

**BVNJ:**  
**Pronounced on 27/02/2018**

**E.P. NO. 1/2016**

**ORDERS ON I.A.NOS.3/2016 & 4/2016**

This election petition has been filed, seeking a declaration that the election of respondent No.1 to the Karnataka Legislative Council from 16-Bangalore Local Authorities' Constituency declared on 30/12/2015 as illegal and void, and to set aside the election of respondent No.1 held on 27/12/2015 as a member of Karnataka Legislative Council. Further, a declaration is sought that petitioner is the successful candidate elected to the Legislative Council from 16-Bangalore Local Authorities' Constituency pursuant to election held on 27/12/2015.

2. Upon issuance of notices, respondent No.1/successful candidate has filed his written statement and two interlocutory applications: one, under Order VI Rule 16 of the Code of Civil Procedure, 1908 ("CPC", for short) seeking striking out certain paragraphs in the pleadings and the other, under Order VII Rule 11(a) of CPC seeking rejection of the petition as the same does not disclose a cause of action.

3. The aforesaid applications have been heard at length and are disposed of by this order.

4. The Election Commission of India notified holding of biennial elections to the Legislative Councils of Karnataka along with Maharashtra and Telangana State from Local Authorities' Constituencies, vide press note No.ECI/65/2015, dated 24/11/2015 with the following calendar of events as per Annexure-B:

Issue of Notification	02/12/2015
Last date of making Nominations	09/12/2015
Scrutiny of Nominations	10/12/2015
Last date for withdrawal of Candidatures	12/12/2015
Date of Poll	27/12/2015
Hours of Poll	8.00am to 4.00pm
Counting of votes	30/12/2015
Date before which election shall be completed	01/01/2016

5. In response to the notification, petitioner and respondent Nos.1 to 5 filed their respective nominations, the scrutiny of which took place on 10/12/2015 and their nominations were found to be valid by the Returning Officer. Petitioner contested from Bharatiya Janata Party (BJP) and respondent No.1 contested from Indian National Congress (INC). On 12/12/2015, the list of candidates validly nominated was published in Form No.7B. The Local Authorities for the purpose of election to Legislative Council are, (1) City Municipal corporations; (2) City

Municipal Councils; (3) Town Municipal Councils; (4) Town Panchayath; (5) Zilla Panchayath; (6) Taluk Panchayath; (7) Gram Panchayath and (8) Cantonment Boards. The electors consist of Members of the Local Authorities exercising jurisdiction in any place within the limits of that constituency.

6. Subsequent to the last date for withdrawal of nomination, canvassing commenced. According to the petitioner, the ruling party in the State INC did not have majority in the Legislative Council and therefore, illegal and unconstitutional methods were adopted by respondent No.1 to lure the electors. The print and electronic media reported that respondent No.1 was spending huge sums of money and using muscle power to get votes in his favour. According to the petitioner, as the number of electors in MLC elections is small in number, it is easy for an aspiring candidate to commit corrupt practice and use undue influence to get the first preferential votes in his favour. The petitioner has stated about the corrupt practices committed and undue influence exercised in paragraph No.8 of the petition as under:

"8. It is submitted that Respondent No.1 herein had committed corrupt practices to garner votes in his favour. That on 23/12/2015 between 6:30 to 7:30 pm in the house of Gram Panchayath President Mr.Anjanappa @ Puttanna, the members belonging to Marenahalli Gram Panchayath and Kannur Gram Panchayath members were got assembled by the Respondent No.1 and he was personally present during the said meeting. It is submitted that the Respondent No.1 himself had personally given Rs.1,00,000/- (Rupees One Lakh only) and one silver coin of Goddess Lakshmi and Ganesha each to all the members present at the meeting with an intention to lure them to vote in his favour. The said amount was paid in a separate room in the same house by Respondent No.1, assisted by Sri. Anjanappa President of Gram Panchayath Marenahalli & Sri. Danegowda Zilla Panchayath Member. Later, the members assembled in the hall and Respondent No.1 also sat in the first row. Along with Respondent No.1 former Member of Parliament Mr. C.Narayanaswamy was also present and he was sitting beside Respondent No.1. Later the President of the Gram Panchayath Sri. Anjanappa, in furtherance and in prospects of Respondent No.1's election, orally asked all the electors that each elector having received

Rs.1,00,000/- (One Lakh) and one silver coin, as a mark of promise everyone should take an oath in the name of God and Parents to vote in favour of Respondent No.1 and to make him successful in the elections. Accordingly Sri. Anjanappa in the presence of Respondent No.1 and with the consent of Respondent No.1 administered the oaths to the 30 electors and the representatives of electors who were present there.”

7. Thereafter, the petitioner has made the following allegation in paragraph No.22 of the petition, which reads as under:

“That, apart from bribing and unduly influencing the electors, respondent No.1 and his agents also resorted to malpractice on the day of voting. So far as Bangalore Local Authority Constituency is concerned, the total number of booths are 100. That booth No.98 is for Mugulur Gram Panchayath. At about 10.15 am, one Smt. Nagaveni, wife of Srinivas, Gram Panchayath member of Mugulur village, entered the polling station to cast her vote on the instruction of respondent No.1 and his agents. After her identification ballot No.3048 was handed over to her to cast her vote, it was noticed that instead of casting her vote and dropping the ballot in the box, she was holding

the original ballot in her hand closely and she has dropped a model ballot into the box. Before she could go out of the polling station, the polling agent of BJP had noticed the same and immediately informed the Presiding Officer and a complaint was lodged against Smt. Nagaveni by the Presiding Officer of the polling station No.98 and the Tahsildar, Anekal Taluk had submitted a separate report with the Deputy Commissioner and Returning Officer. That based upon the complaint, Crime No.273/2015 was registered by the Sarjapur Police Station under Sections 135 and 136 of Representation of People Act. The Certified Copy of the complaint by the Presiding Officer, Tahsildar and Crime No.273/2015 are produced herewith and marked as **Annexure-P, Q, R.**"

8. Learned Senior Counsel, Sri Jayakumar S.Patil, appearing for respondent No.1, by drawing my attention to the aforesaid averments made in the petition contended that two aspects are relevant with regard to the applications filed by respondent No.1. One is that, the source of information of the alleged corrupt practices has not been mentioned. The second is that, the pleadings in the petition are unnecessary, scandalous, frivolous,

vexatious and tend to prejudice and embarrass fair trial. That the two major allegations against respondent No.1 are; firstly, that respondent No.1 personally gave Rs.1.00 lakh and a silver coin of Goddess Lakshmi and Lord Ganesha to each of the members present at the meeting held on 23/12/2015, between 6.30 pm to 7.30 pm, in a separate room in the house of the President of the Gram Panchayath, Sri Anjanappa @ Puttanna, where the members belonging to Marenahalli and Kannur Gram Panchayath had assembled, with an intention to lure the said voters in his favour. Later, the President of the Grama Panchayath of Marenahalli, Sri Anjanappa asked the electors, who had received Rs.1.00 lakh in cash and silver coin to make a promise in the name of God and their parents, to vote in favour of respondent No.1 so that he would be successful in the election. That Sri Anjanappa, in the presence of respondent No.1 administered the oath to thirty electors and the representatives of electors who were present at the said meeting.

9. According to learned Senior Counsel for respondent No.1, the source of the aforesaid information has not been stated in the petition, as to who recorded the

proceedings of the said meeting or, as to who conveyed news about the same. It is contended by the learned Senior Counsel for respondent No.1 that the aforesaid incident was widely telecast by TV9, which is a Kannada News channel, on 24/12/2015, between 4.30 pm and 5.00 pm. Thereafter, a complaint was lodged with the Chief Electoral Officer, Karnataka, by Sri S.Suresh Kumar of BJP to the effect that respondent No.1 had paid Rs.1.00 lakh and a silver coin to the voters, so as to induce them by taking oath and that the same was telecast on electronic media. While advertng to what was downloaded from YouTube by the petitioner, which was a recording of what was telecast by TV9 News channel, learned Senior Counsel for respondent No.1 submitted, the source of what was downloaded from TV9 through YouTube channel was also not known. Therefore, the allegations were made against respondent No.1 without disclosing the source of such information.

