

A.F.R.

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Case :- ELECTION PETITION No. - 19 of 2012

Petitioner :- Prabhat Pandey

Respondent :- Dimpal Yadav And Another

Counsel for Petitioner :- In Person, Asit Kumar Roy, M.P.

Sinha, Pradeep Verma, Rajendra Kumar Pandey, Sunil Kumar

Tiwari, Vijai Prakash Shukla

Counsel for Respondent :- K.R. Singh, Bhopendra Nath Singh,
H.P. Dubey, Shivam Yadav.

Hon'ble Devendra Pratap Singh, J.

1. Heard learned counsel for the parties on a combined application under Order 6 Rule 16 read with Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as the "CPC") alongwith another application under Section 86(1) of the Representation of People Act, 1951 (hereinafter referred to as the "Act") and also perused the record.

2. The present election petition has been filed challenging the election of Smt. Dimpal Yadav, respondent no.1, from the Kannauj Lok Sabha Constituency No.42 in the By Election held in accordance to the programme.

3. Briefly, the facts are that Sri Akhilesh Yadav, the husband of the respondent no.1 and Leader of the Samajwadi Party (hereinafter referred as the "SP") was the elected representative of the Constituency. In the Assembly election held for the State of U.P. in March 2012, the SP came to power and Sri Akhilesh Yadav became the Chief Minister and thus vacated the seat. The Election Commission of India issued a notification on 30th of May 2012 and notified the following programme for the By Election :

Last date of filing nomination - 6.6.2012

Date of scrutiny of nomination - 7.6.2012

Date of withdrawal -9.6.2012

Date of polling -24.6.2012

Date of counting of votes - 27.6.2012

4. In pursuance thereof, three candidates, including the respondent no.1 had filed their respective nominations. However, the two other candidates withdrew their candidature and accordingly, the respondent no.1 was declared elected unopposed. It is pleaded that the Voters Party International (hereinafter referred to as the "VPI"), a non political organization, has a huge membership in and around Kannauj and, therefore, its Central Committee nominated the petitioner, one of its active members, to contest the seat. It is further pleaded that the petitioner, in accordance with the directions of the Central Committee, prepared his nomination papers, but members of the SP and its leaders, with the help of the District Administration, did not allow the petitioner to file his nomination, thus the present petition.

5. It is urged on behalf of the respondents in support of the two applications that the petition is not maintainable as it has not been filed by any "candidate" or "elector", as provided in Section 81 of the Act and, therefore, it has to be thrown out on this ground alone. It is also asserted that the pleadings do not disclose a complete cause of action as there is no pleading, even if accepting all the incidents as correct, that the alleged incidents were committed with the consent and knowledge of the respondent no.1. It is further urged that the petition is based only on corrupt practices, but the affidavit in support of the allegation as prescribed by the proviso to Section 83 (1) of the Act, has not been filed and, therefore, also the petition does not disclose a complete cause of action and cannot be put to trial.

6. To the contrary, it is contended that the petitioner made all possible efforts to file his nomination papers within the time prescribed after depositing the security, but due to the influence of the respondent no.1, the Returning Officer did not accept it and supporters of respondent no.1 snatched away and tore the nomination papers. It is further urged that all the material facts and particulars have been given with specific details and it discloses complete cause of action. It

is also urged that being the wife of the sitting Chief Minister, she was exercising undue influence on the District Administration, including the District Magistrate and also local leaders of SP were working in unison to ensure that she gets elected unopposed. It is further urged that the affidavit has already been filed and the second affidavit was not required. It is also urged that the petition cannot be dismissed at the threshold as Section 83 of the Act does not find mention in Section 86. Lastly it is urged that “consent” on the facts pleaded can be presumed because the respondent no. 1 colluded with the Returning Officer and that is why the nomination papers were not accepted and she had full knowledge of these facts.

7. Before the Court deals with the arguments of the respective parties, it would be appropriate to examine the nature of the proceedings under the Act.

8. The Constitution Bench of the Apex Court, more than half a century ago, in **Jagan Nath vs. Jaswant Singh & others** (AIR 1954 SC 210) commented upon the proceedings of an election petition under the Act in the following words :

“The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however have any application if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it.

It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence, or does not lay down penalty for non-

compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected.”

It further went on to declare that :

“ It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law.”

9. It went on to reiterate the position in **Jyoti Basu & others vs. Debi Ghosal & others** (AIR 1982 SC 983) in the following words :

“A right to elect, fundamental though it is to democracy is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a straight jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code

within which must be found any right claimed in relation to an election or an election dispute.”

10. In **Mohan Singh vs Bhanwar Lal** (AIR 1964 SC 1366), the apex court while dealing with the challenge on grounds of corrupt practices, speaking through Justice Shah, commented that :

“The onus of establishing a corrupt practice is undoubtedly on the person who sets it up, and the onus is not discharged on proof of mere preponderance of probability, as in the trial of a civil suit; the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous”

11. Again it reiterated the position in **Mahant Shreo Nath v. Choudhry Ranbir Singh** (1970) 3 SCC 647 (2), as follows :

“A plea in an election petition that a candidate or his election agent or any person with his consent has committed a corrupt practice raises a grave charge, proof of which results in disqualification from taking part in elections for six years. The charge in its very nature must be established by clear and cogent evidence by those who seek to prove it. The Court does not hold such a charge proved merely on preponderance of probability; the Court requires that the conduct attributed to the offender is proved by evidence which establishes it beyond reasonable doubt.”

