

Commissioned Officer may compete for the same job. The soldier may secure a higher position in the merit list. According to Clause (2) of Rule 5, the *inter se* seniority of all candidates who are appointed against the reserved vacancies under rule 3 and allotted to a particular year has to be determined on the basis of their dates of birth. Thus, a soldier who may be at No. 1 in order of merit and who may have been born earlier than the Emergency Commissioned Officer, would be senior. However, according to the interpretation placed on the rules by the appellant, the officer alone shall be entitled to the benefit of the military service for the purpose of seniority. If this contention is accepted, the officer would become senior. The result would be contrary to that contemplated under Clause (2). Thus, the interpretation as placed on the rules by the appellant would lead to a contradictory result.

(21) In view of the above, we hold that the respondent was entitled to the benefit of seniority as admissible under Rule 5 despite the fact that he was not released as an Emergency Commissioned Officer or a Short Service Regular Commissioned Officer.

(22) Resultantly, we uphold the decision of the learned Single Judge inasmuch as the writ petition was allowed. However, the decision is based on reasons which are different from those adopted by the learned Single Judge. Consequently, the appeal is dismissed. However, we make no order as to costs.

J.S.T.

Before K.K. Srivastava, J

RAVINDER SINGH,—*Petitioner*

versus

JANMEJA SINGH & OTHERS,—*Respondents*

E.P. No. 4 of 1997

3rd June, 1999

Representation of People Act, 1951—Ss. 80, 81 & 100—Pleadings in election petition—Whether different from pleadings in suit—Material facts not disclosed—Allegations of corrupt practices against elected candidate—No averment in the petition connecting him with those averments—Maintainability of election petition.

Held that the law relating to the pleadings in a suit is entirely different than the law relating to the averments made in an election petition. The Hon'ble Supreme Court in the cases has categorically

taken the view that in an election petition, there must be concise statement on material facts and the particulars relating to the corrupt practice relied on by the election petitioner. The amendment of any of the grounds explaining or adding any material facts relating to the corrupt practice, after the filing of the election petition is in law impermissible.

(Para 42)

Further held, that the averments made in the election petition lack in any material allegations and full & better particulars about the involvement either directly or indirectly of respondent No. 1 behind the representation allegedly made by Mrs. Rupinder Kaur or in taking up the matter with the authorities. Moreover, this news item, which was got published on 16th September, 1989 much prior to the date of polling in the present case i.e. of more than seven years ago, was not likely to adversely effect the prospects of the petitioner in February, 1997 elections. This news item is too remotely connected with the elections of February, 1997, in which the respondent No. 1 was declared elected by defeating the petitioner.

(Para 23)

Further held, that in the election petition, there are no averments made that the respondent No. 1 got the pamphlet published on behalf of the Front of the Joint Employees, Punjab or he was in any way directly or indirectly concerned with the publication of the said pamphlet. The election petition lacks in material facts and complete particulars regarding the publication of this pamphlet and connecting respondent No. 1 with the same. Apart from this, there is no date mentioned in this pamphlet though it refers to the polling scheduled to take place on 7th February, 1997. It cannot be assumed for the purpose of election petition that since the pamphlet appealed to the voters to vote for respondent No. 1, the same was prepared or issued with his consent by the said Joint Front of the five lac employees.

(Para 28)

Further held, that there can be no manner of doubt that the election petition discloses no cause of action and it must on that ground be dismissed.

(Para 59)

Gulshan Sharma, Advocate for the Petitioner

H.S. Hooda, Sr. Advocate with M.L. Saggar Advocate for
respondent No. 1

JUDGMENT

K. K. Srivastava, J

(1) The petitioner Ravinder Singh contested the election as a candidate of the Congress Party to the Legislative Assembly of Punjab as its member from constituency No. 96, Ferozepur Cantt., held in the month of February, 1997. The respondent No. 1, Shri Janmeja Singh, was a candidate at the said election set up by the Akali Dal (Badal). The polling was held on 7th February, 1997. The counting took place on 9th February, 1997. In all there were six candidates, which remained in the field for the contest of election as Member Legislative Assembly of the State of Punjab. Besides the petitioner and respondent No. 1 the other candidates in the fray were respondents No. 2 to 5, namely Lal Singh, Khairati Lal, Gurpiar Singh and Ratinder Singh. The Returning Officer declared Shri Janmeja Singh as duly elected Member of the Legislative Assembly of the State of Punjab, having secured the highest votes amongst the other candidates. Respondent No. 1 secured 38281 votes while the petitioner secured 36,551 votes. The other candidates secured votes as under :—

Name	No. of votes polled in favour of the candidate
Sh. Lal Singh son of Sh. Naginder Singh (respondent No. 2)	7,840
Sh. Kharaiti Lal son of Dev Raj (respondent No. 3)	314
Gurpiar Singh son of Arjan Singh (respondent No. 4)	65
Ratinder Singh son of Mohinder Singh (respondent No. 5)	3,753

(2) The respondent No.1 defeated the petitioner by a margin of 1730 votes. The total votes which were polled in the elections were 87947. The number of invalid votes was 1143 leaving the total number of valid votes as 86804.

(3) The petitioner filed the election petition seeking the election of the returned candidate/respondent No. 1 declared void on the various grounds mentioned therein and for further declaration that the respondent No. 1 has been guilty of committing corrupt practices and

sought his disqualification for a period of six years. The petitioner also sought a declaration that he has been duly elected as Member Legislative Assembly from the said constituency.

(4) The allegations of corrupt practice, alleged to have been committed by respondent No. 1 were mentioned in the petition. These allegations can be put in two sets of facts. The first set of facts is in the respondent No.1 distributing photostat copies of annexures A1, A2, A3, A4, A5, A6 and A7 amongst the voters in the constituency with a view to tarnish the image of the petitioner in the eyes of the public. It was alleged in the petition that the contents of these annexures were so devastating that a large number of voters, who read these annexures (A1 to A7), either decided not to vote at all and in any case not in favour of the petitioner. It was alleged that the circulation of these annexures was done with a calculated move to prejudice the prospects of the petitioner in the said elections. The averments made in respect of this set of facts are contained in paragraphs 9(i), 9(ii), 11 to 27. The second set of facts regarding the allegation of corrupt practice against respondent No. 1 is about distributing cash amount to his supporters for being given to such voters, who would agree to vote in the said election in favour of respondent No.1. These allegations are contained in paragraphs 28 to 39. In para 40, the facts were summarised in this regard and it was mentioned, *inter alia*, that from the contents mentioned in paragraphs 28 to 39, it is clear beyond doubt that respondent No. 1 has purchased 3575 votes by paying Rs. 7.5 lacs at different places of the constituency and he spent the whole night in distributing money and indulged in corrupt practice to win the election by hook or crook.

(5) The returned candidate/respondent No. 1 filed his written statement, wherein he categorically denied the allegations made in the petition against him regarding indulging in corrupt practices. A preliminary objection was taken that paragraphs 5 to 7, 9, 10, 12 to 14A, 15 to 21, 23, 24 and 26 to 40 were liable to be struck off as being unnecessary, irrelevant, false, frivolous, imaginary and concocted and not disclosing complete cause of action for trial of the election petition. It was also contended that the averments made in paragraphs 6, 7, 9, 10, 12 and 13 did not disclose any cause of action. Regarding the remaining paragraphs, it was alleged that they were false, imaginary and concocted ones and the trial of the election petition on those averments will be an abuse of the process of law. On merits, the allegation made in the petition were categorically denied.

