 2 of Order VI of the Code uses the term 'particulars', clause (b) of sub-section (1) of Section 83 of the Act uses the phrase 'full particulars'. But, neither the Code nor the Act employs the expression 'material particulars'. Though the phrase 'material particulars' had been used by this Court in some cases [see *Pratap Singh* v. *Rajinder Singh & Anr.*; [1975] 1 SCC 535 : AIR (1975) SC 1045; *D. Venkata Reddy* v. *R. Sultan* E *& Ors.*; [1976] 2 SCC 455 : AIR (1976) SC 1599, probably for the first time, distinction was sought to be made between the two in *Udhav Singh.*

Considering the ambit and scope of Section 83 of the Act in *Udhav Singh,* the Court stated;

F

"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 O.6, R.2, while clause (b) 257 is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because G 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

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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. A

All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action nor his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded and failure to plead even a single material fact amounts to disobedience of the mandate of sec. 83(1) (a). B C D

"Particulars", on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of clause (b) of s. 83(i) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative." E

The Court observed that the distinction between 'material facts' and 'material particulars' was pointed out by the Court in several cases including *Hardwari Lal.* We have gone through those cases and in none of those cases, the distinction was drawn between *'material facts'* and *'material particulars'*. What had been done by this Court was drawing of distinction between 'material facts' and 'particulars' or 'full particulars'. F G

In *K.M. Mani* v. *P.J. Antony & Ors.*, [1979] 2 SCC 221, this Court indicated that while alleging corrupt practice in an election petition, substance of the allegation alone is material. The allegations must be read as a whole. Precise material or contemporaneous record of the averments regarding allegations should be produced. But, when it comes to proof, since commission H

A of corrupt practice at an election is a very serious matter not only for the candidate but also for the public at large as it relates to the purity of electoral process and is in the nature of quasi-criminal proceedings, it must be established beyond reasonable doubt and not merely by preponderance of probabilities.

In *Azhar Hussain* v. *Rajiv Gandhi,* [1986] Supp SCC 315 : AIR (1986) B SC 1253, it was observed that the law as to corrupt practice is well settled. In the context of a charge of corrupt practice, it would mean that the basic facts which constitute the ingredients of a corrupt practice alleged by the petitioner must be specific in order to succeed on the charge. Whether in an election petition, a particular fact is material or not and as such required to C be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded. Failure to plead even a single material fact would amount to non-compliance with the mandate of Section 83(1)(a) of the Act and the election petition is liable to be dismissed.

D The Court, however, drew the distinction between 'material facts' and 'particulars'. According to the Court, 'material facts' are facts, if established would give the petitioner the relief prayed for. The test is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on E the basis of the facts pleaded in the petition.

In *S.A. Sapa & Ors. etc.* v. *Singora & Ors. etc.,* [1991] 3 SCC 375, this Court held that Section 83(1)(a) stipulates that every election petition shall contain a concise statement of material facts on which the petitioner relies. It means that entire bundle of facts which would constitute a complete cause F of action must be concisely stated in the petition. Clause (b) of the said section then requires an election petitioner to set forth 'full particulars' of any corrupt practice alleged against a returned candidate. According to the Court, those particulars are obviously different from the 'material facts' on which the petition is founded and are intended to afford to the returned candidate an G adequate opportunity to effectively meet with such an allegation. The underlying idea in requiring the election petitioner to set out in a concise manner all the 'material facts' as well as 'full particulars', where commission of corrupt practice is complained of, is to delineate the scope, ambit and limits of the inquiry at the trial of the election petition.

H The Court also observed that the power of amendment granted by

Section 86(5) of the Act is relatable to clause (b) of Section 83(1) and is coupled with a prohibition, namely, that the amendment will not relate to a corrupt practice not already pleaded in the election petition. The power is not referable to clause (a) of Section 83(1) as the plain language of Section 86(5) confines itself to the amendments of 'particulars' of any corrupt practice alleged in the petition and does not extend to 'material facts'. It is clear from the trinity of clauses (a) and (b) of Section 83 and sub-section (5) of Section 86 that there is distinction between 'material facts' referred to in clause (a) of Section 83 and 'particulars' referred to in clause (b) of the said section and sub-section (5) of Section 86 applies to the latter and not to the former.

In *Gajanan Krishnaji Bapat & Anr.* v. *Dattaji Raghobaji Meghe & Ors.*, [1995] 5 SCC 347, the Court stated that Section 83 provides that the election petition must contain a concise statement of material facts on which the petitioner relies. He must also set forth full particulars of the corrupt practice including as full a statement as possible of the name of the parties alleged to have committed such corrupt practice and the date and place of the commission of each of such corrupt practice. The section has been held to be mandatory which requires first a concise statement of material facts and then full particulars of the corrupt practice, so as to present a full picture of the cause of action.

