

Bhalla Vs. R.N. Aggarwal, District Judge, Delhi and ors.

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Court : Delhi

Decided On : Mar-13-1975

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Judge : Prakash Narain, J.

Acts : [Delhi Municipal Corporation Act, 1957](#) - Sections 15; Representation of People Act, 1951 - Sections 97; [Delhi Municipal Corporation Act, 1957](#) - Sections 15 and 15(4); Delhi Municipal Corporation (Election of Councillors) Rules, 1962 - Rules 80 and 81

Appeal No. : Civil Writ Appeal No. 1208 of 1971

Appellant : Bhalla

Respondent : R.N. Aggarwal, District Judge, Delhi and ors.

Advocate for Pet/Ap. : S.N. Marwah,; N.S.D. Behl and; Sat Pal, Advs

Judgement :

Prakash Narain, J.

(1) A municipal election took place in 1971 for election of Councillors to the Municipal Corporation of Delhi. The petitioner herein and respondents 2 to 7 filed nomination papers for alection as Councillors for Ward No, 87, Kishan Ganj, Delhi. The nomination papers had to be filed by April 5, 1971, the scrutiny thereof

was to take place on April 7, 1971, the last date for withdrawal of nominations was April 12, 1971, the last date on which the poll was to be taken for election to the Corporation was May 2, 1971 and the date before which election was to be completed was May 20, 1971, according to a Notification No. 1 (1)71-IM.Cor(III) published in the official Gazette on March 29, 1971, so notified by the Commissioner, Municipal Corporation of Delhi, under Rule 11 of the Delhi Municipal Corporation (Election of Councillors) Rules, 1962, hereinafter referred to as the Rules. The nomination papers filed by the petitioner and respondents 2 to 7 were accepted on scrutiny. Respondents 5 to 7, however, withdrew their nominations by the prescribed date and so, only the petitioner and respondents 2 to 4 went to the polls. On the basis of the polling that took place on May 2, 1971 the petitioner herein was declared as duly elected by the Returning Officer on May 3, 1971, on which date the counting of the votes was done. Respondent No. 2 herein filed an election petition (Election Petition No. 8 of 1971) under Section 15 of the said Rules challenging the election of the petitioner and praying that the petitioner's election be set aside and she be declared elected as Municipal Council from Ward No, 87. The grounds on which the election was challenged will be noticed hereafter. The election petition was contested by the petitioner herein, inter alia, on two grounds. First, that the election petition did not conform to the requirements of law and particularly the provisions of Section 15(4) of the Delhi Municipal Corporation Act, hereinafter referred to as the Act, and so, was liable to be dismissed; and secondly, that respondent No." '2 herein was 'responsible for the commission of every kind) of violation, of law. and/or corrupt practices and the violation has been of Rule 92(a)(b)(1)(2) and also Section 22(1),(2), (3), (5), (6) and (7)'. The particulars of the illegalities and. corrupt practices were set out in paragraph 8 of the written statement filed by the petitioner before the Election Tribunal. It was also urged by the petitioner. In his written statement that material particulars regarding averments of illegalities made in the election petition had not been supplied or given and the annexures to the election petition were not verified as required by the Rules.

(2) A replication was filed by respondent No. 2 to: the written statement of the petitioner traversing the contentions raised in the written statement and giving some additional facts and particulars.

(3) The District Judge, Delhi, who is the Election Tribunal postulated by the Act, settled four preliminary issues. These were :-

'1. Whether the annexures filed along with the petition are not verified in accordance with law? If so, what is its effect?

2. Are the copies of the annexures supplied to respondent No. 1 not bearing the annexure marks, are not in accordance with law?

3. Whether the allegations made in the petition are vague and lack in material particulars? If so, what is its effect?

4. Whether the allegations contained in para 8 of the preliminary objections in the written statement can be tried in this petition?

(Onus objected to)'

(4) No evidence was recorded on the preliminary issues by the District Judge. After hearing the learned counsel for the parties before him, he passed the impugned order dated October 26, 1971. Issue Nos. 1 and 2 were decided against the petitioner (respondent No. 1 in the election petition). On issue No. 3 the District Judge held that the allegations made in paragraph 8(d) of the election petition could not be tried unless full particulars of the ballot papers which were Wrongly rejected or wrongly accepted were furnished. On Issue No. 4 it was held that the corrupt practices alleged by the petitioner herein against respondent No. 2 could not be tried in the election petition. This issue was, accordingly, decided against the present petition. As a consequence of his findings the District Judge allowed respondent No. 2 to furnish full particulars in respect of her allegations in paragraph 8(d) of the election petition within one week. It seems the same were not supplied and so, the allegations in paragraph 8(d) were struck off.