(6) On the pleadings of the parties, six issues were framed on 12th September, 1997. Learned counsel for respondent No.1 contended

that issues No. 4 and 5 be treated as preliminary and be heard prior to the petition being listed for evidence. Issues No. 4 and 5 were framed as under :-

- (4) Whether the averments made in paras 5 to 7, 9 to 12 and 14 of the petition are liable to be struck off as being unnecessary and not disclosing any cause of action ?
- (5) Whether the election petition lacks in material facts and particulars, necessary to constitute complete cause of action for setting aside of the election of the respondent No. 1 within the meaning of Section 83, read with Sections 100 (1) (d) (iv) and 123 of the Representation of People Act ?

(7) Subsequently, Shri H. S. Mattewal learned Senior Advocate made a statement on 14th July, 1998 about the petitioner not pressing for the prayer relating to the recounting of the votes and stated that the averments in this regard in any of the paragraphs of the petition may be treated as not pressed. In view of this statement, issue No.3, which was initially framed as under :—

3. Whether illegalities/irregularities were committed in the counting of votes (as alleged in sub-paras (iii), (iv) and (vi) of para 9 of the election petition, viz. :—
 - (i) the votes polled in favour of the petitioner were improperly rejected, if so, its effect ?
 - (ii) votes marked in favour of the petitioner were wrongly counted in favour of the respondent No. 1/returned candidate, if so, its effect ?

was deleted *vide* order dated 16th December, 1998. As a result of the deletion of issue No. 3, the remaining issues No. 4, 5 and 6 were ordered to be re-numbered as issues No. 3, 4 and 5 respectively. Issue No. 4, which was re-numbered as No. 3, was also re-casted so as to read as under :—

3. Whether the averments made in paragraphs 7, 9(i) & (ii), 10, 11, 12 and 14 of the election petition are liable to be struck off as being unnecessary and not disclosing any cause of action ?

(8) Learned counsel for the petitioner and the learned counsel for respondent No. 1 addressed their arguments on the recasted issue No. 3 and re-numbered issue No. 4.

(9) So far as issue No. 3 is concerned, the contention of learned counsel for the respondent No. 1 is that the averments made in paragraphs 7, 9(i), 9(ii), 10 to 12 and 14 of the election petition are liable to be struck off as being unnecessary and not disclosing any cause of action. Issue No. 4 is about the election petition lacking in material facts and particulars necessary to constitute complete cause of action for setting aside of the election of respondent No. 1 within the meaning of Section 83 read with Sections 100(1) (d) (iv) and 123 of the Representation of People Act. I will take up the averments made in various paragraphs referred to in issue No.3 to consider if the same were liable to be struck off as being unnecessary and not disclosing any cause of action. The allegation made in para 7 of the election petition, *inter alia*, is as under :—

“That the respondent No. 1 committed various irregularities a day before the polling as well as at the time of counting of votes so as to be declared elected by hook and crook.”

(10) In para 9(i) and 9(ii), the petitioner alleged as under :—

“9. That the petitioner submits that the election of the returned candidate Sh. Janmeja Singh respondent No. 1 is void, *inter alia*, on the following grounds and is liable to be set aside under Section 100 of the Act.:—

- (i) That the corrupt practices of the publication and distribution of money by the returned candidate, his agents and by other persons with the consent of the returned candidate of various statements of facts which falls and which relates to the personal character and conduct of the petitioner, which is believed to be false and did not believe to be true, were got photostat and distributed. Such material was clearly calculated to prejudice the prospect of the petitioner's election. The material fact and full particulars of such corrupt practices are set out in subsequent paras of this petition.
- (ii) That the petitioner further submits that the result of the election in so far as it concerned the returned candidate has been materially affected on various grounds set out hereunder and on scrutiny of evidence, it will be found that it is not the returned candidate but the petitioner is entitled to be declared elected. The petitioner therefore submits that the election of the returned candidate is liable to be set aside under section 100 of the Act and the

petitioner claims a declaration under section 101 of the Act that the petitioner has been duly elected because, in fact, the petitioner is entitled to be declared elected."

(11) Para 10 of the election petition runs as under :—

"That certain material facts which have bearing on all the grounds which are being taken in this petition may be stated for the sake of convenience and better understanding at this stage itself.

- (i) That the petitioner is an agriculturist and has been taking great interest in politics right from 1980 when he became member of the Market Committee, Ferozepur Cantt, Tehsil and District Ferozepur. In 1983 the petitioner became the President of the District Youth Congress, Ferozepur. In 1984 petitioner became Manager of the Malwa Khalsa Senior Secondary School, Ferozepur and thereafter in 1986 the petitioner became President of the Dasmesh Public School, Ferozepur City. In 1988 the petitioner became the President of the District Wrestling Association, Ferozepur. In 1989 the petitioner became General Secretary of the "PUNJAB PRADESH CONGRESS KISAN DAL". In 1991 the petitioner contested the aborted Assembly Election of Punjab from 96—Ferozepur Cantt Assembly Constituency. In 1992 the petitioner contested the Assembly Election and was declared elected as an M.L.A. from Ferozepur Cantt Assembly constituency. From the above it is clear that the petitioner has a very long and outstanding career in politics."

(12) Para 11 of the petition reads as under :—

"That during long career of politics the petitioner has been continuously facing opposition from his opponents particularly respondent No.1, i.e. a returned candidate who also contested the aborted Assembly Election of Punjab in 1991 against the petitioner from 96—Ferozepur Cantt Assembly Election of Punjab in 1991 against the petitioner from 96—Ferozepur Cantt Assembly Constituency as Akali Dal (Badal) candidate. The respondent No. 1 had earlier in the year 1989 engineered a conspiracy to defame the petitioner by misguiding the then Akal Takhat Jathedar Mr. Darshan Singh and got published a news item in the Daily Tribune dated 16th September, 1989 but the petitioner promptly reacted to the statement of the

then Akal Takhat Jathedar Mr. Darshan Singh and made a statement to the effect that the news item published in the Daily Tribune dated 16th September, 1989 is false and has been made to malign the petitioner and his party and the statement of the petitioner denying the charges was published on 17th September, 1989 in the Daily Tribune in which the petitioner told the then Jathedar of the Akal Takhat Mr. Darshan Singh to retract his statement failing which he would file a defamation suit.”