In *L.R. Shivaramagowda, etc.* v. *T.M. Chandrashekar etc.*, [1999] 1 SCC 666 : JT (1998) 8 SC 278, referring to *Udhav Singh*, the Court used two expressions, 'material facts' and 'material particulars' and held that while failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time limit prescribed for filing the election petition is over, absence of material particulars can be cured at a later stage by an appropriate amendment.

In *V.S. Achuthanandan* v. *P.J. Francis & Anr.*, [1999] 3 SCC 737, referring to *Udhav Singh,* the Court drew the distinction between 'material facts' and 'material particulars'. It was observed that material facts are preliminary facts disclosing cause of action and they have to be specifically pleaded. Failure to do so would result in rejection of the election petition. Defect in material particulars, however, can be cured at a later stage by amendment and the petition cannot be dismissed in limine on the ground of such defect.

In *V. Narayanaswamy* v. *C.P. Thirunavukkarasu,* [2000] 2 SCC 294 : JT (2000) 1 SC 194, again the Court discussed two phrases 'material facts' and

A 'material particulars'. Drawing the distinction between the two, the Court held that while failure to plead material facts was fatal to the petition, absence of material particulars could be cured subsequently.

In *Hari Shanker Jain* v. *Sonia Gandhi,* [2001] 8 SCC 233, referring to *S.N. Balakrishna,* the Court held that quoting the words of the section like
B chanting of a *mantra* does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. Failure to plead 'material facts' is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.
C The Court also stated that it is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else.

D In *Santosh Yadav* v. *Narender Singh,* [2002] 1 SCC 160, the Court stated that an election petition must set out all material facts wherefrom inferences vital to the success of the election petitioner and enabling the court to grant the relief prayed for by the petitioner can be drawn subject to the averments being substantiated by cogent evidence. Concise and specific pleadings setting out all material facts and then cogent affirmative evidence being
E adduced in support of such averments, are indispensable to the success of an election petition. An election petition, if allowed, results in avoiding an election and nullifying the success of a returned candidate. It is a serious step and, therefore, an election petition seeking relief on the ground of corrupt practice must precisely allege all material facts on which the petitioner relies
F in support of the plea.

In *Mahadeorao Sukaji Shivankar* v. *Ramaratan Bapu & Ors.,* [2004] 7 SCC 181, dealing with 'material facts' and 'particulars', one of us (Thakker, J.) stated;

G "Now, it is no doubt true that all material facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by Clause (a) of Rule 11 of Order VII of the Code. The question, however, is as to whether the petitioner had
H set out material facts in the election petition. The expression "material

facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts are those facts upon which a party relies for his claim or defence. In other words, material facts are facts upon which the plaintiff's cause of action or defendant's defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party.

But, it is equally well settled that there is distinction between "material facts" and "particulars". Material facts are primary or basic facts which must be pleaded by the party in support of the case set up by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise."

As we have already observed earlier, in the present case, 'material facts' of corrupt practice said to have been adopted by the respondent had been set out in the petition with full particulars. It has been expressly stated as to how Mr. Chahal who was a Gazetted Officer of Class I in the Government of Punjab assisted the respondent by doing several acts, as to complaints made against him by authorities and taking of disciplinary action. It has also been stated as to how a Police Officer, Mr. Mehra, who was holding the post of Superintendent of Police helped the respondent by organizing a meeting and by distributing posters. It was also alleged that correct and proper accounts of election expenses have not been maintained by the respondent. Though at the time of hearing of the appeal, the allegation as to projecting himself as 'Maharaja of Patiala' by the respondent had not been pressed by the learned counsel for the appellant, full particulars had been set out in the election petition in respect of other allegations. The High Court, in our opinion, was wholly unjustified in entering into the correctness or otherwise of facts stated and allegations made in the election petition and in rejecting the petition holding that it did not state material facts and thus did not disclose a cause of action. The High Court, in our considered view, stepped into prohibited area of appreciating the evidence and by entering into merits of the case

which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable.

We, therefore, hold that the High Court was wrong in dismissing the election petition on the ground that material facts had not been set out in the election petition and the election petition did not disclose a cause of action. The order passed by the High Court, therefore, deserves to be quashed and set aside.

For the foregoing reasons, the appeal deserves to be allowed and is, accordingly, allowed. The order passed by the High Court is set aside. The Election Petition No. 26 of 2002 is restored to file, and is remitted to the High Court to decide the same on merits. Since the election took place in the beginning of 2002 and the petition was dismissed on preliminary ground as not maintainable and is required to be decided on merits, the High Court is requested to give priority and dispose it of expeditiously. In the facts and circumstances of the case, however, there shall be no order as to costs.

V.S.S. Appeal allowed.