12. This position remains unaltered till date.

13. It is evident from the aforesaid decisions that the right to challenge an election is not a common law right but the right has specially been conferred by the Act for maintaining the purity of election. However, when a candidate employs or adopts any of the corrupt practices mentioned in the Act, his election should be set aside where the corrupt practice is proved. But, the procedure prescribed by the Act for challenging the election must be strictly followed and in case there is non-compliance of the mandatory provisions or there is any deviation, the Court will have no other

alternative than to dismiss the election petition. Charge of corrupt practice has to be proved beyond reasonable doubt like in criminal cases.

14. Let us now consider the relevant provisions of the Constitution, the Act and CPC which have a direct bearing on the decision of this case.

15. Article 329(b) of the Constitution of India bars any challenge to the election of either Houses of Parliament except through an election petition as provided under the Act, in the following words :

“329. Bar to interference by Court in electoral matters-

(a).....

(b) no election to either house of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

16. In pursuance of the powers conferred by the Constitution, the Act was promulgated wherein Part VI deals with disputes regarding Elections and therein Section 80 provides that no election shall be called in question except through an election petition under the Act which runs as below :

“80- Election petitions- *No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.*

Section 81 of the same Part of the Act provides as to who and on what ground can file an election petition challenging the election :

“81. Presentation of petitions- *(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not*

earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

The same Part contains Section 79 sub-clause (b) which defines the word “candidate”, while sub-clause (d) defines “electoral right” as follows :

“79. Definitions: *In this Part and in Part VII unless the context otherwise requires,-*

(a).....

(b) “candidate” means a person who has been or claims to have been duly nominated as a candidate at any election.

(c).....

(d) “electoral right” means the right of a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate, or to vote or refrain from voting at an election:

Section 100 of the same Part provides for the grounds on which an election may be held to be void as follows :

“100. Grounds for declaring election to be void- (1) *Subject to the 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 consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d)

(i)

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent, or

(iii)

iv. by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.”

In the same Part Section 83 mandates as to what should be the contents of an election petition, as under :

“83. Contents of petition- (1) *An election petition-*

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

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

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

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

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

Section 86(1) of the same Part mandates as to when an election petition can be dismissed summarily, in the following words :

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

Explanation- An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98".

17. Part VII of the Act deals with Corrupt Practices and Electoral Offences wherein Section 123 is a deeming clause in respect to corrupt practices and provides as below :-

"123. Corrupt practices- *The following shall be deemed to be corrupt practices for the purposes of this Act-*

(1)"Bribery", that is to say,-

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing-

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

- (b)
- (B)

(a)

(b)

Explanation- For the purpose of this clause the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money and it includes any forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

2. Under 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)

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)
- (3)
- (4)
- (5)
- (6)

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 whether or not in the service of the Government or belonging to any of the following classes, namely :-

- (a) gazetted officers;*
- (b)*
- (c).....*
- (d) members of police forces*
- (e).....*
- (f)*
- (g) such other class of persons in the service of the Government as may be prescribed:*
- (h)”*

18. Section 87 of the Act provides that an election petition shall be tried as nearly as possible in accordance to the procedure prescribed under the CPC. The relevant provisions of CPC which have a bearing in the decision of this petition are quoted below :

Order VI Rule XV of C.P.C. provides as under :

“15. Verification of pleadings :- (1) *Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.*

(2).....

(3)

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”

and Order VI Rule XVI reads as under :

“16. Striking out pleadings- *The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-*

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.”

Order VII Rule XI makes a provision for rejecting a plaint, as under:

“11. Rejection of plaint- *The plaint shall be rejected in the following cases:-*

(a) where it does not disclose a cause of action;

(b)

(c)

(d).....

(e).....

(f).....

19. Let us first consider whether the petition is liable to be thrown out on the ground that it has neither been filed by a ‘Candidate’ nor any ‘Elector’

20. It is not the case of the petitioner that he was an electorate of that constituency, but it has been filed as a ‘Candidate’. It is a pleaded fact that he did not, or rather, could not file his nomination papers. It is amply pleaded that he firstly made an effort to file it on 5th June, 2012 at about 2 pm, tendered his papers to the Returning Officer along with security deposit in cash, but she refused to accept it without disclosing any reason, presumably on the ground that he should deposit the security amount in the Treasury and submit the receipt. He made another effort on 6th June, 2012 after depositing the security in the Treasury, but he was prevented from filing it and his papers were snatched and torn by the supporters of respondent no 1 and he was confined to an unknown place and released only after the period of filing had elapsed. He also alleges that the nomination papers were faxed to the Election Commission and also sent by registered post to it. Copy of the nomination papers together with the security deposit receipt which was sought to be filed is also annexed with the petition and has not been shown to be wanting in any respect. No doubt the definition of ‘Candidate’ as mentioned in section 79 confines itself to Parts VI and VII, but help can also be sought from section 34, which

reads as under:

“34. Deposits- (1) *A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited-*

(a) in the case of an election from a Parliamentary constituency (a sum of twenty-five thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of twelve thousand five hundred rupees]; and

(b).....

(2) Any sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper [under sub-section (1) or, as the case may be, sub-section (1-A) of section 33] the candidate has either deposited or caused to be deposited that sum with the returning officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.”

