

**Har Narain Vs. Vinod Kumar**

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**Court :** Allahabad

**Decided On :** Oct-15-1986

**Reported in :** AIR1987All319

**Judge :** Om Prakash, J.

**Acts :** [Constitution of India](#) - Article 141; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11 and 151; [Representation of the People Act, 1951](#) - Sections 83, 123(2) and 123(4)

**Appeal No. :** Civil Misc. Appl. No. Nil of 1986 in Election Petn. No. 22 of 1985

**Appellant :** Har Narain

**Respondent :** Vinod Kumar

**Advocate for Def. :** K.N. Tripathi and ;K.P. Singh, Adv.

**Advocate for Pet/Ap. :** V. Bhauguna and ;R.N. Pant, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Om Prakash, J.**

1. The application A-59 has been made by the respondent under Order 6, Rule 16 and Section 151 C.P.C praying that the paragraphs Nos. 10, 13, 15, 16, 20, 21, 22, 24, 25, 26, 27, and 31 to 34 be struck out as they do not contain material facts and do not disclose the cause of action and that the election petition be dismissed in entirety, as the petitioner could not be allowed to lead evidence on the allegations contained in the aforesaid paragraphs.

2. Sri Dwivedi, learned counsel for the petitioner raised a preliminary objection that this application is not maintainable, inasmuch as an application A-7 dated 7-10-1985 exactly with the same prayer had been made by the respondent under Order 6, Rule 16, read with Order 7, Rule 11 and Sections 82, 83 and 86 of the [Representation of the People Act, 1951](#) (the Act, 1951). The said application was disposed of on 13-12-1985 and was partly allowed, as only para 18 of the election petition was ordered to be struck out. The contention of Sri Dwivedi is that the order dated 13-12-1985 operates as res judicata against the respondent. Same matter having already been decided between the same parties by this Court on 13-12-1985 under the application A 7 dated 7-10-1985. Sri Dwivedi argues that the contention of the respondent as raised in the application A-59 is barred by the rule of res judicata and the application A-59 which is nothing but a review application, though is not labelled under Order 47, Rule 1 C.P.C is not maintainable for two reasons : --

(1) that it is barred by time; and,

(2) that Order 47, Rule 1 cannot be invoked in the election matters, because the Act, 1951 does not confer this power on the Court. The argument was that power of review is a part of substantive law in contradiction to procedural law and, therefore, that cannot be exercised under Section 87 of the Act, 1951, which simply provides that every election petition shall be tried by the High Court as nearly as may be, in accordance with the procedure applicable under the Civil P.C to the trial of suits. I need not dilate on the issue whether the provisions of Order 47, Rule 1 are applicable to this application, because Sri K.N. Tripathi, learned counsel for the respondent candidly states that Order 47, Rule 1 refers to a power which is to be conferred specifically on a court by Statute and that the same

cannot be exercised by virtue of the fact that the election petition is to be tried in accordance with the Civil P.C. Then the question is whether the application A59 is maintainable under Section 151, read with Order 6, Rule 16.

3. The contention of Sri Tripathi is that the order dt. 13-12-1985 rejecting the application A-7 partly is erroneous, inasmuch as that runs counter to the decision of the Supreme Court in the case of Azhar Husain v. Rajiv Gandhi, 1986 All U 625 : (AIR 1986 SC 1253) and that the same deserves to be recalled under Section 151 CP.C to prevent abuse of the process of the court. Sri Tripathi urges that the law laid down in the case of Azhar Husain (supra) by the Supreme Court could not be shown to the Court on 13-12-1985, as that was not within his knowledge at that stage and, therefore, the error arose in that order. Sri Tripathi elaborates that in the said case, the Supreme Court took the view that where the corrupt practice is alleged in the election petition, in the absence of material facts and particulars, the petition would not disclose the cause of action. So in view of the law laid down by the Supreme Court in that case, Sri Tripathi contents that the material facts and particulars relating to corrupt practice as stated in the election petition having not been disclosed either in the grounds or in the paragraphs, mentioned in the application A-59, the election petition deserves to be dismissed under Order 6, Rule 16, read with Order 7, Rule 11 CP.C for not having contained the material facts and disclosed the cause of action. It is argued that when the petition does not disclose any cause of action, the Court has no option but to dismiss the election petition under Order 7, Rule 11 CP.C and that if the order dt 13-12-1985 is not recalled, then the prolonged trial of the election petition would amount to an abuse of process of the court.

