IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CIVIL APPLICATION(O) NOS.753/2020 AND 12/2021
in ELECTION PETITION NO.12/2019

Md. Nafis s/o Shifat Khan
Vs.
The Election Commission of India through Chief Election Commissioner and others.

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri Sunil V. Manohar, Senior Advocate with Shri D.V.Chauhan, Advocate for applicant/ respondent no.4.
Shri S.V. Purohit, Advocate for non applicant/petitioner.
Shri Neeja Choube, Advocate for non applicant/respondent no.1.
Mrs. Ketki Joshi, Government Pleader for non applicant/respondent no.2.
Shri N.C.Phadnis, Advocate for non applicant /respondent no.3.
Ms. N.P. Singhania, Advocate for non applicant /respondent no.16.

CORAM :- A.S.CHANDURKAR, J.

Date on which the arguments were heard : 05.02.2021
Date on which the order is passed : 26.02.2021

The election of the returned candidate-respondent no.4 in the general elections to the Lok Sabha from Constituency No.10-Nagpur has been challenged by the petitioner who is a voter from the said constituency. The election has been challenged under the provisions of Section 100 (1) (b), 100 (1) (d) (i), (ii) and (iv) of the Representation of the People Act, 1951 (for short, 'the Act of 1951'). It is also prayed that it be declared that the election of the returned candidate is null and void. Further relief that the respondent no.5 be declared elected is also prayed for.

2. The returned candidate has moved Civil Application No.753/2020 (Exhibit 18) under the provisions of Order VI Rule 16 of the Code of Civil

Procedure, 1908 (for short, the Code) for striking out the pleadings in the election petition which according to the returned candidate are unnecessary, vexatious, scandalous, frivolous and are intended to prejudice as well as delay the trial of the election petition. The returned candidate has also filed Civil Application No.12/2021 (Exhibit 19) under the provisions of Order VII Rule 11 of the Code read with Section 86 of the Act of 1951 seeking rejection of the election petition for want of cause of action. Replies have been filed by the election petitioner opposing the aforesaid civil applications. Both these applications are being decided by this common order.

3. In support of the applications filed under the provisions of Order VI Rule 16 and Order VII Rule 11 of the Code, the learned Senior Advocate for the returned candidate referred to the pleadings in the election petition. After doing so it was submitted that the averments in paragraph 7 as a whole did not disclose any triable issue being raised for adjudication. The election petitioner was in fact seeking answers to various questions posed in the said paragraph. Specific material facts that could constitute a cause of action to challenge the election of the returned candidate were conspicuously missing. It could be said that the election petitioner was seeking a roving enquiry into various aspects about the family affairs of the returned candidate. This was not permissible and unless the election petitioner came up with a specific case to indicate violation of any of the provisions of the Act of 1951, the pleadings in the election petition were unnecessary besides being scandalous, vexatious and amounted to abuse of

the process of the Court. Even the assertions with regard to the income-tax returns of the returned candidate were without any substance as there was no assertion that in the affidavit filed along with the nomination form the information supplied was not in accordance with the income-tax returns filed by the returned candidate. Only on the basis of surmises and conjectures it was alleged by the election petitioner that the affidavit filed by the returned candidate was false. So was the case with regard to alleged income from the turmeric boiler regarding which vague allegations were made. A detailed reference to the grounds on which the deletion of the pleadings in the election petition has been prayed for would be made while dealing with the relevant paragraphs hereinafter. Suffice it to say that according to the learned Senior Advocate since no triable issue arose on the basis of the pleadings in the election petition, there was no reason to proceed further with the trial. The pleadings not giving rise to any cause of action were liable to be deleted and after that exercise if nothing was found to be further adjudicated, the election petition itself was liable to be summarily rejected under the provisions of Order VII Rule 11(a) of the Code. In support of his submissions the learned Senior Advocate placed reliance on the following decisions :

1) Krishnamoorthy Vs. Sivakumar and others (2015) 3 SCC 467
2) Dhartipakar Madan Lal Agarwal Vs. Shri Rajiv Gandhi. AIR 1987 SC 1577.
3) Pannalal S.S. Vs. Hitendra Vishnu Thakur. (1996) 4 Bom CR 74.
4) Shambhu Prasad Sharma Vs. Charandas Mahant and others, (2012) 11 SCC 390.
5) Kisan Shankar Kathore Vs. Arun Dattatray Sawant and others. (2014) 14 SCC 162.

6) Kamalnath Vs. Sudesh Verma (2002) 2 SCC 410.

7) Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and ors. (1995) 5 SCC 347.

8) Daulat Ram Chauhan Vs. Anand Sharma AIR 1984 SC 621.

9) L.R.Shivaramagowda and ors. Vs. T.M.Chandrashekar(dead) by LRs and ors. (1999) 1 SCC 666.

10) Ganesh Dadu Shendge Vs.Dilip Dnyandeo Kamble. 2016 SCC online Bom 3577.

11) Jitu Patnaik Vs. Sanatan Mohakud and ors. (2012) 4 SCC 194.

12) Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar. (2009) 9 SCC 310.

13) Ram Sukh Vs. Dinesh Aggarwal (2009) 10 SCC 541.

14) Vejhurani Thakurdas Jhamandas Vs. Sabir Shaikh. 1996(2) Mh.L.J.291.

15) Santosh Yadav Vs. Narender Singh (2002) 1 SCC 160.

16) Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari. (2014) 5 SCC 312.

17) Manohar @ Sagar s/o Pundlik Dabrase Vs. Election Commission of India,New Delhi and others. 2020 (3) Mh.L.J.72.

18) Bita w/o Ghanshyam Ramteke Vs. Nanaji Sitaram Shamkule. 2010 (5) Mh L.J.707.

19) Ravinder Singh Vs. Janmeja Singh and others (2000) 2 SCC 191.

4. Opposing the aforesaid submissions the learned counsel for the election petitioner submitted that the election petition as a whole had to be read which would indicate the existence of a cause of action along with the material facts giving rise to triable issues. What was important was the substance in the pleadings and not the form thereof. The Court could not adopt a hyper-technical approach while adjudicating the prayers in the applications in question. The basic pleadings clearly disclosed material facts as pleaded and therefore it was necessary that the election petition should

proceed for trial. The learned counsel referred to the averments in the election petition to justify the existence of material facts and urged that the pleadings in the election petition were not liable to be struck off as prayed for by the returned candidate. Reference to contentions with regard to the specific averments in the election petition shall be made when the averments are examined hereinafter. To substantiate his contentions, the learned counsel for the election petitioner placed reliance on the following decisions :

