

A. Devegowda Vs. Ramachandra Gowda and Others

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Court : Karnataka

Decided On : Mar-01-2014

Judge : H.G. Ramesh

Appeal No. : Election Petition No. 1 of 2012

Appellant : A. Devegowda

Respondent : Ramachandra Gowda and Others

Judgement :

Order on I.A.Nos.2/2012 and 1/2013

1. I.A.No.2/2012 is filed by the returned candidate (respondent no.1) to dismiss the election petition for not stating the material facts in the Election petition and for non-disclosure of cause of action. I.A.No.1/2013 is also filed by him to strike down several paragraphs in the Election petition on the ground that they are devoid of material facts.

2. I have heard the learned counsel for the petitioner and respondent no.1 and examined the matter in the light of the decisions referred to by them.

3. In the Election petition, the petitioner has challenged the election of respondent no.1 to the Karnataka Legislative Council from the Bangalore Graduates' Constituency. The polling was held on 10.06.2012 and respondent No.1 was

declared elected on 14.06.2012. The petitioner was also one of the candidates sponsored by Janata Dal (secular) and the returned candidate was sponsored by Bharatiya Janata Party. It is stated that respondent no.1 got elected by a margin of 244 votes. In the election petition, the petitioner, inter alia, has prayed for setting aside the election of respondent no.1 and for recounting of the votes polled.

4. The Election of the returned candidate (respondent no.1) is challenged on the following two grounds:

(i) Bharatiya Janata Party with the consent of respondent No.1 (returned candidate) has published an appeal (pamphlet) depicting a model ballot paper wherein respondent No.1 sought for first preference vote for himself and fourth preference vote for the petitioner, which according to the petitioner, misled the voters interfering with their free exercise of electoral right. It is also stated that the appeal (pamphlet) contained false and incorrect information. This publication, according to the petitioner, amounted to corrupt practice within the meaning of Section 123(2) and (4) of the Representation of the People Act, 1951 ('the Act' for short); (ii) 761 votes cast in favour of the petitioner were improperly rejected by the Returning Officer resulting in the defeat of the petitioner.

5. In view of the above, it is stated that the election of the returned candidate is to be declared as void as per Section 100(1)(b)(d)(iii) and (iv) of the Act.

6. The question that requires to be examined by this Court is as to whether the Election Petition is liable to be dismissed for non-disclosure of 'cause of action' and for not stating all the 'material facts'. To answer the question, it is relevant to refer to the facts stated in the election petition.

7. Paras 6, 7 and 8 of the Election petition relates to ground No.(i) stated above; hence, it is relevant to refer to the said paras:

"6. It is submitted that the 1st Respondent has indulged in falsely publishing an appeal and circulated the same to prejudice the election of the Petitioner and exercised undue influence and interfered with the electoral right, thereby committing the corrupt practice within the meaning of Section 123(2) and (4) of the

Act. In the said Appeal, apart from others, the 1st Respondent had sought for first preference vote in his favour and fourth preference vote in favour of the Petitioner, by marking in the said manner in a Model Ballot Paper printed therein. The 1st Respondent had also made statements knowing and believing it to be false and passing of the same as truth. The 1st Respondent has also propagated several issues/things including certain government programmes, as if it is his own and as though it is true. The material facts and particulars are as stated hereunder.

7. It is submitted that the Bharatiya Janata Party, the Political Party of the first Respondent had published the said appeal with the consent of the first Respondent both in Kannada and English languages soliciting first preferential votes in his favour, with a Model Ballot Paper. This was published on behalf of the Bharatiya Janata party by its General Secretary and printed at Abhimani Publications Ltd. This appeal was distributed/circulated by the 1st Respondent and his supporters with his consent among all the voters of the constituency by hand and also by post even before the last date for withdrawal of candidature and also during the election campaigning between 26.05.2012 to 08.06.2012. In the said appeal, the first Respondent and his Political Party had made false statements regarding his achievements as a Legislator and also as the Minister in the Government of Karnataka and had also indicated in the Model Ballot Paper by marking in the column in the first page, the first Respondent should be given the first preferential vote and the Petitioner should be given the fourth preferential vote. This was done to mislead the voters and thereby prejudicially affect the election prospects of the Petitioner. In that regard Shri. Kushal Babu, the Election Agent appointed by the Petitioner had lodged a complaint on 29.05.2012 with the Chief Electoral Officer in Karnataka about the publication and distribution of the aforesaid false and misleading appeal. A copy of the Complaint dated 29.05.2012, is produced herewith as ANNEXURE-'B'.