4. Before touching the merits of the application A-59, I take up the preliminary objection of Sri Dwivedi whether or not order dated 13-12-1985, in so far as it partly rejected the application A-7, deserves to be recalled under Section 151. This section refers to the inherent power of the court In exercise of such inherent power, the court can make such orders as may be necessary in the ends of justice or to prevent abuse of process of the court. From the law laid down by the Supreme Court in the case of Azhar Hussain (AIR 1986 SC 1253) (supra), it is manifest that when a charge of corrupt practice is raised in the election petition

then both the material facts and the particulars must be stated to disclose a cause of action and clothe the court with jurisdiction to try the election petition. In the absence of material facts and particulars, the election petition would be deemed not to have disclosed the cause of action and when cause of action is not there, the election petition either in entirety or in part, as the case may be, has to be dismissed. Before proceeding with the trial, it is the duty of the petitioner to show that a proper cause of action has been disclosed and unless it is shown, the trial could not be permitted to go on, otherwise it would be an abuse of process of the court. Article 141 of the Constitution is clear that the law declared by the Supreme Court shall be binding on all courts within the territory of India. This Article cannot be read, to mean that the binding duty of the court to follow the law, declared by the Supreme Court in India, is there only when the law declared by the Supreme Court was shown to it before delivery of judgment and that if the law declared by the Supreme Court, is brought to the notice of the court after the pronouncement of the judgment, then there is no duty of the court to correct the judgment so as to follow the law declared by the Supreme Court. It is a trite law that the Supreme Court does not make the law but it simply pronounces what the law is. So the law remains the same what it was before the pronouncement of the judgment and what the Supreme Court does is that it simply interprets the correct nature of the law. It means the decision contrary to the law, declared by the Supreme Court, would be a decision contrary to law. To prevent abuse of process of law, it is duty of all the courts to correct the decision which runs counter to the law, declared by the Supreme Court and it is to correct a mistake of the type *inter alia* in the inherent power under Section 151 C.P.C has been conferred on the courts by the law. If the contention of Sri Tripathi is correct that the material facts and particulars have not been stated in the paragraphs, specified in the application A-59 and if they as such do not disclose the cause of action, then the process of the court would surely be abused, if the trial is permitted to continue, because in that case the trial which would not have been continued would continue at the cost of the public time. The purpose of the inherent power is that what can be corrected in one step that should not be left to be corrected in the second step. If inherent power as envisaged under Section 151 were not there, then the position would have been different, but the court having possessed inherent power cannot permit this error to

perpetuate to be corrected in appeal by the Supreme Court

5. Cause of action goes to the root of jurisdiction and it is the bounden duty of the Court to ascertain whether it is clothed with the jurisdiction or not. Trial of a case by a court in the absence of jurisdiction will, undoubtedly, be an abuse of process of the court. If the court wrongly decides that it has jurisdiction to try a suit then such a decision would not operate as res judicata at a subsequent stage. In support of this view, I rely on Mathura Prasad Sarjoo Jaiswal v. Dossibai N.B. Jeejeebhoy, AIR 1971 SC2355, in which the Supreme Court observed : --

'A question relating to jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of that Court. If by an erroneous interpretation of the Statute the Court holds that it has no jurisdiction, the question would not operate as res judicata. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise because, if those decisions are considered as conclusive, it will assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the Court in derogation of the rule declared by the legislature.'