1. Dahiben Vs. Arvindbhai Kalyanji Bhanusali(Gajra) dead through LRs and others. (2020) 7 SCC 366.
2. Shaktibhog Food Industries Ltd. Vs. Central Bank of India and anr. 2020(5) Mh.L.J.1
3. Mohan Rawale Vs. Damodar Tatyaba alias Dadasaheb and ors. (1994) 2 SCC 392.
4. V.S.Achuthanandan Vs. P.J.Francis and another (1999) 3 SCC 737.
5. Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and ors. (2012) 7 SCC 788.
6. Madiraju Venkata Ramana Raju Vs. Peddireddigari Ramachandra Reddy & ors. (2018) 14 SCC 1.
7. Vatal Nagraj Vs. R.Dayanand Sagar AIR 1975 SC 349.
8. Resurgence India Vs. Election Commission of India and anr. (2014) 14 SCC 189.
9. Lok Prahari through its General Secretary S.N.Shukla Vs. Union of India and ors. (2018) 4 SCC 699

5. Before embarking upon the adjudication of the applications in question it is necessary to keep mind to the following observations of the Hon'ble Supreme Court in paragraph 26 of its decision in ***Madiraju Venkata Ramana Raju*** *Vs.* ***Peddireddigari Ramachandra Reddy and others (2018) 14 SCC 1*** *:*

> *"26. Indeed, if the defendant moves two separate applications at the same time, as in this case, it would be open to the Court*

> *in a given case to consider both the applications together or independent of each other. If the Court decides to hear the application under Order VII Rule 11 in the first instance, the Court would be obliged to consider the plaint as filed as a whole. But if the Court decides to proceed with the application under Order VI Rule 16 for striking out the pleadings before consideration of the application under Order VII Rule 11 for rejection of the plaint, on allowing the former application after striking out the relevant pleadings then the Court must consider the remainder pleadings of the plaint in reference to the postulates of Order VII Rule 11 for determining whether the plaint (after striking out pleadings) deserves to be rejected in limine."*

6. Following the latter course, it would be necessary to first take into consideration the application moved by the returned candidate under the provisions of Order VI Rule 16 of the Code. Reference would be made first to the relevant pleadings in the election petition, thereafter the grounds on which the returned candidate seeks those pleadings to be struck off and the consideration of the same.

7. While considering the prayer for striking out pleadings under the provisions of Order VI Rule 16 of the Code, it would be beneficial to refer to the instructive decisions of the Hon'ble Supreme Court on this subject.

Relevance of material facts and full particulars giving rise to cause of action in an election petition is of basic importance. In ***Hardwari Lal Vs. Kanwal Singh AIR 1972 SC 515,*** it has been observed in paragraph 19 as under :

> *"19. The requirements in an election petition as to material facts and the consequences of lack of such allegation of material facts came up for consideration in this Court in the recent decision in Samant N. Balakrishnan V George Fernandes, (1969) 3 SCR 603 =(AIR 1969 SC 1201). In that case reference was made to Sections 81, 83 and 86 of the Act*

> *as the procedure provisions of election petition. Section 81 deals with presentation of petitions. Section 83 deals with contents of petitions. Section 86 deals with trial of petitions. Hidayatullah,C.J. speaking for the Court laid down these propositions. First, Section 83 of the Act is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. Second, omission of a single material fact, leads to an incomplete cause of action and the statement of claim becomes bad. Third, the function of particulars is to present in full a picture of the cause of action to make the opposite party understand the case he will have to meet. Fourth, material facts and particulars are distinct matters. Material facts will mention statements of fact and particulars will set out the names of persons with the date, time and place. Fifth, 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. Sixth, in stating the material facts it will not do merely to quote words of the section because then the efficacy of the material facts will be lost. The fact which constitutes a corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Seventh, 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 obtaining or procuring of assistance unless the exact type and form of assistance and the person from whom it is sought and the manner in which the assistance is to further the prospects of the election are alleged as statements of facts."*

In ***Roop Lal Sathi Vs. Nachhattar Singh Gill (1982) 3 SCC 487***, it has been held that the words "material facts" are the facts that are necessary to formulate a complete cause of action and the same are to be stated. In paragraph 26 of the said decision it has been observed as under :

> *"26……..*
> *Thus, the word 'material' in material facts under Section 83 of the Act means facts necessary for the purpose of formulating a complete cause of action; and if any one 'material' fact is omitted, the statement or plaint is bad; it is liable to be struck out. The function of 'particulars' is quite different, the use of particulars is intended to meet a further and quite separate requirement of pleading imposed in fairness and justice to the*

> *returned candidate. Their function is to fill in the picture of the election petitioner's cause of action with information sufficiently detailed to put the returned candidate on his guard as to the case he has to meet and to enable him to prepare for trial in a case where his election is challenged on the ground of any corrupt practice."*

In ***Ajay Arjun Singh Vs. Sharadendu Tiwari and others, AIR 2016 SC 4087*** the expressions occurring under the provisions of Order VI Rule 16(1) of the Code have been explained. In paragraph 5 thereof it has been held as under :

> *"5.Before we examine the various questions that arise in this appeal, we think it profitable to examine the scheme of Order VI , Rule 16.*
> *16. Striking out pleadings - The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -*
> *(a) which may be unnecessary, scandalous, frivolous or vexatious, or*
> *(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or*
> *(c) which is otherwise an abuse of the process of the Court.*
> *It authorises the Court to order that any matter in any pleading before it be struck out on the grounds specified under clauses (a), (b) and (c). Each one of them is a distinct ground. For example, clause (a) authorises the Court to strike out the pleadings which may be (I) unnecessary, (ii) scandalous,, (iii) frivolous, (iv) vexatious. If a pleading or part of it is to be struck out on the ground that it is unnecessary, the test to be applied is whether the allegation contained in that pleading is relevant and essential to grant the relief sought. Allegations which are unconnected with the relief sought in the proceeding fall under this category."*

Similarly, the principles laid down as to the manner of reading the plaint as a whole without touching the merits of the controversy as laid down in ***Dahiben, Shakti Bhog Food Industries Pvt. Ltd.*** and ***Mohan Rawale*** (supra) are also required to be kept in mind.

8. Keeping the aforesaid statements of law in mind the adjudication of the prayer made in Civil Application No.753/2020 can be embarked upon.

9. In paragraph 7 (i) Point No.I, it has been pleaded as under :

> "**Point No.I**: The name at Sr.No.3, Column (r) is Nitin J. Gadkari (Hindu Undivided Family), so a question arises as, who is Nitin J. Gadkari ? The name Nitin Jairambapu Gadkari is recorded in 7/12 extracts (land record) of Survey No.264, Mouza Dhapewada(Khurd) Taluka Kalmeshwar, District - Nagpur. The said 7/12 extract dated 10.06.2019 is enclosed herewith and marked as **Annexure-D.** On the mutation entry no.192, it is observed that towards from Shankar Rangrao Pande has executed trust deed regarding the property on 29/10/1958 and also executed a correction deed on 01/08/1975 on behalf of Premilabai Jairambapu Gadkari and gave the said property to his nephew (Sinster's Son) Nitin Jairambapu Gadkari. The Ferfar Patrak (Mutation Entry) is enclosed herewith and marked as **Annexure-E.** The said mutation entry is implemented on 24.07.1995 in the individual name of Nitin Jairambapu Gadkari the instant respondent no.4. Now, the question arises that who is HUF? Nitin J. (Jairambapu) Gadkari mentioned in the affidavit of Nitin Jairam Gadkari. What is the name of Nitin's father ? Jairam or Jairambapu? It is mentioned in the mutation entry that Jairambapu is husband of Premilabai. An application for obtaining Mutation Entry and related documents is submitted to Tahsildar on 20.06.2019 under Right to Information Act, 2005. The copy is enclosed herewith and marked as **Annexure-F.** The information is yet not received."