(5) Before I proceed further I may notice the grounds on which respondent No. 2 had challenged the election of the petitioner here. These were, inter alia, (a) that the petitioner published a circular under the heading 'Prathna' on May 1, 1971 containing statements of facts which were false and which he either believed to be false or did not believe to be true in relation to the personal character of the

petitioner. These statements were such as were reasonably calculated to prejudice the prospects of her election. This circular was got distributed by the petitioner in the evening of May 1, 1971 in blocks Nos. 1C, 2C, 3C, 4C, 21B, 23B, 25B and 27B, Rohtak Road 'amongst other places'; (b) that the above circular was got printed by the petitioner without the name and the address of the printer and publisher which amounts to a corrupt practice within the meaning of Section 22(7) of the Act; (c) the petitioner also issued a circular (brochure) entitled 'Jeevan Parichaya' having a reference to the election but the same did not bear the name of the printer and publisher. The brochure was issued on April 25, 1971 and widely distributed by the petitioner on that day and 'subsequent days up to May 1, 1971, in the localities mentioned in paragraph 7 above'. This also amounted to a corrupt practice within the meaning of Section 22(7) of the Act. In paragraph 7 of the election petition the places mentioned are those enumerated in sub-para (a) above; (d) that the result of the election insofar as it concerned the returned candidate had been materially affected by non-compliance of the provisions of Rules 32(1), 32(3), 32(4), 66, 68 and 72 of the aforesaid Rules as under:

(I) Regarding Rule 32(1) it was stated that votes of 13 electors were marked as tendered votes. Out of the 13 tendered votes respondent No. 2 claimed that 'about 10 of them are marked in her favor'. It was prayed that the genuine votes be counted in her favor and the nongenuine votes be excluded from the count.

(II) It was further stated that electors whose particulars were given in Schedule 'A' to the election petition never came to the poll at the election. Two of them were dead, four of them were not in Delhi and one was on election duty. The votes polled in place of these seven electors had to be excluded from the count.

(III) Regarding Rule 32(3) it was stated that electors whose particulars were given in Schedule 'B' to the election petition were registered in Ward No. 87 'and other wards'. They voted in Ward No. 87 'and other wards'. These votes had to be excluded from the count as being void.'

(IV) Regarding Rule 32(4) it was stated that the electors whose particulars were given in Schedule 'C' annexed to the election petition were registered in two places in Ward No. 87 and cast their votes more than once in the same ward.

Their votes had to be excluded.

(V)Regarding Rule 67 it was stated that the Returning Officer wrongly rejected some of the votes polled. It was alleged that out of 54 rejected votes 'about 50 are valid votes and have been cast in favor of the petitioner. About 100 votes which were not valid and ought to have been rejected were counted in favor of respondent No. 1'.

(VI)Regarding Rule 68 it was averred that while counting was going on, respondent No. 1 (petitioner herein) and his counting agents along with counting agents of respondents 2 and 3 in election petition started creating a row and disturbance and hampered the Counting Officers in their work. In the confusion many ballot papers marked in favor of respondent No. 1 were wrongly placed in bundles meant for petitioner herein and were counted as his votes. Respondent No. 1 claimed that 'not less than 100 ballot papers were wrongly included in the count of respondent No. 1 (petitioner herein)'.

(VII)Regarding Rule 72 the contention was that the petitioner and his counting agents surrounded the Returning Officer and respondent No. 1 and his election agents were pushed back. In the two so created respondent No. 1 was put to difficulty so much so that petitioner's supporters started shouting that he had been elected. The election agents of respondent No. 1 made their way with difficulty and asked for recount. She also along with her Legal Advisor approached the Returning Officer and asked for a recount but the Returning Officer was overawed by the threatening crowd and refused to listen to her and declared the petitioner as elected. He did not entertain the written application which Respondent No. 1 wanted to move.

(6) The verification of the election petition was in the following terms:-

'I, Kaushalya Malik, above said do hereby verify that the contents of paras 1 to 5, 7 to 9 are true to my knowledge and para 6 is correct on information received from 'my counsel and believed to be true by me. Rest are submissions to the Hon'ble court. Verified at Delhi this 2nd day of June, 1971.'

(7) Along with the election petition and attached thereto respondent No. 2 herein had filed two annexures and three schedules. The two annexures were the two circulars/brochure while the three schedules set out names of electors. The two annexures were marked as P.1 and P.2 while the three schedules were marked 'A', 'B' and 'C'. Schedule 'A' was verified as under:-

'VERIFICATION:-1, Kaushalya Malik, do hereby verify that the contents of the above schedule are correct to my know- ledge.

Verified at Delhi this 22nd day of June, 1971.'

(8) The verification of schedule 'B' was in the following terms:-

VERIFICATION:-1,Kaushalya Malik, do hereby verify that the contents of the above schedule are correct according to the Elector Rolls of the ward No. 87 and the other relevant wards.' Schedule 'C' was verified as under:-

'VERIFICATION:-I, Kaushalya Malik, do hereby verify that the above schedule is correct according to the electors roll of ward No. 87 Kishanganj, Verified at Delhi 2-6-1971'.

