ASHRAF KOKKUR

v.

K.V. ABDUL KHADER ETC.

(Civil Appeal Nos. 69-70 of 2012)

AUGUST 29, 2014

[MADAN B. LOKUR AND KURIAN JOSEPH, JJ.]

Code of Civil Procedure, 1908:

O.7, r.11(a) – Cause of action – Election petition – Challenging the election of returned candidate to State Legislative Assembly – On the ground of disqualification as he was holding office of profit, i.e. Chairperson of Kerala State Wakf Board – Petition dismissed by High Court holding that it did not disclose a complete cause of action or a triable issue – Held: The inquiry under O. 7, r. 11(a) is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action – The limited inquiry is only to see whether the petition should be thrown out at the threshold – Holding an office of profit under Government of India or Government of any State is the disqualification – Whether that ground is discernible if the election petition is read as a whole, is the simple exercise to be undertaken by High Court, when called upon to do so under O.7, r.11(a) – In the instant case, the averments made in the election petition clearly disclose a cause of action, viz. respondent was holding the position as Chairperson of Kerala State Wakf Board and deriving financial benefits from Kerala Government and, as such, was disqualified under Art. 191(1)(a) of the Constitution of India, as holding of an office of profit under State Government of Kerala – That is the triable issue in the election petition.

Representation of the People Act, 1951:

s.83 – Election petition – Material facts – Election of *returned candidate challenged on the ground of disqualification as he was holding an office of profit – High Court rejecting the petition holding that it did not contain a pleading that respondent was holding an office of profit under State Government – Held: The requirement u/s 83(1)(a) in contradistinction to s.83(1)(b) is that the election petition need contain only a concise statement of the material facts and not material particulars — The expression 'material facts' plainly means facts pertaining to the subject matter and which are relied on by the election petitioner — If the party does not prove those facts, he fails at the trial – In the instant case, the pleadings, (as contained in election petition and Annexure P1(d), which forms an integral part of election petition) if taken as a whole, would clearly show that they constitute the material facts so as to pose a triable issue as to whether respondent is disqualified to contest election to Kerala State Legislative Assembly while holding an office of profit under State government as Chairperson of Kerala State Wakf Board – In an election petition, the requirement u/s 83 is to provide a precise and concise statement of material facts – The expression 'material facts' plainly means facts pertaining to the subject matter and which are relied on by election petitioner – Constitution of India, 1950 – Art.191.*

s.83 – Election petition – Annexures thereto- Held: In the instant case, all the annexures attached to election petition in the instant case have been signed and verified by election petitioner as per the requirement u/s 83(2) — Therefore, Annexure-P1(d) to the election petition forms an integral part of election petition – There is a clear and unambiguous plea that respondent was holding the post of Chairman, Kerala State Wakf Board, an office of profit under Government of Kerala and, as such, he was disqualified.

The respondent was the Chairperson of the Kerala State Wakf Board when he contested the election to the Kerala Legislative Assembly. The appellant objected to

his nomination, as per Annexure P1(d) to the election A petition. However, as per order dated 29.03.2011, the objection was overruled. The respondent was eventually elected. The appellant filed an election petition challenging the election of the respondent on the ground of disqualification as he was holding an office of profit B i.e. Chairperson of the Kerala State Wakf Board. The election petition was dismissed in limine, by the High Court holding that it did not disclose a complete cause of action or a triable issue. The High Court further held that the election petition did not clearly contain a C "pleading that the respondent holds an office of profit under the State Government. The pleading is only to the effect that the respondent holds an office of profit".

Allowing the appeals, the Court

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HELD: 1.1. The inquiry under O. 7, r. 11(a) of CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the E requirement u/s 83 of the RP Act is to provide a precise and concise statement of material facts. The expression 'material facts' plainly means facts pertaining to the subject matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails F at the trial. [para 25] [1143-D-F]

1.2. In *Hari Shanker Jain's* case, a three-Judge Bench of this Court held that the expression 'cause of action' would mean facts to be proved, if traversed, in order to support his right to the judgment of the court and G that the function of the party is to present a full picture of the cause of action with such further information so as to make opposite party understand the case he will have to meet. [para 29] [1145-B-C]

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A *Hari Shanker Jain vs. Sonia Gandhi* **2001 (3)
Suppl. SCR 38 = (2001) 8 SCC 233 – relied on**