According to the returned candidate the aforesaid pleadings besides being scandalous and vexatious, they are intended to embarrass the returned candidate. It is stated that except for raising question as regards who constitutes the Hindu Undivided Family (HUF), the name of the father of the returned candidate and so on these pleadings do not disclose any cause of action even if they are taken at their face value.

Perusal of paragraph 7(i) Point-I indicates that reference is made to mutation entry no.192 by observing that the trust deed was executed by one

Shankar Rangrao Pande on 29.10.1958 and thereafter correction deed was executed on 01.08.1975 by one Premilabai Jairambapu Gadkari. This property was then given to the returned candidate and the mutation entry was implemented on 24.07.1995 in the individual name of the returned candidate. It is seen that the entire paragraph merely seeks to raise a question as to who constitutes the HUF, the name of the father of the returned candidate whether it is Jairam or Jairambapu. The election petitioner merely seeks answer to these questions and the averments therein are merely in the nature of a roving enquiry sought to be made in that regard. There is no assertion in the said paragraph that any false information was given by the returned candidate in the nomination form. In fact the election petitioner himself does not appear to be sure of the facts and what he wants to allege. There is total absence of any material fact in the entire paragraph. Taking the contents of the entire paragraph to be true nothing can be gathered from the same. In absence of any material fact being pleaded therein it is found that the averments in paragraph 7(i) Point-I are unnecessary and not indicating any cause of action. The averments in paragraph 7(i) Point-I are therefore liable to be struck off being unnecessary.

10. In paragraph 7 (ii) Point No.2, it has been pleaded as under :

> "**Point-2** : As per the 7/12 extract (land Record) Nitin Jairambapu Gadkari is the sole owner of Survey No.264, Mouza Dhapewada (Khurd), Tah. Kalmeshwar, District Nagpur. Hence, the said land cannot be owned by HUF (Hindu Undivided Family). The said HUF column/s is/are false."

According to the returned candidate the only assertion found in this paragraph is that as per the 7/12 extract the returned candidate is the sole

owner of Survey No.264. Hence the said land cannot be owned by the HUF and the said column indicating otherwise is false. There is no material fact pleaded that when the nomination form was filed the status of the land was not as belonging to the HUF. Hence these pleadings are liable to be struck off.

As per the averments in the aforesaid paragraph, according to the election petitioner, the 7/12 extract of Survey No.264 records the name of the returned candidate as the sole owner. In the affidavit filed by the returned candidate land bearing Survey No.264 has been shown as owned by the HUF as per the information stated in paragraph 7(B)(i) in that affidavit. It is therefore asserted that this information as disclosed in the affidavit is false.

It is found that the election petitioner has specifically asserted that while in the 7/12 extract the name of the returned candidate is shown as the sole owner of Survey No.264 Mouza-Dhapewada (Khurd), this land is shown to be owned by the HUF as per paragraph 7(B)(i) of the affidavit. The affidavit forms part of the election petition being its annexure. It is averred by the election petitioner that the said land cannot be owned by the HUF and hence such information as given by the returned candidate in paragraph 7(B) (i) of the affidavit is false. In view of presence of this material fact the pleadings aforesaid cannot be struck of.

11. In paragraph 7 (iii) Point No.3, it has been pleaded as under :

> "**Point No.3** : In Sr. No.(i) Column (7 B) it is mentioned that personal agricultural land owned by self Nitin Jairam Gadkari is NIL. It is written in (a) Self of column (9), Business/Occupation-as Agriculture. In source of income of

> self in (a) of column (9) is also written as agriculture. It is false, since he do not possess agricultural land, his source of income cannot be agriculture."

According to the returned candidate the source of income in paragraph 9(a) of the affidavit is shown as agriculture. It has not been stated that as the returned candidate does not own agriculture land, his source of income cannot be agriculture. For earning agricultural income it is urged that a person need not own land. It has also not been pleaded that the returned candidate does not have any agriculture income.

As per the election petitioner, the returned candidate had disclosed in his affidavit that he did not own any land personally. However his source of income was shown to be through agriculture. This rendered the information furnished to be false. Hence material facts had been pleaded in the said paragraph.

A plain reading of the aforesaid paragraph indicates that in the affidavit filed by the returned candidate and especially paragraph 7(B)(i), it is stated that the returned candidate individually does not own any agriculture land. Further in paragraph 9(a) while giving the details of profession or occupation, the returned candidate has stated the same to be agriculture and in paragraph 9(A) the details of the source of income is shown as agriculture, etc. There is specific assertion in the aforesaid paragraph that according to the returned candidate he does not own land while his business/occupation is shown as agriculture, the source of income being shown as agriculture is false. Taking the aforesaid statements at their face value, it is found that there are averments indicating that the disclosure

made in the affidavit filed along with nomination form with regard to source of income to be agriculture is false. These averments disclose existence of material facts and hence they cannot be struck off as being unnecessary or vexatious.

12. In paragraph 7 (iv) Point No.4 it has been stated as under :

> "**Point No.4** : In column 7(B), it is mentioned that Smt. Kanchan Nitin Gadkari owns an agricultural land at Dhapewada, District Nagpur. In Kalmeshwar Taluka of Nagpur District, there are two different revenue Mouja, namely Dhapewada (Khurd) and Dhapewada (Bu.). The agricultural land of Mrs. Kanchan Nitin Gadkari and Shri Nitin J. Gadkari are at Dhapewada (Khurd). The incomplete information about this is misleading information. Hence, it is false."

According to the returned candidate the aforesaid pleadings do not give rise to any cause of action. All necessary details as required in the affidavit have been stated and merely because the specific detailed location being Dhapewada (Khurd) or Dhapewada (Bujruk) not being stated does not amount to any violation and it is merely an exercise of hairsplitting by the election petitioner. The land in question has been clearly identified by mentioning its Survey number and location by stating the name of the Tahsil concerned.

According to the election petitioner in column 7(B) of the affidavit, it has been stated that the wife of the returned candidate owns agriculture land at Dhapewada, District Nagpur. Since there are two different revenue units by name Dhapewada (Khurd) and Dhapewada (Bujruk), incomplete and misleading information has been given.