21. Thus, it is clear that if the pleadings are to be believed, he did tender the nomination papers and the security in cash on 5th, but it was unlawfully refused to be accepted. This is a question which can be considered only after evidence is led by the parties. The effort made on 6th also is a question which can be decided after evidence. What else was expected of the petitioner than to tender his papers ? The definition of the word ‘Candidate’ is in two parts. ‘Candidate’ means a person who has either in fact filed his nomination papers, or, a person who claims to have been nominated. The case of the petitioner squarely falls in the second part. As already herein above commented upon, copy of nomination papers together with security deposit receipt has been filed but the respondents do not claim that it is defective in any respect. The Apex Court in the case of **Charan Lal Sahu vs Giani Zail Singh (AIR 1984 SC 309)** was considering an identical provision and definition occurring in Presidential and Vice Presidential Elections Act, where an election petition was filed by a person whose nomination papers were rejected as it was not proposed by the required number of the electors. It went on to hold in

paragraph 12:

“Thus, the occasion for a person to make a claim that he was duly nominated can arise only if his nomination paper complies with the statutory requirements which govern the filing of nomination papers and not otherwise. The claim that he was ‘duly’ nominated necessarily implies and involves the claim that his nomination papers conformed to the requirements of the statute. Therefore, a contestant whose nomination paper is not subscribed by at least ten electors as proposers and ten electors as seconders as required by S. 5B (1)(a) of the Act cannot claim to have been duly nominated any more than a contestant who had not subscribed his assent to his own nomination can. The claim of a contestant that he was duly nominated must arise out of his compliance with the provisions of the Act. Otherwise, a person who had not filed any nomination paper at all but who had only informed the Returning Officer orally that he desired to contest the election could also contend that he “claims to have been duly nominated as a candidate”.

22. Therefore, it is still open to the petitioner to prove that his pleadings are truthful and he did tender his nomination papers complete in all respects, together with security deposit, to the Returning Officer. Accordingly, at this stage it cannot be said that the petition can be thrown out on this ground. Thus, the argument is rejected.

23. Let us now consider whether all the material facts for constituting any corrupt practice have been disclosed and a complete cause of action has been stated and whether any affidavit in conformity with the proviso to Section 83(1) has been filed because the petition is based only on corrupt practices.

24. Before dealing with the material facts and cause of action, it would be appropriate to consider the settled law on the issue.

25. The Apex Court in the case of **Azhar Hussain vs. Rajiv Gandhi** (AIR 1986 SC 1253), while considering whether the publications were made with the knowledge or consent of the returned

candidate, has held that the consent should be detailed in the affidavit and it spelt out the requirement in the following words in paragraph 31:

“31. There is no averment to show that the publication was made with the knowledge or consent of the returned candidate when the book was published in June, 1983. In fact, in 1983 there was no question of having acted in anticipation of the future elections of 1985 and in anticipation of the respondent contesting the same. In the election petition even the offending paragraphs have not been quoted. The petitioner has set out in paragraphs (a) to (h) the inferences drawn by him or the purport according to him. This apart, the main deficiency arises in the following manner. The essence of the charge is that this book containing alleged objectionable material was distributed with the consent of the respondent. Even so strangely enough even a bare or bald averment is not made as to :

- i whom the returned candidate gave consent;*
- ii in what manner and how; and*
- iii. when and in whose presence the consent was given,*

to distribute these books in the constituency. Nor does it contain any material particulars as to in which locality it was distributed or to whom it was distributed, or on what date it was distributed. Nor are any facts mentioned which taken at their face value would show that there was consent on the part of the returned candidate. Under the circumstances it is difficult to comprehend how exception can be taken to the view taken by the High Court.”

26. A three judge bench of the Apex Court in the case of **Subhash Desai vs Sharad J Rao** (1994 Supp (2) Supreme Court Cases 446) while considering the import of Section 86 vis a vis Section 83 of the Act after relying upon the decision in Azhar Hussain’s Case, has held that :

“ Section 86 vests power in the High Court to dismiss an election petition which has not been properly presented as required by Section 81; or where there has been non-compliance of Section 82 i.e. non-joinder of the necessary parties to the election petition; or for non-compliance of Section 117 i.e. non-deposit of the required amount as security for the costs of the election petition. Section 86 does not contemplate dismissal of the election petition for non-

compliance of the requirement of Section 83 of the Act. But Section 83 enjoins that an election petition shall contain concise statement of material facts, and shall set forth full particulars of any corrupt practice that the petitioner alleges, which should be verified and supported by affidavit, so far the allegations of corrupt practices are concerned. This provision is not only procedural, but has an object behind it; so that a person declared to have been elected, is not dragged to court to defend and support the validity of his election, on allegations of corrupt practice which are not precise and detail whereof have not been supported by a proper affidavit. Apart from that, unless the material facts and full particulars of the corrupt practices are set forth properly in the election petition, the person whose election is challenged, is bound to be prejudiced in defending himself of the charges, which have been leveled against him. In view of the repeated pronouncements of this Court, that the charge of corrupt practice is quasi-criminal in nature, the person challenging an election on the ground of corrupt practice, cannot take liberty of making any vague or reckless allegation, without taking the responsibility about the correctness thereof. Before the court proceeds to investigate such allegations, the court must be satisfied, that the material facts have been stated along with the full particulars of the corrupt practice, alleged by the petitioner, which have been duly supported by an affidavit. In cases where the court finds that neither material facts have been stated, nor full particulars of the corrupt practice, as required by Section 83, have been furnished in the election petition, the election petition can be dismissed, not under Section 86 but under the provisions of the Code of Civil Procedure, which are applicable read with Section 83(1) of the Act, saying that it does not disclose a cause of action....”

27. The aforesaid judgment in Azhar Hussain's case (supra) was again reiterated by the Apex Court in the case of **Ram Sukh vs. Dinesh Aggarwal** (2009 (10) SCC 541) where it held that even if a single material fact is not pleaded, the cause of action would be incomplete in the following words in paragraph 20 :

“20. The issue was again dealt with by this Court in Azhar Hussain v. Rajiv Gandhi. Referring to earlier pronouncements of this Court in Samant N. Balkrishna and Udhav Singh vs. Madhav Rao Scindia wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in Azhar Hussain case

held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1) (a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.”