(9) The two annexures, P.I. and P, were verified as under:-

'VERIFIEDthat the above is the true original poster/circular. Verified at Delhi, this 2-6-1971.'

(10) The petitioner has, aggrieved by the decision of the District Judge, filed a petition under Article 226/227 of the Constitution for the issue of a writ in the nature of certiorari, or any other appropriate writ, order or direction quashing the impugned order of October 26, 1971 and directing the District Judge, Delhi, in effect to dismiss the election petition and not to proceed with the hearing of the same. It is further prayed that even if the hearing is to proceed the District Judge should be directed to consider the plea of corrupt and illegal practices set up by the petitioner by way of defense to the election petition.

(11) With regard to the plea that a returned candidate, whose election is challenged by an election petition, can plea that the candidate challenging the

election was himself guilty of corrupt practices, the matter stands concluded by a decision of the Supreme Court. In *Banwari Dass v. Sumer Chand and others*, : [1974]3SCR358 , it has been held that in an election petition for getting an election declared void and for a further declaration that the petitioner was duly elected, the returned candidate is not entitled to plead and prove that the election petitioner himself was guilty of corrupt practice and was therefore not entitled to be declared as duly elected. Such a plea raised by a returned candidate which is in the nature of recrimination as contemplated by Section 97 of the Representation of the People Act, 1951 which is not available under any of the provisions of the Delhi Municipal Corporation Act. therefore, the only point which remains to be decided is whether on the facts and in the circumstances of this case the District Judge is assuming jurisdiction to proceed with the trial of the election petition by not dismissing it under the provisions of Section 150^ the Act read with rule 81 of the Rules framed there under or has exceeded his jurisdiction in giving directions which he did.

(12) Before I proceed to examine the contentions of the parties the relevant provisions of the Act and the Rules may be noticed.

(13) The Municipal Corporation of Delhi is a statutory body constituted under the Act and is charged with the municipal Government of Delhi. It is composed of councillors and aldermen. The councillors are chosen by direct election on the basis of adult suffrage from various wards into which Delhi has been divided in accordance with the provisions of the Act while the aldermen are chosen by the councillors from among persons who are qualified to be councillors but are not councillors themselves. The election of councillors is provided for by Section 11 of the Act. The election of a councillor can be challenged by an election petition as postulated by Section 175 of the Act. This section reads as under:-

'15.(1) No election of a councillor or an alderman shall be called in question except by an election petition presented to the court of the district judge of Delhi within fifteen days from the date of the publication of the result of the election under Section 14.

(2) An election petition calling in question any such election may be presented on one or more of the grounds specified in Section 17-

(a) by any candidate at such election, or '(b) (i) in the case of an election of a councillor, by any elector of the ward concerned, (ii) in the case of an election of an alderman, by any councillor, (3) A petitioner shall join as respondents to his petition all the candidates at the election. (4) An election petition- (a) shall contain a concise statement of the material facts on which the petitioner relies ;

(B) shall, with sufficient particulars, set forth the ground or grounds on which the election is called in question; 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.'

(14) The prayers that may be preferred by an election petitioner are only those set out in Section 16 which reads as under :- '16. (1) A petitioner may claim- (a) a declaration that the election of all or any of the returned candidates is void, and (b) in addition thereto, a further declaration that he himself or any other candidate has been duly elected.

(2) The expression 'returned candidate' means a candidate whose name has been published in the Official Gazette under section 14.'

(15) Section 35 of the Act confers on the Central Government Powers to make rules to provide for or regulate all or any of the matters mentioned in clauses (a) to (k) of sub-section (1) of Section 31. It is by virtue of the power conferred under this provision that the Central Government made and promulgated the Delhi Municipal Corporation (Election of Councillors) Rules, 1962. Rules 80 and 81 read as under :-

'80.(1) Where the petitioner alleges any corrupt practice, an election petition shall, in addition to complying with the provision of section 15 also set forth full particulars of that corrupt practice 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 corrupt practice and shall also be

accompanied by an affidavit in the prescribed form in support 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.

81. If the provisions of Section 15 or rule 89 are not complied with, the court shall dismiss the petition.'

(16) In this petition we are not concerned with Rule 89 referred to in Rule 81.

(17) It will be advantageous to notice the provisions of Section 83 of the Representation of People Act, 1951 also as some arguments were advanced on the basis thereof by comparing it to the provisions of Section 15(4) of the Act. This provision reads as under:- '83. (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 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.

(18) The first contention pressed on behalf of the petitioner is that the election petition was bound to be dismissed by the District Judge as postulated by Rule 81 of the Rules inasmuch as there was noncompliance of the mandatory provisions of sub-section (4) of Section 15 of the Act. It is contended that the petition does not contain : (a) a concise statement of the material facts on which the election

petitioner relies and (b) lacks in sufficient or material particulars of the ground or grounds on which the election is called in question.