A perusal of paragraph 7(B) of the affidavit and especially the description column indicates that what is to be stated is agriculture land,

location (s) and survey number (s). The affidavit indicates that the wife of the returned candidate is shown to be the owner of Khasra Nos. 21/1, 21/2, 51/1 and 51/2 situated at Dhapewada, District Nagpur. The verification to the said affidavit states that the deponent or the spouse or dependent do not have any asset or liability other than those mentioned in items 7 and 8 of the affidavit. On perusal of the description of column in paragraph 7(B) of the affidavit it becomes clear that the Survey number and the location of the lands owned has been disclosed and there is no incomplete information. It is not the averment of the election petitioner that the spouse of the returned candidate does not own any land at Dhapewada and hence the information is incorrect or false.

Taking into consideration the observations in ***Shambhu Prasad Sharma*** (supra) which decision also arises out of the adjudication of an application under provisions of Order VII Rule 11 of the Code in an election petition, there is substantial and adequate compliance with the information sought in the affidavit that was required to be filed with the nomination form. The objection is more to the form than to the substance. The information furnished cannot be said to be incomplete as the Survey number and location have been mentioned nor misleading as nothing incorrect according to the election petitioner has been mentioned therein. Hence the averments in the aforesaid paragraph do not disclose any material fact. The affidavit in that regard is not asserted to be false but the election petitioner alleges furnishing of incomplete information which is misleading. The defect if it could be called one in not giving further details of the location of the lands in question cannot be said to be substantial in character as

contemplated by Section 36(4) of the Act of 1951 for the nomination paper to be rejected by the Returning Officer. It is thus found that the requisite information as required by the affidavit in the light of the description column of paragraph 7(B) has been furnished by mentioning the Survey number and its location. The decision in ***Resurgence India*** (supra) pertains to permitting blanks to remain in the affidavit and hence the same is distinguishable. This paragraph therefore is liable to be struck off.

13. Paragraphs 7 (v) Point 5 to 7 (vii) Point No.7 can be considered together since the averments therein relate to the income-tax returns of the returned candidate with an assertion that amounts less than the income of the returned candidate have been shown in the affidavit. The said paragraphs read as under :

> "**Point No.5** : Sr.No.1, Column (4), Name (Self) Shri Nitin Jairam Gadkari, year 2013-14, the amount shown in Income-tax return Rs.2,66,390/-(Rs.Two lakh sixty six thousand three hundred and ninety only.) In the year 2013-14, Shri Nitin Jairam Gadkari was member of Maharashtra Legislative Council. He was drawing a salary of Rs.75,000/-(Rs.Seventy five thousand only) per month. Therefore, he received an amount of Rs.9,00,000/- (Rs.Nine lakh only) for 12 months (or whatever amount but more than he mentioned in his affidavit). Shri Nitin Jairam Gadkari has disclosed an amount of Rs.2,66,390/-(Rs.Two lakh sixty six thousand three hundred and ninety only) while filing income-tax returns, whereas he has received more than Rs.9,00,000/-(Rs. Nine Lakh only) (or whatever amount but more than he mentioned in his affidavit). It is seen that the amount shown is less than income, meaning thereby that a false amount is shown."
>
> "**Point No.6** : Sr.No.1 Column No.(4) name Self Shri Nitin Jairam Gadkari, year 2014-15 the amount shown in income–tax return Rs.6,01,450/- (Rs. Six lakh one thousand four hundred and fifty only). In 2014-15 Shri Nitin Jairam Gadkari was Member of Maharashtra Legislative Council till June end and he received an amount of Rs.2,25,000/- (Rs.Two lakh twenty five thousand only) as monthly salary and allowances

@ Rs.75,000/- per month.

Thereafter Shri Nitin Jairam Gadkari elected as Member of Parliament from Nagpur Loksabha constituency and became Minister in Central Ministry. According to information he is receiving at least an amount of Rs.1,65,000/- (Rs.One lakh sixty five thousand only) (or whatever amount but more than he mentioned in his affidavit) per month on account of salary and allowances. In the Income-tax returns Shri Nitin Jairam Gadkari Rs.6,01,450/-(Rs. Six lakh one thousand four hundred and fifty only) whereas he has received more than Rs.17,10,000/-(Rs. Seventeen lakh ten thousand only) i.e. for nine months Rs.14,85,000/- + Rs. 2,25,000/- = Rs.17,10,000/-. An amount less than income are shown in affidavit. Hence the affidavit is false."

"**Point No.7** : Sr.No.1, Column (4) name (self) Nitin Jairam Gadkari, year 2015-16 the amount shown in Income-tax return Rs.8,07,300/-(Rs. Eight lakh seven thousand and three hundred only). In 2016-17 Rs.7,65,730/-(Rs. Seven lakh sixty five thousand seven hundred and thirty only) is shown. In year 2017-18 an amount of Rs.6,40,700/-(Rs. Six lakh forty thousand and seven hundred only) is shown. According to information, Shri Nitin Jairam Gadkari is receiving an amount of Rs.19,80,000/- (Rs. Nineteen lakh eighty thousand only) (or whatever amount) as monthly salary and allowance Rs.1,65,000/-(Rs.One lakh sixty five thousand only). The amount shown in Income-tax returns of years 2015-16, 2016-17, and 2017-18 are less, meaning that the affidavit is false. In this connection, Shri Suresh Shamrao Hedau have submitted an application to the Director, Central Public Information officer, Loksabha Secretariat, New Delhi on 18.06.2019 under the Right to Information. Copy enclosed herewith and marked as **Annexure-G.**"

According to the returned candidate all necessary requirements prescribed by Form 26 Column 4 have been disclosed by the returned candidate. What is required to be disclosed in the affidavit is the total income shown in the Income-tax returns and nothing further. The allegation that income shown by the returned candidate while submitting his income-tax returns without an averment that what is reflected in the income -tax return is different from the income disclosed in column no.4 of Form 26 has

not been pleaded and hence no material fact giving rise to any cause of action is disclosed.

As per the election petitioner since the figures indicating income of the returned candidate in his affidavit were false as pleaded, there were material facts existing giving rise to a triable issue. The returned candidate had suppressed his income and hence these pleadings were not liable to be struck off.

