



2026:AHC:192441

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Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

ELECTION PETITION No. - 5 of 2024

Lalitesh Pati Tripathi

.....Petitioner(s)

Versus

Dr Vinod Kumar Bind

.....Respondent(s)

Counsel for Petitioner(s)	: Narendra Kumar Pandey, In Person, Peeyush Kumar Shukla
Counsel for Respondent(s)	: Jagannath Prasad, Shivendra Kumar Singh, Indra Jit Singh, K.R. Singh

Court No. - 89

HON'BLE RAJ BEER SINGH, J.

Order on Civil Misc. Application No. 4 of 2024

1. This Civil Misc. Application under Order VII Rule 11 Code of Civil Procedure has been filed on behalf of respondent / returned candidate Dr. Vinod Kumar Bind seeking following prayer:

"It is therefore most respectfully prayed that the election petition be dismissed under Order VII Rule 11 of the Code of Civil Procedure as it discloses no cause of action."

2. For constitution of 18th Lok Sabha, election schedule was notified by the Election Commission of India on 16.03.2024 and elections for Lok Sabha were to be conducted in seven phases. In 78- Bhadohi (Uttar Pradesh) Parliamentary constituency the nomination for contesting election were to be submitted up-to 06.05.2024 and date of scrutiny of nomination papers was 07.05.2024. The petitioner filed his nomination paper on 04.05.2024 to contest election for Member of Parliament from 78 – Bhadohi Parliamentary Constituency and after scrutiny his nomination papers were found valid. After date of withdrawal of the nomination papers i.e. 09.05.2024, the Returning Officer has issued a list of contesting candidates and there were total 10 candidates, whose

nomination papers were found valid and they were allotted symbols. The poll took place 25.05.2024, followed by counting of votes on 04.06.2024. After counting, the Returning Officer declared that total 10,85,742 votes were polled and as per final result sheet, petitioner Lalitesh Pati Tripathi has got 4,15,910 votes and respondent / returned candidate Dr. Vinod Kumar Bind got 4,59,982 votes and accordingly Dr. Vinod Kumar Bind was declared elected as Member of Parliament from the aforesaid constituency.

3. The petitioner has challenged the election of the returned candidate on the following five grounds :-

A. Because the result of the election in so far as it concerned to Returned Candidate namely Dr Vinod Kumar Bind, is materially affected due to improper acceptance of his nomination paper as a Member of Parliament from 78- Bhadohi Parliamentary constituency of District Bhadohi, by the Returning Officer, 78-Bhadohi Parliamentary constituency of District Bhadohi.

B. Because the election of the Returned Candidate Dr Vinod Kumar Bind as a Member of Parliament from 78- Bhadohi Parliamentary constituency of District Bhadohi, is illegal and void as Returned Candidate was not qualified and was disqualified under the provision of Constitution of India to contest the election on the post of Member of Parliament from 78 – Bhadohi Parliamentary constituency of District Bhadohi.

C. Because the election of the Returned Candidate Dr Vinod Kumar Bind as a Member of Parliament from 78- Bhadohi Parliamentary constituency of District Bhadohi, is illegal and void due to improper rejection of nomination paper of Candidate Zia-Ul-Haq and Lalti Devi.

D. Because the result of election, in so far as it concern the Respondent, is materially affected by non-compliance of the

provisions of Constitution of India or Representation of People Act, 1971 or Conduct Rules, 1961 or Orders made therein, and the orders issued by the Election Commission of India from time to time in exercise of its powers conferred by the Constitution as well as the instructions contained in the hand book of Returning officers issued by the E.C.I. in exercising powers under Article 324 of the Constitution of India.

E. Because the respondent, and his agent or any person with his consent committed the corrupt practice of bribery in the meaning of section 123(1)(B)(a) with explanation of the R.P. Act, 1951.

4. The respondent / returned candidate filed aforesaid application under Order VII Rule 11 CPC, alleging that election petition does not disclose cause of action and the election petition is liable to be dismissed under Order VII Rule 11 CPC. It was alleged that election petition is completely bereft of material facts and that averments made in the election petition do not amount to any ground for setting aside the election of the returned candidate and petition does not raise any triable issue. The necessary material facts and ingredients in respect of grounds and allegations have not been stated in the election petition. The Election petition contains indefinite, vague, general and misconceived allegations, which do not amount to any material facts. There is no such material fact which may indicate any material effect upon election of the returned candidate / respondent. The pleadings in the election petition are frivolous, vexatious, unnecessary, irrelevant and tend to prejudice, embrace and delay the fair trial of election petition. The election petition purports to contain alleged grounds of improper rejection of nomination papers of two candidates, namely, Zia-Ul- Haq and Lalti Devi and improper acceptance of nomination paper of the respondent as well as of corrupt practice of bribery but there are no material facts to support any of the alleged ground raised in the election petition. The petitioner has alleged that respondent was disqualified for being chosen as a Member of Parliament

under Tenth Schedule of the Constitution as he has not resigned from membership of Nirbal Indian Shoshit Hamara Aam Dal party (hereinafter referred as NISHAD Party) before contesting the parliamentary election as a candidate of Bhartiya Janta Party (hereinafter referred as BJP) but said allegation is wholly misconceived inasmuch as Tenth schedule of the Constitution of India is not applicable in the present matter. Regarding alleged improper rejection of the nomination papers of Zia-Ul- Haq and Smt. Lalti Devi, the petitioner has not disclosed even the grounds of rejection of their nomination papers and merely a vague allegation was made that their nominations were rejected on flimsy grounds, which goes to show that petitioner does not know as to on what ground nomination papers of said Zia-Ul- Haq and Smt. Lalti Devi were rejected. Regarding allegation of corrupt practice of bribery, it was alleged that there was some undisclosed understanding or agreement between the President of NISHAD Party and the State unit of BJP but there is no allegation against the respondent at all and there is no allegation of consent of respondent in regard to alleged corrupt practice. It was stated that petition is liable to be dismissed under Order VII Rule 11 Civil Procedure Code (hereinafter after referred as CPC).

5. The petitioner has filed reply / counter affidavit against the application under Order VII Rule 11 CPC, alleging that the petitioner has filed present election petition on the grounds, which come under purview of Section 100 of Representation of the People Act 1951 (hereinafter referred as R.P. Act) and pleadings of election petition are complete in all respect and petitioner has supplied all material facts and particulars in respect of the grounds mentioned in the election petition. The pleadings of election petition disclose complete cause of action and that application under Order VII Rule 11 CPC is misconceived and the same is filed with intention to delay the fair trial. None of the averment / allegation made in the election petition is frivolous, vexatious, unnecessary or irrelevant and in fact pleadings of election petition are precise, definite and specific. The

improper rejection of the nomination papers of candidate Zia-Ul- Haq and Smt. Lalti Devi comes under the purview of Section 100(1)(c) of R.P. Act. In respect of improper acceptance of nomination paper of the respondent, the petition falls within the purview of Section 100(1)(d)(i) of R.P. Act and similarly corrupt practice of bribery comes under purview of Section 100 (1)(b) of R.P. Act read with Section 123(1)(B)(a) of R.P. Act. It was further mentioned that material facts and particulars relating to grounds A, B, C, D, E have been provided in para nos. 28 to 105 and para nos. 1 to 26 of the election petition. The returned candidate / respondent contested the parliamentary election as a candidate of BJP while he was a sitting member of U.P. Legislative Assembly from NISHAD party from Majhwan Assembly Constituency and thus provisions of Tenth Schedule of Constitution are fully attracted and applicable and returned candidate was not qualified and in fact disqualified to contest the parliamentary election. The election petition constitutes a complete cause of action and none of the paragraph of election petition is irrelevant, frivolous or vexatious, rather in fact pleadings of the election petition are definite, precise and disclosed complete cause of action. The application under Order VII Rule 11 CPC was filed by the returned candidate /respondent to delay the fair trial and the same is liable to be rejected.

6. Heard Sri K. R. Singh learned counsel for the respondent / returned candidate and Sri N. K. Pandey learned counsel for the election petitioner at length and perused the record.