28. The principle enshrined in the above decision can be crystallized as such. The facts which constitute corrupt practice must be stated and should be correlated to one of the heads mentioned u/s 123 of the Act. The omission of a single material fact would lead to an incomplete cause of action and in the context of corrupt practice, all the basic facts which constitutes it, must be disclosed in the petition. In cases covered by section.100(1)(b) read with S.123(1)(b) and (2) consent of the candidate is of vital importance. This is not a matter of better particulars but a material fact and as such indispensable part of the cause of action. Better particulars may be furnished by amendment in the petition but not a material fact because, consent, in such cases is the link to connect the candidate with the action of another person which may amount to corrupt practice and lead to penal consequences. In Azhar Hussain’s case(supra) the apex court has aptly propounded the litmus test of ascertaining what are material facts which ought to be pleaded for stating a complete cause of action as “ *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 the basis of the facts pleaded in the petition.*”

29. Let us now consider the argument as to whether ‘connivance’ and ‘knowledge’ are sufficient to draw a presumption of consent and whether the returned candidate would be bound by the actions of his workers and party leaders. It has been settled in large number of decision that the charge of corrupt practice is quasi criminal in nature and has to be specifically pleaded and proved and no amount of evidence can cure a defective pleading.

30. The Apex Court in the case of **Samant N. Balakrishna vs. George Fernandez & others** (AIR 1969 SC 1201) has held that after the amendment to the Act, 'knowledge' or 'connivance' is not sufficient to infer consent, in the following words in paragraph 50 of the judgment :

“50. Now it may be stated that mere knowledge is not enough. Consent cannot be inferred from knowledge alone. Mr. Jethamalani relied upon the Taunton case, (1869) 1 O' M & H 181 at p.185 where Blackburn, J., said that one must see how much was being done for the candidate and the candidate then must take the good with the bad. There is difficulty in accepting this contention. Formerly the Indian Election Law mentioned 'knowledge and connivance' but now it insists on consent. Since reference to the earlier phrase has been dropped it is reasonable to think that the law requires some concrete proof, direct or circumstantial of consent, and not merely of knowledge and connivance. It is significant that the drafters of the election petition use the phrase “knowledge and connivance” and it is reasonable to think that they consulted the old Act and moulded the case round “knowledge and connivance” and thought that was sufficient.”

31. In **Daulat Ram Chauhan vs. Anand Sharma** (AIR 1984 SC 621) it has further gone on to hold in paragraphs 18 and 19 that the consent should be explicitly pleaded in the following words :

“18. We must remember that in order to constitute corrupt practice, which entails not only the dismissal of the election petition but also other serious consequences like disbarring the candidate concerned from contesting future election for a period of six years, the allegations must be very strongly and narrowly construed to the very spirit and letter of the law. In other words, in order to constitute corrupt practices the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings :-

(1) Direct and detailed nature of the corrupt practice as defined in the Act.

(2) Details of every important particular must be stated giving the time place, names of persons, use of words and expressions, etc.

(3) It must clearly appear from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself (b) his authorised election agent or any other person

with his express or implied consent.

19. A person may, due to sympathy or on his own, support the candidature of a particular candidate but unless a close and direct nexus is proved between the act of the person and the consent given to him by the candidate or his election agent, the same would not amount to a pleading of corrupt practice as contemplated by law. It cannot be left to time, chance or conjecture for the court to draw an inference by adopting an involved process of reasoning. In fine, the allegation must be so clear and specific that the inference of corrupt practice will irresistibly admit of no doubt or qualm.”

32. In **Charan Lal Sahu vs. Giani Zail Singh** (supra) it has gone on to hold that “connivance” and “consent” are not one and the same thing in paras 30 and 31 :

“30. It is contended by Shri Shujatullah Khan who appears on behalf of the petitioners that connivance and consent are one and the same thing and there is no legal distinction between the two concepts..... The relevant question for consideration for the decision of the issue is whether there is any pleading in the petition to the effect that the offence of undue influence was committed with the consent of the returned candidate. Admittedly, there is no pleading of consent. It is then no answer to say that the petitioners have pleaded connivance and according to dictionaries connivance means consent. The plea of consent is one thing: the fact that connivance means consent (assuming that it does) is quite another. It is not open to a petitioner in an election petition to plead in terms of synonyms. In these petitions, pleadings have to be precise, specific and unambiguous so as to put the respondent on notice. The rule of pleadings that facts constituting the cause of action must be specifically pleaded is as fundamental as it is elementary. ‘Connivance’ may in certain situations amount to consent, which explains why the dictionaries give ‘consent’ as one of the meanings of the word ‘connivance’. But it is not true to say that ‘connivance’ invariably and necessarily means or amounts to consent, that is to say irrespective of the context of the given situation. The two cannot, therefore, be equated. Consent implies that parties are ad idem. Connivance does not necessarily imply that parties are of one mind. They may or may not be, depending upon the facts of the situation. That is why, in the absence of a pleading that the offence of undue influence was committed with the consent of the returned candidate, one of the ingredients of Section 18 (1) (a) remains unsatisfied.