Syed Dastagir v. T.R.Gopalakrishna Setty **1999 (1)
Suppl. SCR 351 = 1999 (6) SCC 337**, *Mayar (H.K.) Ltd. v.*
B *Owners & Parties, Vessel M.V. Fortune Express* **2006
(1) SCR 860 = 2006 (3) SCC 100;** *Ponnala Lakshmaiah v.
Kommuri Pratap Reddy and others* **2012 (6) SCR 851= 2012
(7) SCC 788,** *Raj Narain v. Indira Nehru Gandhi and another*
1972 (3) SCR 841 = 1972 (3) SCC 850 – referred to.

C **1.3. In the instant case, the charge levelled is that the
respondent holds an office of profit as the Chairperson
of the Kerala State Wakf Board and in that capacity he
enjoys the profits attached to that office from the
Government of Kerala. Holding an office of profit under
D the Government of India or Government of any State is
the disqualification. Whether that ground is discernible if
the election petition is read as a whole, is the simple
exercise to be undertaken by the High Court, when called
upon to do so under O.7, r.11(a) of CPC. At Paragraph-3
E of the election petition, it is contended that the
respondent was holding an office of profit, viz., the
Chairperson of the Kerala State Wakf Board. Again, in the
same paragraph, it is stated that the Chairperson of the
State Wakf Board receives such remuneration as are
F provided for and prescribed by the Government of Kerala.
After quoting Art. 191 of the Constitution, it is pleaded that
any person who holds an office of profit under the State
Government, is debarred from contesting the elections to
the Legislative Assembly. It is again pleaded that the State
G of Kerala having not made any legislation on removal of
disqualification of the Chairperson of the Wakf Board, the
Chairperson of the Kerala State Wakf Board is
disqualified under Art. 191 of the Constitution. At
Paragraph-6, enumerating the particulars, it is pleaded
that the respondent was holding an office of profit in**
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having been granted honorarium, allowances and A
enjoying the facility of a car at State expenses and
drawing other pecuniary advantages. Again, under
Paragraph-7, it is stated that the respondent was
provided with chauffeur whose salary and allowances are
paid also from the funds of the Government of Kerala. At B
Paragraph-10, it is clearly stated that "since admittedly on
the date of the election, the first Respondent was holding
an office of profit as Chairperson of the Kerala State Wakf
Board, he was disqualified to contest the election". These
averments clearly disclose a cause of action, viz. the C
respondent was holding the position as Chairperson of
the Kerala State Wakf Board and deriving financial
benefits from the Kerala Government and, as such, was
disqualified under Art. 191(1)(a) of the Constitution of
India, as holding of an office of profit under the State
Government of Kerala. That is the triable issue in the D
election petition. [para 15 and 26] [1136-F-H; 1137-A-H]

1.4. The requirement u/s 83(1)(a) of the RP Act in
contradistinction to s.83(1)(b) of the RP Act is that the
election petition need contain only a concise statement E
of the material facts and not material particulars. *In V.S.
Achuthanandan's* case, a three-Judge Bench of this
Court has taken the view that only because full
particulars are not given, an election petitioner is not to
be thrown out at the threshold. [para 14 and 27] [1136-D; F
1144-B-C]

V.S. Achuthanandan v. P.J. Francis and another 1999 (2)
SCR 99 = 1999 (3) SCC 737- referred to.

1.5. All the annexures attached to the election petition G
in the instant case have been signed and verified by the
election petitioner as per the requirement u/s 83(2) of the
RP Act. Therefore, Annexure-P1(d) to the election petition
forms an integral part of the election petition. There is a
clear and unambiguous plea that the respondent was H

holding the post of Kerala State Wakf Board, holding an office of profit under the Government of Kerala and, as such, he was disqualified. [para 19] [1140-H; 1141-A-B]

G.M. Siddeshwar v. Prasanna Kumar 2013 (4) SCR 1107 = (2013) 4 SCC 776; and *M. Kamalam v. Dr. V.A. Syed Mohammed* 1978 (3) SCR 446 = (1978)2 SCC 659 – relied on.

Sahodrabai Rai v. Ram Singh Aharwar 1968 SCR 13 = AIR 1968 SC 1079 – referred to.