7. Learned counsel for the respondent / returned candidate submitted that the election petition does not contain any material fact to disclose a cause of action. The ground of alleged disqualification of the respondent taken by the petitioner to challenge the election of the respondent is misconceived. It was submitted that Article 102 of the Constitution of India is in two parts and there is difference between Article 102 (1) and 102 (2). Article 102(1) of the Constitution provides about disqualification 'for being chosen' and 'for being' both, whereas, Article 102 (2) provides

disqualification for 'being' only and not for 'being chosen'. Paragraph 2 of Tenth Schedule provides about disqualification 'for being' a Member of the House and it is not a disqualification 'for being chosen', meaning thereby that under Article 102 (2) read with paragraph 2 of Tenth Schedule, a sitting member of the House shall be disqualified 'for being' or for continuing as a member of that House till the term of that house but it is not a disqualification to contest a fresh election. A member of one House can contest fresh election of another House either from the same party or from different party. The allegation made by petitioner is totally misconceived and it is not a sustainable ground under Section 100 of the R.P. Act to challenge the election of the returned candidate.

8. It was further submitted that there are no material facts in regard to alleged violation of provisions of para 13 of E.S. Order. There are no material facts to support the ground 'A' regarding alleged improper acceptance of nomination papers of the respondent. It was submitted that to make out a ground under Section 100(1)(d)(i) or 100(1)(d)(iv) of R.P. Act, it is necessary to plead material facts as to how the election has been materially affected by the improper acceptance of any nomination, or by any non-compliance with the provisions of the R.P. Act or of any Rules or orders made under R.P. Act. There are no material facts to show as to how the election of the respondent / returned candidate has been materially affected on that ground. It was further submitted that facts mentioned in reference to ground 'D' are quite vague. There are no material facts to indicate there was any non-compliance of the provisions of Constitution of India or of R.P. Act or any Rules or Orders and similarly there are no material facts to show that election has been materially affected by any non-compliance with the provisions of the R.P. Act or of any Rules or Orders made under R.P. Act.

9. It was next submitted that so far the allegations regarding of improper rejection of nomination papers of two candidates, namely, Zia-Ul- Haq and Lalti Devi are concerned, the petitioner has not provided any such

fact that on which ground their nomination papers were rejected and only vague averments have been made that their nomination papers were rejected on flimsy grounds. There are no such averments that aforesaid candidates have sought any time which was refused by the Returning Officer. There is no such fact the petitioner was present before the Returning Officer when said Zia-Ul-Haq and Smt. Lalti Devi have filed their nomination papers or that said Zia-Ul-Haq and Lalti Devi have told the petitioner about taking oath or affirmation or that their nomination papers were valid in all respects. Said candidates have never made any complaint to the Returning Officer nor they have filed any election petition. It was submitted that the petition lacks material facts and thus, no cause of action is made out on that ground.

10. Learned counsel for respondent further submitted that there is no basis at all to support the allegation that there was any undisclosed understanding or agreement between the President of NISHAD Party and the State unit of BJP so as to bring the petition within the purview of Section 123(1)(B)(a) of R.P. Act. There is no allegation of consent of respondent regarding alleged corrupt practice. It was submitted that the allegations regarding corrupt practice are speculative and based on surmises and that there are no material facts in support of bald allegations as required under section 83 of the R.P. Act. It was submitted that no triable issue is made on ground of alleged corrupt practice.

11. Referring to facts of the matter, it was submitted that the grounds raised in the election petition do not disclose any triable issue or cause of action and thus, the election petition is liable to be dismissed under Order VII rule 11 CPC. In support of his contentions, learned counsel for the respondent has placed reliance upon following case laws :-

1. Jyoti Basu Vs. Debi Ghosal AIR 1982 SC 983
2. U. S. Sasidharan Vs. K Karunakaran AIR 1990 SC 924
3. Jitendra Bahadur Vs. Krishna Behari AIR 1970 SC 276

4. Udhav Singh Vs. Madhav Rao Scindia AIR 1976 SC 744
5. Ram Singh Vs. Kazi Mohiuddin AIR 1988 All 210
6. Hari Shankar Jain Vs. Sonia Gandhi 2001 Lawsuit (SC) 1215
7. Shrimanth Balsaheb Patil Vs. Hon'ble Speaker Karnatak Legislative Assembly (2020) 2 SCC 595
8. G.S. Iqbal Vs. K.M. Khadar (2009) 11 SCC 398
9. Sri K.M. Mune Gowda Vs. State of Karnataka 2023 (0) Supreme (Kar) 559
10. Pashupati Nath Singh Vs. Harihar Prasad Singh AIR 1968 SC 1064
11. Khaj Khanavar Khadir Khan Hussain Khan Vs. Siddavanaballi Nija Lingappa AIR 1969 SC 1034
12. Ms. Krishna Mohini Vs. Mohinder Nath Sofat AIR 2000 SC 317
13. J.H. Patel Vs. Subhan Khan (1996) 5 SCC 312
14. Azhar Hussain Vs. Rajiv Gandhi AIR 1986 SC 1253
15. Ram Autar Shashtri Vs. Khurshied Alam Khan AIR 1987 All 279
16. Ramakant Mayekar Vs. Celine D'Silva (1996) 1 SCC 399
17. Chandrakanta Goyal Vs. Sohan Singh Jodh Singh Kohli (1996) 1 SCC 378
18. Subhash Desai Vs. Sharad J. Rao 1994 Supp. (2) SCC 446

12. Learned counsel for the petitioner has opposed the application and submitted that the election petition contains concise statement of material facts in support of all five grounds mentioned in the election petition. Referring to grounds 'A' and 'D', it was submitted that the returned candidate / respondent was a member of NISHAD party and a sitting member of Legislative Assembly of Uttar Pradesh from NISHAD party and there is nothing to show that he has resigned from membership of NISHAD party or joined BJP but in his nomination form and in his affidavit in Form – 26 submitted for contesting election from aforesaid parliamentary constituency, he has shown himself as a candidate of BJP and thus, he has made false declaration in his nomination form and in affidavit in Form – 26 about status of the political party, which is in contravention of para 13 of Election Symbol (Reservation and Allotment) Order, 1968 (hereinafter referred as E. S. Order) and thus his nomination

paper was not complete in terms of Section 33 of R.P. Act and Returning Officer improperly accepted his nomination paper. On that ground petition falls within the purview of Section 100(1)(d)(i) of R.P. Act. Similarly for non-compliance of provisions of Section 33, 33 A of R.P. Act and para 13 of E. S. Order 1968, the petition falls within the ambit of Section 100(1)(d)(iv) of R.P. Act. It was submitted that the respondent / returned candidate cannot be a member of two political parties i.e. BJP and NISHAD party simultaneously, which is also evident from constitution / bye-laws of BJP and NISHAD Party. It was submitted that at the time of scrutiny of nomination papers, the petitioner has raised oral as well as written objection but neither any receipt of same was provided by the Returning Officer nor the same were considered as per law and Rules. The result of the election, insofar as the respondent / returned candidate is concerned, was materially affected by improper acceptance of his nomination paper and by alleged non-compliance of the said provisions. It was argued that so far ground 'A' and 'D' are concerned, election petition disclose complete cause of action and in this connection relevant pleadings have been made in paragraph no. 61 to 83, 87, 90, 97, 101 of the election petition.

13. In regard to ground 'B', it was argued by learned counsel for the petitioner that election petition falls within the purview of Section 100(1)(a) of R.P. Act. The respondent / returned candidate Dr. Vinod Kumar Bind was a Member of Legislative Assembly of Uttar Pradesh from NISHAD party and thus, he was member of NISHAD Party. It was stated that while continuing as an ordinary member of NISHAD Party as well as Member of U.P. Legislative Assembly, the respondent / returned candidate filed his nomination paper for Member of Parliament from above referred constituency as a candidate set up by BJP, whereas there is nothing to show that he has ever resigned from the membership of NISHAD party. He also did not resign from membership of U.P. Legislative Assembly and he has contested the election from above

referred constituency as a candidate of BJP, whereas, he was not a primary or ordinary member of the BJP. It was further submitted that the aforesaid facts show that the respondent / returned candidate Dr. Vinod Kumar Bind has voluntarily given up his membership of NISHAD Party and thereby he was disqualified from contesting the election for Member of Parliament from aforesaid constituency. Returned candidate Dr. Vinod Kumar Bind has tendered his resignation from membership of the Legislative Assembly on 14.06.2024. It was submitted that in view of provisions of Article 102(2) R.P. Act read with para 2(1)(a) of Tenth Schedule of the Constitution of India, the respondent / returned candidate Dr. Vinod Kumar Bind was not qualified and he was disqualified for contesting election for Member of Parliament and his nomination papers ought to have been rejected by the Returning Officer but he has illegally and arbitrarily accepted his nomination papers. It was submitted that the election of the respondent / Returned Candidate Dr Vinod Kumar Bind as a Member of Parliament from aforesaid constituency is illegal and void as he was not qualified and was disqualified to contest the election for Member of Parliament and thus in respect of ground 'B' all material facts have been provided in the election petition, which give rise a cause of action.