6. It, therefore, follows that wrong decision on the point of jurisdiction does not operate (as) res judicata in the subsequent proceedings, either based on same or different cause of action. For the reasons, I decline to accept the submission of Sri Dwivedi that the order dated 13-12-1985 passed on the application A-7, operates as res judicata and the application A-59, is not maintainable under the law.

7. So the order Dt. 13-12-1985, in so far as it rejected the application A-7 dated 7-10-1985, can be recalled, if the respondent succeeds in showing on merits that the paragraphs, named in the application A-59, did not contain the material facts and as such no cause of action was disclosed therein.

8. Let us, therefore, turn to the merits of the application A-59.

The respondent was declared elected on 6-3-1985 in the general election held in 1985 to the U.P. Legislative Assembly from 60 Puranpur Assembly Constituency. Whereas, the petitioner was a Janta Party candidate, the respondent was a candidate from Indian National Congress. The petitioner has challenged the election of the respondent on the grounds as stated in paras. 4 to 7 of the election petition. The grounds as stated in paras 4 to 6 relate to the charge of corrupt practice, as defined under Section 123(2) of the Act, 1951 and the ground as contained in para 7 raises a charge of corrupt practice, covered by Section 123(4). Whereas, the paras 10 to 22 contain the facts relating to first charge, the remaining paragraphs relate to the second charge.

9. The question for scrutiny is whether paragraphs as specified' in application A-59, contain material facts for the two charges and whether they disclose full cause of action. In para 10, it is averred that on 20-2-1985, the petitioner sent a letter to the District Magistrate, Shajahanpur that the respondent had planned to capture polling stations Nos. 175 to 177, 178, 165, 179, 181 and 182 and the addressee was requested to take adequate precautions. The circumstances that led the petitioner believe that the respondent had planned to capture the aforesaid polling stations have not been stated and, therefore, para 10 cannot be said to have contained material facts. Sri Tripathi says that the needful has not been done despite the direction having been given in the order dt. 13-12-1985.

10. In para 11, it is stated that the polling at the aforesaid polling stations remained peaceful till 11 am. In para 12, it is said that the respondent had taken a round of polling stations Nos. 175 to 177 at about 11 am. and then he' talked to his polling agents and took them outside'. In para 13, it is averred that the respondent 'had some talks with his polling agent', as named therein and with his father 'in the compound of the polling stations thereafter the polling agents' of the respondent with his father 'in his presence started terrorising and abusing the voters who were standing in a que from entering the polling stations for casting their votes' and as a result 'of the intimidation of voters they left the polling station and did not vote'. The polling stations referred to in para 13 have not been specified and they have not been linked with the polling stations, as specified in para 12. The names of the voters who were terrorised have not been disclosed The words and actual

expression used for terrorising the voters have not been stated What were the talks as held between the respondent, his father and his polling agents as named in para 13, have not been stated The nature and manner of terrorisation have not been stated Also it is not averred whether the polling agents and the father of the respondent started terrorising and abusing the voters with explicit or implied consent of the respondent The question is what are the material facts and what would be the consequence if they are not stated? The material facts are those facts which can be considered as material supporting the allegations made. In other words, they must be such facts as to afford basis for the allegations, made in the petition. (Jitendra Bahadur Singh v. Krishna Behari, AIR 1970 SC 276). Section 83 of the Act, 1951 is mandatory and requires the election petition to contain first a concise statement of material facts and then requires the fullest possible particulars. The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad (Samant N. Balakrishna v. George Fernandez, AIR 1969 SC 1201). In Hardwari Lal v. Kanwal Singh, AIR 1972 SC 515, it was held that material facts are facts which if established would give the petitioner the relief asked for. Sri Dwivedi submits that all the material facts are adumbrated in the petition and if some particulars giving further details of material facts are not there, then the paragraph relating to the charge of corrupt practice cannot be struck out and the court should give an opportunity to the petitioner to furnish such particulars, as it was given vide order dt. 13-12-1985. In short, he argues that there is a difference between the 'material facts' and 'particulars' and if the material facts giving a complete picture of cause of action, have already been set out, then the petition cannot fail for want of particulars. The point for consideration is whether the petitioner is required to disclose the names of voters who were terrorised, the nature and manner of threat, the actual words used for extending the threat, the fact of consent, explicit or implied, nature of talks held between the respondent, his father and his polling agents.