(19) Dilating on the above contentions, learned counsel for the petitioner invited my attention to paragraph 7, with its sub-paragraphs and paragraph 8 with its sub-paragraphs of the election petition. The allegations made by the respondent No. 2, the election petitioner, in the petition have been verified to be true to her knowledge. It is contended that if the election petitioner had knowledge of the facts mentioned in the election petition she was bound to give better and sufficient particulars and not to make vague allegations. The District Judge dealing with this aspect had come to conclusion that the particulars are given were sufficient and there was non-compliance with the provisions of Section 15(4) of the Act. The question that arises is whether that view is tenable in law.

(20) In paragraph 7 of the election petition it is averred that the returned candidate published a circular under the heading 'Prathna' on May 1, 1971, and, inter alia, 'got the circular widely distributed in the evening of May 1, 1971 in blocks Nos : 1C, 2C, 3C, 4C, 21B, 23B, 25B and 27B, Rohtak Road, amongst other places'. The contention is that full particulars regarding 'evening', 'other places' and blocks should have been given. Similarly, the election petitioner should have clarified through whom the returned candidate got the impugned circular distributed and to whom was the same distributed. Evening, it is contended, is rather a vague term, as it extends from sunset to any time. of the night. If the distribution of the impugned circular was done to the knowledge of the election petitioner she should be able to specify the time or the hours between which the distribution was done. Similarly, the term 'other places' is claimed to be vague. Particulars should have been given of the other places which were to the knowledge of the election petitioner, the places where the circular was distributed. Regarding mention of blocks the contention is that a block is a fairly big area. No particulars have been given of the streets or spots where the distribution was done in the blocks mentioned in this paragraph. It is urged that unless the election petitioner gives a concise statement of material facts regarding the above aspects and gives full and better particulars in respect thereof the election petition has to be regarded as one not complying with the provisions of Section 15(4) of the Act and had to be

dismissed under Rule 81.

(21) In support of the contention noticed above reliance was placed on the decision dated September 29, 1972, P. N. Khanna, J. in Election Petition No. 1 of 1972. That was an election petition by which the election of a successful candidate to the Delhi Metropolitan Council was challenged. One of the grounds urged in support of the plea that the election petition was liable to be dismissed was that the allegations made in paragraphs 17 and 18, sub-clause (a) to (e), of that election petition were vague and lacked in material particulars. This contention was raised in view of the provisions of Section 83 of the Representation of People Act which has already been read. Khanna, J. observed that on a reading of Sections 81, 83 and 86 of the Representation of People Act it was clear that if material facts are missing in a petition, it will not be a petition in accordance with the provisions of the Act. He further observed that it may not be possible to supply the material facts subsequently if they are missing to begin with. A failure to give concise statement of facts or particulars as envisaged by the provisions of the statute bring into play the provision of Section 82 of that Act which require the High Court to dismiss the petition not having a concise statement of material facts or lacking in sufficient particulars. He drew a distinction between material facts and particulars referred to in Section 83 and relied on the judgment of Hidayatullah, C. J. in Samant N. Balakrishna etc. v. George Fernandez and others etc., : [1969]3SCR603 . These observations of the learned Chief Justice may be recapitulated with advantage :-

'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. The function of particulars 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.'

To quote from the judgment of Khanna J:-

'THE learned Chief Justice made it clear that a charge could not be made out or amplified later if the material facts were missing in the original petition. The

importance of an adequate statement of material facts has been emphasised by the Supreme Court, again and again, as in *Ram Sewak Yadav v. Hussain Kamil Kidwai and others*, : [1964]6SCR238 , *Dr. Jagjit Singh v. Giani Kartar Singh*, : AIR 1966 SC773 , and *JitenderBahadur Singh v. Krishna Behari and others*, : [1970]1SCR852 . In the last case, the question being examined was about the permission to inspect the ballot papers. Mr. Justice K. S. Hegde referred to the adequate statement of material facts on which the petitioner must rely in support of his petition, and spoke for the Supreme Court, thus :

'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.'

(22) An argument was advanced before Khanna, J. that the requirement of Section 83 of the Representation of People Act would be met if proper allegations are made even though the same may not be precise and definite. This contention was negatived. On the principle of law thus enunciated it was held that the allegations made were vague and lacked not only in material particulars but also did not amount to giving of material facts.

(23) S. N. Andley, J. (as his lordship then was) in Election Petition No. 2 of 1971, *Kanwar Lal Gupta v. Amar Nath Chawla and others*, has also given an exhaustive opinion in his judgment dated August 6, 1971 on the scope of Section 83(1) (a) and (b) of the Representation of People Act. After noticing the decisions of the Supreme Court in *Samant N. Balakrishna etc. v. George Fernandez and others* (supra) and *Jitendra Bahadar Singh v. Krishna Behari and others*, : [1970]1SCR852 , it was observed that 'material facts' are those which constitute the cause of action or in other words they are facts on the basis of which one or other of the grounds set out in Section 100 of the Representation of People Act for declaring an election to be void is made out, while 'particulars' are with respect to the material facts alleged.