1.6. The pleadings, (as contained in election petition and Annexure P1(d), which forms an integral part of election petition) if taken as a whole, would clearly show that they constitute the material facts so as to pose a triable issue as to whether the first respondent is disqualified to contest election to the Kerala State Legislative Assembly while holding an office of profit under the State government as Chairperson of the Kerala State Wakf Board. [para 23] [1143-A-B]

1.7. The question is not whether the Chairperson of the Kerala State Wakf Board is an office of profit or not. That is the issue to be tried. Question is whether the petitioner has raised such a question in the election petition. The disqualification under the Constitution of India being, holding an office of profit under the State Government. Petitioner has furnished all the material particulars in that regard. Therefore, the petition discloses a cause of action. [para 24] [1143-B-D]

Mohan Rawale v. Damodar Tatyaba alias Dadasaheb and others 1992 (3) Suppl. SCR 850 = 1994 (2) SCC 392 – relied on.

Azhar Hussain v. Rajiv Gandhi 1986 SCR 782 = 1986 Suppl. SCC315 - referred to.

Philipps v. Philipps and others **(1878) 4 QBD 127, 133 – referred to.**

1.8. Therefore, this Court is of the view that the election petition having disclosed a cause of action, it should not have been thrown out at the threshold. The impugned order and judgment are set aside. The election petition is remitted to the High Court for trial in accordance with law. [para 34] [1148-B-C]

Case Law Reference:

1968 SCR 13	**referred to**	**para 16**
1978 (3) SCR 446	**relied on**	**para 18**
2013 (4) SCR 1107	**relied on**	**para 21**
(1878) 4 QBD 127, 133	**relied on**	**para 25**
1992 (3) Suppl. SCR 850	**relied on**	**para 25**
1986 SCR 782	**referred to**	**para 26**
1999 (2) SCR 99	**referred to**	**para 27**
2001 (3) Suppl. SCR 38	**relied on**	**para 29**
1999 (1) Suppl. SCR 351	**referred to**	**para 30**
2006 (1) SCR 860	**referred to**	**para 31**
2012 (6) SCR 851	**referred to**	**para 32**
1972 (3) SCR 841	**referred to**	**para 33**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 69-70 of 2012.

From the Judgment and Order 16.11.2011, in I.A. No. 4 of 2011 in Election Petition No. 2 of 2011 of the High Court of Kerala at Ernakulam.

R. Basant E.M.S. Anam for the Appellant.

Rajiv Dhawan, V.K. Verma, V.K. Biju, Vijay Laxmi for the Respondent.

The Judgment of the Court was delivered by

KURIAN, J.: 1. The simple question arising for consideration in this case is whether the averments in the election petition disclose a cause of action as required under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). Incidentally, it may be noted that the election petition has been dismissed by the impugned judgment dated 16.11.2011, which reads as follows:

"**JUDGMENT**

I.A. 4/11 is allowed. Election petition is dismissed in limine as it does not disclose a complete cause of action or a triable issue."

Of course, detailed reasons are given in the order dated 16.11.2011 in I.A. 4/2011, which is also under challenge in one of the appeals.

2. The sole ground in the election petition is that the respondent is disqualified under Article 191(1)(a) of the Constitution of India, since he was holding the post of Chairperson of the Kerala State Wakf Board. To the extent relevant, the Article reads as follows:

"**191. Disqualification for membership.**-(1) xxx

(a) if he holds office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;"

(Emphasis supplied)

3. The High Court has taken the view that the election A
petition does not clearly contain a pleading that the respondent holds an office of profit under the State Government. The pleading is only to the effect that the respondent holds an office of profit.

4. Therefore, the only inquiry that is required in this case B
is to see on reading the election petition as a whole, whether the petitioner has disclosed a cause of action.

UNDISPUTED FACTS

5. The respondent was the Chairperson of the Kerala State C
Wakf Board when he contested the election to the Kerala Legislative Assembly. The petitioner in fact objected to his nomination, as per Annexure P1(d) (Annexure-D). The objection, to the extent relevant, reads as follows:

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> "Mr. Abdul Kader is candidate for Guruvayoor Constituency. He is Chairman of Kerala State Wakf Board. He is holding an office of profit under Government of Kerala and hence disqualified."