14. Referring to ground 'C', it was argued that nomination papers of candidates, namely, Zia-Ul-Haq and Lalti Devi were rejected improperly. Said candidates Zia-Ul-Haq and Smt. Lalti Devi were duly qualified and eligible to contest the election and after completing all formalities of valid nomination, they filed their nomination papers before the Returning Officer. They have appended the affidavit in form- 26, wherein they have disclosed their criminal and civil antecedents and they were subscribed by oath / affirmation before the competent authority. The Returning Officer after receiving their nomination papers was fully satisfied with the entries made in the nomination papers and no check-list was issued to them as their nomination papers were complete in all respect. None of the

candidate raised any objection against nomination papers of Zia-Ul-Haq and Smt Lalti Devi during the scrutiny of the nomination papers on 07.05.2024 but the Returning Officer illegally and arbitrarily and in a pre-planned mechanism rejected their nomination papers on flimsy ground. It was done with purpose so that only one balloting unit of EVM can be used. The Returning Officer has adopted dual standard in scrutinizing the nomination papers and that if any defect was found by the Returning Officer at the time of scrutiny of their nomination papers, then in view of provision of Section 36(5) of R.P. Act an opportunity to rebut such objection should have been provided to them but no such opportunity was provided to them. It was submitted that the Returning Officer has not only rejected the nomination papers of candidates Zia-Ul-Haq and Lalti Devi but also rejected nomination papers of several other candidates on flimsy grounds. It was argued that the election of returned candidate Dr Vinod Kumar Bind as a Member of Parliament from aforesaid constituency is illegal and void due to improper rejection of nomination paper of candidates Zia-Ul-Haq and Lalti Devi.

15. So far as ground 'E', is concerned, it was submitted by learned counsel for the petitioner that as per Section 123(1)(B)(a) of R.P. Act, bribery is receipt or agreement to receive any gratification, whether as motive or reward by a person for standing or not standing as, or for withdrawing or not withdrawing from being a candidate. At the time of the Notification of parliamentary election, the respondent / returned candidate was a member of Legislative Assembly (UP) from NISHAD party and that the President of NISHAD party has entered into an understanding or agreement with the State unit of BJP that the respondent be set up as a candidate of BJP and thus, his candidature was a consequence of the said bargaining between President of NISHAD party and State unit of BJP. It was also bargained that the President of NISHAD party will not make any complaint to the Speaker under Tenth Schedule against the membership of the respondent in Legislative Assembly. These allegations constitute

corrupt practice within the meaning of section 123(1)(B)(a) of R. P. Act and aforesaid facts provide all particulars in terms of section 83(1)(b) of R.P. Act. Said undisclosed understanding or arrangement between the said political parties is against the spirit of the Tenth Schedule of the Constitution of India and the same amounts to commission of corrupt practice of bribery by the returned candidate within the purview of Section 123(1)(B)(a) of R.P. Act. It was stated that it is a case of commission of corrupt practice by the returned candidate himself and thus it was not necessary to plead and prove element of consent. Whether the said charge is proved or not, that has to be considered in the trial of the election petition. The election petitioner has provided all material facts as required under Section 83(1)(a) of R.P. Act in para Nos. 91 to 103 in the election petition. It was submitted that election of the returned candidate is vitiated due to aforesaid corrupt practice and thus liable to be declared null and void.

16. It was submitted that petition disclose cause of action in respect of all the grounds and thus, the application under Order VII Rule 11 CPC is liable to be dismissed. In support of his contentions, learned counsel for the petitioner has placed reliance upon following case laws :-

1. Syed Dastagir Vs. T.R. Gopalakrishna Setty 1999 AIR SCW 2959
2. D. Ramachandran Vs. R. V. Janakiraman and others AIR 1999 SUPREME COURT 1128
3. Bhim Rao Baswanth Rao Patil Vs. K. Madan Mohan Rao and Ors. AIR 2023 SUPREME COURT 3574
4. Jay Veer Singh VS. Hari Om Yadav (Election Petition No. 4 of 2017), decided on 10.11.2021.
5. Kanhiya Lal Omar Vs. R.K. Trivedi and Others AIR 1986 SUPREME COURT 111
6. Ram Chandra Prasad Singh Vs. Sharad Yadav AIR 2020 SUPREME COURT (Civil) 2077
7. Rajendra Singh Rana & Ors. Vs. Swami Prasad Maurya & Ors. AIR 2007 SUPREME COURT 1305
8. Ravi S. Naik Vs. Union of India and others WITH Sanjay Bandekar and another Vs. Union of India and others AIR 1994 SUPREME COURT

1558.

9. Raj Narain Vs Smt Indira Nehru Gandhi (1972) 3 Supreme Court Cases 850

17. I have considered rival submissions and perused record.

18. Before proceeding further it would be apt to refer Section 83 of R.P. Act of 1951, which reads 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."

19. Section 83 R.P. Act mandates that an election petition must contain a concise statement of material facts so that the elected candidate must get adequate notice of what is alleged against him. Hon'ble Apex Court in the case of **V.S. Achuthanandan Vs P. J. Francis** (1999) 3 SCC 737, after referring to various earlier pronouncements including case of Balwan Singh Vs Lakshmi Narain AIR 1960 SC 770, Samant N. Balkrishna Vs George Fernandez [(1969) 3 SCC 238], Virendra Saklecha Vs Jagjiwan[(1972) 1 SCC 826 and Gajanan Krishnaji Bapat Vs Dattaji Raghobaji Meghe [(1995) 5 SCC 347] and a host of other authorities, 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" can be cured at a later stage by an appropriate amendment. Material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact

or not, and as such, required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon, and in the light of the special circumstances of the case.

20. Dealing with the issue of requirement of material facts vis-a-vis the provisions of Order VII Rule 11 CPC, Hon'ble Apex Court in case of **D. Ramachandran** (*supra*), held as under :-

"10. On the other hand, Rule 11 of Order VII enjoins the Court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this rule. The application filed by the first respondent in O.A. No. 36/97 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order VII, Rule 11 (a), learned senior counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of O.VII R.11(a) CPC can not therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under O.VII R.11 (a) CPC, the Court can not dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the rule, there can not be a partial rejection of the plaint or petition. See *Roop Lal Sathi Versus Nachhattar Singh Gill* (1982) 3 S.C.C. 487. We are satisfied that the election petition in this case could not have been rejected in limine without a trial."

21. In case of **Bhim Rao Baswanth Rao Patil** (*supra*), in paragraph No.26, the Hon'ble Apex Court held as under :-

"26. A plain look at the election petition reveals that apart from allegations pertaining to non-disclosure of criminal cases pending against the appellant, or cases where he was convicted, other averments and allegations have been made regarding non-compliance with stipulations regarding information dissemination and the manner of dissemination through publication in newspapers, the font size, the concerned newspapers' reach amongst the populace, etc. The alleged non-compliance with statutory and Election Commission mandated regulations, and their legal effect, cannot be examined in what are essentially summary proceedings under Order VII Rule 11, CPC or even under Order XII Rule 6, CPC. Even if the allegations regarding non-disclosure of cases where the appellant has been arrayed as an accused, are ultimately true, the effect of such allegations (in the context of provisions of law and the non-disclosure of all other particulars mandated by the Election Symbols orders) has to be considered after a full trial. The admission of certain facts (and not all) by the election petitioner cannot be sufficient for the court to reject the petition, wholly. Even in respect of the undeniable nature of the judicial record, the effect of its content, is wholly inadequate to draw a decree in part. This court has also ruled that the truth or otherwise of anything is ordinarily a matter of evidence, in a full-blown trial."