Form 26 Clause 4 requires a candidate to furnish the details of Permanent Account Number (PAN) and status of filing of income-tax returns. The election petitioner has referred to the income-tax returns of the five financial years which information is found in column no.4. However according to the election petitioner, the amounts shown in the income-tax returns is less. The returned candidate earned more income than what was shown in the income-tax returns. On that count it is stated that the figures indicated in the affidavit filed by the returned candidate are false. It is found that the pleadings in the aforesaid paragraphs are based on misconception as to what is required to be stated in Form 26 Point 4 of the affidavit. The only requirement is the mention of the financial year for which the income-tax return has been filed and the total income shown in the income-tax return by the candidate. Even according to the election petitioner this information has been supplied by the returned candidate. It is the assertion of the election petitioner that the figures shown by the returned candidate indicating the income disclosed in the income-tax returns is different than what is disclosed in the affidavit. In other words, it is not pleaded that the information disclosed in the affidavit as regards the

income-tax returns as filed is incorrect or false. According to the election petitioner the returned candidate earned higher income than what was disclosed in his income-tax returns. These assertions would not take the case of the election petitioner anywhere as Form 26 Point No.4 merely requires disclosure of financial years when the income-tax returns had been filed and the total income of the candidate as shown in those returns. In the absence of any assertion that the information disclosed by the returned candidate in Form 26 Point 4 is not as per the total income shown in the income-tax returns, there is no material fact pleaded by the election petitioner to warrant these pleadings to remain on record. The pleadings in the aforesaid paragraphs are therefore unnecessary as the election petitioner has not pleaded that the total income as shown in the income-tax returns filed by the returned candidate is different from what was disclosed in the affidavit. Thus paragraphs 7 (v) Point 5 to 7(vii) Point No.7 are liable to be struck off.

14. Paragraph 7(viii) Point No.9 (wrongly shown as point no.9 instead of point no.8) reads as under :

> "**Point No.9** : The property involved in the Crimes mentioned by the Respondent No.4 in Column No.5(ii) or outcome/income/profit etc. which is outcome of those Criminal/Civil-business activities or all other Criminal/Civil activities, which is clearly not shown in any part of the affidavit Form-26 dated 25/03/2019. As well as whatever income of the spouse of the Respondent No.4 regarding the income from turmeric boiler, wherein in the jurisdiction of Kalmeshwar police Station Nagpur (rural) turmeric boiler was blasted & someone died in that incidence the said news item dated 23 May 2018 published in Hindustan times & other news papers. So this is income of boiler industry, boiler may be legal or illegal the income from this criminal or civil business is not shown by the Respondent No.4 in his affidavit Form-26. News

Item of Hindustan Times dated 23/05/2018 is annexed herewith and marked as Annexure-H.

The grievance of the petitioner is that the respondent No.4 have not supplied the true and correct information as required by law in the affidavit annexed with the nomination paper which is to be ventilated by preferring Election Petition under Section 81, Section 100 (1) (b) read with Section 123 (2), (d) (I) dated 25.03.2019."

According to the returned candidate the aforesaid averments do not disclose any material fact whatsoever as the same are totally vague. The same do not give any details at all and are based merely on imagination and conjectures of the election petitioner.

As per the election petitioner, the averments clearly disclose cause of action as true and correct information as required by law had not been furnished by the returned candidate in his affidavit submitted along with the nomination form.

The objection of the returned candidate to the averments in the aforesaid paragraph is justified. It cannot be gathered on a complete reading of this paragraph as to what in fact the election petitioner desires to urge. The averments "whatever income of the spouse of the returned candidate earned from the turmeric boiler …… may be legal or illegal" do not indicate what the returned candidate wants to convey. These averments are totally vague and based on conjectures. The paragraph contains mere allegations without any material facts. There are no material facts on the basis of which the election petition could proceed further on these pleadings. On this count the aforesaid paragraph is liable to be deleted.

15. In paragraphs 23 and 24 it has been pleaded as under :

> "23. It is submitted that the grievance was that the representatives of the candidates are not being permitted to put 1000 strokes on each selected EVM as per the guidelines of the Election Commission of India. That the second grievance is in respect of mock trial and it was submitted that only one representative of each candidate is permitted to attend and to carry out the mock trial of EVM chosen for testing. It was also apprehension that on the day of polling the mock polls are conducted by permitting the candidates or their agents to put 50 strokes in EVM's randomly but if at all there is tampering it would be discovered if more than 50 strokes are permitted because the mock drills are designed suitably to conduct only 50 strokes therefore there was demand that the strokes be enhanced to beyond 50 strokes. Copies of the representations are annexed herewith and marked as **Annexure-J.**"
>
> "24. It is most humbly submitted that as per the guidelines of the Election Manual 2019, the respondent no.2 neither permitted 1000 strokes, nor permitted the strokes enhanced to beyond 50 strokes during the mock trial there is clear-cut violation and non-compliance of the Election Manual 2019 and the same is in benefit of elected candidate and as per Section 100 (1) (d) (iv) it is the ground for declaring the election of the elected candidate as void. It is most humbly submitted that as all questions kept open by this Hon'ble Court in WP No.2898/2019 the petitioner is making his grievance that non following the instructions issued by the Election Commission and the non-compliance with the provisions of the act of 1951 and orders issued by the Election Commission of India in the nature of the Election Manual 2019 squarely covers the situation declaring the election of the elected candidate as void."

According to the returned candidate on the basis of the averments made in paragraphs 23 and 24 the election petitioner seeks to contend that there was a clear violation and non-compliance of the Election Manual-2019 as a result of which the election of the returned candidate was rendered void under the provisions of Section 100 (1) (d)(iv) of the Act of 1951. It is urged that for declaring an election to be void due to non-compliance with

the provisions of Constitution of India or the Act of 1951 or any Rules or Orders made under the Act of 1951, it is necessary for the election petitioner to specifically aver that on account of such non-compliance the result of the election insofar as it concerns the returned candidate has been materially affected. It has not been averred in these paragraphs that on account of the alleged non-compliance of the Election Manual-2019 or for that matter the Rules or Orders made under the Act of 1951, the election of the returned candidate has been materially affected. Mere non-compliance by itself would not render the election to be void unless it is shown that as a result of such non-compliance the result of the election has been material affected. In absence of these required averments the aforesaid paragraphs are liable to be struck off being unnecessary and not giving rise to any cause of action. In any event, it is submitted that there is no material fact pleaded in these paragraphs.

According to the election petitioner it having been averred that there was non-compliance as contemplated by Section 100 (1)(d) (iv) of the Act of 1951, the election of the returned candidate was rendered void. It has been averred that though under the Election Manual-2019, 1000 strokes ought to have been permitted during the mock trial the same was not done. In the light of the liberty granted by this Court in Writ Petition No.2898/2019 the grievance has been rightly raised by the election petitioner in the present election petition. Relying upon the decision in ***Madiraju Venkata Ramana Raju*** (supra) it was submitted that it was not necessary to specifically aver and then prove that on account of such non-compliance with the requirements of the Election Manual-2019 the election

of the returned candidate was materially affected. In the light of the law laid down in the aforesaid decision it was submitted that there was no substance in the objection raised by the returned candidate for seeking deletion of the aforesaid paragraphs.