11. The question is whether they constitute material facts or merely particulars and even if they are merely particulars, whether their disclosure is essential for the allegations made in para 13. In the case of Hardwari Lal (supra) which also

involved a charge of corrupt practice, it was held that an election petition which merely alleges corrupt practice against successful candidate of obtaining or procuring or attempting to obtain or procure the assistance of certain named Government Servants in the furtherance of the prospect of his election by writing letters under his own signature without giving material facts and the necessary particulars as to the nature of the assistance the time and place where it was sought from each of the persons mentioned does not furnish any cause of action and it is no election petition in the eye of law. It, therefore, follows that time and place constitute material facts and they have to be disclosed to present a full picture of cause of action like other material facts. In *Daulat Ram Chauhan v. Anand Sharma*, AIR 1984 SC 621, their Lordships advertent to material facts of corrupt practice observed : --

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

- (1) Direct and detailed nature of corrupt practice as defined in the Act.
- (2) Details of every important particular must be stated giving the time place, names of persons, use of words and expressions, etc.
- (3) It must clearly appear from theallegations that the corrupt practices allegedwere indulged in by (a) the candidate himself(b) his authorised election agent or any otherperson with his express or implied consent'.

12. From the above rule, it is abundantly clear that for giving a cause of action 19 regard to a charge of corrupt practice, the petitioner must state to the precision of the details including the details of time, place, names of voters, who were terrorised, use of words and expressions for extending threat and the nature and manner of the threat extended Similar rule has been reiterated in the latest

decision Azhar Hussain v. Rajiv Gandhi, 1986 A11LJ625 : (AIR 1986 SC 1253) by the Supreme Court I, therefore, do not agree with Sri Dwivedi that the details of polling stations, names of voters, nature and manner of threat, actual words used for extending threat constitute merely particulars that can be furnished later, and not the material facts which must be stated in the petition to give a full picture of the cause of action. From the above decisions of the Supreme Court, it is abundantly clear that the petitioner will have to furnish all these , details to give a complete picture of cause of action for the charge of corrupt practice and that he cannot be permitted to make up this deficiency good either by way of amendment on the ground that they merely constitute 'particulars' that can be furnished during the trial either by adducing evidence or in the petition by amendment suo motu or at the direction of the court. The disclosure of all these details in the petition at the very inception is mandatory and the petitioner cannot be permitted to furnish these details , later either suo motu or under the direction of the court. It is precisely here that the order dt. 13-12-1985 went wrong. The proviso to Clause (c) of Sub-section (I) of Section 83 of the Act, 1951 is also a pointer that the petitioner while raising a charge of 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. The disclosure of all the material facts including the details relating to time, place, names of voters, nature and manner of threat extended to them, the actual words and expression used for giving threat, the fact of explicit or implied consent and the details of talks held between the respondent, his father and the polling agents in the petition right from inception was essential and the Court directing the petitioner vide order dt. 13-12-1985 to furnish all these details did some thing, which is not permitted by the case law, stated hereinbefore. If all these facts are not stated in the petition then it would be liable to be rejected straightway under Order 7, Rule II(a) CP.C The law does not permit to inject a life in a dead petition by inserting the material facts and furnishing cause of action thereby. Continuance of the trial sans cause of action would amount to an abuse of process of the court within the meaning of Section 151 CP.C and, therefore, the court is fully empowered to exercise inherent powers to set right the wrong by recalling the order dt 13-12-1985.