22. In case of **Jay Veer Singh** (*supra*), this Court held at the stage of consideration of a prayer to reject the plaint / election petition under

Order VII Rule 11 CPC, it is well settled that the correctness of the allegations is not to be tested on the basis of material produced by the defendant/ respondent. At this stage, the averments made in the plaint or the petition, as the case may be, are alone to be considered as a whole to find out whether they disclose a cause of action to sustain the prayer made. In case of **Jitendra Bahadur Singh (supra)**, it was observed that the material facts disclosed by the petitioner must offered an adequate basis for allegations made. It is not permissible to cull out a sentence or a passage to read it out of context, in isolation. It is the substance and not merely the form that has to be looked into, the pleadings has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of parties concerned is to be gathered primarily from tenor and terms of pleadings taken as a whole. It was further observed that all the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence are material facts. The omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In case of **Udhav Singh (supra)** the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. It was observed that all those facts which are essential to clothe the petitioner with a complete cause of action, are 'material facts' which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a). 'Particulars', on the other hand, are 'the details of the case set up by the party'. 'Material particulars' within the contemplation of clause (b) of Section 83(1) R.P. Act would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and

more informative. Whenever there is an allegation of corrupt practice, election petition shall contain a concise statement as to the material facts on which petitioner relied and also must set forth full particulars of the corrupt practice alleged by the petitioner. In case of **Syed Dastagir** (*supra*), it was observed that while construing a plea in the pleadings, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, some times vague, but still could be gathered what he wants to convey through only by reading the whole pleading, depends on the person drafting a plea. In India most of the pleas are drafted by counsels hence difference of pleas which inevitably differs from one to other. Thus, to gather true spirit behind a plea it should be read as a whole. The conspectus of the above discussion is that for maintaining an Election Petition and for taking it to the stage of trial, it is necessary that there is strict compliance with the provisions of Section 83(1)(a) of the R.P. Act. The concise statement of material facts must constitute a complete cause of action.

23. It is thus clear that Section 83 R.P. Act lays down a mandatory provision that an election petition shall contain a concise statement of material facts and set forth full particulars. The pleadings are regulated by Section 83 R.P. Act and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under Section 100 of the R.P. Act it must fail at the threshold. When there is allegation of corrupt practice, election petition shall contain a concise statement as to the material facts on which petitioner relied and also must set forth full particulars of the corrupt practice alleged by the petitioner. The pleading relating to corrupt practice have to be scrutinised in a strict manner. Thus, Section 83 R. P. Act makes it obligatory for the election petitioner to give requisite facts, details, and particulars of each corrupt practice with exactitude. It is correct that the correctness of the allegations

is not to be tested on the basis of material produced by the defendant/respondent and at this stage the averments made in the petition are alone to be considered as a whole to find out whether they disclose a cause of action to sustain the prayer made, however the material facts disclosed by the petitioner must offer an adequate basis for allegations made. It would be pertinent to mention that right to contest election or to question the election by means of an election petition is neither common law nor fundamental right, instead it is a statutory right regulated by the statutory provisions of the R.P. Act. There is no fundamental or common law right in these matters. This position is settled by a catena of decisions of Apex Court. In this regard reference may be made to case of *N.P. Ponnuswami V Returning Officer* [(1952) 1 SCC 94: AIR 1952 SC 64, *Jagan Nath V Jaswant Singh* [AIR 1954 SC 210, *Jyoti Basu V Debi Ghosal* (supra). These decisions have settled the legal position that outside the statutory provisions there is no right to dispute an election. The R.P. Act is a complete and self-contained Code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of the Civil Procedure Code are applicable to the extent as permissible by Section 87 of the R.P. Act. The scheme of the R.P. Act demonstrates that an election can be questioned under Section 80 on the grounds as contained in Section 100 of the R.P. Act and the pleadings are regulated by Section 83 R.P. Act. If the election petition fails to make out a ground under Section 100 of the Act it must fail at the threshold. Similarly if the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action.

24. At this stage it would be pertinent to refer relevant provisions of the Constitution of India and the R. P. Act. Article 102 of the Constitution reads as under:

102. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- [(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;]
- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;
- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
- (e) if he is so disqualified by or under any law made by Parliament.

Explanation.—For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

24-A. Para 2 of the Tenth Schedule of the Constitution of India reads as under:

"2. Disqualification on ground of defection.-

(1) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House-

- (a) if he has voluntarily gives up his membership of such political party; or*
- (b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.*

Explanation.- For the purposes of this sub-paragraph,-

- (a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;*
- (b) a nominated member of a House shall,-*
 - (i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;*
 - (ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188."*

24-B. Section 100 of R.P. Act provides as under:

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) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(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) that the result of the election, in so far as it concerns a returned candidate, has been materially affected— (i) by the improper acceptance or any nomination, or (ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or (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.

25. Coming to the facts of the matter, it may be seen that so far as ground 'B' is concerned, the case of the petitioner is that respondent / returned candidate Dr. Vinod Kumar Bind was not qualified to contest election for Member of Parliament. It was alleged that the respondent / returned candidate was a member of NISHAD party and also a member of U.P. Legislative Assembly from NISHAD party and he has filed his nomination paper for member of Parliament from above referred constituency as a candidate set up by the BJP and there is nothing to show that he has ever resigned from the membership of NISHAD party. It is further the case of the petitioner that conduct of the respondent/ returned candidate Dr. Vinod Kumar Bind shows that he has voluntarily given up his membership of NISHAD party and thus he was disqualified from contesting the election of Member of Parliament in view of Article 102 read with Tenth Schedule of the Constitution of India. The provisions of para 2 (1) of the Tenth schedule provide that a member of a House belonging to any political party shall be disqualified for being a member of the House if he has voluntarily gives up his membership of such political party. In case of **Ravi S. Naik (supra)**, Hon'ble Apex Court has considered provisions of Para no. 2(1)(a) of Tenth Schedule of Constitution of India and observed that a person may voluntarily give up his membership of a political party even though he has not tendered his

resignation from the membership of that party. It was held that even in the absence of formal resignation from the membership an inference can be drawn from the conduct of member that he has voluntarily given up his membership of political party to which he belongs. Referring to Paragraph no.2 of Tenth Schedule, Hon'ble Apex Court has held as under:

"11.This appeal has been filed by Bandekar and Chopdekar who were elected to the Goa Legislative Assembly under the ticket of MGP. They have been disqualified from membership of the Assembly under order of the Speaker dated December 13, 1992 on the ground of defection under paragraph 2(1)(a) and 2(1)(b) of the Tenth Schedule. From the judgment of the High Court it appears that disqualification on the ground of paragraph 2(1)(b) was not pressed on behalf of the contesting respondent and disqualification was sought on the ground of paragraph 2(1)(a) only. The said paragraph provides for disqualification of a member of a House belonging to a political party "if he has voluntarily given up his membership of such political party". The words voluntarily given up his membership" are not synonymous with "resignation and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs"

26. In the present case it is not disputed that at the time of nomination for election of Member of Parliament from the aforesaid constituency on 06.05.2024, the respondent/ returned candidate Dr. Vinod Kumar Bind was a sitting member of Legislative Assembly of U.P. from NISHAD Party, whereas he has filed his nomination paper as a candidate set up by the BJP. There is nothing to show or suggest that he has resigned from the membership of NISHAD Party and in fact he has resigned from the membership of Legislative Assembly on 14.06.2024, after he was elected as Member of Parliament. From provisions of Section 13 of E.S. Order and above the discussed legal position, it is clear that where a candidate is submitting his nomination paper as a candidate of a particular party, his name must exist on the rolls of members of such political party. In other words to contest the election as a candidate of a particular party, he must be a member of such political party. There is nothing to show that the returned candidate has resigned from membership of NISHAD party or that his name existed on the rolls of the BJP. In view of these facts and circumstances it appears that before filing his nomination paper for

election of Member of Parliament from aforesaid constituency, the respondent / returned candidate has voluntarily given up his membership of NISHAD Party. From law laid down in case of **Ravi S. Naik** (supra), it is clear that words 'voluntarily given his membership' are not synonymous with resignation. It was held that even in the absence of a formal resignation from membership an inference can be drawn from conduct of a member that he has voluntarily given up his membership of the political party to which he belongs. In view of above referred facts and conduct of the returned candidate / respondent, it appears that he has voluntarily given up his membership of NISHAD Party. As per para 2 of Tenth Schedule, if a Member of Legislature has voluntarily gives up his membership of his political party, he entails disqualification as mentioned in Tenth Schedule. As per these provisions a member of a House belonging to any political party shall be disqualified for being Member of that House, if he has voluntarily given up his membership of such political party. As per Article 102(2) of Constitution of India, a person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule. Here it would be pertinent to mention that Para 6th of Schedule Tenth of Constitution of India provides that if any question arises as to whether a Member of a House has become subject to disqualification under the Schedule, the question shall be referred for the decision of the Chairman or as the case may be the Speaker of such House for decision on such disqualification.