10. Referring to paragraph No.17 of the petition, which is another allegation, it was contended by learned counsel for respondent No.1 that the petitioner has not disclosed the source of information with regard to bribery



and influencing the electors by respondent No.1 and personally meeting the electors either by himself or by his daughter, Smt. Divya.

11. Drawing my attention to Section 83 of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"), he contended that the manner in which the election petition should be filed is stated therein. Adverting to Rule 94A of the Conduct of Elections Rules, 1961 (hereinafter referred to as "the Rules") and Form No.25 therein, which is in the form of an affidavit, learned Senior Counsel, Sri Patil submitted that the said affidavit does not categorically say as to which of the particulars are true to petitioner's knowledge and which particulars are to the best of his information. That the source of information is not disclosed in the pleadings of election petition i.e., election petition or in the affidavits.

12. Learned Senior Counsel, Sri Patil, also contended that the election petition lacks material particulars. The paragraphs are the narration of an incident and they are vague and general allegations. In the absence of legally acceptable material in the petition, the pleadings are liable to be struck down. He contended

that the material particulars must also include the source of information. Adverting to certain decisions of the Hon'ble Supreme Court, learned Senior Counsel contended that the pleadings must be struck down and consequently, this Court may reject the election petition.

13. *Per contra*, learned Senior Counsel Sri M.B.Nargund, appearing for petitioner at the first instance drew my attention to a decision of the Hon'ble Supreme Court in the case of ***Ponnala Lakshmaiah vs. Kommuri Pratap Reddy & others [(2012)7 SCC 788]*** (*Ponnala Lakshmaiah*), with regard to the approach to be made in the matter of consideration of applications filed under Order VI Rule 16 and Order VII Rule 11(a) of CPC. He further submitted that such applications are inevitably filed in all election petitions, which results in procrastination of the proceeding. Refuting the arguments of the learned Senior Counsel for respondent No.1, it was contended that the election petition must contain only pleadings and not evidence in support of the same. That the pleadings must epitomize the facts and the facts must be concise statement of material facts as stipulated in Section 83 of the Act. Referring to Section 10(1)(b) read with Section

123 of Act, which deal with the grounds for filing of an election petition and the definition of corrupt practice, he contended that bribery and undue influence are two corrupt practices mentioned under the Act. That legally acceptable material must be discerning on a holistic reading of the petition along with the annexures.

14. Referring to each of the paragraphs of the petition and the annexures, learned Senior Counsel, Sri Nargund contended that the material particulars have been categorically stated in the petition and that there are no vague allegations or statements in the election petition. He further submitted that respondent No.1 has filed the written statement after discerning and understanding the allegations of corrupt practices stated in the petition and that there has been no request or demand made by respondent No.1 for seeking material particulars. Learned Senior Counsel submitted that each annexure appended to the election petition is an integral part of the election petition and has to be read along with the pleadings in the petition. That the annexures are also verified. By adverting to certain decisions of the Hon'ble Supreme

Court, learned Senior Counsel sought for dismissal of the applications.

15. By way of reply, learned Senior Counsel for respondent No.1 contended that the allegations made in paragraph Nos.22 to 24 of the petition, with regard to ballot papers are in no way connected with corrupt practices. That the telecast on television and the downloading of material from YouTube cannot be the source for filing of an election petition. That in the face of applications filed by respondent No.1 herein, the petitioner who could have taken steps to cure the defects has not taken steps to do so, wherever the defects are curable by seeking amendment of the petition. Learned Senior Counsel for respondent No.1, therefore, sought for allowing the applications by relying on certain judgments of the Hon'ble Supreme Court.

16. Before considering the rival submissions on the applications, it would be necessary to advert to the decisions of the Hon'ble Supreme Court relied upon by the respective parties on the approach of the High Court in such matters.

(a) At the outset, reference to *Ponnala Lakshmaiah* may be made.

(i) In that case, the question considered by the Hon'ble Supreme Court was, as to, whether the election petition filed by respondent No.1 against the appellant therein, who happened to be the successful candidate, disclosed a cause of action and could not therefore, be dismissed on the threshold. The High Court of Andhra Pradesh had held that the election petition could not be dismissed. After adverting to the expression "cause of action" as explained in the case of *Om Prakash Srivastava vs. Union of India [(2006)6 SCC 207]*, the Hon'ble Supreme Court noted that every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary, to prove each fact, comprises "cause of action". That while examining whether an election petition discloses a cause of action, the Court has to have a full and comprehensive view of the pleading. That it is not permissible to cull out a sentence or a passage and to read it out of context or 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 vide *Udhav Singh vs. Madhav Rao Scindia [(1977)1 SCC 511]*. That the Court trying a suit or an election petition, shall, while examining whether the plaint or the petition discloses a cause of action, to assume that the averments made in the plaint or the petition are factually correct. Hon'ble Supreme Court also observed that an election petition could be dismissed for non-compliance with Sections 81, 82 and 117 of the Act, but it may also be dismissed if the matter falls within the scope of Order VI Rule 16 or Order VII Rule 11 of CPC, but a defect in the verification of the election petition or the affidavit accompanying the election petition was held to be curable, hence, not sufficient to justify dismissal of the election petition under Order VII Rule 11 or Order VI Rule 16 of CPC.

(ii) The Hon'ble Supreme Court held that the approach in the matter is to take averments made in the election petition to be factually true while determining

whether a case for exercise of powers under Order VII Rule 11 of CPC has been made out. In other words, in order to determine whether it discloses a cause of action or not, it has been pointed out by placing reliance on *Raj Narain vs. Indira Nehru Gandhi* [(1972)3 SCC 850] that just because a corrupt practice has to be strictly proved does not mean that a pleading in an election petition must be strictly construed. In this decision, the Hon'ble Supreme Court has also cautioned that the successful candidates charged with commission of corrupt practices or other illegalities and irregularities that constitute grounds for setting aside their elections seek dismissal of the petition *in limine* on grounds that are more often than not specious, in an attempt to achieve a two fold objective, which are stated as under:

**"16.** We need only emphasise that the burden which lies on an election petitioner to prove the allegations made by him in the election petition, whether the same relate to commission of any corrupt practice or proof of any other ground urged in support of the petition has to be discharged by him at the trial. There is no dilution of that obligation when the court refuses to dismiss a petition at the threshold. All that the refusal to dismiss

the petition implies is that the appellant has made out a case for the matter to be put to trial. Whether or not the petitioner will succeed at the trial remains to be seen till the trial is concluded. Even so, on a somewhat erroneous understanding of the law settled by this Court, the successful candidates charged with commission of corrupt practices or other illegalities and irregularities that constitute grounds for setting aside their elections seek dismissal of the petitions in limine on grounds that are more often than not specious, in an attempt to achieve a twofold objective. First, they take a chance of getting the election petition dismissed on the ground of it being deficient, whether the deficiency be in terms of non-compliance with the provisions of Sections 81, 82 and 117 of the Act or on the ground that it does not disclose a cause of action. The second and the more predominant objective is that the trial of the election gets delayed which in itself subserves the interests of the successful candidate. Dilatory tactics including long-drawn arguments on whether the petition discloses a cause of action or/and whether other formalities in the filing of the petition have been complied with are adopted with a view to prevent or at least delay a trial of the petition within a reasonable time-frame.”



Therefore, according to the Hon'ble Supreme Court, Courts have to guard against such attempts made by parties who often succeed in dragging the proceedings beyond the term for which they have been elected.

17. Learned Senior Counsel for respondent No.1 has relied upon the following two decisions in order to advert to the approach to be made by the Court while dealing with an application filed under Order VII Rule 11 of CPC:

(a) In ***C.P. John vs. Babu M. Palissery & others [(2014)10 SCC 547]*** (*C.P. John*), it has been observed that having regard to Section 83(1)(a) read with its proviso and Rule 94A and Form 25 of the Rules, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material

evidence without an iota of doubt as to such allegation, the election petition cannot be entertained and will have to be rejected at the threshold.