(24) In L.P.A. No. 289 of 1972, *Banarsi Das v. Sumer Chand and others*, decided on April 18, 1973 , a bench of this Court drew a distinction between 'material facts' and 'sufficient particulars' postulated by clauses (a) and (b) respectively of sub-

section (4) of section 15 of the Act on the one hand and 'full particulars' contemplated by Rule 80(1) of the Rules.

(25) Section 83(1)(b) of the Representation of People Act requires full particulars of a corrupt practice to be given. This is similar to Rule 80(1) of the Rules applicable in this case. Non-compliance with the provisions of Rule 80(1) does not entail the penalty contemplated by Rule 81 of the dismissal of the petition. Section 15 (4) (b) only requires 'sufficient particulars' to be given and it is, inter alia, only when sufficient particulars are not given that the provisions of Rule 81 would be attracted. Whether the particulars are sufficient or not in a given case has to be adjudged on the merits of that case. Similarly, whether the election petition contains a concise statement of material facts has to be adjudged in the circumstances of a given case.

(26) Reverting to the election petition in this case, I have already noticed the contentions made in paragraph 7 of the election petition. I now set out the objections to the averments in the other paragraphs of the election petition.

(27) In paragraph 7A the objection is that the returned candidate issued the circular 'Prathna' and got it printed without the name and address of the printer and publisher which is a corrupt practice postulated by Section 22(7) of the Act. This allegation has been verified as true to the knowledge of the election petitioner and so, it was incumbent upon her to give the name of the printer etc. if it was within her knowledge and through whom the returned candidate had got the impugned circular printed and published.

(28) In paragraph 7B the objection is to the words 'issued', 'subsequent days', 'widely distributed' and reference to the localities in paragraph 7 of the election petition noticed earlier. Regarding the word 'issued' it is urged that no particulars are given as to when the impugned brochure was issued, where it was issued and the time of distribution. About the term 'subsequent days' it is urged that it is not clear whether the election petitioner has in mind every day subsequent to April 25, 1971 up to May 1, 1971 or of some of those days. With regard to the term 'widely distributed' it is urged that this is vague as the election petitioner should have specified the places where the brochure was distributed particularly when the

allegation is verified to be true to her knowledge.

(29) In paragraph 8A the allegation has been made about 13 tendered votes and the election petitioner has claimed that 'about 10 of them are marked in her favor'. It is urged that who these 13 electors were should have been disclosed and the word 'about' is extremely vague. Similarly, which of the 10 votes were marked in her favor had to be clarified. If these details were not given the returned candidate would be at a disadvantage and the election petitioner could change her stand later on. Similarly, about the other allegations in the election petition in this paragraph about certain electors not having come to poll, it is urged that the source of knowledge should have been disclosed. It should have been stated whether the two deceased electors had died before or after the election and if so, when; about the electors who were not in Delhi, it should have been disclosed where they had gone and when; and about the electors who was on election duty it should have been disclosed where he was on duty and whether he was prevented from coming to cast his vote.

(30) In paragraph 8B of the election petition the objection is to the words 'other wards'. If the contentions in this paragraph are true to the knowledge of the election petitioner, she should have been able to give particulars of the other wards.

(31) In paragraph 8C the objection is to the terms 'two places' and 'more than once'. The contention is that the election petitioner should have disclosed which two places she was talking about and how many times did the persons mentioned in Schedule 'C' cast their votes in the same ward.

(32) Regarding the contentions in paragraph 8D it is submitted that the District Judge held them to be vague and if the contentions in paragraph 8D were held to be vague there was no reason to hold otherwise regarding contentions in paragraph 8A to 8C.

(33) About paragraphs 8E and 8F, it is submitted that the District Judge has not given any finding.

(34) I have already noticed some decisions relied upon with regard to the meaning of the terms 'concise statement of material facts', 'sufficient particulars' and 'full particulars'. A large number of cases were cited by learned counsel at the bar but it is not necessary to notice all of them. Apart from the ones already noticed by me earlier I may, however, notice a couple of other decisions. The first one is in *Samant N. Balakrishna etc. v. George Fernandez and others etc.*, : [1969]3SCR603 . Drawing the distinction between 'material facts' and 'particulars' referred to in Section 83 of the Representation of People Act, it was observed that 'Section 83 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. The function of particulars 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. There may be some overlapping between material facts and particulars but the two are quite distinct. The material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. An election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information.'

(35) In *J. Devaiah v. Nagappa and others*, 1966 D.E.C. Case 20 a bench of the Mysore High Court observed that there is a fundamental difference between a material fact constituting a corrupt practice and the particulars of that corrupt practice. The ingredients of a corrupt practice can under no circumstances be considered as the particulars of that corrupt practice. It is in the light of the Law thus enunciated that one has to examine the contentions of the petitioner herein.