13. It is manifest that an act of the candidate concerned may amount to an allegation of corrupt practice, it must be committed either by the candidate himself, his agent or by any other person with the consent of the candidate or his election agent. Nowhere, has it been stated in para 13 that the polling agents, namely, Sri Murlidhar, Sri Buddha Lal, and Sri Ved Prakash named in para 13 and the father of the respondent terrorised and abused the voters with the consent of the respondent or his election agent. The character of Sri Ram Deo Dixit, whose name appears in para 13 after the name of the respondent's father, has not been disclosed and, therefore, it is not known whether he was a polling agent, supporter or worker of the respondent. Sri Dwivedi argues that the consent has been pleaded in the grounds Nos. 4 to 6. What he wants is that para 1.3 be read in conjunction with the grounds Nos. 4 to 6. Almost similar argument was made for the petitioner in the case of Daulat Ram Chuhan (AIR 1984 SC 621) (supra). In the said case, no consent was pleaded in para 16 raising a charge of corrupt practice. The allegation made in para 16 was that a rally was organised by the respondent which passed through the main Bazar of Simla; in the rally two persons namely, Kali Das Satish and Pooran Chand Sood (referred to as Satish and Sood in that decision) belonging to Bhartiya Janta Party participated and that the persons on the rally including the respondent raised the slogans, reproduced in para 16. The question was whether the slogans were raised by the persons who participated in the rally, with express or implied consent of the respondent. The argument for the appellant was that the words 'persons in the rally including the respondent raised the libellous slogan' would lead to an inevitable conclusion that the persons who participated in the rally raised the slogans with the express or implied consent of the appellant. Rejecting the contention of the appellant's counsel, the Supreme Court observed :

'We are, however, unable to draw this inference because it is well settled that an allegation of corrupt practice must be proved like a criminal charge without admitting of any doubt'.

Thereupon, the learned counsel for the appellant tried to call into aid the averments made in para 4 of the election petition which was in two parts, the second part being as follows :

'The catalogue of corrupt practices committed by the respondent, his election agent and other persons with the consent of the respondent and his election agent is detailed hereinafter'.

14. In para 14 of the said decision, the Supreme Court rejecting the contention of the counsel for the appellant observed as under : --

'Even if this allegation is taken at its face value, there is no mention at all about Sood or Satish having taken the consent of the appellant for indulging in corrupt practices. Strong reliance was placed on the second part of the recitals which disclose that there was a catalogue of corrupt practices committed by the appellant, his election agent and other persons as detailed in the petition. The learned counsel for the appellant wants us to read para 4 in conjunction with para 16 and then to arrive at the conclusion that libellous slogans were shouted by Sood and Satish with the consent of the appellant. We are however not in a position to accept this somewhat complex process of reasoning. In our opinion, such a disjointed scheme of averring particulars so that one has to read one part of the allegation with another and then by joining the two produce a particular result to infer an allegation of corrupt practice is not contemplated by Section 123 of the Act and is' in fact foreign to the principle of giving all necessary particulars and statement of facts, viz. time, place, manner, mode and the consent of the candidate or his election agent Such an approach would naturally suffer from the vice of vagueness. It is even against the well settled rules of pleadings to interpret or read such a serious allegation as that of fraud by joining one portion of the allegation with another and then connect the head of one with the tail of the other in order to present a composite picture.'

15. The submission of Sri Dwivedi that para 13 be read in conjunction with grounds 4 to 6, has therefore, to be rejected There being no ingredients of the corrupt practice and material facts in para 13, the same is rejected, as it does not disclose any cause of action.

16. In para 15, the averment is that 'the respondent No. 1 and his polling agents referred to above threatened the polling agents of the petitioner with dire consequences and injuries, if they did not leave the polling stations. .... The

polling agents of the respondent No. 1 themselves started stamping the ballot papers and many supporters of respondent No. 1 illegally entered the polling stations and pushed out the polling agents of the petitioner at about 11.30 a.m.'