(b) In ***Azhar Hussain vs. Rajiv Gandhi [1986 (Supp) SCC 315]*** (*Azhar Hussain*), the Hon'ble Supreme Court, while considering as to whether the High Court had correctly exercised its jurisdiction to strike out pleadings under Order VI Rule 16 of CPC and to reject the election petition under Order VII Rule 11 of CPC at the preliminary stage even though no written statement had been filed by the respondent, adverted to Sections 80, 81, 83, 86 and 87 of the Act and the procedure to be followed in such cases. That Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The procedure applicable to the trial of suits under CPC shall apply to the trial of election petitions as well. Under Order VI Rule 16 and Order VII Rule 11 of CPC, the Court is

empowered at any stage of the proceedings to strike out or delete a pleading, which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. That it is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement or statement of objections as the case may be and points out the defects. That if the Court on examination of the plaint or the election petition finds that it did not disclose any cause of action, it would be justified in striking out the pleadings. That the Court need not wait for the filing of the written statement, instead it can proceed to hear the preliminary objections and strike out the pleadings. If after the striking out the pleadings, the Court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11 of CPC.

(c) Apart from the aforesaid cases, the observation of the Hon'ble Supreme Court in ***G.M.Siddeshwar vs. Prasanna Kumar [(2013)4 SCC 776]*** (*G.M.Siddeshwar*) to the effect that the Court must make a fine balance between the purity of the election process and the avoidance of an election petition being a

source of annoyance to the returned candidate and to his constituents, is apposite.

(d) Further, in ***Ajay Arjun Singh vs. Sharadendu Tiwari & others [(2016)15 SCC 219]*** (*Ajay Arjun Singh*), the Hon'ble Supreme Court while alluding to the approach to be adopted by a Court while examining an application under Order VI Rule 16 of CPC, observed that the said provision authorizes the Court to order that any matter in any pleading could be struck out on the grounds specified under clauses (a), (b) and (c) thereof. That each one of them is a distinct ground. That clause (a) authorizes the Court to strike out the pleadings, which may be unnecessary, scandalous, frivolous, vexatious, the test to be applied is whether the allegation contained in that pleading is relevant and essential to grant the relief sought. Allegations which are unconnected with the relief sought in the proceeding fall under this category. Also if a pleading is to be struck out on the ground that it is scandalous, the Court must first record its satisfaction that the pleading is scandalous in the legal sense and then enquire whether such scandalous allegation is called for or necessary having regard to the

nature of the relief sought in the proceeding. That clause (c) is much wider and therefore, such authority under that clause must be exercised with circumspection and on the basis of some rational principles. Referring to *Bhikaji Keshao Joshi vs. Brijlal Nandlal Biyani [AIR 1955 SC 610]*, the Hon'ble Supreme court held that the Court examining an election petition may order striking out of charges which are vague. Reference has also been made to *Ponnala Lakshmaiah* wherein the scope of Order VII Rule 11 of CPC was considered in the context of non-disclosure of any cause of action, wherein it has been opined that for the purpose of determining such an application, the averments in the election petition must be taken to be factually correct and thereafter examine whether such averments furnish the cause of action for granting the relief to the petitioner.

(e) Also, in ***D. Ramachandran vs. R.V. Janakiraman & others [(1999)3 SCC 267]***, it has been observed that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the petitioner if the averments made in the petition are proved to be true. For the purpose of

considering a preliminary objection, the averments in the petition should be assumed to be true and the Court has to find out whether those averments disclose a cause of action or a triable issue as such. The Court cannot probe into the facts on the basis of the controversy raised in the counter. With reference to Order VII Rule 11 of CPC, it has been observed that the Court cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. Further, there cannot be a partial rejection of the plaint or petition vide *Roop Lal Sathi vs. Nachhattar Singh Gill [(1982)3 SCC 487]*.

18. Bearing in mind the aforesaid dicta of the Hon'ble Supreme Court on the approach to be had while considering applications filed under Order VI Rule 16 of CPC and Order VII Rule 11 of CPC in light of the specific contentions raised by learned Senior Counsel on behalf of respondent No.1, in support of the applications and the response of the petitioner could be considered in the first instance by considering the pleadings in the election petition. But before that, it is necessary to advert to the relevant provisions of the Act and Rules having a bearing

on the controversy in question and the relevant case law on the point.

19. The relevant provisions to be considered while adjudicating on the applications in question are Sections 81 and 83 of the Act and Rule 94A of the Rules. They read as under:

**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.

*Explanation.* – In this sub-section “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) [omitted by Act 47 of 1966, sec.39(b) (w.e.f. 14-12-1966)]

(3) Every election petition shall be accompanied by as many copies thereof as

there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

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

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) he shall set forth full particulars of any corrupt practices 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.”

**Rule 94A. Form of affidavit to be filed with election petition.-** The affidavit referred to in the proviso to sub-section (1) of Section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.”

20. The judicial precedent on the aspect of the requirement of setting forth full particulars of any corrupt practice alleged against a returned candidate in the election petition and its non-compliance leading to non-disclosure of cause of action under Section 83(1) and (2) of the Act and the aspect as to whether the striking down of pleadings on the basis of the parameters stated in Order VI Rule 16 of CPC resulting in non-disclosure of cause of action and thereby inevitably leading to rejection of the election petition on the basis of order VII Rule 11 of CPC could be considered.

(a) **In *Ram Sukh vs. Dinesh Aggarwal (2009) 10 SCC 541***, the Hon'ble Supreme Court considered the point as to whether an election petition if it lacks material

facts required to be stated in terms of Section 83(1) of the Act would be dismissed summarily without trial. That under the said section it is mandatory that all material facts are set out in an election petition and if the material facts are not set out, the same could be dismissed on that ground alone. Observing that the phrase "material facts" has neither been defined in the Act nor in the CPC, it is held that it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. It was further observed that all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are material facts. That material facts are facts which would give the petitioner relief sought for. But that would again depend upon the facts of each case and no rule of universal application could be laid down.

The Hon'ble Supreme Court has explained the distinction between the phrases "material facts" as appearing in clause (a) and "particulars" as appearing in clause (b) of sub-section (1) of Section 83. That material facts are primary or basic facts which have to be pleaded

by the petitioner to prove his cause of action and by the defendant to prove his defence whereas "particulars" are details in support of material facts pleaded by the parties, they amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. That the material facts is the basic foundation or edifice on which the election petition is built upon and particulars are to be stated to be ensured that the opposite party is not taken by surprise.

(b) In the context of an election petition, as to statement of material facts and consequences of non-disclosure with reference to Sections 81, 83 and 86 of the Act in ***Samanth N Balakrishna vs. George Fernandis [(1969) 3 SCC 238]***, it has been laid down as under:

- (i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;
- (ii) Omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;
- (iii) the function of particulars is to present in full a picture of the cause of action and to make

the opposite party understand the case he will have to meet;

(iv) material facts and particulars are distinct matters – material facts will mention statements of fact and particulars will set out the names of person with date, time and place; and

(v) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost”

(c) Reference could also been made to another decision of the Hon’ble Supreme Court in the case of ***Virender Nath Gautam vs. Satpal Singh [(2007) 3 SCC 617]***, wherein the distinction between *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia* (the facts by means of which they are proved i.e. particulars or evidence).

(d) In the context of the Act, in ***F.A. Sapa vs. Singora [(1991) 3 SCC 375]***, referring to the expression material facts in Section 83(1) (a) of the Act and the requirement of setting forth full particulars of any corrupt practice alleged against a returned candidate as per Section 83(1) (b) of the Act, the Hon’ble Supreme Court observed that the underlying idea in requiring the election

petitioner to set out in a concise manner all the material facts as well as the full particulars where commission of corrupt practice is complained of, is to delineate the scope, ambit and limits of the inquiry at the trial of the election petition. That Section 86(5) empowers the High Court to allow the particulars of any corrupt practice alleged in the petition to be amended or amplified provided the amendment does not have the effect of widening the scope of the election petition by introducing particulars in regard to a corrupt practice not previously alleged or pleaded within the period of limitation in the election petition. In other words, the amendment or amplification must relate to particulars of a corrupt practice already pleaded and must not be an effort to expand the scope of the inquiry by introducing particulars regarding a different corrupt practice not earlier pleaded. It is also significant to note that Section 86(5) permits particulars of any corrupt practice alleged in the petition to be amended or amplified and not the material facts.