8. It is submitted that the publication of the aforesaid appeal by the Political Party of the first Respondent with his consent, is a corrupt practice within the meaning of Section 123 (2) and (4) of the Act. Further, by virtue of the above appeal more than 1,000 voters were misled, while exercising their preferential vote at the time of polling and the Petitioner has lost more than 1,000 votes by the corrupt practice

committed by the first Respondent and his political party Bharathiya Janata Party." (Underlining supplied)

8. With regard to the publication (pamphlet) referred to above, learned counsel for the petitioner submitted that the petitioner's only grievance is with regard to respondent no.1 (returned candidate) seeking fourth preferential vote in favour of the petitioner in the model ballot paper depicted in the pamphlet. This, according to the petitioner, misled the voters prejudicing the prospects of the petitioner in the election.

9. The Pamphlet was not produced along with the Election petition but has been produced subsequently along with a memo dated 05.01.2013. The model ballot paper depicted in the pamphlet reads as follows:

Table: æKANNADAM?

As could be seen from the above, the model ballot paper depicted in the pamphlet does not contain the petitioner's full name except the first English alphabet of his name i.e. 'D' and in vernacular æKANNADAM?.

10. All the voters of the constituency in question were graduates as it was a graduates' constituency. Hence, it cannot be said that the voters of the Bangalore Graduates' Constituency were in any way misled by the model ballot paper depicted in the pamphlet. The judgment relied on by the petitioner's counsel in *Elvin Sangma v. Projengton* (AIR 1975 SC 425) is not applicable to the facts of this case as all the voters in the constituency in question were graduates and not illiterate villagers as in *Elvin Sangma's* case. In *Elvin Sangma's* case more than 80% were illiterate voters and they were found misled by the dummy ballot papers distributed by the returned candidate showing wrongly the election symbol of the other contesting candidate. It cannot be said that the voters who were graduates in the present case were misled by the model ballot paper depicted in the pamphlet. The decision in *Elvin Sangma's* case, hence, has no application to the present case. It cannot be said that the pamphlet unduly influenced the graduate voters to vote in favour of respondent No.1 or refrained the voters from voting in favour of the petitioner.

11. Law does not prohibit persuading voters to vote or not to vote for a candidate. Proper and peaceful persuasion is the motive force of any democratic process. 'Advertising is the very essence of democracy' as stated by Anton Chekhov. In this context, it is relevant to refer to the following observations of the Supreme Court in *Bachan Singh vs. Prithvi Singh* [AIR 1975 SC 926]:

"19. Doubtless the definition of 'undue influence' in Sub-s (2) of Section 123 is couched in very wide terms, and on first flush seems to cover every conceivable act which directly or indirectly interferes or attempts to interfere with the free exercise of electoral right. In one sense even election propaganda carried on vigorously, blaringly and systematically through charismatic leaders or through various media in favour of a candidate by recounting the glories and achievements of that candidate or his political party in administrative or political field, does meddle with and mould the independent volition of electors, having poor reason and little education, in the exercise of their franchise. That such a wide construction would not be in consonance with the intendment of the legislature is discernible from Proviso to this Clause. The Proviso illustrates that ordinarily interference with the free exercise of electoral right involves either violence or threat of injury of any kind to any candidate or an elector or inducement or attempt to induce a candidate or elector to believe that he will become an object of divine displeasure or spiritual censure. The prefix 'undue' indicates that there must be some abuse of influence. 'Undue influence' is used in contra distinction to proper influence.' Construed in the light of Proviso, Clause (2) of S.123 does not bar or penalize legitimate canvassing or appeals to reason and judgment of the voters or other lawful means of persuading voters to vote or not to vote for a candidate. Indeed such proper and peaceful persuasion is the motive force of our democratic process.