27. At this stage a question arises whether in such circumstances the disqualification of a Member of Legislative Assembly would operate from the time he has voluntarily given up membership of his political party or from the date of decision taken by the Chairman / Speaker of the House in that regard. In this connection in case of **G.S. Iqbal Vs. K.M. Khather** (supra), referring to provisions of Tenth Schedule of the Constitution, the Apex Court observed that:

"28. The Speaker of the House is, accordingly, a competent statutory authority to decide

the question as to whether the Member of a House has become subject to disqualification under the Tenth Schedule. The question relating to disqualification under the Tenth Schedule has to be decided by the Speaker and none else. The decision of the Speaker in this regard is final, however, subject to judicial review on the permissible grounds. In any view of the matter such an issue cannot be a subject-matter for consideration in an election petition under the Act, 1951. The submission is more in desperation than in substance and it is rejected accordingly."

28. In case of *Rajendra Singh Rana (supra)*, Hon'ble Apex Court held as under:-

"33. It may be true that collective dissent is not intended to be stifled by the enactment of sub-article (2) of Articles 102 and 191 of the Tenth Schedule. But at the same time, it is clear that the object is to discourage defection which has assumed menacing proportions undermining the very basis of democracy. Therefore, a purposive interpretation of paragraph 2 in juxtaposition with paragraphs 3 and 4 of the Tenth Schedule is called for. One thing is clear that de-fection is a ground for disqualifying a member from the House. He incurs that disqualification if he has voluntarily given up his membership of his original political party, meaning the party on whose ticket he had got elected himself to the House. In the case of defiance of a whip, the party concerned is given an option either of condoning the defiance or seeking disqualification of the member concerned. But, the decision to condone must be taken within 15 days of the defiance of the whip. This aspect is also relied on for the contention that the relevant point of time to determine the question is when the Speaker actually takes a decision on the plea for disqualification.

34. As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of paragraph 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the Legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore in the background of the object sought to be achieved by the Fifty-Second Amendment of the Constitution and on a true understanding of paragraph 2 of the Tenth Schedule, with reference to the other paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip. It is really a decision ex post facto. The fact that in terms of paragraph 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision making authority. The same would defeat the very object of enacting the law. Such an interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. This would mean that what the learned Chief Justice has called the snow-balling effect, will also have to be ignored and the question will have to be decided with reference to the date on which the membership of the Legislature party is alleged to have been voluntarily given up."

29. In case of *Shrimanth Balasaheb Patil (supra)*, Apex Court in Paragraph Nos.101 and 106 held as under:-

"101. This Court has repeatedly held that a person cannot be barred from contesting elections if he is otherwise qualified to contest the same. This legal position is vividly illustrated by the Constitution Bench ruling in G. Narayanaswami v. G. Pannarselvam, (1972) 3 SCC 717. In dealing with the question as to whether a non graduate was qualified to be a candidate for the graduate constituency for the Legislative Council, when such a requirement was not prescribed either by the Constitution or the Parliament, this Court reversed the judgment of the Madras High Court which required the candidate to be a graduate. This Court held that when the law does not require such a qualification, it cannot be imposed by the Courts.

106. It is clear that the power to prescribe qualifications and disqualifications for membership to the State Legislature must be specifically provided for under the Constitution or by the Parliament by enacting a law. Since neither the Constitution nor any Act provides for defection to another party as a bar from contesting further elections, reading such a bar into the nebulous concept of the inherent powers of the Speaker is impermissible and invalid. Without commenting on whether the Speaker has inherent powers or not, a Constitution Bench of this Court in the Raja Ram Pal case (supra), while holding that certain unwritten powers inure with the Parliament under Article 105(3) of the Constitution, went on to observe even in case of expulsion, the expelled candidate is not barred from contesting reelection."

30. Thus, it may be seen that in case of **G.S. Iqbal Vs. K.M. Khather** (supra), it was held that the Speaker of the House is a competent statutory authority to decide the question as to whether the Member of the House has become subject to disqualification under the Tenth Schedule. It was observed that the question relating to disqualification under the Tenth Schedule has to be decided by the Speaker and none else. However, in case of **Rajendra Singh Rana** (supra), Hon'ble Apex Court held that the fact that a decision in that regard may be taken in the case of voluntarily given up by the Speaker at a subsequent point of time cannot and does not postpone the incurring disqualification by the Act of Legislature. Similar law was reiterated in case of **Ram Chandra Prasad Singh** (supra) and it was observed that the contention that it is only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. In view of aforesaid facts and position of law it is clear that on the date of submission of his nomination paper on 06.05.2024 for election from aforesaid parliamentary constituency, the respondent / returned candidate stand disqualified from holding his membership of the Legislative Assembly of Uttar Pradesh, as he has voluntarily given up his membership of NISHAD Party. Thus, it shall be deemed that the respondent / returned candidate has entailed the alleged disqualification

regarding his membership of Assembly from the time, he has voluntarily given up his membership of NISHAD party.

31. The next question that arises for consideration is that whether due to the above said disqualification suffered by the returned candidate / respondent in respect of his membership of Legislative Assembly of Uttar Pradesh, the respondent / returned candidate Dr. Vinod Kumar Bind was disqualified for contesting the election for Member of Parliament or for being chosen as a member of Parliament. As referred above, provisions of Article 102 (1) Constitution of India provide that a person shall be disqualified for being chosen as, and for being a Member of either House of Parliament if he is subject to five disqualifications mention in sub-clause (a) to (e), whereas, Clause (2) of Article 102 of Constitution of India provides that a person shall be disqualified for being a Member of either House of Parliament if he is so disqualified under Tenth Schedule. It may be noted that words 'being chosen' used in clause (1) of section 102, have not been used in clause (2). Dealing with similar situation in case of **K.M. Mune Gowda** (supra), the Apex Court in Paragraph Nos.15 to 18 held:-

"15. In terms of Article 191 (1) of the Constitution of India, a person if disqualified for "being chosen as", and for being a member of the Legislative Assembly or Legislative Council for the reason stated in clause (a) to (e) above i.e., if any person were to suffer from any of the disqualification in terms of clause (a) to (e), then he would not be entitled to even contest in a election, let alone being a member of the Assembly or Council.

16. In terms of Article 191(2) of the Constitution of India, a person shall be disqualified from being a member of the Assembly or Council if he is so disqualified under the Tenth Schedule. Thus, Article 191(2) of the Constitution of India, is only a disqualification from being a member of the Assembly or Council. There is no disqualification from contesting for election or being chosen to a Legislative Assembly or Council.

17. This aspect has been dealt with in Para 130 of the judgment in Shrimanth Balasaheb Patil's case, which has been reproduced hereinabove and the Hon'ble Apex Court has come to a categorical conclusion that disqualification under Article 191(2) of the Constitution of India would only apply for its existing membership and that there is no prohibition for such person to be re-elected in a by-election or a subsequent election, that is to say that the disqualification under Article 191 (2) of Constitution of India would not come in the way of such person contesting for any subsequent election. Applying the said dicta to the present case, respondent No.3 seeking to contest in the by-election post the disqualification would be covered by the decision in Shrimanth Balasaheb Patil's case permitting him to contest such by-election.

18. Hence, I answer the point raised by holding that the disqualification of a councillor in terms of Section 3(1)(b) of the Act will not create an embargo or prohibition on such disqualified person from contesting any subsequent by-election or election post of disqualification."

32. The observations in the above case law were made in respect of provisions Article 191 of the Constitution, which are applicable to State Legislature under chapter IIIrd of the Constitution. The provisions similar to Article 191 of the Constitution have been enshrined in Article 102 of the Constitution in chapter IInd of the Constitution in respect of the Parliament. Thus, above referred case law squarely covers the dispute in question and it is clear that in terms of Article 191(2) / 102(2) of the Constitution of India, a person shall be disqualified from being a member of Assembly or Parliament, as the case may be, if he is so disqualified under the Tenth Schedule. Thus, the disqualification provided under Article 191(2) / 102(2) of the Constitution of India, is only for being a Member of a House and there is no disqualification in regard to contest an election or being chosen to a Member of Parliament or Legislative Assembly. As referred above, the case of petitioner is that the respondent Dr. Vinod Kumar Bind was disqualified under the provisions of Tenth Schedule, which falls within the purview of Clause (2) of Article 102 of Constitution of India, where words 'for being chosen' have not been used. From these provisions as well as the law discussed above, it apparent that if a member of Legislative Assembly has voluntarily given up membership of his political party, the disqualification suffered by such person is that he stands disqualified from continuing or for being as Member of such Legislative Assembly, but that disqualification does not disqualify such person 'for being chosen' as a Member of either House of Parliament. Learned counsel for the petitioner has also relied upon case of Kanhiya Kumar (supra), wherein it was observed that ' *The Tenth Schedule to the Constitution which added by the Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of State Legislature would be deemed to have defected from his political party and would*