(e) In ***V.S. Achuthanandan vs. P.J. Francis and another [(1999) 3 SCC 737]*** (*V.S. Achuthanandan*), after referring to a catena of decisions, it has been held

that while failure to plead material facts is fatal to the election petition and no amendment of the pleading is permissible to introduce such material facts after the time limit prescribed for filing the election petition, the absence of material particulars could be cured at a later stage by a proper amendment. That an election petition was not liable to be dismissed *in limine* merely because of 'full particulars' of corrupt practice alleged was not set out. Whether in any election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends upon the nature of the charge levelled, the ground relied upon and in light of the special circumstances of the case. Thus, failure to plead material facts may lead to non-disclosure of a cause of action and result in rejection of the election petition itself, but that would not be a position in case of absence of full particulars. Further, striking down of the pleadings under Order VI Rule 16 may also result in lack of cause of action resulting in rejection of the election petition. Thus, if material facts are not stated in the petition, then the same is liable to be dismissed on the ground that the case shall

be covered by clause (a) of sub-section (1) of Section 83 of the Act read with Order VII Rule 11(a) of the CPC.

(f) In ***Ashraf Kokkur vs. K.V. Abdul Khader and Others, [(2015) 1 SCC 129]*** (*Ashraf Kokkur*), reliance has been placed on *Sahodrabai Rai vs. Ram Singh Aharwar, [AIR 1968 SC 1079]*, to observe that a schedule or an annexure which is merely evidence in the case and included only for the sake of adding strength to the petition is not an integral part of the election petition. That was a case where the annexures were not verified by the election petitioner under Section 83(2) of the Act. But in ***Kamalam vs. V.A. Syed Mohammed [(1978) 2 SCC 659]***, it was held that if a schedule or annexure is an integral part of the election petition, it must be signed by the petitioner and verified since it forms part of the election petition. It is further observed by relying on *V.S. Achuthanandan*, that an election petition was not liable to be dismissed *in limine* merely because full particulars of corrupt practice alleged were not set out. So long as the claim discloses cause of action or raises some questions which have to be decided by the Judge, the mere fact that the case is weak and not likely to succeed is no ground for

striking it out. That there is a clear distinction between the failure of the pleadings to disclose a reasonable cause of action and absence of full particulars. Referring to *Ponnala Lakshmaiah*, it observed that courts need to be cautious in dealing with requests for dismissal of the petitions on the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed.

(g) In ***L.R. Shivaramagowda and Others vs. T.M.Chandrashekar (dead) by Lrs. and Others, [(1999) 1 SCC 666]***, reliance has been placed on *Virendra Kumar Saklecha vs. Jagjiwan, [(1972) 1 SCC 826]*, to observe that non-disclosure of grounds or sources of information in an election petition which is to be filed within forty-five days from the date of election of the returned candidate would have to be considered from two points of view. The importance of setting out the sources of information at the time of presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. The non-disclosure of the grounds would indicate that the election petitioner did not come forward with the sources of



information at the first opportunity. The other point of view is that the election petitioner will not be able to make any departure from the sources or grounds, if there is any embellishment of the case it will be discovered.

21. Clause (3) of Section 83 of the Act states that an election petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings. The proviso states that when the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form (Form No.25) in support of the averments of such corrupt practice and the particulars thereof. Sub-section (2) of Section 83 states that any schedule or annexure of the petition shall also be signed by the petitioner and verified in the same manner as in the petition. While considering the aforesaid provision and the judicial precedent thereof, reference could be made to Order VI Rule 15 CPC, which deals with the verification of the pleadings. The rule begins with the words "save as otherwise provided by any law for the time being in force" and it states that every pleading shall be verified by the party or by one of the parties or by some other person acquainted with the case. Secondly,

the rule mandates every person verifying shall specify what he verifies of his own knowledge and what he verifies upon information received or believed to be true by reference to paragraph numbers. The rule further states that the verification shall be signed by the party making it. In *F.A. Sapa*, in the context of Sections 83(1)(c) and 83(2), reference has been made to Order VI Rule 15 of the CPC, which states that a person shall specify with reference to the numbered paragraphs of the pleading, what he verifies on his own knowledge and what he verifies upon the information received or believed to be true. That the verification must be signed by the person making it and must state the date on and the place at which it was signed. Further, the defect in the verification can be of (i) a formal nature and not very substantial, (ii) one which substantially complies with the requirements and (iii) that which is material but capable of being cured. The object of requiring verification of an election petition is clearly to fix the responsibility for the averments and allegations in the petition on the person signing the verification and at the same time discouraging wild and irresponsible allegations unsupported by facts. Under

proviso to Section 83(1)(c) where corrupt practice is alleged in the petition, the petition shall also be supported by an affidavit in the prescribed form i.e., Form No.25 prescribed by Rule 94A of the Rules.

22. While considering as to what is the consequence of a defective or incomplete verification and what is the consequence of a defective affidavit, reference could be made to Section 86(1) of the Act, which lays down that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 does not in terms refer to Section 83 which deals with the contents of the petition. Therefore, the Parliament has not viewed non-compliance of the requirement of Section 83 on the same plane as in the case of Section 81, 82 or 117. But it was said that a petition which does not comply with the Section cannot be said to be an election petition within the contemplation of Section 81 and hence Section 86(1) would be attracted. That proviso to Section 83(1) which was inserted by Section 18 of the Amendment Act 40 of 1961, is attracted where the petitioner alleges any corrupt practice. In such a case, the election petition must be accompanied by an

affidavit in Form 25 prescribed by Rule 94A and must be sworn consistently with Order XIX Rule 3 of the CPC. The affidavit must support the allegation of corrupt practice and the particulars thereof pleaded in the election petition. Order XIX Rule 3 of the CPC provides that an affidavit should be confined to such facts as the deponent is able on his own knowledge to prove. In this regard, the settled position of law is that when the matter disclosed in the affidavit is not based on personal knowledge, the source/sources of information should be clearly disclosed.

23. After referring to a catena of judicial dicta in the context of the aforesaid provisions, the Hon'ble Supreme Court held that (i) the defect in the verification, if any, can be cured (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the

prescribed Form-25 can be cured unless the affidavit forms an integral part of the petition in which case the defect concerning material facts will have to be dealt with subject to limitation, under Section 81(3) That the court would have to decide in each individual case whether the schedule or annexure referred to Section 83 constitutes an integral part of the election petition or not.

24. Further, in the context of a corrupt practice, the Hon'ble Supreme Court has observed that the same must be viewed seriously and the High Court should ensure compliance with Section 83 before the parties go to trial. That, while a defective verification or a defective affidavit may not be fatal, the High Court should ensure its compliance before the parties go to trial so that the party required to meet the charge is not taken by surprise at the actual trial. That delay in complying with the requirements of Section 83 read with provisions of CPC or the omission to disclose the grounds or sources of information, though not fatal, would weaken the probative value of the evidence ultimately led at the actual trial. That a charge of corrupt practice has to be proved beyond reasonable doubt and not merely by preponderance of probabilities as the

allegation of corrupt practice is of a quasi-criminal nature and the failure to supply 'full particulars' at the earliest point of time and to disclose the source of information promptly may have an adverse bearing on the probative value to be attached to the evidence tendered in proof thereof at the trial. Thus, according to the Hon'ble Supreme Court *"even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the court in a given case to doubt the veracity of the evidence ultimately tendered. If, however, the affidavit or the schedule or annexure forms an integral part of the election petition itself, strict compliance would be insisted upon."*

25. In the context of non-compliance with the proviso to Section 83(1) of the Act, in *Ponnala Lakshmaiah*, reliance has been placed on an earlier decision of the Hon'ble Supreme Court in the case of *Sardar Harcharan Singh Brar vs. Sukh Darshan Singh*, [(2004) 11 SCC 196], wherein it has been held that non-compliance of proviso to Section 83 of the Act, would not attract an order of dismissal of the election petition in

terms of Section 86 thereof. Therefore, the defect, if any, in the verification of the affidavit filed in support of the petition is not fatal although Section 83(1) is couched in mandatory terms.