(36) I am not impressed with the argument that the bench decision in Banarsi Das case (supra) precludes the petitioner to raise the contention that he has in the present writ petition. Mr. S. N. Marwah, learned counsel for the petitioner, was heard as a sort of an intervenor and not as representing any party. All that is binding on the petitioner is the law laid down by the Division Bench and not the examination of the individual facets of the present case.

(37) Before I proceed to examine the contention that the election petition is liable to be dismissed under Rule 81 inasmuch as it is not in compliance with the provisions of Section 15(4) of the Act, it will be pertinent to remember the essential difference between Section 15(4) of the Act and Section 83 of the Representation of People Act as also the requirement of Rule 80 relied upon in the present case.

(38) Under Section 15(4) of the Act an election petition shall contain a concise statement of material facts on which the petitioner relies in the same manner as the concise statement of material facts is required by clause (a) of sub-section (1) of Section 83 of the Representation of People Act. The further requirement of Section 15(4) of the Act is that the election petition shall with sufficient particulars set forth the ground or grounds on which the election is called in question, as opposed to 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 commission of each such corrupt practice postulated by Section 83(1)(b) of the Representation of People Act, both the petitions under Section 15(4) of the Act and Section 83 of the Representation of People Act have to be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. Rule 80 contemplates that if a municipal election is challenged on the ground of corrupt practice then in addition to what is contemplated by clauses (a) and (b) of Section 15(4) of the Act the petition shall also set forth full particulars of corrupt practice 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 corrupt practice etc. This is similar to the provision of Section 83(1)(b) of the Representation of People Act. It may be noted, however, that Rule 81 contemplates dismissal of the petition only if the provisions of Section

15 are not complied with. It does not contemplate dismissal for non-compliance of Rule 80. Whether a petition will be dismissed for non-compliance of Rule 80 despite full particulars not being given after opportunity afforded for the same is a different question. The statutory requirement is, therefore, only to give a concise statement of material facts and with sufficient particulars set out for the ground or grounds on which the election is called in question. 'Sufficient particulars' cannot be equated to 'full particulars' contemplated by Rule 80. Further the 'full particulars' are postulated only in respect of an allegation of corrupt practice. Regarding other grounds on which the election can be called in question only 'sufficient particulars' would comply with the provision of law.

(39) The grounds on which a municipal election can be declared void are set out in Section 17 of the Act. One of the grounds on which an election can be called in question is that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent. What constitute corrupt practices are enumerated in Section 22 of the Act. therefore, where an election is called in question on ground other than the ground of corrupt practice compliance with the provisions of Section 15(4) would be sufficient but non-compliance therewith would entail the penalty of dismissal contemplated by Rule 81. Where, however, the only ground on which the election is called in question or one of the grounds is an alleged corrupt practice if the election petition conforms to the requirement of Section 15(4) of the Act, Rule 81 would not be attracted but the District Judge may ask for full particulars contemplated by Rule 80 regarding the corrupt practice alleged. It has, therefore, to be seen whether the allegations in paragraphs 7 and 8 of the petition (including the allegations in subparagraphs under paragraphs 7 and 8) fall within the ambit of Sections 17 and 22 of the Act, and, in any case, whether such allegations and the other allegations are in conformity with the provisions of Section 15(4) of the Act. If the concise statement of material facts and sufficient particulars postulated by Section 15(4) even with regard to an averment about corrupt practice are there, Rule 81 would not be attracted. It is a different thing as to whether Rule 80 will be attracted in the case of any averment and whether the finding of the District Judge is liable to be set aside and any direction be issued to him to call for full particulars under Rule 80 before proceeding with the hearing of the election petition.

(40) Two corrupt practices enumerated by Section 22 of the Act are as given in sub-sections (4) and (7). These are :-

'(4).The publication by a candidate or his agent or by any other person of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal from contest of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(7).The issuing of any circular, placard or poster having a reference to the election which does not bear the name and address of the printer and publisher thereof.'

THEallegation in paragraphs 7, 7(a) and 7(b) are clearly allegations of corrupt practices within the ambit of the above provisions. The allegations made in paragraph 8 (A), 8(B), 8(C), 8(D), 8(E), and 8(F) are grounds for declaring the election to be void under Section 17(d) (ii) and (iv) of the Act and the rules enumerated in paragraph 8. These averments have no relevance to the ground of a corrupt practice. I am compartmentalising the averments into two sets of allegations because in the case of an averment regarding corrupt practice there has to be compliance not only with the provisions of Section 15(4) of the Act but also Rule 80 while with regard to other averments compliance is required only of the provisions of Section 15(4) of the Act.

(41) Recapitulating what has been laid down in the decided cases as to the meaning to be given to the phrases 'concise statement of material facts', 'sufficient particulars', and 'full particulars', these mean respectively 'facts necessary to formulate a complete cause of action', 'presenting as full a picture of the cause of action with such further information in detail as to make opposite party understand the case he will have to meet', and 'a full picture of the cause of action with all relevant information so as to make the opposite party understand the case he will have to meet but not necessarily all the details contemplated by the term full particulars'. The ingredients of a corrupt practice or an impugned act cannot take the place of the particulars which an election petitioner has to enumerate in' the election petition.