(13) Para 12 of the election petition alleged as under :—

“That the material facts and full particulars of the corrupt practice by the returned candidate against the personal character and the conduct of the petitioner are as follows :—

- a. That a large number of photo copies of News Item published in the Daily Tribune dated 16th September, 1989 and 17th September, 1989 were distributed in every village and town of the constituency. In these News Items very derogatory and totally false statement facts have been made against the petitioner. Such false facts and derogatory statements were as follows :—
 - (i) In the News Item dated 16th September, 1989 the petitioner was described as a land grabber and respondent No. 1 distributed photo copies of this news item in the Constituency a day before the election and dubbed the petitioner as a land grabber.
- b(i) The respondent No. 1 also distributed the news item published in the Tribune dated 17th September, 1989 whereby the petitioner had denied the allegations but had challenged the then Jathedar of Akal Takhat to retract his statement failing which defamation suit will be filed by the petitioner. This news item was also distributed in every part of the Constituency by respondent No. 1 in which the respondent No. 1 vehemently told people of the Constituency to the effect that the petitioner had challenged the then Jathedar of the Akal Takhat hence no body should vote for him in the election in this way the returned candidate has brought the dignity of Akal Takhat in the election, so that his prospects in the election are brightened and the petitioner is defeated in the election.

These news items published in the Daily Tribune, Chandigarh dated 16th September, 1989 and 17th September, 1989 are being attached herewith this petition as Annexures A/1 and A/2.

- (ii) That the respondent No. 1 has also distributed in every village and town of Constituency a large number of photo copies of News Item published in the Punjabi Tribune dated 31st October, 1996 whereby the petitioner has been alleged to have beaten Mehar Singh Sandhu, Vice President, Shiromni Akali Dal Badal, Ferozepur and his family members including his son, wife and daughter-in-law and in this news item the respectables have been dubbed as 'Gundas' of the petitioner. The distribution of large number of copies of this news item by respondent No. 1 was aimed to brighten his prospects in the election and to defeat the prospects of the petitioner in the election. One of the original photo copy actually circulated is being filed alongwith this petition as Annexure A/3. The English translation of this news item is Annexure A/4.
- (iii) That the respondent No. 1 has also distributed a large number of photo copies of a pamphlet in every village and town of the constituency purported to have been issued by the front of the Joint Employees Punjab a day before the election in which the false statement of facts have been made against the petitioner. In these pamphlets, the petitioner has been dubbed as corrupt, and have also been alleged to have been threatening the employees, dislodging the families and spreading the gundaism. The respondent No. 1 declared openly in every part of the constituency that this pamphlet has been issued by the Joint Front of five lac employees of Punjab and in this way respondent No. 1 had lowered the image of the petitioner in the eyes of the voters so as to brighten his prospects in the election. One of the original photo copy of this pamphlet circulated by respondent No. 1 is being attached herewith this petition as Annexure A/5 and its true translation as A/6.
- (iv) That the respondent No. 1 has also distributed a large number of photo copies of a letter dated 30th June, 1990 issued by the then President, District congress Committee, Ferozepur, Mr. Gurnaib Singh Brar in which false statement has been made against the petitioner to the effect that a criminal case of theft has been registered in police

station Ghal Khurd against the petitioner and also to the effect that the petitioner was detained by the C.I.A. Staff, Ferozpur for interrogation for harbouring terrorists. The respondent No. 1 openly declared in the entire constituency by visiting villages and towns a day before the election that in this letter the petitioner has been dubbed as criminal by his own party leader, i.e. Mr. Gurniab Singh Brar. By distributing photo copies of this letter the respondent No. 1 has misguided the voters of the constituency to brighten his prospects in the election and to defeat the prospects of the petitioner in the election and in this way he has indulged into corrupt practice in the election. One of the original photo copies actually circulated is being attached herewith this petition as Annexure A/7.

- (v) That the contents mentioned in the annexures A/1 to A/7 are false and are not true and have been engineered in conspiracy against the petitioner from time to time so as to tarnish his image in the eyes of public. The contents are so devastating that large number of voters who read these photo copies Annexures A/1 to A/7 either decided not to vote at all and, in any case not in favour of the petitioner and thus these statements were clearly calculated to prejudice the prospects of the petitioner being elected.
- (vi) That the respondent No. 1 and his supporters namely Joginder Singh *alias* Jindu Vice President of Ferozpur Cantonment Board beaten up jointly Nishan Singh and other supporters of the petitioner in the town of Ferozpur cantt in the morning hour i.e. at about 8 A.M. on the day of polling i.e. 7th February, 1997, so as to terrorise the Urban voters of the town and in this way a good number of voters of the town did not come out of their houses to vote sensing trouble in the urban areas of the constituency and this episode in the Ferozpur Cantonment that too in the heart of the town, i.e. Cantonment Board's School Ferozpur Cantt. near Amar Talkies Ferozpur Cantt was intentionally engineered by the respondent No. 1 so as to defeat the prospects of the election of the petitioner.

(14) Para 13 of the election petition made the following allegations :-

“That the returned candidate and with his consent his workers and supporters distributed the aforesaid photo copies of news

items and pamphlets, i.e. Annexures A/1 to A/7 throughout the constituency on 6th February, 1997. The workers and supporters of the returned candidate distributed the photo copies of news items and pamphlets A/1 to A/7 in his presence.”

The allegations made in para 14 are as under :—

“That the returned candidate distributed the above photo copies of news items and pamphlets, i.e. Annexures A/1 to A/7 by himself in many places and arranged distribution throughout the constituency. The petitioner, however, wants to confine his case to only those places where the returned candidate himself was found to be distributing the above mentioned photo copies of News Items and pamphlets Annexures i.e. A/1 to A/7. The photo copies of News Items and pamphlets, i.e. A/1 to A/7 where these were distributed by the workers and supporters of the returned candidates in his presence obviously implying his consent.

On 6th February, 1997 at about 8.30 A.M. the returned candidate accompanied by :—

1. Mehar Singh Sandhu son of Bhag Singh r/o Basti Bhag Singh.
2. Babu Singh s/o Balwant Singh r/o village Vadni Gulab Singh.

And some others visited village Ratta Khera and distributed the photo copies of news items and pamphlets, i.e. Annexures A/1 to A/7 at the Sath (common place) of the village and also went from door to door for appealing to the voters to vote for him. At the same time the returned candidate handed over the aforesaid photo copies of news items and pamphlets copies of which are A/1 to A/7 to the voters. The persons to whom these photo copies were given were :—

- (i) Harbinder Pal Singh s/o Late S. Sant Singh r/o village Ratta Khera.
- (ii) Baldev Singh son of Basant Singh r/o village Ratta Khera.

(15). So far as the averments made in para 7 of the election petition are concerned, they are general in nature, alleging various irregularities committed by respondent No. 1, a day before the polling, as alleged at the time of counting of votes, so as to declared as elected by hook or crook. In view of the stand taken by learned counsel for the petitioner Mr. H.S. Mattewal, Senior Advocate, the petitioner has given up his case regarding the alleged irregularities being committed at the time of counting of votes and as such certain paras in the election petition as

also the issue regarding the irregularities committed at the time of counting of votes were deleted. Therefore, the allegations made in para 7 in so far as it relates to counting of votes is concerned, stands given up in view of the statement of Mr. H.S. Mattewal.

(16) So far as the first part of the submission made in para 7 of the election petition is concerned, it is quite general and vague in nature. Para 7 of the petition, if taken by itself, does not disclose any cause of action qua the petitioner to file this election petition.