26. Similarly, in **G.Mallikarjunappa vs. Shamanur Shivashankarappa [(2001) 4 SCC 428]** and **Vijay Laxmi Sadho vs. Jagadish [(2001) 2 SCC 247]**, it has been held by the Hon'ble Supreme Court that non-compliance with the provisions of Section 83 of the Act, does not attract the consequences envisaged under Section 86(1) of the Act and hence the election petition is not liable to be dismissed *in limine* under that Section. The defect in the verification of the affidavit is a curable defect. Further, if there is any defect in the affidavit, an opportunity must be given to the petitioner to remove the same by filing a proper affidavit. In fact, in the aforesaid cases, this Court had dismissed the election petition on the ground that there had been non-compliance of Rule 94A of the Conduct of Election Rules, 1961 inasmuch as the affidavit filed in support of allegations of corrupt practices with the election petitions did not comply with the requirements of the format as prescribed in Form 25.

Allowing the appeal, the Hon'ble Supreme Court held that the defect in the verification of the affidavit is a curable defect. In *Ponnala Lakshmaiah*, it has been observed that the format of the affidavit is not a matter of substance. What is important is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so. The Hon'ble Supreme Court has also cautioned that a petition which raises triable issues ought not to be dismissed simply because the affidavit filed by the petitioner is not in a given format no matter the deficiency in the format has not caused any prejudice to the successful candidate and can be cured by the election petition by filing a proper affidavit.

27. In *G.M.Siddeshwar* the Hon'ble Supreme Court on perusing the affidavit furnished by the respondent therein held that *ex facie* it was not in absolute compliance



of the format affidavit, but there was substantial compliance of the prescribed format and the defect in the verification was curable and was not fatal to the maintainability of the election petition. On the question as to whether an affidavit required to be filed under the proviso to Section 83(1) of the Act, is an integral part of an election petition and if so, whether the filing of the defective affidavit would be fatal to the maintainability of the election petition, the Hon'ble Supreme Court held when the averments are too compendious for being included in an election petition, they may be set out in the schedule or annexures to the petition. In such an event, these schedules or annexures would be an integral part of the election petition and must therefore, be served on the respondents. This is quite different when the documents or annexures to the petition is by way of evidence and do not form an integral part of the averments of the election petition and may not therefore be served on the respondents. Affirming the order of this court, the Hon'ble Supreme Court held that the defective verification was curable and that an opportunity ought to be granted to cure the defects.

28. Applications have been filed under Order VI Rule 6 as well as Order VII Rule 11 of CPC. It is contended that if the pleadings have to be struck down on the basis of Order VI Rule 16 CPC, then they would be no subsisting cause of action for further consideration of the election petition. Hence, Order VII Rule 11(a) CPC has been pressed into service for rejection of the election petition itself. The judicial dicta on this aspect of the matter is culled out as under:

(a) In *C.P. John*, the Hon'ble Supreme Court, on a conspectus reading of Section 83(1)(a), along with its proviso of the Act, as well as, Rule 94A and Form 25 of the Rules, has held that the Court which deals with an Election Petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place etc., so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. Unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt

practice is supported by legally acceptable material, without an iota of doubt as to such allegation, the election petition cannot be entertained and will have to be rejected on the threshold.

(b) In *Ramsukh*, it has been held that the object and purpose of applying Order VI Rule 16 and Order VII Rule 11 of the CPC to the election petition is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy judicial time of the courts. If that is so, in matters pertaining to ordinary civil litigation, it must be applied with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him.

(c) Further, in *Azhar Hussain*, it has been observed that the sword of Damocle need not be kept hanging over the head of the elected representative unnecessarily without point or purpose. Even in an ordinary civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. That an order directing a party to strike out a part

of the pleading could result in the termination of the case arising in the context of the said pleading. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. Since the Court has the power to act at the threshold, the power must be exercised on the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such power is warranted under the relevant provision of law. Therefore, if the powers to dismiss or reject the election petition or pass appropriate orders be exercised, that must be done at the threshold and not at the stage of final judgment after recording the evidence.

(d) In *Ponnala Lakshmaiah*, the Hon'ble Supreme Court has reiterated that for the purpose of determining whether the plaint discloses a cause of action, the Court must take into consideration the plaint as a whole. It is only if even after the plaint is read as a whole, that no

cause of action is found discernible that the Court can exercise its power under Order VII Rule 11 of the CPC. The same test would apply even in the case of an election petition. Further, the Court while trying a suit or an election petition, while examining whether the plaint or the petition discloses a cause of action has to assume that the averments made in the plaint or the petition are factually correct. It further held that the election petition that raises triable issues need not be dismissed simply because the affidavit filed by the petitioner is not in a given format, no matter the deficiency in the format would not cause any prejudice to the successful candidate and can be cured by the election petitioner by filing a proper affidavit. Further, it has been cautioned that if the Courts adopt a technical approach towards the resolution of electoral disputes, the confidence of the people not only in the democratic process but in the efficacy of the judicial determination of electoral disputes will be seriously undermined. In *G.M.Siddeshwar* also it has been held that the Court must make a fine balance between the purity of the election process and the avoidance of an election petition being a

source of annoyance to the returned candidate and his constituents.

(e) In *V.S. Achuthanandan*, it has been held that the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. In *Ashraf Kokkur*, the Hon'ble Supreme Court has quoted from the judgment in *V.S. Achuthanandan* to observe that so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground to strike out the pleadings. Further, the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars.

(f) In ***Hari Shanker Jain vs. Sonia Gandhi [(2001)8 SCC 233] (Hari Shanker Jain)***, it has been held by the Apex Court that the expression "cause of action" would mean facts to be proved, if traversed, in order to support his right to the judgment of the Court and that the function of the party is to present a full picture of the cause of action with such further information so as to make opposite party understand the case he will have to meet.

29. In the aforesaid background of judicial dicta, the pleadings in the election petition could be considered.

(a) As already noted in paragraph No.8 of the election petition, the petitioner has alleged that respondent No.1 has committed certain corrupt practices so as to garner votes in his favour. Two allegations have been mentioned: the first being that, respondent No.1 had invited the members belonging to Marenahalli Grama Panchayath and Kannur Gram Panchayath to the house of Anjanappa @ Puttanna, who is President of one of the Grama Panchayaths, on 23/12/2015. That on the said date, between 6.30 pm and 7.30 pm, respondent No.1 personally gave Rs.1,00,000/- and one silver coin to each of the members at the meeting with an intention to lure them to vote in his favour. That the said amount was paid in a separate room in the house by respondent No.1, assisted by Sri Anjanappa, President of Marenahalli Gram Panchayath and Danegowda, Zilla Panchayath Member. The second allegation is that, the members assembled in the house of Anjanappa were administered oath in the name of God and their parents to vote in favour of respondent No.1 so as to make him successful in the

election. That along with respondent No.1, former Member of Parliament, Sri C.Narayanaswamy was also present and he was sitting beside respondent No.1.

(b) In paragraph No.9 of the petition, petitioner has stated that the aforesaid incident of corrupt practice was widely broadcast on TV9 Kannada Channel, on 24/12/2015, between 4.30 pm to 5.00pm. Under the leadership of Sri S. Suresh Kumar, MLA and spokesman of BJP along with two other office bearers of the said party lodged a complaint with the Chief Electoral Officer Karnataka to the effect that M.Narayanaswamy had paid Rs.1,00,000/- (Rupees one lakh only) and a silver coin to the voters and induced them to vote in his favour by taking an oath, and the same was broadcast on electronic media. Therefore, BJP had requested to invalidate the candidature of respondent No.1. That P.S. Dhananjaya, Advocate, had made a request on behalf of the petitioner to the Election Commission of India to supply a copy of the complaint filed by BJP and action taken by Election Commission of India. In reply to the said request, the Chief Electoral Commissioner's Office had given an endorsement dated 01/02/2016 along with a copy of the



complaint filed by BJP and the letter addressed to the Returning Officer, Bangalore, to take appropriate action, dated 25/12/2015.