16. Perusal of the paragraphs 23 and 24 reproduced hereinabove indicates that the election petitioner seeks to urge that the election of the returned candidate be declared void under Section 100 (1) (d) (iv) of the Act of 1951 on the ground that there was violation as well as non-compliance of the Election Manual-2019. Through the process of judicial interpretation the distinction while seeking declaration as to the voidness of the election of the returned candidate under the provisions of Section 100 (1) (d) (i) and Section 100 (1) (d) (iv) of the Act of 1951 vis-a-vis the requirement of pleading that the result of the election insofar as it concerns the returned candidate has been materially affected stands recognised. Insofar as sub-clause (i) clause (d) of Section 100 (1) is concerned, it has been held by the Hon'ble Supreme Court that if it is found that the nomination form of the returned candidate has been improperly accepted and the election of the returned candidate is void on that count, it would not be necessary to plead and prove that the result of the election insofar as it concerns the returned candidate has been materially affected. Reference in this regard can be made to the decision in ***Durai Muthuswami Vs. N.Nachiappan and ors. (1973) 2 SCC 45*** wherein it has been held that if there was only one seat to be filled in and there were only two contesting candidates, on the finding that the nomination form of the returned

candidate had been improperly accepted it would be undisputed that the result of the election insofar as it concerns the returned candidate had been materially affected. This decision has been referred to in ***Madiraju Venkata Ramana Raju*** (supra) and has been followed. In ***Madiraju Venkata Ramana Raju*** (supra) the facts indicate that the election of the returned candidate had been challenged on grounds ascribable to Section 100 (1) (d) (i) of the Act of 1951. While considering the question as to the absence of an averment in the election petition that on account of improper acceptance of the nomination form of the returned candidate the same had materially affected the election result, it was held that such averment would not be necessary where the election of the returned candidate is challenged on the ground of improper acceptance of his nomination. It was observed that if the election petition is based on the ground of improper acceptance of the nomination form of the returned candidate under Section 100 (1) (d) (i) of the Act of 1951 and that plea is accepted it would necessarily follow that the election result of the returned candidate has been materially affected. Though heavy reliance was placed by the learned counsel for the election petitioner on the aforesaid decision, it is found that the ratio of the said decision cannot be made applicable to the facts of the present case to the extent the election of the returned candidate is challenged under Section 100 (1)(d) (iv) of the Act of 1951.

17. In this regard reference can be made to the judgment of the three Judge Bench in ***L.Shivaramagowda*** (supra) holding it imperative for the purpose of Section 100 (1)(d)(iv) of the Act of 1951 an averment that the

election of the returned candidate has been materially affected due to non-compliance with the provisions of the Constitution of India or the Act of 1951 or any Rules or Orders made thereunder. Similarly in ***Election Commission of India through Secretary Vs. Ashok Kumar and others, (2000) 8 SCC 216*** in paragraph 29 it has been held that the ground of non-compliance with the provisions of Constitution of India or the Act of 1951 or any Rules or Orders made thereunder would be covered by sub-clause (iv) of clause (d) of sub-Section (1) of Section 100 of the Act of 1951. The result of the election insofar as it concerned the returned candidate has to be set aside for any such non-compliance and on satisfying the requirement of the result of the election having been shown to have been materially affected insofar as the returned candidate was concerned. In ***Mangani Lal Mandal Vs. Bhishnu Deo Bhandari (2012)3 SCC 314*** it was held in clear terms that for the election petitioner to succeed under Section 100(1)(d)(iv)of the Act of 1951 he has not only to plead and prove the ground but has also to show that the result of the election insofar as it concerns the returned candidate has been materially affected. This view is further followed in ***G.S.Iqbal Vs. K.M.Khader and ors (2009) 11 SCC 398*** and reiterated in ***Kameng Dolo Vs. Atum Welly (2017) 7 SCC 512***.

From the aforesaid decisions it becomes crystal clear that if the election of the returned candidate is challenged under Section 110 (1)(d)(i) of the Act of 1951 alleging improper acceptance of the nomination of the returned candidate then on the same being proved it would sufficient to declare the election of the returned candidate to be void. It would not be necessary in such case to plead and prove that the result of the election

insofar as it concerns the returned candidate has been materially affected. Improper acceptance of the nomination form of the returned candidate itself materially affects the election. On the other hand where the election is challenged under Section 100 (1) (d) (iv) of the Act of 1951 and non-compliance with the provisions of the Constitution of India or the Act of 1951 or any Rules or Orders made thereunder is alleged, it would be necessary to plead and prove that on account of such non-compliance the result of the election insofar as it concerns the returned candidate has been materially affected.

18. The averments in paragraphs 23 and 24 of the election petition specifically raise a challenge based on the provisions of Section 100(1)(d)(iv) of the Act of 1951 alleging violation and non-compliance of the Election Manual-2019 and therefore it was necessary for the election petitioner to specifically aver that on account of such violation and non-compliance of the Election Manual-2019 the result of the election insofar as it concerns the returned candidate has been materially affected. There is no such averment in both these paragraphs as a result of which it would not be permissible for the election petitioner to lead any evidence to prove that by virtue of such alleged non-compliance the election of the returned candidate has been materially affected. In that view of the matter, the averments in paragraphs 23 and 24 are liable to be struck off being unnecessary and not giving any cause of action.

19. In paragraphs 27 and 28 the election petitioner has pleaded as under:

> "27. It is submitted that Shadow Observation Register for maintenance of day to day accounts of the contesting candidates is maintained by the accounting team of every candidate. It is submitted that for the respondent no.4 also his accounting team has maintained the shadow observation register. It is mandatory and also in practice of respondent no.1 and 2 to examine the extract of shadow register provided by the candidate and to upload it on the official website i.e. open to general public for inspection. The total expenses as on 01.04.2019 of the respondent no.4 in the shadow observation was shown as 678243.60 and whereas the expenses as on 02.04.2019 shown as 20,21,393.40 and on 06.04.2019 the total expenses shown as 67,51,710.77 and the Election Observer and Expenses Controller for the Lok-Sabha Elections 2019 have also certified the same on 09.04.2019 and have ordered for issuance of notice to the respondent no.4 seeking explanation in difference of Rs.44,81,731.00. It is most humbly submitted that the copy of the same document is downloaded by the petitioner from the official website of the Election Commission. That the bare perusal of the expenses submitted by the respondent no.4 shows that expenses as on 06.04.2019 shown as 67,51,710.77 and it was reduced later on."
>
> "28. It is submitted that the petitioner was shocked when he again examined the expenses from the official website and found that respondent no.4 have submitted the expenses to the tune of Rs.44,88,041.93 only. It is submitted that the respondent no.4 have not submitted the expenses of polling day i.e. 11.04.2019 and have also not submitted the expenses of the counting day i.e. on 23.05.2019. It is most humbly submitted that the expenses shown by the respondent no.4 is more than the limit fixed by the operation of Section 77 and Rule 90 of the Conduct of the Election Rules 1961. Thus in view of this the respondent no.4 have committed the corrupt practice in view of the Section 123 (6) of the RP Act 1951. Copies of the shadow register and the abstract of statement of election expenses are annexed herewith and marked as **Annexure-K."**