20. We are unable to appreciate how the publication of this poster interfered or was calculated to interfere with the free exercise of the electoral right of any person. There was nothing in it which amounted to a threat of injury or undue inducement of the kind inhibited by Section 123(2)." (Underlining supplied)

12. In my opinion, neither the contents of the pamphlet including the model ballot paper depicted therein nor the facts stated in paras 6, 7 and 8 of the Election petition referred to above would make out a case of corrupt practice within the meaning of Section 123(2) and (4) of the Act. Hence, it cannot be said that the election petition would disclose any cause of action insofar as it relates to the allegation of corrupt practice by the returned candidate. 13. Now coming to ground No.(ii) namely, the allegation of improper rejection of 761 votes cast in favour of the petitioner, it is relevant to refer to paras 12 to 32 of the Election petition; they read as follows:

"12. It is submitted that in the First Round of counting about one thousand ballots papers were given to all the 14 counting tables, except in table Nos.6, 8 and 13, where only 999 ballot papers were given. After counting, 13,997 votes were found to be valid and 1,298 votes were rejected. The Petitioner had secured 3,715 votes and the first Respondent had secured 2,981 votes and other candidates had got the remaining votes.

13. It is submitted that in first Round, the scrutiny of ballot papers were not done in accordance with Rule 73 by the Counting Supervisor and assistants and several valid votes were treated as doubtful votes on flimsy grounds, in a very haphazard manner. Thereafter, without verifying the same i.e. the doubtful votes and applying his mind, the Returning Officer had mechanically rejected the same, accepting the stand of the Counting Supervisor and Assistants. It is submitted that they were valid votes and they were rejected on flimsy grounds and contrary to law.

14. It is submitted that in some of the rejected votes, the preferential mark of '1' was preceded by '0' i.e., the voters had marked as '01'. The rejection is illegal and contrary to the rules. A chart containing the table numbers, the votes rejected and the votes which were cast in favour of the Petitioner is produced hereunder as Chart-A:

CHART-A

BALLOT PAPERS WITH MARKING-'01'

Table No.	Round-1	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	15	8
2	18	8
3	9	6
4	17	12
5	30	25
6	25	15
7	18	15
8	7	5
9	8	6
10	18	15
11	14	11
12	9	6
13	14	10
14	6	2
Total	208	144

15. Similarly, the ballot papers containing the votes cast and marked 1 as indicating the first preference vote i.e., figure 1 encircled, have been rejected illegally, in which majority of votes were in favour of the Petitioner, as per Chart-B hereunder.

CHART-B

BALLOT PAPERS WITH MARKING- 1

Table No.	Round-1	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	7	4

2	12	8
3	8	6
4	10	6
5	5	3
6	15	9
7	10	5
8	4	2
9	15	9
10	5	3
11	20	13
12	5	4
13	7	4
14	2	1
Total	126	77

16. The Petitioner submits that the marks having the mark as herein "1^š", i.e., right mark after figure 1, have also been improperly rejected and the Petitioner had secured more number of votes and are shown in Chart-C hereunder:

CHART-C

BALLOT PAPERS WITH MARKING-"1^š"

Table No.	Round-1	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	7	0
2	5	3
3	8	5
4	6	3
5	10	6
6	9	5
7	3	2

8	5	3
9	6	4
10	15	9
11	10	6
12	5	3
13	4	2
14	15	0
Total	108	51

17. The first preferential vote marked against the candidate, within the column showing the name of the candidates have also been rejected, which is illegal and improper and the Petitioner has secured more votes and they are shown in Chart-D as hereunder:

CHART-D

BALLOT PAPERS WITH FIRST PREFERENTIAL MARK FOUND IN THE COLUMN OF THE CANDIDATES NAME MARKING

Table No.	Round-1	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	3	1
2	4	2
3	3	0
4	6	4
5	7	3
6	3	2
7	4	2
8	6	4
9	5	4
10	3	0
11	8	4

12	10	5
13	6	3
14	4	2
Total	72	36

18. It is submitted that the Second Round of Counting commenced at about 4.00 P.M. Tables 1 to 13 were given 1,000 ballot papers and Table No.14 was given 842 ballot papers. In all 13,842 votes were counted, out of which 1,205 votes were rejected. The Petitioner had secured 2,965 first preferential votes and the first Respondent had secured 3,540 first preferential votes and the remaining votes were secured by other candidates.

19. It is submitted that in Second Round also the scrutiny of ballot papers were not done in accordance with Rule 73 by the Counting Supervisor and Assistants and several valid votes were treated as doubtful votes on flimsy grounds, in a very haphazard manner. Thereafter, without verifying the same i.e., the doubtful votes and applying his mind, the Returning Officer had mechanically rejected the same, accepting the stand of the Counting Supervisor and Assistants. It is submitted that there were valid votes and they were rejected on flimsy grounds and contrary to law.