(42) I shall first deal with the allegations in paragraphs 7, 7(a) and 7(b) of the election petition. The District Judge was of the view that these paragraphs fulfill the requirements of Section 15(4) of the Act. I agree with that finding. Mr. Marwah, learned counsel for the election petitioner, contends otherwise but, in my opinion, the contention is based more on the provisions of section 83 of the Representation of the People Act than on the requirements of Section 15(4) of the Act applicable here. The cause of action to enable the election petitioner to plead a corrupt practice is the alleged publication by the returned candidate of the circular entitled 'Prathna' and the brochure entitled 'Jeevan Parichaya' which the election petitioner to her knowledge verifies as having been published by the returned candidate containing statement of facts which were false and which he either believed to be false or did not believe to be true in relation to the personal character of the election petitioner and which, to her knowledge were statements reasonably calculated to prejudice the prospects of her election. The publication is said to have been made by getting the said circular and brochure widely distributed in certain places. Further the said two public documents are stated to have been issued having a reference to the election and without the name and address of the printer and publisher of the said two documents. These averments, as noticed earlier, are verified by the election petitioner as true to her knowledge. I am not required to comment upon whether the verification is correct or incorrect. It is urged that the averments as made merely reproduce the provisions of subsections (4) and (7) of Section 22 of the Act and do not give facts constituting the cause of action. There is no force in this contention because the averments have to be read along with the verification of the election petitioner and, in my opinion, clearly set out the cause of action. Coming now to the question of 'sufficient particulars' postulated by clause (b) of sub-section (4) of Section 15 of the Act once again I agree with the finding of the District Judge that the averments as made do set out sufficient details regarding the material facts to enable the returned candidate to meet the allegation. The details may not be full details but are sufficient to meet the requirements of the statute. I do not agree that the use of the words 'evening', 'other places', and not giving more details about the blocks specified in these paragraphs would amount to 'sufficient particulars' not being supplied. All that can be said is that 'full particulars' have not been given. P. N. Khanna, J. in the context

of requirements of Section 83 of the Representation of the People Act no doubt held that words like 'other places' would be vague but that rule would not be attracted here. The election petitioner has mentioned the blocks in which the impugned circular/brochure were distributed and has then gone on to say that it was distributed in some other places also. This averment can be got clarified by invoking Rule 80 and asking the election petitioner to give full particulars. Indeed, it must be done that way otherwise there will be non-compliance of Rule 80. Inasmuch as the District Judge has not called upon the election petitioner to give full and better particulars regarding 'other places' in my view he has assumed jurisdiction to proceed with the election petition contrary to the requirements of Rule 80 which are mandatory. Similarly regarding the objection of the petitioner herein to the word 'evening' has not specifying at what time in the evening or from what time to what time, my view is that though the use of the word 'evening' is sufficient for the purposes of clause (b) of sub-section (4) of Section 15 of the Act fuller and better particulars had to be called for under Rule 80 and till those were supplied the District Judge would not have jurisdiction to proceed with the hearing of the election petition. It would have been desirable to call upon the election petitioner to also give more details about the blocks in which the circular/brochure were distributed as well as more details about the persons through whom the returned candidate got the impugned circular/brochure distributed.

(43) With regard to the averments in paragraphs 8A to 8F, excluding averments made in paragraph 8D (which no longer subsist for adjudication in view of the orders of the District Judge). The contention is that the averments as made fall within the ambit of Section 15(4), clauses (a) and (b) read with Rule 81. With regard to these paragraphs it may be remembered that Rule 80(1) is not attracted for Rule 80(1) deals only with particulars of a corrupt practice. therefore, the averments must not only set out the cause of action but also give sufficient particulars in respect of the cause of action on which the election petitioner has come to Court. The District Judge, except for paragraph 8D came to the conclusion that the averments in paragraphs 8A, 8B, and 8C fulfill the requirements of Section 15(4) of the Act, but the averments in paragraph 8D of the election petition was somewhat vague and required to be clarified. I fail to appreciate how the averments in paragraphs 8A, 8B and 8C could be held to contain a concise statement of material facts with