According to the returned candidate the averments in these paragraphs do not disclose any cause of action much less a ground alleging commission of corrupt practice by the returned candidate. It is urged that the election petitioner has proceeded on a wrong assumption that the Shadow Observation Register has to be maintained by the candidate. Such

Register has to be maintained by the District Election officer and his team. Reference in this regard is made to the Compendium of Instructions on Election Expenditure Monitoring issued by the Election Commission of India. It is the candidate who has to maintain accounts of actual expenditure. The Shadow Observation Register is based on guess work and the figures stated therein have to be reconciled with the accounts maintained by the returned candidate. Reference is made to the provisions of Section 77(3) read with Section 123(6) of the Act of 1951 to submit that only if it is alleged by the election petitioner that the election expenses of the returned candidate exceed the prescribed limit of Rs. Seventy lakhs, the provisions of Section 123(6) would stand attracted so as to constitute a corrupt practice. The pleadings in the election petition nowhere indicate any assertion by the election petitioner that the election expenses of the returned candidate exceeded the limit of Rs. Seventy lakhs. On the contrary, the abstract of statement of election expenses that was annexed to the election petition itself indicated that the amount of election expenses was less than the maximum limit prescribed. On the aforesaid averments it could not be said that the provisions of Rule 90 of the Rules of 1961 had been violated. Since the aforesaid averments do not disclose any material fact, no triable issue would arise and therefore the aforesaid pleadings were liable to be struck off.

According to the election petitioner the averments in these paragraphs when read together disclose material facts that the returned candidate had incurred election expenses exceeding the maximum permissible limit of Rs. Seventy lakhs. Besides not maintaining the account

of election expenses correctly it had been pleaded that the provisions of Section 77 of the Act of 1951 with Rule 90 of the Rules of 1961 had been violated. Cause of action had been disclosed.

20. For the purposes of constituting a corrupt practice the provisions of Section 123(6) of the Act of 1951 require the incurring or authorising of expenditure in contravention of Section 77 of the Act of 1951. Section 77 of the Act of 1951 prescribes for maintenance of account of the election expenses and the maximum expenses permissible to be expended. As per Rule 90 of the Rules of 1961, the maximum limit of election expenses in a parliamentary constituency in the State of Maharashtra is Rs. Seventy lakhs. In this regard the legal position as laid down by the Hon'ble Supreme Court can be found in the decision in ***Kamalnath*** (supra) wherein it has been observed in paragraph 4 as under :

> *4.... "When maintainability of an election petition is considered from the stand point as to whether materials facts have been pleaded or not in a petition alleging corrupt practice on the ground that expenses incurred by the candidate are more than the prescribed limit, it would be necessary to aver the fact that the candidate has incurred the expenditure or has authorised any other person to incur the expenditure or that his election agent has incurred the expenditure and further, the candidate has undertaken the liability to reimburse. These would constitute the material facts of an election petition, which is filed, alleging corrupt practice within the ambit of Section 123(6) read with Section 77 of the Act and Rule 90 of the Conduct of Election Rules.....But the Court observed that in a petition on the allegation of corrupt practice, the cause of action cannot be equated with the cause of action, as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices inasmuch as an election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter and if proved, not only does the candidate suffer ignominy, but he also suffers disqualification from standing for election for a*

> *period that may extend to six years. After taking note of all the earlier decisions, the Court held that to plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected and it cannot be left to time, chance or conjecture for the Court to draw inference by adopting an involved process of reasoning."*

Similarly in ***L.R.Shivaramagowda*** (supra) it has been held that it is only when the provisions of Section 77(3) of the Act of 1951 are violated on account of election expenses exceeding the maximum limit prescribed that a corrupt practice can be said to be committed by the returned candidate. In paragraph 18 of the said decision it has been observed as under :

> *18…. . "In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-section 1(b) of Section 100 relates to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. In order to bring a matter within the scope of sub-section 1(b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section (3) of Section 77,i.e. incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Sections 77(1) and (2) would also fall within the scope of Section 123(6). Consequently, it cannot fall under Section 100(1)(b). The attempt here by the first respondent is to bring it within Section 100 (1)(d)(iv). The essential requirement under that sub-section is that the result of the election insofar as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Sections 77(1) and (2) will in no case affect, and much less materially, the result of the election."*

21. In the light of the aforesaid legal position if the averments

in paragraphs 27 and 28 of the election petition are perused, it is seen that

according to the election petitioner the total expenses of the returned candidate as on 01.04.2019 in "shadow observation was shown as 678243.60". The figure quoted herein is much below the maximum permissible limit of election expenses as shown in "shadow observation". However, it has been pleaded that the expenses as on 02.04.2019 were shown as Rs.20,21,393.40 and on 06.04.2019 the total expenses were shown were Rs.67,51,710.77. It is then pleaded that the Election Observer and Expenses Controller in the Lok-Sabha Elections-2019 had certified the same on 09.04.2019 and had ordered for issuance of notice to the returned candidate seeking explanation for the difference of Rs.44,81,731.00. It is thereafter pleaded that on 06.04.2019 expenses submitted by the returned candidate were Rs.67,51,710.77 and the same were reduced lateron. These averments nowhere indicate that the election expenses of the returned candidate exceeded the maximum limit of Rs.Seventy lakhs. Thereafter, the election petitioner has pleaded that the returned candidate submitted election expenses to the tune of Rs.44,88,041.93 only. The returned candidate did not submit expenses of the polling day which was 11.04.2019 as well as the expenses of the counting day which was 23.05.2019. According to the election petitioner, the expenses shown by the returned candidate were more than the limit fixed by the operation of Section 77 of the Act of 1951 and Rule 90 of the Rules of 1961 and thus the returned candidate had committed a corrupt practice in view of Section 123(6) of the Act of 1951.

22. Reading the averments in paragraphs 27 and 28 nowhere indicate a specific assertion that the returned candidate by spending an amount beyond the maximum limit prescribed of Rs. Seventy lakhs had violated the provisions of Section 77(3) of the Act of 1951. On the contrary, the averments of both these paragraphs indicate that according to the election petitioner the account of election expenses had been improperly maintained by the returned candidate and nothing further. Even the averments "*It is most humbly submitted that the expenses shown by the respondent no.4 is more than the limit fixed by the operation of Section 77 and Rule 90 of the Conduct of the Election Rules 1961. Thus in view of this the respondent no.4 have committed the corrupt practice in view of Section 123(6) of the Act of 1951.*" do not constitute a material fact so as to give rise to a triable issue that there was violation of the provisions of Section 77 (3) of the Act of 1951 especially when the abstract of statement of the election expenses which is annexed as Annexure-K to the election petition is perused. Since this Annexure forms a part of the election petition and the election petition also refers to the said Annexure, it can be looked into being a part of the election petition. This abstract of statement of the election expenses indicates the total election expenses of the returned candidate to be Rs.44,88,041.93. Even the averments quoted aforesaid that the expenses "shown" by the returned candidate were more than the limit fixed do not find support from the abstract of statement of the election expenses since the amount of Rs.44,88,041.93 as "shown" is less than the maximum limit fixed by Rule 90 of the Rules of 1961. Where such expenses are "shown" by