20. It is submitted that even in the second round in some of the rejected votes, the preferential mark of '1' was preceded by '0' i.e., the voters had marked as '01'. The rejection is illegal and contrary to the rules. A chart containing the table numbers, the votes rejected and the votes which were cast in favour of the Petitioner is produced hereunder as 'Chart-E'.

CHART-E

BALLOT PAPERS WITH MARKING “ 01

Table No.	Round-2	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	15	8

2	18	8
3	9	6
4	17	12
5	30	25
6	25	15
7	18	15
8	7	5
9	8	6
10	18	15
11	14	11
12	9	6
13	14	10
14	8	5
Total	210	147

21. Similarly, the ballot papers containing the votes cast and marked as ' 1 i.e., by encircling figure one, indicating the first preference vote, have been rejected illegally as per 'Chart-F' hereunder.

CHART-F

BALLOT PAPERS WITH MARKING - 1

Table No.	Round-2	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	4	1
2	8	5
3	6	4
4	7	5
5	8	7
6	10	8
7	25	20

8	8	3
9	10	5
10	5	4
11	6	3
12	8	5
13	10	6
14	10	5
Total	129	81

22. The Petitioner submits that the marks having '1^š' i.e., figure one succeeded by right mark, have also been rejected which are in favour of the Petitioner as per 'Chart-G' hereunder:

CHART-G

BALLOT PAPERS WITH MARKING - '1^š'

Table No.	Round-2	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	19	16
2	23	5
3	18	8
4	28	20
5	16	10
6	18	6
7	9	5
8	6	3
9	38	30
10	19	15
11	18	10
12	9	3
13	12	5

14	15	3
Total	248	139

23. The first preferential vote marked against the candidate, within the column showing the name of the candidates have also been rejected, which is illegal and improper and they are shown in Chart-D as hereunder:

CHART-H

BALLOTS WITH FIRST PREFERENTIAL MARK FOUND IN THE COLUMN OF THE CANDIDATES NAME

Table No.	Round-2	
	Votes Rejected	Votes Cast in favour of the Petitioner
1	3	3
2	4	4
3	6	5
4	8	6
5	4	3
6	5	4
7	12	10
8	6	5
9	6	3
10	7	5
11	28	25
12	10	7
13	8	6
14	0	0
Total	107	86

24. It is submitted that the intention of the voter is to cast his vote in favour of the candidate of his choice and in this case the Petitioner herein at Sl.No.1. This preference has been exercised by some of the voters by prefixing '01', 1 '1^š' and

the votes marked in the candidates column. Looked at from any angle the irresistible conclusion that can be drawn is that the voters have cast their votes in favour of the Petitioner at Sl.No.1 and it does not in any manner disclose the identity of the voter. Further, there is no prohibition to cast their votes in the manner indicated above. This is also not one of the illustrations in the invalid instances as indicated in the Model Ballot Paper (Ann-C), by the Election Commission of India. The cumulative effect of not counting the votes referred to in Tables A to H, would clearly go to show that Petitioner has secured highest number of votes, had the Returning Officer taken into account the votes referred to in the above tables and apart from securing the highest number of votes, the Petitioner ought to have been declared as elected. By not counting the votes there is statutory violation of Rule 73, thereby materially affecting the result of the election.

25. It is submitted that out of the total of 514 votes which were rejected during the first round of counting, 308 valid votes having the preferential mark like '01', '1^š' and the votes marked in the candidates column cast in favour of the Petitioner, have been rejected. And in the second round, similarly, out of total of 673 which were rejected, 453 votes were cast in favour of the Petitioner. These Votes are not treated as invalid either under Rule 73 of the Rules or in the Model Ballot Paper published by the Election Commission of India (Ann-C), which was given wide publicity in all the polling stations of the Constituency. Thus in all 761 valid votes cast in favour of the Petitioner, have been rejected improperly.

26. It is submitted that since the difference of votes between the Petitioner and the returned candidate is only 244 as per the final result sheet, the result of the election is materially affected by improper rejection of 761 valid votes and therefore, the election of the first Respondent is liable to be set aside, under Section 100 (1)(b)(d)(iii) and (iv) of the Act.