(c) Further, in paragraph No.10, it is averred that petitioner has downloaded the said telecast of TV9 Kannada from YouTube <https://www.youtube.com/watch?v=FK05GmT8vsY>. That, on 24/12/2015, between 7.00 pm to 7.30 pm, the same incident was re-telecast by TV9 Kannada Channel with particulars. Sri Thammegowda, resident of R.M.V. Extension, businessman and social worker had recorded the later telecast by TV9 by using his mobile phone bearing No.9980181818 and IMEI No.355899065196079. The petitioner with the help of one Sri Satyanarayana, son of Srinivasaiah @ Deepu, resident of Bailmaranahalli, had downloaded the broadcast of TV9 on 24/12/2015 from YouTube, which is available to the general public. The petitioner through his advocate, Sri Rajshekar, also made a request to TV9 Kannada authorities to supply a copy of the broadcast made on 24/12/2015. The effort made by Sri Rajshekar was in vain and TV9 Kannada official orally informed that they would produce the documents only to the Court, if ordered.

However, it was informed by those officers that the same telecast was available on YouTube also which is a public document. Further, petitioner also applied to TV9 Kannada by making a written request through RPAD on 02/02/2016 for supply of a copy of the said telecast. The Kannada version of the Kannada telecast on the CD has been quoted followed by the English version by translation of the same in paragraph No.10.

(d) It is averred that the whole act of paying money by respondent No.1 and administering the oath under his personal supervision and consent has directly induced the electors to vote at the legislative Council election held on 27/12/2015 in favour of respondent No.1. Further, respondent No.1 has also used undue influence on the electors by administering the oath in his favour and has unduly influenced the free exercise of the electoral right. That the administering of oath is an interference with the free exercise of electoral rights of the elector and the same falls with the meaning of corrupt practice under Section 123 of the Act.

(e) It is further averred in paragraph No.11 that petitioner on 02/02/2016, applied to "Truth Foundation",

Truth Labs, India's First Independent Forensic Science Laboratory ISO 9001 certified, which is a Non-profit Public Society, situated at 1<sup>st</sup> Floor, South Block, Manipal Centre, Bangalore-560 042, by depositing necessary fees. That Truth Laboratory, on 08/02/2015, gave a comprehensive report in respect of electronic evidence recorded in the form of CD1 and CD2, which were obtained from YouTube and mobile phone. The expert laboratory has authenticated both the CDs and opined that no abrupt changes in wave form and spectrogram were found in the audio and video and it concluded that recordings in Q1 to Q4 contained in the item marked item Nos.1 to 4 respectively were authentic recordings. The said report was forwarded by Truth Lab with covering letter dated 09/02/2016, accompanied by report dated 08/02/2016.

(f) It is submitted in paragraph No.13 that as per the report and the video, M.Narayanaswamy, respondent No.1 was present and oath was administered by Sri Anjanappa with the consent and under the personal supervision of respondent No.1 to the electors who were present. That Sri Nagaraj, son of Muniyappa, member of Gram Panchayath Marenahalli, Sri Anjanappa, President of

Marenahalli Gram Panchayath, along with Sri Somanna, Sri Nanjegowda and Sri Krishnappa, members of Marenahalli Gram Panchayath were present at the meeting held on 23/12/2015 at Sri Anjanappa's House. Smt.Lakshminarasamma and Smt. Gajalakshmi are members of Marenahalli Gram Panchayath. As representatives of these two members Sri Gopal, husband of Smt.Gajalakshmi was present, likewise Sri Ramalinganna husband of Smt. Lakshminarasamma was also present at the said meeting. Further, Sri Ashok, son of Subramani was present. Smt. Jayamma wife of Siddalingappa; Smt. Umadevi wife of Sriram; the members of Kannur Gram Panchayath were represented by their respective husbands and participated in the meeting at the house of Sri Anjanappa. That, in all, there were thirty members present at Sri Anjanappa's house at the instance of respondent No.1. It is submitted that all the electors and their representatives were paid Rs.1,00,000/- (Rupees one lakh only) cash and one silver coin each by respondent No.1 at the house of Anjanappa and respondent No.1 had also got administered the oath to vote in his favour. As a reciprocation to money paid and under the influence of the

oath, thirty electors had voted in favour of respondent No.1.

(g) That based upon the incident that took place on 23/12/2015, which was telecast on 24/12/2015 at 4.30 pm, a complaint was lodged on 25/12/2015 before Bagalur Police Station by the Tahsildar Bangalore North Taluk and the same was registered as Crime No.220/2015.

(h) In paragraph No.15, it is stated that one Sri Nagaraj was also present on 23/12/2015, at Sri Anjanappa's house and he also saw respondent No.1, Sri Anjanappa and Sri Danegowda were paying Rs.1,00,000/- (Rupees one lakh only) and a silver coin to the electors in one of the rooms of Anjanappa's house at around 6.30 pm and later, the oath was also administered by Sri Anjanappa under instructions of respondent No.1, which fact is substantiated by the CDs and the telecast. Therefore, it is averred that respondent No.1 had committed offences of bribery and undue influence under Section 123 (1) & (2) of the Act. It is submitted that administering the oath is influencing of an elector to believe that he/she and their parents would get divine displeasure by violating the oath as it would bring a divine displeasure to them and their

family members. Petitioner has stated that respondent No.1 used undue influence on the electors as per Section 123(2) of the Act. The petitioner has stated that if respondent No.1 had not adopted bribery and undue influence, he would not have received 1,384 votes and petitioner asserts that he would have got more first preference votes than respondent No.1. Petitioner has stated that the act of respondent No.1 in adopting corrupt practice of bribery and undue influence has materially affected the results of the election. That the incident that took place on 23/12/2015 at Sri Anjappa's house was also published in the "Vijaya Karnataka" daily newspaper on 25/12/2015.

(i) It is stated in paragraph No.17 that apart from gathering the electors in the house of Sri Anjanappa, respondent No.1 had also bribed and influenced the other electors by personally meeting them. That on 21/12/2015, one Smt.Ramamani, wife of Subramani, member of Ward No.3 of Hunusamaranahalli Gram Panchayath was approached by Smt. Divya, daughter of respondent No.1 along with others in the house of Smt.Ramamani at around 11.00 am and Smt. Divya had promised that her father

i.e., respondent No.1 would help Smt.Ramamani in all respects and asked her to vote in favour of respondent No.1. Later, on 25/12/2015 Smt. Divya and respondent No.1 along with others came to the house of Smt. Ramamani at around 5.00 pm. That another elector Smt. Pillamma who was elected from Ward No.4 was also called to the house of Smt. Ramamani by respondent No.1 and he and Divya had paid Rs.1,00,000/- (Rupees one lakh only) consisting denomination of Rs.1,000/- notes along with a silver coin to Smt. Ramamani and Smt. Pillamma and administered an oath in the name of God and their parents to cast their votes in favour of respondent No.1.

(j) It is further averred that the action of respondent No.1 amounts to bribery and undue influence within the meaning of Section 123 of the Act. The petitioner has further stated that respondent No.1 and his daughter Smt. Divya had gone to the houses of other Gram Panchayath members of Hunusumaranahalli village and paid an amount of Rs.1,00,000/- (Rupees one lakh only) cash and silver coin to the electors to vote in favour of respondent No.1 and administered an oath in the name of God and their parents to cast their votes in favour of

respondent No.1. But for the corrupt practice respondent No.1 would not have been elected. Hence, results of the election have been materially affected according to petitioner.