thereby be disqualified for being a member of the House concerned, hence it is difficult to say that reference to recognition, registration etc of political parties by Symbols Order is unauthorized and against political system adopted by our country'. Though, issue involved in the said case was quite different from the one involved in the present case but reference made in the said case law also suggests that on the ground of defection in terms of the Tenth Schedule, the disqualification entailed is regarding the membership of such person of either House as existed at the time of such defection. In view of these facts and circumstances, it clear that due to voluntarily giving up his membership of NISHAD Party, the respondent / returned candidate Dr. Vinod Kumar Bind stand disqualified from his then existing membership of Legislative Assembly of Uttar Pradesh but he was not disqualified for being chosen as a Member of either House of Parliament. Apparently in the instant matter the provisions of Clause (2) of Article 102 of the Constitution of India are applicable. Thus, it cannot be said that returned candidate / respondent Dr. Vinod Kumar Bind was not qualified or disqualified for being a member of Parliament. In other words on the ground of voluntarily giving up his membership of NISHAD party, the returned candidate has not suffered any such disqualification which may affect his right to contest election for Member of Parliament from aforesaid constituency. The averments / facts provided in support of ground 'B' do not provide any basis or ground for disqualification of being chosen as a Member of Parliament and thus, it can not be said that the returned candidate was disqualified or not qualified for contesting election of Member of Parliament from aforesaid constituency. The pleadings / facts mentioned in connection with ground 'B', if accepted as such, would not provide any ground to show that respondent / returned candidate was not qualified or he was disqualified to contest election for Member of Parliament from aforesaid constituency and thereby election petition does not fall within the purview of section 100(1)(a) of R.P. Act. In view of these facts no cause of action arises on account of averments / facts made in support of ground 'B'.

33. Ground 'A' and 'D' are interconnected, ground 'A' is to the effect that the result of the election in so far as it concerned to Returned Candidate namely Dr Vinod Kumar Bind, is materially affected due to improper acceptance of his nomination paper and similarly in ground 'D' it was alleged that the election in so far as respondent is concerned, is materially affected by non-compliance of the provisions of Constitution of India or R. P. Act or Conduct Rules or Orders issued by the Election Commission of India as well as the instructions contained in the hand book of Returning officers. In respect of these grounds essentially the case of the petitioner is that the respondent / returned candidate has made false declaration in his nomination paper as well in his affidavit in form - 26 about status of the political party, which is in contravention of para 13 of E. S. Order. As per petitioner, the returned candidate in his nomination form as well as in affidavit has shown himself as a candidate of BJP, whereas he was a member of NISHAD party and a sitting a Member of Legislative Assembly from NISHAD party and thus he made a false declaration in his nomination paper and in his affidavit and his nomination paper was not complete in terms of section 33 of R.P. Act and Returning Officer improperly accepted his nomination paper. It was alleged that on that ground petition falls within the purview of section 100(1)(d)(i) of R.P. Act and for non-compliance of provisions of section 33, 33 A of R.P. Act and para 13 of E. S. Order 1968, the petition falls within the ambit of section 100(1)(d)(iv) of R.P. Act.

34. The relevant provisions of Section 33(1) R.P. Act read as under:

"33. Presentation of nomination paper and requirements for a valid nomination. —(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the returning officer on a

day which is a public holiday:

Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to ten per cent. of the electors of the constituency or ten such electors, whichever is less, as proposers."

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34-A. The relevant provisions of para 13 of E.S. Order prescribe as under:

"13. When a candidate shall be deemed to be set up by a political party.- For the purposes of an election from any parliamentary or assembly constituency to which this Order applies, a candidate shall be deemed to be set up by a political party in any such parliamentary or assembly constituency, if, and only if,-

(a) the candidate has made the prescribed declaration to this effect in his nomination paper;

(aa) the candidate is a member of that political party and his name is borne on the rolls of members of the party."

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35. Thus, para 13 of E.S. Order provides that a candidate shall be deemed to be set up by a political party in any such Parliamentary or Assembly constituency, if, and only if such candidate is a member of that political party and his name is borne on the rolls of members of the party. Section 100(1)(d)(i) of R.P. Act provides that where the result of the election, in so far as it concerns a returned candidate, has been materially affected due to the improper acceptance or any nomination, it shall be ground for declaring such election to be void. Similarly, section 100(1)(d)(iv) of R.P. Act provides that where the result of the election, in so far as it concerns a returned candidate, has been materially affected by non-compliance with the provisions of the Constitution or of R.P. Act or any Rules or Order under R.P. Act, it shall be ground for declaring such election to be void. It may be noticed that so far clause (b) and (c) of Section 100(1) of R. P. Act are concerned, the Election Petitioner is not required to state as to how corrupt practice had materially affected the result of the election but when the clause (d)) of Section 100(1) is invoked, it is mandatory to state that how the result of election was materially affected by improper acceptance of the nomination form of the returned candidate. In

Mairembam Prithviraj alias Prithviraj Singh Vs Pukhrem Sharatchandra Singh AIR 2016 Supreme Court 5087, the Apex Court noted that the allegation that there has been an improper acceptance of a nomination would not be sufficient for a declaration that the election is void under Section 100(1)(d)(i) and there has to be further pleading and proof that the result of the election of the returned candidate was materially affected. In **Mangani Lal Mandal Vs Bishnu Deo Bhandari** (2012) 3 SCC 314, the Apex Court held that the sine qua non for declaring an election of returned candidate to be void under Section 100(1)(d)(iv) of the RP Act is further proof of the fact that such breach or non-observance results in materially affecting the result of returned candidate. Mere violation or breach or non-observance of the provisions of Constitution of India, R.P. Act, Rules or orders made thereunder would not ipso facto render the election of returned candidate void. Similarly in **Karikho Kri vs Nuney Tayang and Another** 2024 INSC 289, Hon'ble Apex has held so far the ground under Section 100(1)(d)(iv) of the Act of 1951 is concerned, the provision requires that the established non-compliance with the provisions of the Constitution or the Act of 1951 or any rules or orders made thereunder necessarily has to be shown to have materially affected the result of the election insofar as it concerns the returned candidate. It was further observed that mere non-compliance or breach of the Constitution or the statutory provisions would not result in invalidating the election of the returned candidate under Section 100(1)(d)(iv) as the sine qua non for declaring the election of a returned candidate to be void on that ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the election of the returned candidate. Thus, for the election petitioner to succeed on such ground, viz., Section 100(1)(d)(iv), he has not only to plead and prove the breach but also show that the result of the election, insofar as it concerned the returned candidate, has been materially affected thereby.

36. From the aforesaid case laws it is clear that in order to declare an election void under Section 100(1)(d)(i) / (iv) of the R.P. Act, it is absolutely necessary for the election petitioner to plead that the result of the election, insofar as it concerned the returned candidate, has been materially affected by the alleged non-compliance with the provisions of the Constitution or the R.P. Act or the rules or orders made thereunder and the failure to plead such material facts would be fatal to the election petition. As stated above, it is the case of the petitioner himself that the respondent / returned candidate has voluntarily given up his membership of NISHAD party and it has already been held that on that ground he entailed disqualification regarding his then existing membership of Legislative Assembly of Uttar Pradesh. In the instant matter mere bald averment has been made that the result of election was materially affected due to alleged improper acceptance of the nomination form of the returned candidate / respondent and by non-compliance of section 33 R.P. Act and Para 13 of E.S. Order. Such bald averment can hardly be termed as material fact to sustain the above referred ground. Further, as transpiring from the Election Petition, the claim of the petitioner that he has raised oral and written objection at the time of scrutiny made by the Returning Officer against the acceptance of nomination paper of the returned candidate is not acceptable. In this regard except a bald allegation, nothing has been brought on record. Had he raised any such objection, in that case the Returning Officer would have dealt with his objection under sub-section (2) of Section 36 of R.P. Act. Even if it is accepted that he had raised an oral objection before the Returning Officer at the time of scrutiny, the petitioner has failed to state material facts as to how and in which manner the alleged improper acceptance of the nomination papers of the respondent / returned candidate, the election has been materially affected. The non-mentioning of the particulars as to how and in which manner such improper acceptance of nomination paper or alleged non-compliance of the said provisions has materially affected the result of the election, is apparent on the face of the Election Petition. As