27. It is submitted that the during the counting, after 15th count elimination process, the Petitioner had secured 8,224 votes and the first Respondent had secured 8,418 votes and there was a difference of only 194 votes as borne out by the Result Sheet furnished by the Returning Officer, a copy of which is produced

herewith as ANNEXURE-'D'. But contrary to the same, the final result sheet showed that first Respondent had won by majority of 244 votes. The round wise result sheet and the result of the elimination process Sheet in Form No.23B are produced herewith as ANNEXURES-'E' AND 'E1', respectively. It demonstrates that all was not well in the election process.

28. From the aforesaid, it is clear that the Returning Officer has illegally declared the first Respondent as duly elected in Form No.23, a copy of which is produced herewith as ANNEXURE-'F'.

29. It is submitted that during the elimination process the Petitioner and his election agents were not allowed to verify whether the second preference votes exercised by the voters is properly distributed, especially in favour of the Petitioner and they were made to observe from a distance of 15 feet away from the place of elimination process and therefore, they were not able to watch and raise objections regarding the transfer of second preference votes in favour of the Petitioner. It is submitted that further, during the 12th, 13th and 14th count of the elimination process, when the 4th Respondent's transfer of votes in favour of the continuing candidates was taking place, it was in the wee hours i.e., late in the night and the Counting Staff were drowsy and they did not properly scrutinize the second preference votes cast in the ballot papers of the 4th Respondent. The Returning Officer and all the Counting Staff rather mechanically transferred those votes in favour of first Respondent and thereby manipulated the votes in favour of the first Respondent with a view to help the first Respondent, who is the ruling party candidate. The officials involved were Revenue officials who are under the control of the Government, which is in power in the State.

30. It is submitted that the entire counting process was done in a haphazard manner. Though the counting commenced at 8.00 AM on 13th June, 2012, it continued till next morning, till about 8,00 Clock on 14th June, 2012, which is an abnormal process in counting, clearly demonstrating that all was not well in the entire election process. When the Petitioner and the election agent came to know that the Returning officer had rejected the first preferential marking of '01' in large numbers, the Petitioner gave a application at about 7.15 pm on 13.06.2012 for

recount of rejected votes. The Returning Officer had refused to order for recount of the rejected ballot papers and he gave an endorsement on 14.6.2012 relying upon the election Commission's direction, which is totally contrary to the Rules. A copy of the application for recount of rejected ballot papers and the endorsement given by the Returning Officer is produced herewith and marked herewith as ANNEXURES-'G' and 'G1' , respectively. No proper arrangements were made for watching the counting process of the second preference votes. The candidates and election agents were made to sit in a stage which was set up towards north of the hall and they were not in a position to ascertain and watch the proper transfer of second preference votes and also rejection of the valid votes and were unable to make a note of the details of the same.

31. It is submitted that the haphazard manner and the irregular process of counting and its delay has been reported in several news papers both in Kannada and English. The said news was also telecast in almost all Kannada TV Channels on 13th and 14th of June, 2012. There were protests from the counting agents of the political parties including the Petitioner's counting agents about the illegal counting process. In spite of such protests the Returning Officer did not take proper steps to count the ballot papers as per the Rules and also the directions issued by the Election Commission of India by its letters dated 12.06.2012, bearing No.322/KT-LC/1/2012-CCand BE, and 17.12.2011, bearing No.318/RO-HB/2011-CCand BE, along with its enclosures. It is submitted that the rejection of the 761 ballot papers with '01', 1 , '1~š' and figure 1 against the candidates name are improper and contrary to the Rule 73 and the directions issued by the Election Commission of India.

32. The Petitioner submits that he has obtained majority of valid votes in view of the fact that 761 number of votes cast in favour of the Petitioner have been improperly rejected by the Returning Officer and the 1st respondent has obtained 1,000 votes by means of corrupt practice which have to be excluded. There is material irregularity in the counting process. The cumulative effect is that there is a statutory violation, thereby materially affecting the result of the election. Therefore, the Petitioner is entitled to declare that he is duly elected to fill the seat in Karnataka Legislative Council from Bangalore Graduate's Constituency."