(k) It is further stated that on 24/12/2015 at about 10.00 am, respondent No.1 accompanied by Sri Danegowda, Zilla Panchayath member had gone to the house of Sri Venkatesh, son of Munishamappa, member of Gram Panchayath Meenakunte, Hosur and paid Rs.1,00,000/- (Rupees one lakh only) cash consisting of Rs.1,000/- denomination notes along with a silver coin of Goddess Lakshmi and Ganesha's image on it. That respondent No.1 also obtained an oath from Sri Venkatesh in the name of God and his parents to cast his vote in favour of respondent No.1. Another member of Meenakunte – Hosur Panchayath Smt. Radhamma, wife of Ramachandra was approached by respondent No.1 on 24/12/2015 around 12.00 noon accompanied by Sri Danegowda Zilla Panchayath Member and paid an amount of Rs.1,00,000/- (Rupees one lakh only) and a silver coin of Goddess Lakshmi and Ganesha and took an oath in the



name of God and her parents to cast her vote in favour of respondent No.1.

(l) It is contended that the action of respondent No.1 falls within the meaning of bribery and undue influence as per Section 123 of the Act. The petitioner further states that respondent No.1 and his daughter, Smt. Divya had gone to the houses of other Gram Panchayath members of Hunusumaranahalli village and paid amount along with silver coin and administered oath to vote in favour of respondent No.1. But for the corrupt practice respondent No.1 would not have been elected. Hence, results of the election have been materially affected.

(m) That the aforesaid information has been given to the petitioner by individual persons namely Sri Nagaraj son of Muniyappa, Gram Panchayath Member of Marenahalli, Sri Venkatesh, son of Munishamappa, resident of Huttanahalli, Gram Panchayath Member of Meenakunte, Hosur, then Smt. Ramanani, wife of Subramani and Smt. Pillamma, Gram Panchayath Member of Hunasamaranahalli and Sri Nanjegowda, resident of Chokkanahalli, Gram Panchayath member of Marenahalli, Sri Krishnappa, resident of Malakunte, Gram Panchayath

member of Marenahalli and others who were approached by respondent No.1 and his agents. On verification, petitioner came to know about the truth of the statements and information which he had received and hence, the petitioner believes them to be true.

(n) In paragraph No.22, it is stated that apart from bribing and unduly influencing the electors, respondent No.1 and his agents also resorted to malpractice on the day of voting. So far as Bangalore Local Authority Constituency is concerned, the total number of booths are 100. That booth No.98 is for Mugulur Gram Panchayath. At about 10.15 am, one Smt. Nagaveni, wife of Srinivas, Gram Panchayath member of Mugulur village, entered the polling station to cast her vote on the instruction of respondent No.1 and his agents. After her identification ballot No.3048 was handed over to her to cast her vote, it was noticed that instead of casting her vote and dropping the ballot in the box, she was holding the original ballot in her hand closely and she has dropped a model ballot into the box. Before she could go out of the polling station, the polling agent of BJP had noticed the same and immediately informed the Presiding Officer and a complaint was lodged

against Smt. Nagaveni by the Presiding Officer of the polling station No.98 and the Tahsildar, Anekal Taluk had submitted a separate report with the Deputy Commissioner and Returning Officer. That based upon the complaint, Crime No.273/2015 was registered by the Sarjapur Police Station under Sections 135 and 136 of the Act. That the *modus operandi* adopted by respondent No.1 and his agents who were sitting outside polling station No.98 was to collect the blank original ballot paper from the electors and asking them to drop a model/duplicate ballot paper in the box. Later, the next elector would drop the original duly filled up ballot in favour of respondent No.1 and handover the original blank ballot paper, which he has obtained from the polling station. By this process all the votes polled in polling station No.98 are invalid. That even while counting the discrepancy was noticed by the counting officials. That, report dated 30/12/2015 substantiates the said fact.

(o) In paragraph No.24, it is stated that on 30/12/2015 while counting booth No.98, the ballot papers taken out of the ballot box were sixteen only. Whereas in the report of the Returning Officer, it was stated as

(a) total voters in polling station No.98; (b) total votes cast in polling station No.98; (c) total number of different papers found in the ballot box, which were not taken into account. Therefore, with reference to polling station No.98 is concerned the original ballots were not of the electors. On the other hand, they were taken out of the polling booth and votes were marked by the agents of respondent No.1 and later, these ballots were dropped in the box. Therefore, according to petitioner, all votes cast in booth No.98 are invalid and cannot be taken into account. Hence, the petitioner has stated that the results of the election of the returned candidate has been materially affected by non-compliance of provision of the Act and Rules made there under.

(p) In paragraph No.25, the petitioner has contended that due to the corrupt practice adopted by respondent No.1, the latter has obtained more number of votes, otherwise the petitioner would have obtained the majority of the validly cast votes in his favour. Further, the votes counted in favour of respondent No.1 ought to have been rejected since the same are not in accordance with the provisions the Act and Rules made there under.

Therefore, according to petitioner, he would have obtained the majority of the votes cast and is entitled to be declared as elected.

30. Thus, apart from the two allegations of corrupt practices made in paragraph No.8, petitioner has also alleged that on the date of poll, respondent No.1 and his agents also resorted to malpractice, which is stated in paragraph No.22 of the petition. Therefore, looking into the aforesaid three allegations, I am of the view that there is a concise statement of material facts on the basis of which petitioner has sought to assail the election of respondent No.1 to the Karnataka Legislative Council. In support of the aforesaid allegations of corrupt practice, as narrated in paragraph No.8 petitioner has given particulars of the corrupt practices from paragraph No.9 onwards, including the names of persons alleged to have been involved in the commission of corrupt practice, the date and place of the commission of each such practice and source of information about the same. Further, petitioner has given details of alleged malpractice committed on the date of the poll as narrated in paragraph No.23 in paragraph No.24. A reading of the said details would clearly indicate

that the allegations of corrupt practices have been clearly stated and the particulars of the same have been narrated in consonance with Section 83(1)(a) and (b) of the Act. According to the Hon'ble Supreme Court, the election petition must contain only pleadings and not evidence in support of the same. The pleadings must epitomize facts and the facts must be concisely stated as material facts. Two corrupt practices alleged in paragraph No.8 of the election petition pertain to bribery and undue influence. The subsequent paragraphs of the election petition are material particulars with regard to the aforesaid two allegations of bribery and undue influence with reference made to the relevant annexures. The contention of learned senior counsel for respondent No.1, that the source of information must contain details as to who video graphed the episode broadcast on TV9 channel and as to how it was processed and made available to the said channel are not stated in the petition and therefore, there is lack of material particulars cannot be accepted as these aspects are matters of evidence. Further, although learned Senior Counsel for respondent No.1 contended that the allegations made in paragraph Nos.22 to 24 with regard to

ballot papers do not amount to an allegation of corrupt practice, that is a matter to be discerned at a later stage of the election petition, but the fact remains that in support of the allegation in paragraph No.22, details are narrated in paragraph Nos.23 and 24. Having regard to the judgments of the Hon'ble Supreme Court, it is held that the election petition filed is in accordance with Section 83(1)(a) and (b) of the Act.

31. It has also been submitted by learned Senior Counsel for the petitioner that the material particulars are not narrated only in the pleadings. That annexures to the relevant pleadings also form part and parcel of the election petition and the annexures appended to the election petition fully elaborate the particulars pertaining to the material facts as stated in paragraph Nos.8 and 22 of the election petition. Therefore, the annexures to the election petition when read as part and parcel of the pleadings in the election petition would clearly imply that the same elaborate the allegations of corrupt practice and or malpractice stated in the petition.