31. *The importance of a specific pleading in these matters can be appreciated only if it is realized that the absence of a specific plea puts the respondent at a great disadvantage. He must know what case he has to meet. He cannot be kept guessing whether the petitioner means what he says, 'connivance' here, or whether the petitioner has used that expression as meaning 'consent'. It is remarkable that in their petition, the petitioners have furnished no particulars of the alleged consent, if what is meant by the use of the word connivance is consent. They cannot be allowed to keep their options open until the trial and adduce such evidence of consent as seems convenient and comes handy. That is the importance of precision in pleadings, particularly in election petitions. Accordingly, it is impermissible to substitute the word 'consent' for the word 'connivance' which occurs in the pleadings of the petitioners. "*

33. In **Ramakant Mayekar vs. Celine D'Silva** (1996 (1) SCC 399) it has been held that action of a party leader *ipso facto* cannot be said to have been taken with the consent of the returned candidate. It has further been held that there can be no presumption in law with regard to consent in the following words in paragraph 32 :

"32. The requisite consent of the candidate cannot be assumed merely from the fact that the candidate belongs to the same political party of which the wrongdoer was a leader since there can be no presumption in law that there is consent of every candidate of the political party for every act done by every acknowledged leader of that party. The corrupt practice for which a candidate can be held vicariously guilty for an act of any other person who is not his agent in whose favour general authority is presumed, must be pleaded and proved to be with the consent of the candidate. Obviously, it is so because the penal consequences resulting from the finding of a corrupt practice against the candidate are visited on the candidate including the setting aside of his election. The High Court assumed for the purpose of pleading as well as proof that no specific pleading or proof of consent of the candidate was necessary if the act was attributed to any leader or even a member of the same political party...."

34. In the background of the principles enumerated above, let us now examine the grounds of challenge and the pleadings in its

support.

35. Though three grounds have been mentioned in the petition, but the only substantial ground relates to corrupt practices, which have been raised by the petitioner for challenging the election. According to the petitioner the allegations of corrupt practices have been mentioned from paragraphs 8 to 12 in the petition and discloses the eight incidents to show how and at whose instance, the petitioner was prevented from filing his nomination papers. Let us examine the said paragraphs after noticing them. (The averments have been quoted in verbatim without attempting to correct the apparent grammatical errors or even where they lack clear and unambiguous comprehension) :

“8. On 04.06.2012, Petitioner was traveling from Amethi to Kannauj by train to file his nomination papers before Respondent No.2 for contesting the election for the 42 Parliamentary Constituency. At about at Manimohi just before the Kannauj Railway Station some unknown persons/passengers caught hold of the petitioner and snatched the a brief case of the petitioner containing the documents related to the filing of nomination papers. Petitioner visited the office of the Railway Protection Force and Local Police station also to lodge the complaint GRP but both of them refused to entertain the complaint of the petitioner. Local police station denied lodging the complaint on the pretext that the police force was busy with the event of nomination of candidature by Smt. Dimple Yadav wife of sitting Chief Minister of U.P.

9. Petitioner visited the office of the Railway Protection Force and Local Police station to lodge the complaint GRP but both of them refused to entertain the complaint of the petitioner. Local police station denied to lodge the complaint on the pretext that the police force was busy with the event of nomination of candidature by Smt. Dimple Yadav, the wife of sitting Chief Minister of U.P.

10. Since petitioner had to file the nomination for contesting the Election petitioner chooses not to pursue the complaint anymore and concentrate his all effort and energy on filing of the Nomination Papers as last date of filing was next day on 06.06.2012”.

36. In the three paragraphs he merely says that his brief case containing papers was snatched by unknown passengers/persons on

4th June near Kannauj railway station on the train and though he went to the GRP and RPF they did not register his complaint on the pretext that they were busy in the nomination of respondent no 1. There is absolutely no corrupt practice alleged or even hinted. Appears to be a pure law and order situation and has nothing to do with the cause of action required to file an election petition under the Act.

“11. On 05.06.2012, after preparing fresh set of papers, petitioner at about 2 pm reached the office of District Magistrate Kannauj who was also the Returning Officer to file his nomination paper for contesting the election for the 42 Kannauj Parliamentary Constituency. Respondent no.2 without giving any explanation refused to accept the nomination paper of the petitioner. At 5:41 PM a complaint against Ms. Shilva Kumari J, the DM of the Kannauj was lodged in the office of Chief Election Commission Nirvachan Sadan, Ashoka Road, New Delhi by email. Thereafter at about 6.30 PM one S. Nawab Singh Yadav a Samajwadi Party leader of Kannauj and Ex-Block Pramukh from Kannauj Sadar from his mobile No.9415473092 called Sh. Arun Kumar Baudh, the local resident and leader of VPI at his mobile No.9794198252 and stated that VPI candidate S. Prabhat Kumar Pandey should not file nomination for contesting election against Smt. Dimple Yadav who has filed her nomination today. He also stated that only Smt. Dimple Yadav the wife of sitting Chief Minister was entitled to represent his constituency in the Parliament, because her husband had recently vacated this seat to work as Chief Minister of UP. It was stated that Sh. Akhilesh Yadav was representing the constituency before and, therefore, it's not only the will of Respondent No.1 but also of all the people of the constitution that Respondent No.1 represent the Constituency. On 06.06.2012, around 7 am Sh. Nawab Singh Yadav again made telephone to Sh. Arun Kumar Baudh and threatened to assault and kidnap the daughters of Sh. Baudh, if petitioner the candidate of his party dared to file the nomination papers against Respondent No.1”.