stated earlier, in Election Petition, the pleadings have to be precise, specific and unambiguous. If the allegations contained in Election Petition do not set out grounds as contemplated in Section 100 R.P. Act and do not conform to the requirement of Section 81 and 83 of the Act, the Election Petition is liable to be dismissed under Order VII Rule 11 of CPC. An omission of a single material fact leading to an incomplete cause of action or omission to contain a concise statement of material facts on which the Election petitioner relies for establishing a cause of action, would entail rejection of Election Petition under Order VII Rule 11 CPC read with Section 83 and 87 of the RP Act. As referred above, after voluntarily giving up his membership of NISHAD party, the respondent / returned candidate was not disqualified to contest the election for Member of Parliament. Though, it appears that the issue of violation of provisions of para 13 of E.S. Order is involved but as stated above the provisions of Section 100(1)(d) R.P. Act provide that where the result of the election, in so far as it concerns a returned candidate, has been materially affected due to the improper acceptance of any nomination or due to non-compliance of the aforesaid provisions, then it shall be ground for declaring such election to be void. Thus, to bring the alleged violation of provisions of para 13 of E.S. Order and section 33 R.P. Act within the purview of clause (d)(i) or clause (d)(iv) of section 100(1) of R.P. Act, one of the condition is that the result of the election, in so far as it concerns a returned candidate, must have been materially affected by the improper acceptance or any nomination, or by any non-compliance with the provisions of the Constitution or R.P. Act or of any rules / orders made under R. P. Act. In **Hari Shanker Jain V Sonia Gandhi** (supra), the Court had an occasion to deal with Section 83(1)(a) of the RP Act and the Court dismissed the Election petition holding that the bald and vague averments made in the election petitions do not satisfy the requirements of pleading "material facts" within the meaning of Section 83(1)(a) of the RP Act read with the requirements of Order VII Rule 11 CPC. It was observed as under: -

"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238 : (1969) 3 SCR 603] , *Jitendra Bahadur Singh v. Krishna Behari* [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan v. P.J. Francis* [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

37. The legal position with regard to the non-compliance of the requirement of Section 83(1)(a) of the RP Act and the rejection of Election Petition under Order VII Rule 11 CPC has also been considered in case of **Kanimozhi Karunanidhi V Santhana Kumar** 2023 SCC Online SC 573, wherein it was held as under:

"33. As elaborately discussed earlier, Section 83(1)(a) of RP Act mandates that an Election petition shall contain a concise statement of material facts on which petitioner relies, and which facts constitute a cause of action. Such facts would include positive statement of facts as also positive averment of negative fact. Omission of a singular fact would lead to incomplete cause of action. So far as the present petition is concerned, there is no averment made as to how there was non-compliance with provisions of the Constitution or of RP Act or of the Rules or Order made thereunder and as to how such non-compliance had materially affected the result of the election, so as to attract the ground under Section 100(1)(d)(iv) of the RP Act, for declaring the election to be void. The omission to state such vital and basic facts has rendered the petition liable to be dismissed under Order VII, Rule 11(a) [CPC](#) read with Section 83(i)(a) of the RP Act, 1951"

38. It was observed that if the allegations contained in Election Petition do not set out grounds as contemplated in section 100 R. P. Act and do not conform to the requirement of section 81 and 83 of R.P. Act, the Election Petition is liable to be rejected under Order VII Rule 11 CPC. In the instant matter after going through the para Nos. 61 to 83, 87, 90, 97,

101 of the election petition, it emerges that except a passing reference in para No. 89 of the petition that the Returning Officer improperly accepted nomination paper, which materially affect the result of election and a reference in para No. 101 of the petition that "the Returning Officer committed error in accepting nomination paper of returned candidate and acted contrary to provisions of section 33, 33-A of R.P. Act and did not follow directions of Election Commission dated 30.09.2013, 26.02.2019 and 28.02.2019, which materially affects the result of election", there are no material facts and particulars to indicate that how and in which manner the election of the respondent / returned candidate has been materially affected on that grounds. Mere bald allegation / averment in the election petition that the election of the respondent / returned candidate has been materially affected by the alleged improper acceptance of any nomination paper or by any non-compliance with the provisions of the E.S. Order would not be sufficient to bring the election petition within the purview of Section 100(1)(d)(i)/(iv) of R. P. Act. As held in case of Hari Shankar Jain (supra) that merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. Failure to plead material facts is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition. As held in case of **Ram Singh** (supra), omission of a single material fact leads to an incomplete cause of action and statement of claim becomes bad. In the instant matter after going through the relevant averments of the election petition, it appears that there are no material facts to indicate that how and in which manner the result of the election, in so far as the respondent / returned candidate was concerned, was materially affected by alleged improper acceptance of his nomination paper and by alleged non-compliance of the mandatory provisions so as to constitute a cause of action under Section 100(1)(d)(i) or 100(1)(d)(iv) of the R.P. Act. The petition lacks material facts and the averments made in

the petition do not constitute a cause of action within the purview of Section 100(1)(d)(i) or 100(1)(d)(iv) of the R.P. Act and thus, ground 'A' and 'D' do not give rise to any cause of action.

39. Ground 'C' is to the effect that the election of the respondent / returned candidate Dr. Vinod Kumar Bind as a Member of Parliament from 78-Bhadohi parliamentary constituency is illegal and void due to improper rejection of nomination papers of candidates, namely, Zia-Ul-Haq and Lalti Devi. As per petitioner, candidates, namely, Zia-Ul-Haq and Lalti Devi have filed their nomination papers, after completing all the formalities of valid nomination paper, and the Returning Officer after receiving their nomination papers was satisfied with the entries made therein did not issue any check-list to them. It was further alleged that none of the candidate has raised any objection against the nomination papers of said two candidates but their nomination papers were illegally and arbitrarily rejected by the Returning Officer, which is contrary to the provisions of Section 33, 33A, 34 of R.P. Act.

40. As per provisions of clause (c) of Section 100(1) R.P. Act, one of the ground to declare election to be void is that where any nomination has been improperly rejected. In the instant case after going through the pleadings of election petition, it appears that only general and vague averments have been made in the election petition that the nomination papers of said Zia-Ul-Haq and Smt. Lalti Devi were improperly rejected. In case of **Kanimozhi Karunanidhi** (supra) and **Hari Shankar Jain (supra)**, it was observed that mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition. It is quite general and ambiguous to allege that nomination papers of some the candidates were improperly rejected but such allegation hardly bring an election petition within the purview of Section 100(1)(c) of R. P. Act. As well settled not only positive statement of facts, even a positive statement of negative fact is also required to be stated, as it would be a material fact constituting a

cause of action. The material facts which are primary and basic facts have to be pleaded by the Election petitioner in support of the case set up by him to show his cause of action and omission of a single material fact would lead to an incomplete cause of action, entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) CPC read with Section 83(1)(a) of the RP Act.

41. In the instant matter after perusing the relevant pleadings as provided in para Nos. 13 to 15, 27C, 29 to 60 and 90 of election petition, it appears that there are absolutely no specific pleadings as on what ground their nomination papers were rejected. Merely a vague and general allegation has been made that the nomination papers of said Zia-Ul-Haq and Smt. Lalti Devi were improperly rejected. It is unsafe in an election case to accept oral evidence at its face value without looking for assurances from some surer circumstances or unimpeachable documents. In this connection a reference may be made to case of Rahim Khan Vs Khurshid Ahmed [(1974) 2 SCC 660], M. Narayana Rao Vs G. Venkata Reddy [(1977) 1 SCC 771, Lakshmi Raman Acharya Vs Chandan Singh [(1977) 1 SCC 423 and Ramji Prasad Singh Vs Ram Bilas Jha [(1977) 1 SCC 260. In the case in hand, there is no such averment that the petitioner was present at the time of scrutiny of nomination papers of said Zia-Ul-Haq and Smt. Lalti Devi. There is no such averment that said Zia-Ul-Haq and Smt. Lalti Devi have raised any objection against rejection of their nomination papers. There are no such primary facts that on which ground their nomination papers were rejected. It appears that even the petitioner is not aware that on what ground or defect their nomination paper were rejected. Only vague and general averments have been made that their nomination papers were rejected on flimsy grounds. There are no such pleadings that aforesaid candidates or any person on their behalf, was present at the time of scrutiny of nomination papers and raised any objection. Similarly, there are no pleadings that they have sought any time which was refused by the Returning Officer. It is not the case of petitioner

that he was present before the Returning Officer when said Zia-Ul-Haq and Smt. Lalti Devi have filed their nomination papers or at the time of scrutiny of their nomination papers. There is no such averment that said Zia-Ul-Haq and Smt. Lalti Devi have informed the petitioner about taking of oath or affirmation or that their nomination papers were valid in all respects. Aforesaid both the candidates have neither made any complaint to the Returning officer nor they have filed any election petition. Not a single material fact is pleaded in support of the plea that the nomination papers of said Zia-Ul-Haq and Smt. Lalti Devi were improperly rejected. Thus, it is clear that so far ground 'C' is concerned, the election petition is bereft of material facts and required particulars and thus, the pleadings do not disclose any cause of action.