(17) So far as the allegations made in paras 9(i) and 9(ii) are concerned, they relate to the corrupt practice allegedly committed by the respondent No. 1 and the details of which are averred in the subsequent paragraphs of the petition. The allegations made in para 9(i) and (ii) are in a summarised and concise form of the allegations of corrupt practice set out in the subsequent paragraphs of the election petition and they are to be read alongwith other paragraphs of the writ petition. Similarly, the allegations made in paras 11, 12 and 14 of the petition are to be read alongwith the remaining paras of the election petition, as they relate to the corrupt practice allegedly committed by the respondent No.1. The allegations made in para 10 are regarding the personal and political life of the election petitioner and showing his interest in politics from 1980 onwards and about his being appointed General Secretary of the Punjab Pradesh Congress Kisan Dal. In this para it has been averred that the petitioner was duly elected M.L.A. from Ferozepur Cantt Assembly Constituency. So far as these averments made in para 10 of the petition are concerned, they have the bearing only on the personal and political status of the petitioner and the same cannot be held to be such which are likely to embarrass the respondent No. 1. Therefore, the allegations made therein are not liable to be struck of.

(18) In so far as the averments made in paragraphs 9(i), 9(ii), 11, 12 and 14 are concerned, they are to be taken up alongwith issue No.4, which is in respect of the election petition lacking in material facts and particulars necessary to constitute complete cause of action for setting-aside the election of respondent No. 1. Accordingly issue No.4 is to be taken up for consideration and in case Issue No.4 is decided in favour of the respondent No.1 then the fate of the averments made in the aforesaid paragraphs, i.e. 9(i), (ii), 11, 12 and 14 would be decided. In other words, the relevant consideration affecting these paragraphs is to be made in respect of the two sets of averments made in the election petition regarding existence of corrupt practice, allegedly adopted by respondent No. 1/Sh. Janmeja Singh.

(19) The first set of instances of corrupt practice as set out in the election petition is about respondent No. 1 distributing photo copies of Annexures A1 to A7 in the Assembly Constituency aforesaid on 6th February, 1997, i.e. a day prior to the date of polling, which was scheduled to take place on 7th February, 1997. It will be useful to refer briefly to the contents of Annexures A1 to A7, which have been annexed with the election petition and to *prima facie* consider if these annexures are in any way attributed to the respondent No. 1 and whether the petitioner has given material facts and full and better particulars regarding the involvement of the respondent No. 1 or his supporters, with his consent, in distributing the photo copies of annexures A1 to A7. Apart from it, the adverse effect, if any, on the poll prospects of the petitioner by virtue of the alleged distribution of these annexures has also to be considered, *prima facie*, at this stage.

(20) Annexures A1, A2 and A3 are the extracts of the news items appearing in the newspapers 'The Tribune' dated 16th August, 1989, 17th September, 1989 and 'The Punjabi Tribune' dated 31st October, 1996 respectively. The newspapers, 'The Tribune' as well as 'The Punjabi Tribune' are in wide circulation in the State of Punjab. The news items published in 'The Tribune' dated 16th August, 1989 and 17th September, 1989 are not in any way related to the respondent No. 1. In other words, these two annexures (A1 and A2) were not *prima facie* alleged to have been got published by the respondent No. 1. There are no allegations made in the election petition that respondent No. 1 or any of his supporter, with his consent, was the person who got these news items published. Likewise the news item appearing in 'The Punjabi Tribune' dated 31st October, 1996 (copy annexure P3) is also not attributed to respondent No. 1 or to any of his supporters, with his consent.

(21) The news item dated 16th September, 1989 (annexure A1) refers to Akal Takhat Jathedar, Mr. Darshan Singh bringing to the notice of the Punjab Government and the State Congress (I) leadership a case of harassment of a women allegedly by the Youth Congress (I) President of Ferozpur district. In third para of the news item, it was mentioned :—

“In her attested representation, Mrs. Rupinder Kaur, who is hospitalised, alleged that Mr. Ravinder Singh and his “muscle-men” had forcibly occupied her land about eight months ago. Later when she complained to the Adviser to the Governor, J. F. Ribeiro, he helped her in getting back the land. However, once again the Congress (I) leader had occupied her land and

was threatening her of "dire-consequences" the representation said."

(22) In fourth para of this news item (annexure A1), it was, *inter alia*, alleged :—

"A mother of two children, Mrs. Rupinder Kaur said she and her brother Gurdeep Singh were going on a scooter on September 8 when a jeep load of armed persons led by Mr. Ravinder Singh attacked them. They were beaten up with rifle butts and lathis before some villagers intervened and saved them. She suffered injuries on the head and was admitted to Civil Hospital, Zira."

(23) The reference to Mr Ravinder Singh in this news item is to the election petitioner, as alleged by the petitioner himself. A careful reading of the said news item will go to show that the aforesaid matter was taken up by the Akal Takhat Jathedar Mr. Darshan Singh and the lady concerned, i.e. Mrs. Rupinder Kaur had filed her representation, making allegations against the petitioner. The news item refers to the demand of enquiry by the C.P.I. leader, Mr. Satya Pal Dang. The averments made in the election petition lack in any material allegations and full and better particulars about the involvement either directly or indirectly of respondent No. 1 behind the representation allegedly made by Mrs. Rupinder Kaur or in taking up the matter with the authorities. Moreover, this news item, which was got published on 16th September, 1989 much prior to the date of polling in the present case, i.e. of more than seven years ago, was not likely to adversely effect the prospects of the petitioner in February, 1997 elections. This news item is too remotely connected with the elections of February, 1997, in which the respondent No. 1 was declared elected by defeating the petitioner.

(24) Annexure A2 is, as a matter of fact, a denial of the news item appearing in The Tribune dated 17th September, 1989, which was got published by the petitioner Mr Ravinder Singh Babbal himself, who was at that time President of the Ferozepur District Youth Congress (I). The respondent No. 1 could not be benefited in any manner even remotely by circulating photo copies of this news item (annexure A2), which was published apparently at the behest of the petitioner himself. In this contest, it may be metioned that there is no material allegation and full and better paticular mentioned in the election petition about respondent No. 1 being directly or indirectly connected with this news item and secondly regarding the adverse effect on the election prospects of the petitioner.

(25) Now coming to Annexure A3, which was published in The Punjabi Tribune on 31st October, 1996, i.e. about three months prior to the date of polling, which took place on 7th February, 1997, it relates to the allegation of beating of the family member of an Akali leader by M.L.A. This news item was published by a correspondent from Talwandi Bhai, reporting about the allegations made by Jatinder Singh Sandhu son of Mehar Singh Sandhu, resident of Basti Bhag Singh, the Senior Vice-President of Shiromani Akali Dal (Badal), Ferozepur Unit, against the petitioner, Ravinder Singh Babbal, the then M.L.A. of Ferozepur, Assembly Constituency. It alleged that Ravinder Singh Babbal alongwith some of his companions caused injuries to his father Sh. Mehar Singh, his mother Paramjit Kaur, wife Sandeep Kaur and two children in the area of Police Station Sadar Moga. Towards the end of the news item, it was mentioned, *inter alia*, as under :—

“__ When the gunmen of Babbal came and told the police officials that he is an M.L.A. from Cantt. then the police instead of taking any action just put off the matter by recording a report. They made allegation that Babbal has attacked Mehar Singh because of his being Akali Leader and therefore, legal action may be initiated against him under Section 307.”