32. The petitioner has filed two affidavits, which are as under:

**"VERIFYING AFFIDAVIT**

I Dodda Basavaraju, about 69 Years, S/o. Vasudevappa R/o. Uttanahalli Village, Chikka Jala Post, Bangalore North Taluk hereby states on solemnly affirmation as under:

1. I am the Petitioner in the above case hence I swear to the contents of this Affidavit.
2. The statements made in Paragraphs No.1 to 7, 9 to 12, 14, 16, 22, 24 to 30 are based upon my personal knowledge.
3. The statements made in Paragraphs No.8, 13, 15, 17 to 21, 23 are based upon the information which I, believe them to be true.
4. Annexure A to C, G, H, J, L, M, P to T are Certified Copies of the originals. The two CD's, Annexure E and F are the originals downloaded from the proper source and Annexure D1, D2, D3 are the copies supplied under the Right to Information Act; Annexure K1, K2 and N are the originals.

I, hereby verify that the statements made above are true and correct."

**"FORM No.25 AFFIDAVIT**

I Dodda Basavaraju, aged about 69 Years, S/o. Vasudevappa R/o. Huttanahalli Village, Chikkajala Post, Bangalore North Taluk do hereby solemnly states on oath as under:

I am the Petitioner in the accompanying Election Petition calling in question the election of Sri. M.Narayanaswamy Respondent No.1 in the above petition, make solemn affirmation/oath and say



- (a) The statements made in paragraphs No.8, 20 and 25 of the accompanying Election Petition are about the Commission of Corrupt Practice of bribery and undue influence as defined under Section 123 (1) & (2) of the Representation of People Act, 1951. The particulars of the Corrupt Practice are given in paragraphs No.9, 10, 12, 14 and 22 of the said petition, they are true to my Knowledge.
- (b) The particulars of the Corrupt Practice of bribery and undue influence are stated in paragraphs No.8, 13, 15, 17 to 19, 21 and 23 which are based on my information.
- (c) The Annexure No. A to C, D1, D2, D3, E to H, J, K1, K2, L to T produced along with Election Petition are based upon my knowledge and information which I believe them to be true."

33. As far as the form of affidavit is concerned, it is noted that the petitioner has filed the aforesaid two affidavits: one, verifying the election petition, wherein it is stated that the statements, made in paragraph Nos.1 to 7, 9 to 12, 14, 16, 22 and 24 to 30 are based upon his personal knowledge; that the statements made in paragraph Nos.8, 13, 15, 17 to 21 and 23 are based upon information, which he believes to be true; it is further deposed that Annexures-A to C, G, H, J, L, M and P to T are certified copies of originals; that Annexures-E and F are the originals downloaded as two CDs; Annexures-D1,

D2 and D3 are the copies supplied under the Right to Information Act; Annexures-K1, K2 and N are the originals. Thus, the petitioner has clearly stated, what are the averments which are in his personal knowledge and what are the averments which are based on information which he believes to be true. Significantly, the allegations of corrupt practice contained in paragraph No.8 are believed to be true as the source of information about them is from what is stated in paragraph Nos.9 to 12, 14 and 16. Similarly, the allegation of alleged malpractice as contained in paragraph No.22 is based on personal knowledge and the same is elaborated in paragraph No.24. However, *modus operandi* of the said malpractice as narrated in paragraph No.23 is based upon information which the petitioner believes to be true. Further, the petitioner has, in paragraph No.4 of the verifying affidavit, deposed about the annexures to the election petition, whether they are certified copies or originals or the source from which the said documents have been obtained, whether from YouTube or under Right to Information Act etc., or whether the documents are originals. Thus, on a consideration of the verifying affidavit, it is noted that the

petitioner has clearly delineated as to the contents in the paragraphs, which are based upon his personal knowledge, the statement in certain paragraphs based upon information which he believes them to be true and about the annexures. The source of information is also discernible upon a reading of the election petition, which is from different sources as narrated in the pleadings in various paragraphs of the election petition.

34. Affidavit in Form No.25 has also been filed by the petitioner, wherein the petitioner has stated that the contents of paragraph Nos.8, 20 and 25 are about the commission of corrupt practice of bribery and undue influence and that the particulars of the aforesaid corrupt practice are given in paragraph Nos.9, 10, 12, 14 and 22, which are based on petitioner's knowledge. The same tallies with what has been stated in paragraph No.2 of the verifying affidavit. Further, petitioner has stated that the particulars of corrupt practice of bribery and undue influence stated in paragraph Nos.8, 13, 15, 17 to 19, 21 and 23 are based on information, which is in consonance with paragraph No.3 of the verifying affidavit. No doubt, paragraph No.8 is found both in sub-paras (a) as well as

(b) of the affidavit in Form No.25. Paragraph No.8 not only contains a concise statement of the alleged corrupt practices, but also certain material particulars. But in sub-para (a) of the said affidavit what is stated is that, the contents of paragraph No.8 pertains to commission of corrupt practices of bribery and undue influence as defined under Section 123(1) and (2) of the Act. But in sub-para (b) of the said affidavit, the petitioner has clearly stated that the contents of paragraph No.8 is also based on information and the source of information of the alleged corrupt practices said to have been committed on 23/12/2015, is the broadcast on TV9 Kannada channel, on the following day i.e., on 24/12/2015, which broadcast was said to have been downloaded by the petitioner from YouTube. The same is the source of information about the said corrupt practice of bribery and undue influence as mentioned in paragraph No.8. Further, the petitioner has stated that Annexures-A to C, D1 to D3, E to H, J, K1, K2, L to T are based upon his knowledge and information, which he believes them to be true.

35. In the circumstances, by applying the dicta of the Hon'ble Supreme Court on the nature of verification as

well as the affidavit filed by the petitioner in Form No.25, it is clear that there is compliance with what is mandated under Section 83(1)(c) of the Act. Further, the annexures to the election petition are also signed by the petitioner and verified in the verifying affidavit as well as in the affidavit in Form No.25. In the circumstances, it is held that the contents of the election petition comply with the stipulations in Section 83 of the Act and hence, the election petition cannot be dismissed on account of there being non-compliance with the stipulations contained therein.

36. However, learned Senior Counsel appearing for respondent No.1 contended that apart from the aforesaid aspect, this Court ought to consider the application filed by respondent No.1 under Order VI Rule 16 of the CPC and if, on a consideration of the said application, it is found that the pleadings would require striking down in terms of the said provision and keeping in mind judicial dicta of the Hon'ble Supreme Court, then the striking down of the pleadings would result in non-disclosure of cause of action and hence, the election petition would have to be rejected under Order VII Rule 11 of CPC.

37. On a perusal of the application filed under Order VI Rule 16 of CPC, it is noted that respondent has sought striking down of paragraph Nos.7 to 26 as they are unnecessary, scandalous, frivolous and vexatious and would tend to prejudice and embarrass the fair trial of the election petition. As already noted, paragraph No.8 contains two allegations of corrupt practices, namely bribery and undue influence and paragraph No.22 is another allegation of malpractice made by the petitioner. The said corrupt practices are narrated concisely and full particulars of the same have been given in paragraph Nos.9 to 21 as far as the allegations in paragraph No.8 are concerned and paragraph Nos.23 and 24 elaborates alleged malpractice narrated in paragraph No.22. Paragraph No.25 is a conclusion arrived at by the petitioner after narrating the contents of paragraph Nos.1 to 24. Paragraph No.26 is a contention raised by the petitioner. The aforesaid paragraphs have been encapsulated above. A reading of the same would in no way lead to striking down of the pleadings as per the parameters stipulated in Order VI Rule 16 of CPC. On a reading of the averments and the contents of the election

petition, I do not find that the averments contained in paragraph Nos.7 to 26 are unnecessary scandalous, frivolous, vexatious or in any way tend to prejudice or embarrass a fair trial of the election petition. In the circumstances, I.A.No.4/2016 is dismissed.

38. As already held, paragraph Nos.8 and 22 contain the alleged corrupt practices and what is stated in paragraph Nos.9 to 21 and 23 and 24 respectively give details of the alleged corrupt practices, which are the material particulars. They do not call for striking down of the same. In the circumstances, it cannot be held that the election petition does not disclose any cause of action and therefore, would have to be rejected on that ground. Consequently, the application filed under Order VII Rule 11(a) of the CPC (I.A.No.3/2016) is also dismissed.

Parties to bear their respective costs.

**(B.V. NAGARATHNA)**  
**JUDGE**