42. Fifth Ground 'E' is to the effect that the respondent / returned candidate and his agent or any person with his consent committed corrupt practice of bribery, which falls within the purview of section 123(1)(B)(a) of R.P. Act. As per section 123(1)(B)(a) of R.P. Act bribery is receipt of, or agreement to receive any gratification, whether as motive or reward by a person for standing or not standing as, or for withdrawing or not withdrawing from being a candidate. As per the petitioner, the President of NISHAD party has entered into an understanding or agreement with the State unit of BJP that the respondent be set up as a candidate of BJP and thereby his candidature was a consequence of the said bargaining between President of NISHAD party and State unit of BJP and it was further bargained that the President of NISHAD party will not complaint to the Speaker under the Tenth Schedule against the membership of the respondent of Legislative Assembly in order to save his membership from U.P. Legislative Assembly. As per petitioner, the allegations constitute corrupt practice within the meaning of section 123(1)(B)(a) of R. P. Act.

43. At this stage, it would be apt to peruse the relevant provisions of Section 123 of R.P. Act which reads as under :-

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)*****

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward -

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) *****

Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all 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.

44. Recently in case of **Karim Uddin Barbhuiya Vs Aminul Haque Laskar** and Ors 2024 INSC 282 ,the Apex Court observed as under :-

"It is also pertinent to note at this juncture that a charge of "Corrupt practice" is easy to level but difficult to prove because it is in the nature of criminal charge and has got to be proved beyond doubt. The standard of proof required for establishing a charge of "Corrupt practice" is the same as is applicable to a criminal charge. Therefore, Section 83(1)(b) mandates that when the allegation of "Corrupt practice" is made, the Election Petition shall set forth full particulars of the corrupt practice that the Election Petitioner alleges, including as full a statement as possible of the names of parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The pleadings with regard to the allegation of corrupt practice have to be precise, specific and unambiguous whether it is bribery or undue influence or other corrupt practices as stated in Section 123 of the Act. If it is corrupt practice in the nature of undue influence, the pleadings must state the full particulars with regard to the direct or indirect interference or attempt to interfere by the candidate, with the free exercise of any electoral right as stated in Section 123(2) of the Act. We are afraid, Mr. Gupta has failed to point out from the pleadings of the Election petition as to how the appellant had interfered or attempted to interfere with the free exercise of any electoral right so as to constitute "undue influence" under Section 123(2) of the Act."

45. Thus, so far as the allegations of "Corrupt practice" are concerned, the petitioner was required to make concise statement of material facts as to how the respondent / returned candidate had indulged into 'Corrupt practice'. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of making a concise statement of the 'material facts' in the Election Petition. The material facts which are primary and basic facts have to be pleaded in support of the case set up by the Election petitioner to show his cause of action. In this connection a

reference may be made to case of **Azhar Hussain V Rajiv Gandhi** (supra), wherein the Hon'ble Apex Court after referring to the earlier pronouncements in case of Samant N. Balkrishna (supra) and Shri Udhav Singh Vs Madhav Rao Scindia (supra), held that a charge of 'Corrupt practice' is easy to level but difficult to prove because it is in the nature of criminal charge and has got to be proved beyond doubt. The standard of proof required for establishing a charge of 'Corrupt practice' is the same as is applicable to a criminal charge. Therefore, Section 83(1)(b) R.P. Act mandates that when the allegation of "Corrupt practice" is made, the Election Petition shall set forth full particulars of the corrupt practice that the Election Petitioner alleges, including as full a statement as possible of the names of parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The pleadings with regard to the allegation of corrupt practice have to be precise, specific and unambiguous whether it is bribery or undue influence or other corrupt practices as stated in section 123 of R.P. Act.

46. In the instant matter, there are no such primary facts that on what basis said inference has been drawn by the petitioner that there was some agreement or understanding between President of NISHAD party and State Unit of BJP that respondent be set up as a candidate of BJP and the President of NISHAD Party would not make complaint under Tenth Schedule against the membership of respondent in U.P. Assembly. Further, there is no such specific allegation regarding respondent / returned candidate that he was part of any such agreement that he would *stand or not stand as a candidate, or for withdrawing or not withdrawing from being, a candidate'* in relation to election in aforesaid constituency. There is no averment that the respondent / returned candidate has received any gratification or agreed to receive any gratification for standing or for not standing as a candidate in the election from aforesaid constituency. In view of these facts the allegation that there was an understanding or agreement between the President of NISHAD party and State unit of BJP

that the respondent be set up as a candidate of BJP and his candidature was a consequence of the said bargaining or that there was any agreement that the President of NISHAD party will not complain to the Speaker against the membership of the respondent in Legislative Assembly, hardly falls within the purview of Section 123(1)(B)(a) R. P. Act. Be that as it may, there are no primary facts as to when and where alleged agreement was entered in to or what is the source of information about alleged understanding or agreement. There is no such pleading that the respondent / returned candidate was part of any such agreement. The averments made in support of ground 'E' are quite vague, speculative and based on surmises and conjectures. The issue involved in case of Raj Narain (*supra*) was quite different from the one involved in the present case and the said case law has no applicability in the present case. As referred above, the allegation of corrupt practice are in nature of criminal charges and thus, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to face. If allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of election petition cannot proceed for want of cause of action. No doubt the conduct of the respondent / returned candidate to contest election as candidate of BJP, without resigning from NISHAD party or without becoming a member of the BJP, can not be said a healthy practice for Democracy but it would be interesting to note that it is the case of petitioner himself that the respondent / returned candidate has voluntarily given up his membership of NISHAD party and that version has been found acceptable and it has been held that before filing his nomination from aforesaid Parliamentary constituency the respondent / returned candidate has voluntarily given up his membership of NISHAD party. As held earlier the only effect of the same was that his then existing membership of U.P. Legislative Assembly was subject to disqualification as per provisions of Tenth Schedule and Article 191(2) / 102(2) of the Constitution of India but he has suffered no disqualification for contesting election for Member of Parliament. The

fact remains that allegations made regarding alleged agreement / understanding between President of NISHAD party and State unit of BJP are not supported primary facts. I have gone through the relevant pleadings of the election petition as contained in para Nos. 91 to 103 of the petition and it appears that the requisite facts, details and particulars of the alleged corrupt practice are completely missing. The allegations made by the petitioner are quite vague and speculative in nature and the Petitioner has failed to provide concrete evidence or detailed allegations linking the respondent / returned candidate to corrupt practice. There are absolutely no averments that on what basis it could be said that the President of NISHAD party has entered into an understanding or agreement with the State unit of BJP that the respondent be set up as a candidate of BJP or that his candidature was a consequence of the said bargaining between President of NISHAD party and State unit of BJP. There is nothing to indicate that what is source of that inference drawn by the petitioner. As well settled, pleadings relating to corrupt practice have to be scrutinised in a strict manner. The allegations are unsupported by primary documents and facts, rendering them insufficient to constitute cause of action. The petition did not adhere the mandatory requirements of Section 83 of R.P. Act. The allegations made regarding alleged corrupt practice are quite speculative and based on conjectures and do not disclose any cause of action to proceed on the ground of corrupt practice. Taking averments made in petition as such, not a single material fact is pleaded making out an allegation of corrupt practice covered by Section 123(1)(B)(a) of the R.P. Act. The averments made in paragraph nos. 91 to 103 do not constitute a cause of action available to proceed on ground of corrupt practice as contemplated by Section 123 of the R.P. Act. In view of aforesaid no cause of action is disclosed on the basis of the averments made regarding alleged corrupt practice.

47. In view of aforesaid, it is clear that the election petition does not disclose a cause of action and thus, the application filed on behalf of the

respondent / returned candidate under Order VII Rule 11 CPC is liable to be allowed. Accordingly, the application under Order VII Rule 11 CPC is allowed and the election petition is dismissed under Order VII Rule 11 CPC.

48. Both the parties shall bear their own costs.

September 15, 2026

Anand / S Rawat / SP

(Raj Beer Singh,J.)