(26) The news item relates to the allegations made by Jatinder Singh Sandhu aforesaid. There are no allegations made in the petition regarding any direct or indirect link of Jatinder Singh Sandhu with the respondent No. 1 and further that the respondent No.1 could get benefit by distribution of the photo copies of this news item. In other words, this news item did not materially affect the election prospects of the petitioner in the first instance and at any rate at the behest of respondent No. 1 nor it boosted the prospects of respondent No. 1 in the aforesaid elections.

(27) Annexure A4 is the translation of the news published in the The Punjabi Tribune, Annexure A3, referred to above.

(28) Annexure A5 is a pamphlet containing an appeal to the voters in the Assembly Constituency of Ferozepur, which was made by the Joint Front of the five lac employees of the Punjab, not to support the candidature of the petitioner, the then sitting M.L.A. In the election petition, there are no averments made that the respondent No. 1 got this pamphlet published on behalf of the Front of the Joint Employees, Punjab or he was in any way directly or indirectly concerned with the publication of the said pamphlet. The election petition lacks in material facts and complete particulars regarding the publication of this pamphlet

and connecting respondent No. 1 with the same. Apart from this, there is no date mentioned in this pamphlet though it refers to the polling scheduled to take place on 7th February, 1997. It cannot be assumed for the purpose of election petition that since the pamphlet appealed to the voters to vote for the respondent No.1, the same was prepared or issued with his consent by the said Joint Front of the five lac employees. The election petition also does not specifically allege as to how and to what extent the poll prospects of the petitioner were adversely affected by the said pamphlet.

(29) So far as Annexure A7 is concerned, it was issued by the President of the District Congress Committee (I), Ferozepur, namely Shri Gurnaib Singh Brar as far back as on 30th June, 1990. This letter was addressed to the President, All India Youth Congress Committee, New Delhi, which *inter alia* reads as under :—

“ ___A criminal case of theft has been registered in Police Station Ghall Khurd against Ravinder Singh Sandhu *alias* Babbal, President, Ferozepur District Youth Congress Committee. This has brought a bad name for the party. The District Youth Congress is totally non-existing body in Ferozepur District. It has no office and most of Block President posts are not fulfilled, party programme never held. As directed by all India Youth Congress, Dharna in front of Deputy Commissioner office and blood donation camp were not organized. Ravinder Singh Sandhu was also detained in C.I.A. Staff Ferozepur for interrogation for harbouring terrorists. In the interest of party, such undesirable person should be removed immediately. Otherwise the reputation of the party will be totally damaged in the district.”

(30) The respondent No. 1 had apparently no hand in sending of this letter. There are no averments in the petition as to how the respondent No. 1 got access to this letter. Moreover the communication regarding registration of a criminal case of theft having been made to the President, All India Youth Congress Committee, New Delhi by the President, District Congress Committee, Ferozepur, would have no direct bearing on the poll prospects of the petitioner in the election in question. The material facts and particulars regarding the pamphlet (Annexure A7) being prepared and circulated at the behest of the respondent No.1 are lacking in the election petition. The allegation made in the relevant paragraphs of the election petition regarding the photo copies of Annexures A1 to A7 being circulated on 6th February, 1997 by the respondent No.1 and with his consent by his supporters

and other persons are general and vague in nature. These news items and the pamphlets were either got published by some persons other than the respondent No. 1 or by the office bearers of the Congress Committee. In paragraphs 14, 14(A) and 15 to 27 of the election petition, reference has been made to the returned candidate accompanied by his supporters going to various villages mentioned therein for handing over photo copies of annexures A1 to A7 to the voters and the names of some of such voters have been mentioned at the foot of the said paragraphs. Apart from this, no material facts and better particulars have been given in all these paragraphs regarding any concern of the respondent No. 1 with the news items and the pamphlets aforesaid and about the pool prospects of the petitioner being adversely effected by the distribution of annexures A1 to A7.

(31) Learned counsel for the respondent No. 1 referred to the judgments of this Court and the Hon'ble Supreme Court as also of some other High Courts in support of his contention that it is imperative 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 which he alleges, including as full a statement as possible of the names of parties alleged to have committed such practice.

(32) In *Mani Ram Petitioner v. Surinder Kumar and others*, respondents (1) a learned Single Judge of this Court held in para 10 as under :—

“According to the prescribed procedure under the Act for the presentation of election petitions, it has been rendered imperative 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 which he alleges, including as full a statement as possible of names of the parties alleged to have committed such practice and the date and place of commission of such practice. In other words, Section 83 thereof is mandatory and requires first a concise statement of material facts and then the fullest possible particulars. As was discussed in *Samant N. Balakrishna etc. v. George Fernandez etc.*, AIR 1969 SC 1201, “The word ‘material’ shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material facts 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. 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 the cause of action.”

(33) In para 12, the learned Single Judge referred to the judgment of the Apex Court in the case of *Madan Lal Agarwal v. Shri Rajiv Gandhi* (2) and quoted from there the following observations (made at page 1587) :—

“Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is, therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner.”

(34) The learned Single Judge referring to the judgment of the Apex Court in case *Lalit Kishore Chaturvedi v. Jagdish Prasad Thada*, (3) quoted the following observations made by the Apex Court (at page 1733) :—

“Elections the mechanical guarantee of democracy and means to the end of the Government by public opinion responsive and responsible to the electorate is basically fought out on fair criticism. Resorting to corrupt practice in it is subversive of

(2) A.I.R. 1987 S.C. 1577

(3) A.I.R. 1990 S.C. 1731

democratic process, impact of it is deep and wide spread, therefore, statutory compulsion visualised by S. 83(i) (b) of the Act to set forth full particulars of such practice including names of persons, time and place, has been construed strictly and in absence of precise and specific pleading it has been held to render an election petition infirm”.

(35) In *Hardwari Lal v. Kanwal Singh*, (4) while considering the importance of material facts and the distinction between the material facts and particulars, it was held by the Hon'ble Apex Court in para 20 as under :—

“The importance of material facts and the distinction between the material facts and particulars was also brought out in another recent decision of this Court in *Manubhai Nandlal Amersey v. Popatlal Manilal Joshi* (1969) 3 SCR 217=(AIR 1969 SC 734). In that case a charge in the petition was that several persons with the consent of the appellant or his election agents induced or attempted to induce the electors to believe that if they voted for the Congress party candidate they would become the objects of divine displeasure and spirituals censure. At a late stage of the trial the High Court gave leave to the election petitioner to amend the petition by adding fresh particulars of the corrupt practice. Bachawat, J. Speaking for the Court said that Section 83 of the Act was mandatory and particulars of corrupt practice were to be set out in full. It was said in that case that no amendment in the shape of particulars of corrupt practice was permissible if the corrupt practice was not previously alleged in the petition. The obvious need not be stressed. It is that an election petition has the effect of declaring an election void. It is a serious remedy. It is, therefore, vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance or extracting words from the statute which will have no meaning unless and until facts are stated to show what

that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that assistance obtained or procured was other than the giving of word. It was said by counsel for the respondent that because the statute did not render the giving of vote a corrupt practice the words 'any assistance' were full statement of material facts. The submission is fallacious for the simple reason that the matter of assistance, the mode of assistance, the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared could the Court had given a verdict in favour of the election petitioner. The answer is in the negative because the allegations in the petition did not disclose any cause of action."