the returned candidate is also not pleaded. Thus the averments reproduced hereinabove that the expenses shown by the returned candidate were more than the limit fixed by the provisions of Section 77 of the Act of 1951 read with Rule 90 of the Rules of 1961 are not in tune with the abstract of statement of the election expenses annexed by the election petitioner himself. At the cost of repetition it may be stated that failure to maintain true and correct account of the election expenses is not a matter covered by Section 123(6) of the Act of 1951 inasmuch as the provisions of Section 77(1) and (2) of the Act of 1951 deal with maintenance of account of the election expenses. Thus in the absence of the averments that the election expenses of the returned candidate exceeded the maximum limit of Rs.Seventy lakhs there is absence of any material fact in these paragraphs and hence no triable issue arises from the said averments. Moreover, since the provisions of Section 123(6) of the Act of 1951 are sought to be invoked by the election petitioner alleging commission of corrupt practice, it was all the more necessary for the election petitioner to have specifically averred about the same by pleading material facts. It cannot be forgotten that a charge of corrupt practice is in the nature of a quasi-criminal charge. Hence the pleadings in the paragraphs 27 and 28 not giving rise any cause of action are liable to be deleted.

23. In paragraph 30 it has been pleaded as under :

> "30. It is shocking and surprising to the petitioner, during the existence of the Model Code of Conduct, the respondent No.4 got published an advertisement of opening ceremony of Rokde Jewellers containing his photographs. It is most humbly submitted that in view of the above quoted provisions of law the respondent no.4 ought to have included the expenses of

> that advertisement in his election expenses but failed to do so and thus have violated the mandate of Section 77 of RP Act, 1951 and committed the corrupt practice as per Section 123(6) of the RP Act 1951. It is most humbly submitted that as per the information of the petitioner the respondent no.4 have not taken any action against said Rokde Jewellers nor have issued any notice asking from him about the explanation about the advertisement. That the petitioner got the information that the respondent authorities have registered FIR is registered against the said Rokde Jewellers on 11.04.2019, thus on this point also there is violation of Rule 90 of the Conduct of Election Rules, 1961 and Section 77 of the RP Act 1951 and the respondent no.4 have committed the corrupt practice in view of Section 123(6) of the RP Act 1951. Copy of the news paper cutting are annexed herewith and marked as **Annexure-L** collectively."

According to the returned candidate the averments in this paragraph are vague without disclosing any material fact. The averment that the returned candidate got published an advertisement of opening ceremony of Rokde Jewellers containing his photographs does not indicate that these photographs were connected with the election campaign of the returned candidate. There is no averment in that regard. Further it is submitted that the expenses alleged to have been incurred have not been indicated nor is there any averment that if such expenses had been included in the election expenses of the returned candidate the total election expenses would have exceeded the maximum permissible limit. At the highest it was submitted that failure to include the alleged expenses of publishing the advertisement in the election expenses of the returned candidate would result in violation of Section 77(1) of the Act of 1951 and hence it would not be a corrupt practice. The averments were in general terms without a statement that the provisions of Section 77(3) of the Act of 1951 had been violated resulting in commission of a corrupt practice under Section 123(6) of the Act of 1951.

The statement that the authorities had registered a First Information Report (FIR) against the said Rokde Jewellers also does not carry the case of the election petitioner any further. These averments did not give rise to any cause of action and being vexatious the said pleadings were liable to be struck of.

According to the election petitioner the averments in paragraph 30 do give rise to a triable issue inasmuch as publishing the advertisement during the existence of the Model Code of Conduct resulted in violation of the provisions of Rule 90 of the Rules of 1961. The newspaper reports were annexed to the election petition and therefore could be read along with these averments. Reading the entire paragraph as a whole, the pleadings were not liable to be struck off.

24. A complete reading of paragraph 30 indicates that according to the election petitioner during the subsistence of the Model Code of Conduct the returned candidate got published an advertisement of opening ceremony of Rokde Jewellers containing his photographs. There is no averment that the advertisement as published was in relation to the election of the returned candidate. Further merely by averring that the expenses of the advertisement ought to have been included in the election expenses by the returned candidate and by failing to do so, there was violation of the mandate of Section 77 of the Act of 1951 would indicate that according to the election petitioner there was violation of Section 77(1) of the Act of 1951 as the election expenses had not been correctly maintained by the returned candidate. In the absence of any averment that if the alleged

expenses for publishing the advertisement had been included in the election expenses of the returned candidate the same would have resulted in the maximum limit of election expenses being exceeded, there is no material fact pleaded. There is no averment that the provisions of Section 77(3) of the Act of 1951 read with Rule 90 of the Rules of 1961 have been violated. As stated above, it is only if there is an assertion of violation of the provisions of Section 77(3) of the Act, 1951 read with Rule 90 of the Rules of 1961 that it could be said that the returned candidate had committed a corrupt practice as per Section 123 (6) of the Act of 1951. In absence of these material statements in the entire paragraph it has to be held that the material facts constituting a valid cause of action are absent and the averments in paragraph 30 do not give rise to any triable issue. Even the averment that the FIR was registered against said Rokde Jewellers resulting in violation of Rule 90 of the Rules of 1961 and Section 77 of the Act of 1951 is also of no avail as the aforesaid provisions relate to exceeding the limit of election expenses prescribed. Since the averments in paragraph 30 do not disclose any material fact there would be no useful purpose served by permitting them to remain on record as they do not give rise to any triable issue. The said averments are thus liable to be struck off being unnecessary. This conclusion is recorded by considering the contents of entire paragraph 30 to be true.

25. As a result of the aforesaid discussion, it is found that the averments in paragraphs 7(i) Point No.1, 7(iv) Point No.4, 7(v) Point No.5 to 7(vii) Point No.7, 7(viii) Point No.9, 23, 24, 27, 28 and 30 are liable to be struck

of under the provisions of Order VI Rule 16 of the Code for the reasons indicated hereinabove. However the averments in paragraphs 7(ii) Point No.2 and 7(iii) Point No.3 of the election petition are not liable to be struck off under the provisions of Order VI Rule 16 of the Code as they disclose material facts and give necessary cause of action to challenge the election of the returned candidate. As a result of this adjudication the prayer made in Civil Application No. 12/2021 seeking rejection of the election petition cannot be granted. The election petition consequently would proceed for trial on the basis of the averments that remain after the paragraphs as directed to be struck off are so struck off.

Consequently Civil Application No.753/2020 (Exhibit 18) is partly allowed to the extent stated hereinabove and Civil Application No.12/2021(Exhibit 19) stands rejected.

JUDGE

Andurkar..