37. In this paragraph the petitioner cites two incidents of 5th June, 2012. 1st instance of filing the papers. Here also no corrupt practice has been alleged against the respondent no 1, her election agent or anybody with her consent, except that his nomination was refused to be accepted without any reason. There is neither any allegation that the refusal of nomination papers by the Returning Officer was the result of undue influence, direction, consent or even knowledge of

respondent no 1 or her election agent. The allegations as they stand can only give a cause of action against the respondent no2 for other action under the Act but not for challenging the election through an election petition under the Act.

38. 2nd instance of the phone call by Nawab Singh. Here also there is no allegation of any corrupt practice of undue influence. It is a call by Nawab Singh Yadav to Arun Kumar Baudh but there is no threat or intimidation pleaded, there is no assertion that the petitioner should not be allowed to file his nomination papers. It is only a communication of a fact between the two. The court fails to comprehend how this assertion, without anything more, creates any cause of action to enable the petitioner to file this petition on this ground. It is not only vexatious but total abuse of the process of law.

“12. On 06.06.2012, around 7 am Sh. Nawab Singh Yadav again made telephone to Sh. Arun Kumar Baudh and threatened to assault and kidnap the daughters of Sh. Baudh, if petitioner, the candidate of his party dared to file the nomination papers against Respondent No.1. Petitioner at about 10 am along with his proposers again made efforts to file nomination paper so as to contest election for the 42-Parliamentary Constituency of Kannauj but he was manhandled and stopped from filing the nomination papers, party worker of Respondent No.1 also torn two sets of nomination papers and abducted two workers of 'VPI' with the aid and support from the police and Civil Administration. Petitioner through an email narrated the whole incident to the Chief Election Commissioner at 10:30 AM with regard to kidnapping of the two workers and tearing of the nomination papers by the support of Respondent No.1 Sh. Bharat Ghandi mentor of the VPI made telephonic calls to the Personal Secretary of Chief Election Commissioner of India and Sh. Umesh Sharma, Chief Election in charge of the State of Uttar Pradesh at 11:37 am and 02:44 pm with regard to an irregularity and corrupt practices committed by Supporters of Respondent No.1 and officers of Respondent No.2 and with regard to undue influence of the Respondent No.1. Both of them gave oral assurance of providing security to the Petitioner but no security was ever provided to Petitioner. Smt. Anguri Dharia, an active member of VPI was demonstrating against the irregularities committed by Respondent No.1 and Respondent No.2 and restraining Petitioner from filing nomination for contesting election for the 42-Kannauj Parliamentary

Constituency alongwith other 500 workers of the VPI, when at about 12.30 she was approached by Manta Kanaujia a Samajwadi Party leader and was told to take to some person on her mobile phone having no.9415483403 who was Sh. Nawab Singh Yadav on his mobile No.9415473092. Sh. Nawab Singh invited Smt. Dharia to discuss the issue with Respondent No.1 and in lieu of that she would be granted any benefit of her choice. On not been convinced he stated that Respondent No.2 and Police administration was working on dictates of Respondent No.1 to pave her path for un-opposed victory in the election and therefore, she should not waste her time in demonstration. She was told that any media or TV Channels would not cover the demonstration and the agitation of the VPI as they had already been managed and taken care of and this will broadcast the contents which will be issued by the Lucknow State Office of the Samajwadi Party. Therefore, her demonstration was worthless and she would not find a single news item in print and electronic media of group kidnapping. He further threatened to assault the family members of Smt. Dharia too if she would not stop the demonstration. In that view of the matter and the inability to file the nomination and exercise the electoral rights vested in the petitioner, the petitioner soon thereafter the Chief Election Commissioner assured the petitioner that his nomination papers will be duly accepted. At about 1 pm got the Nomination Papers containing 21 pages were faxed and sent by Registered Post to the Election Commission of India, Head Office in New Delhi. Relying on the assurance given by the Chief Election Commissioner, the petitioner Prabhat Pandey called upon Respondent no.2 on CUG no.9454417555. Respondent No.2 directed petitioner to come at 1:30 pm to file the nomination and assured that of adequate security arrangement would be made to enable him to file the nomination papers. However, when at about 1.30 pm petitioner reached the office of the Respondent No.2, workers and her agents abducted him at gunpoint and detained him at about 1.45 pm. Petitioner was brought to a room where many other persons who also keen in contesting the election and were abducted were kept. At 7.30 am. Petitioner was released from the illegal detention in the nearby jungle of Kannauj. A true copy of the nomination papers, complaint and other documents are collectively filed as Annexure No.III to the election petition”.

39. Paragraph 12 cites 5 instances of 6th June, 2012. 1st with regard to the call by Nawab Singh Yadav to Arun Kumar Baudh and the threat. It is not even pleaded that the call was made by Nawab Singh Yadav with the consent or even knowledge of respondent no. 1 or her election agent. Who informed the petitioner about the call, what

were the actual words used by Nawab Singn Yadav have also not been disclosed.

40. 2nd incident is with regard to snatching and tearing of the nomination papers and abducting two supporters by party workers of respondent no. 1 with the aid and support of Police and Civil Administration. Here also there is no averment that it was done with the consent or even knowledge of the respondent no. 1 or her election agent. Even the names of the alleged party workers has not been disclosed. Neither the names of the police officers nor civil officers has been disclosed who aided and supported the party workers and in what manner did they extend support or help, has also not been disclosed.

41. 3rd incident is with regard to Smt. Anguri Dharía and the offer made to her by Nawab Singh Yadav. Again, it has not been disclosed who told the petitioner about it, whether offer was made with the consent of respondent no. 1 or her election agent has also not been alleged, leave alone the pleadings with regard to the exact words of offer. The allegation that respondent no. 2 and the administration was working on the dictates of respondent no. 1 for unopposed victory, is also highly vague. There is not even an averment before whom, when and in what words the diktat was issued. This is a very serious charge not only upon a senior officer but casts an aspersion upon the entire local administration and therefore also full details are imperative and it cannot be left to the sweet will of the petitioner to supply details at his own leisure to take the respondent no. 1 by complete surprise. The petitioner upon a query from the court could not point out even from the annexures as to whether the said details are mentioned therein.