In this para also the nature of threat and the words used for having given the threat have not been stated. The details of the polling stations have not been set out. The serial number of ballot papers which were stamped by the polling agents of the respondent, have not been disclosed. It is not known as to who of the polling agents of the petitioner were pushed out and whether such polling agents are those, who are named in para 14 or others. It is also not stated as to in whose presence the threat was extended and the ballot papers were stamped.

17. In para 16, the names of the voters who were prevented from casting their votes and the number of polling stations where they were prevented, have been given. The allegation in para 16 can be divided into two parts. First part refers to the voters who were prevented by the respondent and his polling agents with his consent from casting their votes. In the second part, the allegation is : 'Some of the voters who were forcibly prevented from casting their votes by the respondent No. 1, his agents and workers is as follows.....' The word 'agent' used in second part cannot be equated with the words 'polling agents', occurring in the first part. Whereas, the allegation of consent has been made in the first part with reference to the polling agents, no such allegation has been made with reference to the agents and workers, as pleaded in the second part. Who were these polling agents, agents and workers of the respondent nothing has been said in this behalf.

18. In para 20, it is stated that 'the petitioner also sent a telegram to the Chief Election Commission, New Delhi on 3-3-1985 complaining of both capturing at polling stations 175, 176 and 177 by Vinod Kumar himself. Neither the contents of such telegram have been reproduced in para 20 nor has the telegram been filed. Moreover, it is entirely an independent allegation having no nexus with the charge of booth capturing alleged in the earlier paragraphs. Thus there are no material facts either in para 16 or 20.

19. In para 21 the allegation is that 'the Presiding Officer's diary of the polling stations 175, 176 and 177 are not filled in accordance with the direction of the

Election Commission and the diary of the polling stations 175 and 177 are totally blank'. The details of the direction and how that was violated, have not been given. In grounds 4 to 6, the charge of corrupt practice and the allegations made in para 21 have no connection with each other. So the averment made in para 21 does not relate to any ground. Otherwise also it not having set out the material facts deserves to be struck out.

20. In para 22, the averment is that a complaint was made to the Returning Officer on the date of counting by the petitioner that there was a rigging at the polling stations 175, 176 and 177 and, therefore, no counting should be done of the ballot boxes relating to the said polling stations, but the application was rejected in violation of the directions issued by the Election Commission on 6-11-1984 on booth capturing. The cause of action arising from the rejection of such application cannot be linked with the cause of action relating to corrupt practice by way of 'undue influence', defined in Sub-section (2) of Section 123 of the Act, 1951 meaning as any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or of any other person with the consent of the candidate or his election agent with the free exercise of electoral right. The term 'electoral right' as defined by Section 79 Clause (d) of the Act, 1951, means the right of a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate, or to vote or refrain from voting at an election. The averment made in para 22 was nothing to do with the candidature or withdrawal of candidature or with the right to vote or refrain from voting at an election. The para 22 having no linkage with the charge of corrupt practice covered by Section 123(2) as raised in grounds 4 to 6 of this petition, deserves to be struck out.

21. No material facts and the cause of action relating to the charge of corrupt practice as defined under Section 123(2) having been stated, grounds as stated in paras 4 to 6 and paras 9 to 22, relating to those grounds are struck out.

22. Then, I turn to para 7 which raises another ground of corrupt practice, as defined in Sub-section (4) of Section 123. The allegation for the said para is that 'the respondent No. 1, his agents, workers and supporters with his consent published and distributed pamphlets containing statements of fact, which were