14. As could be seen from Charts A to H depicted in paras 14 to 17 and 20 to 23 of the election petition extracted above, totally 761 votes cast in favour of the petitioner were alleged to have been improperly rejected by the Returning Officer. The basis on which the figures are stated in each of the above Charts is not disclosed in the election petition. In the charts, the number of votes cast in favour of the petitioner but rejected by the Returning Officer is stated. The basis on which the petitioner has arrived at those figures is not stated. This omission amounts to non-disclosure of material facts as held by the Supreme Court in Jitendra Bahadur's case (AIR 1970 SC 276). In the said case, Jitendra Bahadur Singh was declared elected from a Parliamentary Constituency in the general elections held in 1967. The election was challenged by an elector mainly on the ground of irregularities in scrutinizing and counting of votes. The Allahabad High Court allowed inspection of all the ballot papers. The said order was challenged before the Supreme Court. The Supreme Court allowed the appeal and set aside the order made by the Allahabad High Court. K.S.Hegde,J speaking for the Bench observed that an Election Petition must contain material facts and the Court must be prima facie satisfied before ordering inspection of ballot papers and for re-count of the votes. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made; if the petitioner gives some figures as to the rejection of valid votes and acceptance of invalid votes, the same must not be considered as an adequate statement of material facts when the petitioner has not disclosed in the petition the basis on which he has arrived at those figures. It is relevant to refer to the following observations made by the Supreme Court in Jitendra Bahadur v. Krishna Behari (AIR 1970 SC 276):

"8. The trial court was of the opinion that if an election petitioner in his election petition gives some figures as to the rejection of valid votes and acceptance of invalid votes, the same must not be considered as an adequate statement of material facts. In the instant case apart from giving certain figures whether true or imaginary, the petitioner has not disclosed in the petition the basis on which he arrived at those figures. His bald assertion that he got those figures from the counting agents of the congress nominee cannot afford the necessary basis. He did not say in the petition who those workers were and what is the basis of their information. It is not his case that they maintained any notes or that he examined

their notes, if there were any. 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 to afford a basis for the allegations made in the petition. The facts stated in paragraphs 13 and 14 of the election petition and in Schedule 'E' are mere allegations and are not material facts supporting those allegations. This Court in insisting that the election petitioner should state in the petition the material facts were referring to a point of substance and not of mere form. Unfortunately the trial court has mistaken the form for the substance. The material facts disclosed by the petitioner must afford an adequate basis for the allegations made.

9.

10. Now coming to the rejection of the votes polled in favour of the congress nominee, under the rules before a vote is rejected the agents of the candidates must be permitted to examine the concerned ballot paper. Therefore it was quite easy for them to note down the serial number of the concerned ballot papers. The election petition is silent as to the inspection of the ballot papers or whether the counting agents had noted down the serial numbers of those ballot papers or whether those agents raised any objection relating to the validity of those ballot papers; if so who those agents are and what are the serial numbers of the ballot papers to which each one of them advanced their objections. These again are the material facts required to be stated."

(Emphasis and underlining supplied)

15. As could be seen from the above observations, the Supreme Court has, with reference to the allegations made in the election petition therein, has observed that the election petition was silent as to whether the counting agents had noted down the serial numbers of the ballot papers, or whether those agents raised any objection relating to validity of those ballot papers and if so, who those agents were, the serial numbers of the ballot papers to which each one of them advanced their objections. It also noticed that the basis on which the petitioner arrived at some figures as to the rejection of valid votes and acceptance of invalid votes was not disclosed in the petition. The above facts are held to be material facts which

are required to be stated in the context of a prayer for recounting of votes on the ground of irregularities in scrutinizing and counting of votes. It is relevant to state none of the aforesaid facts are stated in the present election petition.

16. Further, nowhere in the election petition, the petitioner has stated the serial numbers of any of the ballot papers alleged to have been improperly rejected. It is not the case of the petitioner that the Counting Agents or the Election Agent prepared any notes at the time of the alleged illegal counting and noted down the particulars of the ballot papers improperly rejected by the Returning Officer.

17. As held by the Supreme Court in several judgments, all the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would result in dismissal of the election petition.

18. In view of what is stated above, it cannot be said that the election petition would disclose any 'cause of action' relating to the allegation of 'corrupt practice'. The Election Petition also does not contain the material facts relating to the allegation of improper rejection of votes cast in favour of the petitioner. Accordingly, I.A.No.2/2012 and I.A.No.1/2013 are allowed; consequently, the election petition is dismissed under Section 86(1) of the Act but with no order as to costs.

Election Petition dismissed.

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