(36) In *Dr. (Smt.) Shipra etc. v. Shanti Lal Khoiwal etc. with Jhammak Lal v. Laxmi Narayan Pandey and others*, (5) the Hon'ble Supreme Court held, *inter alia*, in para 13 as under :—

"It is well settled that only those parts of the petition which contain allegations of corrupt practices and which are not pleaded in conformity with Form 25 read with Rule 94-A and Section 83(1), alone are required to be struck off and other independent issues are required to be tried and decided on merits. In this case, though validity of the rejection of her nomination was questioned by the appellant, it would appear that in the High Court it was not seriously canvassed and the main thrust of the argument in the High Court, by the counsel for the appellant, was on corrupt practices and curability of the defect which did not find favour with the High Court. In view of the above finding, we are of the considered view that the question of barring the appellant to contest elections on the ground of improper rejection of nomination does not arise for serious considerations. The entire election petition rested only on imputation of corrupt practices. Consequently, when the election petition was held not maintainable due to the material defect in the true copy of the affidavit which is an integral

(5) A.I.R. 1996 S.C. 1691.

part of the election petition, dismissal of the election petition cannot be faulted.”

(37) In *Gajanan Krishnaji Bapat and another Appellants v. Datta Raghobaji Meghe and others, respondents* (6), it was observed in para 17 as under :—

“17. Section 83 of the Act provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must set forth full particulars of the corrupt practice that he alleges including as full a statement as possible of the name of the parties alleged to have committed such corrupt practice and the date and place of the commission of each of such corrupt practice. This section has been held to be mandatory and requires first a concise statement of material facts and then the full particulars of the alleged corrupt practice, so as to present a full picture of the cause of action.”

(38) In a recent judgment reported as *L.R. Shivaramagowda and others v. T.M. Chandrashekar (Dead) By LRs and others* (7), it was observed in para 11 as under :—

“11. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between “material facts” and “material particulars”. While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment._____”

(39) The case of *Ganjanam Krishnaji Bapat v. Dattaji Raghobaji Meghe*, was referred to in para 15 of the judgment in *L.R. Shivaramagowda's case (supra)* extracting the following observations from the said case :—

“_____allegations of corrupt practice must be properly alleged and both material facts and particulars should be provided in the petition itself so as to disclose the complete cause of action.”

(6) A.I.R. 1995 S.C. 2284.

(7) 1999 (1) S.C.C. 666.

(40) The Hon'ble Supreme Court in *L.R. Shivaramagowda's case* (*supra*) further held in paras 16, 17 and 18 as under :—

“16. The election law insists that to unseat a returned candidate, the corrupt practice must be specifically alleged and strictly proved to have been committed by the returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or by his election agent. Suspicion, however strong, cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence._____”

“17. Section 83 of the Act provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must set forth full particulars of the corrupt practice that he alleges including as full a statement as possible of the name of the parties alleged to have committed such corrupt practice and the date and place of the commission of each of such corrupt practice. This section has been held to be mandatory and requires first the concise statement of material facts and then full particulars of the alleged corrupt practice so as to present a full picture of the cause of action.”

“18. A petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise.”

(41) On the other hand, learned counsel for the election petitioner referred to the decision of Hon'ble Supreme Court in *Corporation of the City of Bangalore Appellant v. M. Papaiah and another Respondents*, (8) wherein in para 4, it was, *inter alia* held as under :—

“4._____ It is well established that for deciding the nature of a suit the entire plaint has to be read and not merely the relief portion and the plaint in the present case does not leave any manner of doubt that the suit has been filed for establishing the title of the plaintiffs and on that basis getting an injunction against the appellants Corporation._____”

(42) At the very out-set, it may be mentioned that the law relating to the pleadings in a suit is entirely different than the law relating to the averments made in an election petition. The Hon'ble Supreme Court has in the cases referred to above by the learned counsel for respondent No. 1, has categorically taken the view that in an election petition there must be concise statement on material facts and the particulars relating to the corrupt practice relied on by the election petitioner. The amendment of any of the grounds explaining or adding any material facts relating to the corrupt practice, after the filing of the election petition is in law impermissible. To somewhat similar effect is the law laid down in *Udhav Singh Appellant v. Madhav Rao Scindia, Respondent*, (9) wherein in para 30, it was held as under :—

“30. We are afraid, this ingenious method of construction after compartmentalisation, dissection, segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal canon of interpretation, according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context, in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole”.

(43) Another authority relied upon by the learned counsel for the petitioner relates to the decision of the Allahabad High Court in *Ram Tej Tewari, Petitioner v. Smt. Vijaya Laxmi, Respondent*, (10) wherein it was observed in paras 17, 22 and 23 as under :—

“17. Taking up next ground No. 'B' the relevant averments are to be found contained in paras 25 to 29 and Schedule 'A' to the petition. The charge is that the respondent and her election agent committed the corrupt practice of bribery within the meaning of S. 123 (1) of the Act by making gifts, offers and promises of gratification to the voters with the object of directly inducing them to vote for the respondent. Shri Pandey for the respondent contends that the pleadings are lacking in relevant particulars required to be incorporated under S. 83 (1) (b) of the Act. Based on the provisions of O. 6 R. 2(1), C.P.C. Section

(9) A.I.R. 1976 S.C. 744

(10) A.I.R. 1986 Allahabad 325

83 (1) (a) enjoins that an election petition shall contain a concise statement of the material facts on which the election petitioner relies. Clause (b) of sub-sec. (1) of S. 83 interdicts that an election petition must set forth a full particulars of any corrupt practice on which he challenges the election of the returned candidate 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. This rests more or less on O. VI. R 4 of the Code. There is no dispute that what follows the word 'including' in S. 83 (1) (b) is not exhaustive. The expression used is of extension, this covers not that alone which is spelled out in the clause but all that goes to constitute full particulars of the corrupt practice averred. In *Bruce V. Odhams Press Ltd.* (1936) 1 ALL ER 287, Scott, L.J. has thus distinguished between 'material facts' and 'particulars'—

"The cardinal provision in R. 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 "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 B.S.C.O. XXV. R. 4. See *Philipps v. Philipps* (1978) 4 QBD 127 or "a further and better statement of claim" may be ordered under R. 7.

The function of "particulars" under R. 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim-gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiffs cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiffs cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial."

"22. Order VI, R 16 (b), CPC, permits striking out of pleadings which may, *inter alia* embarrass the fair trial of the suit. The expression "embarrassing" according to the Webster's Third New International Dictionary (1971) Vol I p 739 means, "to place to boubt perplexity or difficulty" Nothing, it has been said, is more embarrassing to a defendant than a number of

statements which may be irrelevant and which the defendant, therefore, does not know what to do. Each party is entitled to have his case against him presented in an intelligible form so that he may not be embarrassed in meeting it : *Davy v. Garret* (1877) 7 Ch D 473 at p. 483.”