false and which, they believed to be false and did not believe it to be true, in relation to the personal character and conduct of the petitioner, with a calculated motive to prejudice the prospect of the petitioner's election'. The paragraphs containing the facts for this ground are 24 to 34. The averment in para 24 is : 'That the respondent No. 1, his agents, workers and supporters with his consent got published an appeal to the voters on behalf of the respondent No. 1 from Vishwa Karma Press, Puranpur.' The Photostat copy of the pamphlet is Annexure 1 to the petition. The said Annexure enumerates at serial Nos. 1 to 19, the achievements, purportedly claimed having been made by the respondent during his term, ended in March, 1985 as a member of the Legislative Assembly. The last paragraph refers to an appeal purportedly made by the respondent to the electorate to be careful from the petitioner and his supporters, who due to their misdeeds and criminal activities, created terror among the people. It is also stated that the petitioner and his supports rendered a great support to the Sikhs and a sum of Rs. 2 lacs raised by way of contribution from the people, was sent to Bhinderwala and that the petitioner and his family thrive on the funds of Ram Lila and the college. It also states that the malpractices of the petitioner reached the culminating point when the nephew of the petitioner unlawfully detained somebody's daughter in his house at the gun point. The pamphlet, lastly, refers to an appeal by the respondent to the electorate that if the latter want to be free from the atrocities of the petitioner, then better they should vote for him (respondent). The question is whether the material facts regarding the printing and distribution of the said pamphlet have been stated in paragraphs 24 to 34.

23. Let us see what can be the material facts relating to printing and distribution of the pamphlet Annexure 1. In *Azhar Husain v. Rajiv Gandhi*, 1986 All LJ 625 : (AIR 1986 SC 1253) the Supreme Court considered a similar ground in para 31 on page 639 and then observed that for supporting the allegation of a pamphlet or the book allegedly having been published by the returned candidate, there must be a clear averment that the publication was made with the knowledge or consent of the returned candidate; offending paragraphs of the book or pamphlet should be quoted; the facts must be stated, (i) to whom the returned candidate gave the consent, (ii) in what manner and how; and (iii) when and in whose presence the consent was given, to distribute the books/pamphlet in the constituency, the

locality in which the distribution took place, to whom the published material was distributed and on what date it was distributed, all these facts should be stated. In para 34 on page 641, affirming the finding of the High Court that no material facts were stated regarding the publication of a booklet in Hindi, the Supreme Court reiterated 'that it is not pleaded as to who has distributed the pamphlets, when they were distributed, where they were distributed and to whom they were distributed, in whose presence they were distributed etc' The Supreme Court also said 'It has not even been pleaded that any particular person with the consent of the respondent or his election agent distributed the said pamphlets'. Affirming the finding of the High Court on ground Not XV in which the allegation was made that during the course of the campaign, the respondent, his election agent and his party made a propaganda committee and through the agent of that committee, the respondent, his election agent and others with their consent caused another pamphlet to be printed, published and circulated during the election campaign, the Supreme Court observed in para 38 that the High Court was perfectly justified in taking the view that no cause of action was made out for in the absence of material particulars as to who had printed, published or circulated the pamphlet, when where and how it was circulated and which facts went to indicate the respondent's consent to such distribution, the pleading would not disclose a cause of action.

24. So the case of Azhar Hussain (AIR1986 SC 1253) (supra) furnishes sufficient guideline as to what should be the material facts in the matter of publication of pamphlet Let us test the facts as stated in paras 24 to 34 in the instant petition on the touchstone of the principles laid down in the case of Azhar Hussain (supra). An omnibus allegation has been made in para 24 that the respondent, his agents, workers and supporters with his consent got published an appeal to the voters on behalf of the respondent No. 1 from Vishwa Karma Press, Puranpur. The names of the agents, workers and supporters have not been stated Also the particulars of consent, how, when where, and in whose presence the consent was given, have not been stated The offending paragraphs of the pamphlet have not been stated In para 25, it is averred that Syed Shahanshah Ali is a worker and supporter of the respondent No. 1 and the it is stated: 'With the consent of the respondent No. 1 the aforesaid pamphlet was got published from Vishwa Karma Press, Puranpur