sufficient particulars on the same yard-stick which was adopted for paragraph 8D of the election petition. Indeed, no reason is given by the District Judge in coming to the conclusion that paragraph 8D lacked in material particulars. In my view the allegations are not only vague but so insufficient as to be such where the returned candidate can well say that he does not know what exactly is the case that he is required to meet. The election election petitioner has stated as true to her knowledge that 13 electors were marked as tendered votes and out of 13 tendered votes she claims that about 10 of them were marked in her favor. Such an averment can be regarded nothing but guesswork and cannot amount to giving sufficient particulars. Similarly, in Schedule A' annexed to the election petition names are given of two electors who were supposed to have been dead; four electors who were supposed to be out of Delhi and one elector who was on election duty When these persons died as to where the other four had gone, and how she came to be in possession of this information is not disclosed The person who was supposed to be on election duty named but where he was on election duty is not disclosed. Unless all this information was given (me cannot say that sufficient particulars had been given. The allegation about electors registered in Ward No. 87 'and other places' and electors having voted in Ward No. 87 'and other wards' is also very vague. The election petitioner cannot be allowed to spring a surprise at the time of evidence and to bind her down it was her duty to mention the other wards in her contemplation. Some electors mentioned in Schedule 'C' annexed to the election petition are stated, to her knowledge, by the election petitioner to have been registered in two places in ward No. 87 and again, to her knowledge, to have cast their votes more than once in the same ward. Which were those two places, where the said electors were registered and how often they cast their votes had to be disclosed. Then about 50 votes out of the 54 rejected votes are stated to have been valid votes. Which 50 or whether more than 50 or less than 50 has not been clearly stated. It is a very vague allegation. Again it is averred that about 100 votes which were not valid and which ought to have been rejected were counted. The use of the adjective 'about' is not warranted and makes the allegation vague. I need not enumerate any more of the averments. Suffice it to say that all the above averments are vague and cannot be regarded as fulfilling the requirements of clauses (a) and (b) of sub-section (4) of Section 15 of

the Act. If that be correct the petition was liable to be dismissed under Rule 81. Another fact which may be noticed is that the District Judge has given no finding regarding averments in paragraphs 8E to 8F in the election petition. These also suffer from the same infirmity as noticed earlier with regard to paragraphs 8A to 8D. In this view of the matter the District Judge must be held to have acted beyond his jurisdiction in deciding to proceed with the hearing of the election petition despite non-compliance with the provisions of Section 15(4), clauses (a) and (b) of the Act.

(44) Mr. N. S. Dass Bahl, learned counsel for the election petitioner, urged that on a reasonable construction of the averments in paragraphs 7 and 8 and the sub-paragraphs there under it should be held that the requirements of Section 15(4) of the Act as well as Rule 80 have been substantially met. He referred to a large number of decisions but it is not necessary to notice all of them. I will deal with some of the precedents cited.

(45) In *Manphul Singh v. Surinder Singh*, : [1974]1SCR52, the Court was dealing with the matter under the Representation of the People Act. It was observed that what clause (a) of Section 83(1) of that Act required was concise statement of material facts and not evidence but clause (b) required full particulars of corrupt practices and as full a statement as possible of the names of the parties who committed corrupt practice and the date and place of the commission of each such practice. On the facts of that case it was held that the statements in that petition were neither vague nor general nor did they lack in any material particulars. Apart from the fact that the case was an appeal arising out of an election petition filed to challenge election to the Haryana Vidhan Sabha the Court was not concerned with the construction of a provision similar to Section 15(4) of the Act. The case may be relevant as far as Rule 80 in the present case is concerned, but not as far as the requirements of Section 15(4) go.

(46) In *Raj Narain v. Smt. Indira Nehru Gandhi and another*, A.I.R. 1973 SC 1302, once again the Supreme Court was dealing with the matter arising under the Representation of the People Act. Dealing with whether an amendment should have been allowed or not it was held that the facts stated in an election petition

relating to any corrupt practice must be sufficient to constitute a cause of action. If the facts stated fail to satisfy that requirement, then they do not give rise to a triable issue and such a defect cannot be cured by an amendment after limitation but even if all the material facts are stated, for a proper trial better particulars may still be required and these could be obtained even after the period of limitation had expired. thereforee, as far as allegation of corrupt practice is concerned in a challenge to an election under the Act if material facts and sufficient particulars are found to have been given vis-a-vis a corrupt practice better particulars may be called for under Rule 80 but if material facts and sufficient particulars are not given to start with the penalty envisaged by Rule 81 would be attracted.

(47) There is thus no force in the contention on behalf of the election petitioner vis-a-vis my observations made above about noncompliance of the provisions of Section 15(4), clauses (a) and (b).

(48) In view of my findings given above, it is not necessary to dilate on the contention of the petitioner herein regarding the) defective verifications.

(49) The result of the above discussion is that it is held that the District Judge had acted beyond his jurisdiction in deciding to proceed with the hearing of the election petition. Rule 81 was clearly attracted vis-a-vis averments made in paragraphs 8A, 8B, 8C, 8E and 8F of the election petition. If with regard to averments made in the various sub-paragraphs under paragraph 7 of the election petition full and better particulars had to be called for, to the extent noticed by me above, the District Judge in deciding to proceed with the election petition without calling for those particulars acted without jurisdiction. That the District Judge has not dismissed the election petition and proceeding to hear it is not only failure to exercise jurisdiction but assumption of jurisdiction where he has none. The rule is, thereforee, made absolute and I direct that the election petition be dismissed. The petitioner herein will be entitled to his costs. Counsel's fee Rs. 300.00 .