“23. The settled view has, however, been that before the pleadings are struck out on ground vagueness there ought to be opportunity given to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged: and in the event of non-compliance with that order the Court may strike out the charges which remain vague : *vide* *Balwan Singh v. Lakshmi Narain* (1960) 22 Ele LR 273 at 281 : (AIR 1960 SC 770 at p. 774) : *Harish Chandra Bajpai v. Triloki Singh* (*supra*). Though s. 83 (3) has been deleted, the Court is desired to give an option to the peititoner either to amend the petition or furnish particulars or to have the concerned paras struck off *Amin Lal v. Hunna Mal*, AIR 1965 SC 1243. The particulars of the corrupt practice alleged in the petition may in appropriate cases be permitted to be introduced by amendment *D.P. Mishra v. Kamal Narayan Sharma*, AIR 1970 SC 1477. This would be in conformity with S. 86(5) of the Act read with O.VI. R.5, Code of Civil Procedure.”

(44) The position regarding law stands well settled and concluded by the recent judgments of the Hon'ble Apex Court in *Dr. (Smt.) Shipra's* case (*supra*), *Sardar Baldev Singh Mann's* case (*supra*) and *L. R. Shivaramagowda's* case (*supra*). Standard of proof is required for proving the charge of corrupt practice, which in the instant case is not the relevant inasmuch as at the present stage the petitioner has not gone into trial.

(45) Now coming to the second charge of corrupt practice i.e. about the bribe allegedly given by the respondent No. 1 to his supporters for being distributed to the voters for casting their votes in his (respondent No. 1's) favour. From paragraph No. 28 to 39, i.e. in 12 paragraphs there is a reference regarding the visit of the returned candidate alongwith his supporters to village Jhole Hari Har at about 7.30 P.M. and giving Rs. one lac to Sh. Hari Singh, Ex-Sarpanch; then to village Sande Hashim at about 8.30 P.M. and giving Rs. 40,000 to Gursewak Singh son of Jagir Singh, then to village Valoor at about 9.00 P.M. and giving Rs. 30,000 to Baldav Singh son of Nazar Singh ; then to village Yareshahwala at about 9.30 P.M. and givinng Rs. 40,000 to Bohar Singh son of Baj Singh ; then to village Sadhu Shah Wala

around 10.00 P.M. and giving Rs. 35,000 to Dharam Singh, Ex-Sarpanch ; then to village Nazushah Mishriwala at about 10.30 P.M. and handing over Rs. 30,000 to Kulbir Singh son of Jaswant Singh ; then to village Sher Khan at about 11.00 P.M. and giving Rs. 80,000 to Darshan Singh, Ex-Sarpanch ; then to village Takhtuwala at about 11.30 P.M. and handing over Rs. 20,000 to Sh. Gurcharan Singh son of Bagga Singh; then to village Jameet Pur Dheru at about 12.15 A.M. on 7th February, 1997 and giving Rs. 40,000 to Darshan Singh son of Bagga Singh ; then to village Sodhi Nagar at about 1.15 A.M. on 7th February, 1997 and giving Rs. 1.80 lacs to Mohinder Singh son of Kundan Singh; then to village Kulgarhi at about 1.45 A.M. and giving Rs. 40,000 to Harjinder Singh son of Bakhtawar Singh and then to village Lohgarh at about 2.15 A.M. on 7th February, 1997 and giving Rs. 80,000 to Malkiat Singh son of Bagga Singh.

(46) In each of the aforesaid 12 paragraphs and in paragraph 40 (wherein the averments of these 12 paragraphs have been summarised), names of two persons, who were allegedly present before the persons named in the respective para, to whom the amounts were paid by the respondent No.1 and who did not accept the bribe offer for promising to cast their votes in favour of respondent No. 1, have been mentioned. The names of these witnesses village wise are as under :—

Lakhbir Singh son of Angrej Singh and Jassa Singh son of Tek Singh in village Jhoke Hari Har,

Chamkaur Singh son of Naib Singh and Prithi Singh son of Sohan Singh in village Sande Hasam,

Lakhbir Singh son of Surjit Singh and Jeet Singh son of Prithi Singh in village Valoor.

Major Singh son of Chanan Singh and Sher Singh son of Munsha Singh in village Yareshahwala.

Natha son of Beela and Balwinder Singh son of Bakhshish Singh in village Sadhu Shah Wala ;

Kulwinder Singh son of Tarlok Singh and Nachhattar Singh son of Darshan Singh in village Mishriwala ;

Karnail Singh son of Pala Singh and Mohinder Singh son of Dara Singh in village Sher Khan ;

Hans Raj son of Chuni Lal and Jeet Singh son of la Singh in village Takhtuwala ;

Jagir Singh son of Bishan Singh and Balkar son of Shingara Singh in village Jameetpur Dheru ;

Darbara Singh son of Jeet Singh and Surjit Singh son of Thakur Singh in village Sodhi Nagar ;

Jagtar Singh son of Hakim Singh and Sukhmandir Singh son of Joginder Singh in village Kulgarhi;

Sucha Singh son of Ajeet Singh and Jagir Singh son of Bagga Singh in village Lohgarh.

(47) The narration of events taking place in villages metioned in paragraphs 28 to 39 are couched in the same language but for the change of name of the village, time of arrival in the village, amount paid to the conerned person and the two witnesses, who declined to accept bribe is the same. At the very out-set, it may be mentioned that the two witnesses, named at the bottom of each of the paragraph, commencing from para 28 to 39, are said to have gone to the concerned person to whom the money was allegedly paid by respondent No. 1 on being summoned by him alongwith other persons, to whom the offer of bribe was made for casting vote in favour of the repondent No. 1. It necessarily follows that these sets of two witnesses in each of the village aforesaid were not present at the time of visit of respondent No. 1 to the said villages and they did not witness the alleged payment of amount by the respondent No. 1 to the person named therein and nor did they hear any conversation between respondent No.1 and the concerned person metioned in these paragraphs, to whom the amount was allegedly paid. For example, in para 28 it has been averred as under :—

“That the returned candidate alongwith the above-mentioned supporters on that very day i.e. 6th Feburary, 1997 visited village Jhole Hari Har at about 7.30 P.M., and handed over Rs. one lac to Sh. Hari Singh, Ex. Sarpanch and he accepted the above metioned amount on oath and promised five hundred votes. *Thereafter Sh. Hari Singh, Ex. Sarpanch summoned the meeting of many voters and handed over Rs. 200 to each on oath numbering five hundred voters and then the next morning, i.e. 7th Feburary, 1997 all these persons who had accepted money on oath voted for the returned candidate. Few persons of the village refused to accept money for voting who*

also attending the meeting summoned by Sh. Hari Singh Ex. Sarpanch. The names of some persons are mentioned below :—

1. Lakhbir Singh son of Angrej Singh ;
2. Jassa Singh son of Tek Singh, resident of village Jhoke Hari Har.”

(emphasis supplied by me).

(48) The use of the word ‘Thereafter’ apparently and clearly shows that the two witnesses, who refused to accept the bribe were not present at the time when the amount was allegedly paid to the concerned named person in the village to promise to offer the support of the number of voters mentioned therein. In other words, these paragraphs lack in material facts regarding the person before whom the respondent No. 1, during his alleged visit to each of the aforesaid villages, met his supporter and paid the amount to him and the latter i.e. the person who accepted the amount assured the casting of votes in favour of the respondent No. 1. Moreover, there is no mention of the name of even a single person, i.e. a voter in the said villages in the election in question, who accepted the bribe for casting his vote in favour of the respondent No. 1.