42. 4th incident relates to the threat extended to Smt. Anguri Dharía. Again, it is not disclosed who informed the petitioner about it, what were the exact words and before whom it was extended has been

suppressed.

43. 5th incident relates to abduction of the petitioner. Here also, the names of the persons abducting the petitioner has not been disclosed, who held the gun and the manner of abduction has also not been disclosed. Further, whether it was done on the direction or with the consent or even knowledge of the respondent no 1 has been suppressed.

44. It is evident from a perusal of the petition that there is absolutely not even a bald assertion that the respondent no.1 or her election agent had given her consent to any one for restraining the petitioner from filing his nomination papers. Further, even the details when the consent was given and before whom it was given has not been disclosed. Simply put, it lacks complete cause of action as the material fact of consent is missing. Though 'Knowledge' and 'Connivance' are not the same thing, but even that has not been pleaded. Further, the action of the alleged party leaders or the workers also cannot be attributed to the returned candidate without specific pleading on that behalf.

45. Let us now examine the affidavit. It would be appropriate to first notice the format as provided in Form 25 in view of rule 94A of the Conduct of Election Rules, 1961.

FORM 25

AFFIDAVIT

I the petitioner in the accompanying election petition calling in question the election of Shri/Smt. (respondent No. in the said petition) make solemn affirmation/oath and say-

(a) that the statements made in paragraphs of the accompanying election petition about the commission of the corrupt practice of* and the particulars of such corrupt practice mentioned in paragraphs of the same petition and in paragraphs of the Schedule annexed thereto are true to my knowledge;

(b) that the statements made in paragraphs of the said petition

about the commission of the corrupt practice of* and the particulars of such corrupt practice given in paragraphs of the said petition and in paragraphs of the Schedule annexed thereto are true to my information;

(c)

(d)

etc. Signature of deponent

Solemnly affirm by Shri/Smt. before me at this..... day of20.....

Before the Magistrate of the first class/Notary/

Commissioner of Oaths}.

* Here specify the name of the corrupt practice}

46. Let us now examine the affidavit which has been filed with the petition.

“IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

AFFIDAVIT

IN

ELECTION PETITION NO. OF 2012

(Under Section 80/81 of Representation of the people Act, 1951)

(District: Kannauj)

Prabhat Pandey Petitioner

versus

Dimple Yadav & another Respondents

Affidavit of Prabhat Pandey aged about 33 years, Son of Om Prakash Pandey, Resident of Sarvanpur, Antu Road, Amethi, CSM Nagar, Uttar Pradesh.

(Deponent)

I, the deponent abovenamed do hereby solemnly affirm and state on oath as under :-

1. That the deponent is the sole petitioner in the above Election Petition and his religion is Hindu and is practising Advocate of High Court at Judicature at Allahabad, having Enrollment No.UP2633/05 and as such fully acquainted with the facts, deposed to below.

2. That the contents of accompanying affidavit has been read over and explain to the deponent and the deponent has understood the same.

I, the deponent above named do hereby verify that the contents of paragraph nos. 1 to 2 and statement made in para no.1 to 35 of the election petition are true to my personal knowledge of this affidavit are based on perusal of records; the contents of paragraph

nos. ... of this affidavit are based on legal advice; which all I believe to be true that no part of it is false and nothing material has been concealed in it.

So Help Me God.

DEPONENT

I, Pradeep Verma, Advocate, High Court, Allahabad, do hereby declare that the person making this affidavit and alleging himself to be the deponent is known to me from the perusal of papers; produced before me in this case.

(ADVOCATE)

Solemnly affirmed before me on this 21st day of July, 2012 at about 11:00 a.m. by the deponent who has been identified by the aforesaid person.

I have fully satisfied myself by examining the deponent that he understood the contents of this affidavit and its annexure which have been read over and explained to him by me.

OATH COMMISSIONER."

47. We may first consider the law which has been propounded and settled by the Apex Court with regard to filing of an affidavit as required by the proviso to Section 83 sub-clause (1) of the Act.

48. The Apex Court was considering the effect of non filing of affidavit as required by the proviso to Section 83(1) of the Act in the case of allegation of corrupt practice under Section 123 of the Act, in the case of **Ravinder Singh vs. Janmeja Singh** (2000 (8) SCC 191) and a two Judge Bench held to the following effect :

"9. Coming now to the charge of corrupt practice falling under Section 123(1) of the Act, for which material facts and particulars have been detailed in paras 28 to 39 of the election petition, we find that those allegations could not be put to trial either. There is no affidavit filed in support of the allegations of corrupt practice of bribery.

10. Proviso to Section 83 (1) of the Act lays down, in mandatory terms that where an election petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit, in the prescribed form, in support of the allegations of such practice and the particulars thereof. The affidavit, which has been filed in support of the election petition, does not at all deal with the charge of bribery falling under Section 123(1) of the Act. Leaving aside the questions

that the affidavit is not even in the prescribed form- Form 25 of the Conduct of Elections Rules, the allegations of corrupt practice made in the election petition are not supported by the otherwise defective affidavit either. All the names of the informants which have been given in the affidavit relate to the corrupt practice under Section 123(4) of the affidavit in this respect is a verbatim reproduction of the verification clause of the election petition concerning corrupt practice under Section 123(4). No name of any informant has been mentioned in respect of the allegations of corrupt practice under Section 123(1) in the affidavit. In the absence of the requisite affidavit filed in support of the allegation of corrupt practice under Section 123(1) of the Act, as detailed in the election petition, no issue could be raised for trial.

11. Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition leveling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving inquiry and save the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial – the defect being of a fatal nature.”

49. In **P.A.Mohammad Riyas Vs. M.K.Raghavan & others** (2012 (V) SCC 511), again a two judge bench of the Apex Court was considering an appeal against the order of the High Court, which had dismissed the election petition at the threshold on the ground that though corrupt practice was alleged in the petition, but the affidavit to be filed alleging corrupt practice as required by clause (4) of Order VI Rule XV had not been filed, therefore, it did not disclose a complete cause of action. Considering the arguments as to whether a separate affidavit is required, it went on to hold in paragraph 44 to the following effect:

“44. In the present case, although allegations as to

corrupt practices alleged to have been employed by the respondent had been mentioned in the body of the petition, the petition itself had not been verified in the manner specified in Order 6 Rule 15 of the Code of Civil Procedure. Sub-section (4) of Section 123 of the 1951 defines "corrupt practice" and the publication of various statements against the appellant which were not supported by affidavit could not, therefore, have been taken into consideration by the High Court while considering the election petition. In the absence of proper verification, it has to be accepted that the election petition was incomplete as it did not contain a complete cause of action."

50. It further repelled the arguments that though Section 83 of the Act is not mentioned in Section 86 of the Act, even then incomplete cause of action would relate to Section 81 of the Act and, therefore, the issue would be rendered unworthy of any trial in the following words :

"47. In our view, the objections taken by Mr. P. P. Rao must succeed, since in the absence of proper verification as contemplated in Section 83, it cannot be said that the cause of action was complete. The consequences of Section 86 of the 1951 Act came into play immediately in view of sub-section (1) which relates to trial of election petitions and provides that the High Court shall dismiss the election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the 1951 Act. Although Section 83 has not been mentioned in sub-section (1) of Section 86, in the absence of proper verification, it must be held that the provisions of Section 81 had also not been fulfilled and the cause of action for the election petition remained incomplete. The petitioner had the opportunity of curing the defect, but it chose not to do so."

51. The correctness of the aforesaid decision in P A Mohd Riyas' case (supra) with regard to filing of the second affidavit in terms of Order VI Rule XV(4) was called in question by another two judge bench in G M Siddeshwar vs Prasanna Kumar (2013 (4) SCC 799). After noticing several of its decisions, including two Constitution Bench decisions in Murarka Radhey Shyam Ram Kumar vs Roop Singh Rathore (AIR 1964 SC 1545) Subbarao vs Election Tribunal (AIR 1964 1027) and a three judge decision in G. Mallikarjunappa vs

Shamanur Shivshankarappa (2001 (4) SCC 428, it referred the question to a larger bench.

52. On aforesaid reference, a three judge bench in **GM Siddehwar vs Prasanna Kumar (2013 (4) SCC 799)**, after considering large number of decisions, extracted the following principle in paragraph 52 :

*“52. The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions thereof. **However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold.**” (emphasis supplied)*

53. The election of the respondent no. 1 has been challenged on the ground of employing corrupt practice as mentioned in section 100(1)(b) of the Act. The charges are of using bribery as mentioned in section 123(1)(b) and of undue influence under section 123(2) of the Act. The affidavit which has been filed along with the petition does not at all deal with either the charge of bribery or undue influence, further it is not even in conformity with the prescribed format. The affidavit appears to be in terms of Order XVI Rule 15(4) CPC and cannot also be said to be even a defective affidavit which could be cured. A perusal of the Form 25 shows that the affidavit should disclose the nature of the corrupt practice with its particulars. Even the annexures filed in support of the petition are also to be sworn, but both the requirements are totally lacking. A specific objection was raised in the written statement filed by the respondent no.1 with regard to total absence of the affidavit as required by the proviso to Section 83(1) of the Act, but even then no effort was made by the petitioner to file it or to even seek permission of the Court to file the affidavit. Whether this total non compliance could be cured at a later stage is not a question which falls for consideration in this case, but it discloses the cavalier approach in making such charges but shunning the responsibility to stand by it. It has to be remembered, that the petitioner is not a

layman but is a practicing lawyer of this court !

54. Applying, generally the principles propounded in the above mentioned decisions, especially those extracted by the three judge decision in G M Siddeshwar's case (supra) and in Azhar Hussain' case (supra), five things are absolutely clear: (a) Full material facts of corrupt practice are missing, especially the pivotal fact of consent; (b) there is total non compliance of proviso to Section 83(1) and therefore it is not a petition as contemplated by Section 81; (c) total lack of statement of complete cause of action in violation of Order VII Rule 11 (a) of CPC read with Section 83 of the Act; (d) merely because the returned candidate was the wife of the sitting Chief Minister, it cannot be presumed that the alleged action of the Returning Officer and the claimed action of her workers and party leaders could be presumed to have been taken with her consent, without there being specific, clear and unambiguous pleadings to that effect and (e) even if the respondent had not appeared to oppose the petition, being a half baked petition, court could not have given the verdict in favour of the petitioner.

55. Therefore, there is no other option except to allow the two applications and to dismiss the petition at the threshold as it fails the test of stating complete cause of action.

56. However, in the circumstance of the case, no order as to costs.

Order Dated : 03rd of September 2014.

PKG/