and a payment of Rs. 400/- was made by the respondent No. 1 to the Press for the printing charges of the said pamphlet'. The last sentence makes no reference to Syed Shahanshah Ali and, therefore, it cannot be said that he got the pamphlet published Even if it is assumed that the last sentence refers to Syed Shahanshah Ali even then the name of agents as stated in para 24 have not been disclosed The date of payment and the mode of the payment of Rs. 400/- have not been stated The particulars of consent whether it was express or implied, are absent. In para 26 again an omnibus allegation has been made that the pamphlets in thousands were distributed by the respondent himself, his agents and workers at public places and in his meetings. No material facts have been stated as to whether, at what point of time, to whom and by whom the pamphlets were distributed In the last sentence of para 26, the petitioner stated: 'The details of one such meeting and place where the pamphlet was distributed is being mentioned hereinafter'. No such details have been set out in the following paragraphs. The petitioner claims to have given the details in the Table, as set out in para 31. In column 1, date and time are mentioned; in col. 2, the place is stated: in the third column, names of the distributors are mentioned and in the last column the names of the persons in whose presence the distribution was done are stated In para 24, as already pointed out, the allegation is that 'the respondent No. 1, his agents, workers and supporters with his consent got published an appeal to the voters on behalf of the respondent No. 1 from Vishwa Karma Press, Puranpur' and in para 26 the averment is that pamphlets in thousands were 'distributed by the respondent No. 1 himself and his agents and workers at public places and in his meetings'. In the Table or elsewhere, no facts have been stated as to who were the agents and who were the supporters and workers, who were engaged, in the distribution of the pamphlets. Also no facts have been stated as to whom the pamphlets were distributed by the persons mentioned in column 3 of the Table. The Table also does not disclose to whom the pamphlets were distributed by the respondent Nor did the petitioner disclose this material fact in para 32.

25. In para 33 it is averred that 'on 14-2-1985 at the aforesaid meeting, the respondent No. 1 gave speech before the arrival of the Chief Minister, Sri, N. D. Tewari. In the speech the respondent No. 1, reiterated the allegations made against the character of the petitioner in the aforesaid pamphlet and accused him

of having links with Bhinderwale and of misusing public funds of the Ram Lila Committee and Public Intermediate College, Puranpur, District Pilibhit'. The allegation made in para 33 firstly has nothing to do with the grounds, as stated in para 7, which raises a charge of corrupt practice as covered by Section 123(4) and secondly, it deserves to be struck out, inasmuch as, no material facts have been stated in regard to speech. The contents of the speech have not been reproduced. Moreover, the speech of the kind as stated in para 33 is not covered by Sub-section (3) of Section 123 which refers to an appeal to vote or refrain from voting for any person on the ground of his religion, race, casts, community or language. In para 25 on page 636 in the case of Azhar Hussain( AIR 1986 SC1253) (supra), the Supreme Court rejecting the charge of corrupt practice by way of speech observed; 'No exact extracts from the speeches are quoted'.

26. Moreover, the statement of fact published, must be a statement reasonably calculated to prejudice the prospects of the election of the candidate against whom the statement is published. No portion of the pamphlet has been reproduced to pin point that that prejudice the prospects of the election of the petitioner.

27. In para 26, there is no allegation that the election agent was also involved in distribution of pamphlet, but in the col. No. 3 of the Table as set out in para 31, the name of Sri Raj Bhadur Tewari election agent is mentioned

28. No material facts having been stated in paras 24 to 34 relating to the ground of corrupt practice under Section 123(4), as stated in para 7, it must be held that all the paras; Nos. 7 and 24 to 34 are liable to be struck out, as they do not disclose any cause of action.

29. The effect of the foregoing findings is that the entire petition deserves to be dismissed under Order 7, Rule 11, read with Order 6, Rule 16 C.P.C. as the material facts or the cause of action have not been stated in regard to any charge, as defined under Section 123(2) and/or 123(4).

30. In the result the application under Order 6, Rule 16 CP.C is allowed and the election petition dismissed with costs, which I assess at Rs. 500/- The balance of the security will be refunded to the petitioner on presenting a proper application.