(49) In para 40 of the election petition, the petitioner made the following averments :—

“That from the contents mentioned in paras 28 to 39 it is clear beyond doubts that the respondent No. 1 has purchased 3575 votes by paying Rs. 7.15 lacs at different places in the constituency and spent almost whole night in distributing money in the above mentioned parts of the constituency and has indulged in corrupt practice to win the election by hook and crook.”

(50) In para 41 of the election petition, it was averred, *inter alia*, as under:—

“That the respondent No. 1 was so confident of his victory that a day after of the polling, the respondent No. 1 went to Dana Mandi (Grain Market), Ferozepur Cantt. and openly challenged that any body can have a bet that it would be respondent No. 1 who would be elected because he has purchased votes to the tune of 3,575 and has spent Rs. 7.15 lacs.”

(51) It was further averred in this para that on his challenge following four persons entered into a bet with respondent No. 1 :—

1. Beant Singh, Sarpanch, resident of village Valoor;
2. Darbara Singh s/o Ajit Singh, resident of village Sodhi Nagar;
3. Sardool Singh, Sarpanch, resident of village Sande Hashim;
and
4. Malkiat Singh, Sarpanch, resident of village Kamaghar.

(52) The respondent No.1, it was further averred, then went to his house and brought Rs. one lac and deposited at the Commission Agent shop of Ch. Jagdish Dana Mandi, Ferozepur Cantt. and the above-mentioned four persons also deposited Rs. one lac at the shop of Ch. Jagdish and it was decided that the amount deposited by respondent No. 1 and the above-mentioned four persons would be given to respondent No. 1 in case he is elected but in case he is defeated then the amount would be paid to the above-mentioned four persons. This bet took place on 8th February, 1997 at 3.30 P.M. Since the respondent No. 1 was declared elected so he took away the amount of Rs. two lacs from the shop of Ch. Jagdish, Dana Mandi, Ferozepur Cantt.

(53) The averments made in para 41 of the petition largely depend upon the averments made in paras 28 to 39 and summarised in para 40. In case the averments made in the aforesaid paras (28 to 40) do not disclose cause of action, the averments made in para 41 would automatically follow the suit. In other words, from the averments made in para 41, it cannot be held that the petitioner had a cause of action against the respondent No. 1 to show that the latter indulged in corrupt practice by offering bribe to the voters because the allegation of offering bribe to the voters would largely be effected by the consideration of the pleadings in paragraphs 28 to 40 of the petition.

(54) In somewhat similar circumstances, a learned Single Judge of this Court considered this aspect in the case of *Mani Ram (supra)* and observed in para 14, *inter alia*, as under :—

“Where the corrupt practice of bribery was alleged to have been committed by the returned candidate, the absence of any averment to the effect that the offer of bribery was made to persons who were voters or that the persons who actually received money were voters, or the further fact that no one of the recipients of any such alleged bribe has been named in the petition would conclude that the said allegation of corrupt

practice constitutes no cause of action, and therefore, the election petition was liable to be dismissed on that ground.”

(55) In the case of Mani Ram (*supra*), the allegations made in the petition by Mani Ram, a voter in the constituency of Kaithal Assembly in the year 1991 were that the returned candidate Surinder Kumar had committed the corrupt practice of bribery as defined in Section 123 of the Representation of the People Act, 1951 (hereinafter referred to as “the Act”) by distributing money for the purpose of inducing voters to vote for him. It was averred in this behalf that Surinder Kumar had given Rs. 25,000 to Sat Pal son of Shri Chand and Sat Pal son of Tek Chand, for distribution in a Harijan Colony for getting votes for himself. This money was given at 132/5, Siwan Gate, Kaithal at about 10 p.m. on 19th May, 1991. This amount was given in the presence of Subhash Malhotra. Both the Sat Pals had been asked by Surinder Kumar to distribute this money amongst persons who promised to vote for him. The two Sat Pals thereupon went to Arjun Nagar Locality and contacted Balwan Singh and Ram Saran. They went around the locality and called the male members to assemble near the house of Balwan Singh. About 15/20 minutes later, a crowd of over 250 persons gathered there. Sat Pal alias Pala addressed them saying that he had come there at the behest of Surinder Kumar, who had sent them to help his Harijan brothers. He then said that those who promise to vote for Surinder Kumar would be paid Rs. 100 each. He thereupon asked those who wanted money and promised to vote for Surinder Kumar raise their hands. Many people did so. They were then called one by one and given Rs. 100 each after they had promised to vote for Surinder Kumar. According to the petitioner, he learnt of this from Sat Pal son of Shri Chand at his residence at about 5 p.m. on 17th June, 1991.

(56) The learned Single Judge in *Mani Ram's case (supra)* while evaluating the averments made in the said election petition held in para 14, as under :—

“Turning now to evaluate and assess the averments made by the petitioner with regard to the corrupt practice of bribery alleged to have been committed by the petitioner in the context of the law, as settled, a plain reading of the petition would reveal that the essential materials and particulars are conspicuous by their absence. With regard to the allegation that the petitioner paid Rs. 25,000 to two Sat Pals to purchase votes from the Harijan Colony, the omission of material significance is provided by the absence of any averment to the effect that the offer of bribery was made to persons who were voters or that the persons who actually received money, were voters.

What stands out, in this behalf, is the further fact that not one of the recipients of any such alleged bribe has been named in the petition. In this situation there can be no escape from the conclusion that this allegation constitutes no cause of action for the respondent to answer."

(57) In my considered view, the averments made in the election petition in the instant case fall further short of the mention regarding the person in whose presence the respondent No. 1 paid the amount to the persons named in the respective paragraphs in the villages concerned and the names of the persons, who actually received the bribe and promised to vote in favour of the respondent No. 1. The allegations in the instant case are, thus, much more lacking in full and better particulars than the facts in the case of Mani Ram (*supra*).

(58) In view of the foregoing discussion, I am of the considered opinion that the averments made regarding the offer of bribe by the returned candidate/respondent No. 1 and its acceptance by the voters from the respective villages, with a promise to cast their votes in favour of the respondent No. 1, are lacking in complete particulars and thus the petition lacks in concise statement of material facts and particulars. It is well settled that if the election petition lacks in averring even a single material fact regarding the corrupt practice, the defect goes to the root of the election petition and the same is liable to be dismissed.

(59) Resultantly, it is held that there can be no manner of doubt that the election petition discloses no cause of action and it must on that ground be dismissed. The preliminary issues are accordingly decided in favour of the respondent No. 1 and consequently the petition is dismissed as it discloses no cause of action.

S.C.K.

Before V.K. Bali & B. Rai, JJ

MALKIAT SINGH,—*Petitioner*

versus

P.S.E.B. & OTHERS,—*Respondents*

CWP No. 16989 of 1998

21st January, 1999

Constitution of India, 1950—Art. 226—PSEB policy instructions dated 8th July, 1994—Policy decision of Board to provide a job upto