(Emphasis supplied) E

6. However, as per order dated 29.03.2011, the objection was overruled holding that the petitioner failed to prove beyond doubt as to whether the elected office bearers of the Wakf Board would come under the purview of the office of profit as stated F
under Article 191 of the Constitution of India [Annexure-P1(c)-(Annexure-C)].

PLEADINGS IN THE ELECTION PETITION

7. To see whether the facts pleaded in the election petition G
constitute a cause of action, we shall extract the relevant ones, with emphasis supplied. At Paragraph-3 of the election petition, it is stated as follows:

> "3. The petitioner respectfully submits that on the date of election, the first respondent was disqualified to H

> contest the election as he was admittedly on that day holding an office of profit, namely the Chairperson of the Kerala State Wakf Board. In terms of Section 14(9) of the Wakf Act (Central Act 43) of 1995, the Chairperson of the State Wakf Board, which is constituted by the State Government, namely the first respondent was appointed as Chairman of the Kerala State Wakf Board on 29th December, 2008. ...."
>
> xxx xxx xxx
>
> "The Chairperson of the State Wakf Board is performing public duties particularly of statutory nature under the Wakf Act 1995. He exercises even Quasi Judicial and supervisory powers. He receives such remuneration as are provided for and prescribed by the Government of Kerala. ..."

8. Paragraph-4 of the election petition to the extent relevant, reads as follows:

> "4. Article 191 of the Constitution of India to the extent relevant reads as follows:-
>
> "191. Disqualification of membership.-(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State-
>
> (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;
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> (b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

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

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule)."

9. Paragraph-5 of the election petition refers to the objection before the Returning Officer and the order passed thereof, which we have already referred to above.

10. Paragraph-6 of the election petition reads as follows:

"6. The petitioner respectfully submits that in terms of the principles evolved by the Apex Court, the first Respondent falls within the expression 'holder of an office of profit' in view of the following admitted facts, among other tests.

(1) He was appointed by the State of Kerala, from members of a statutorily constituted body.

(2) He is removable by the State Government.

(3) The resignation tendered by him has to be accepted and a successor appointed and said appointment should be duly notified in the Gazette,

which was not done.

(4) The first Respondent has been admittedly granted honorarium, allowances and enjoying the facility of a car at State expenses and drawing other pecuniary advantages.

(5) The office held by him is a public office.

(6) There is a degree of control by and dependence on government and governmental functions are performed.

Besides, paying the remuneration the functions performed by the first Respondent, the holder of an office of profit, are carried on by him from the Government with an effective Governmental control over his duties and functions. Undoubtedly from the office that he holds the first Respondent is deriving pecuniary gains and the office he holds is that of a permanent nature."

11. At Paragraph-7 of the election petition, it is pleaded as follows:

"7. The first Respondent has been granted the facility of a car driver whose salary and other allowances are paid also from the funds of the Government of Kerala. This also goes to point out that the office that he holds is that of an 'office of profit'. ..."

12. At Paragraph-10 of the election petition, it is averred as follows:

"10. Since, admittedly on the date of the election, the first Respondent was holding an office of profit as Chairperson of the Kerala State Wakf Board, he was disqualified to contest the elections. ..."

13. Ground-A of the election petition, to the extent relevant, reads as follows:

"A. Admittedly on the date of the election, the returned candidate, the first Respondent was disqualified to contest the elections under Section 100 (1) (a) in that he was holding an office of profit as contemplated under Article 191 of the Constitution of India, the Chairperson of the Wakf Board. Admittedly the first Respondent was appointed by the State of Kerala. Concededly he was entitled to and was drawing financial perquisites and allowances and enjoying pecuniary benefit from the State as Chairperson of the State Wakf Board. He therefore, was holding an office of profit which is a disqualification as contemplated under Article 191 of the Constitution of India and even now he is continuing as such in the position. Thus, the first respondent was wholly disqualified to contest the elections to the Kerala State Legislative Assembly. ..."

THE REPRESENTATION OF THE PEOPLE ACT, 1951

14. Section 83 of The Representation of the People Act, 1951 (hereinafter referred to as 'the RP Act'), reads as follows:

" **83. Contents of petition.**—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908(5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.]"

(Emphasis supplied)

The requirement under Section 83(1)(a) of the RP Act in contradistinction to Section 83(1) (b) of the RP Act is that the election petition need contain only a concise statement of the material facts and not material particulars. 'Concise' according to **Oxford Dictionary** means, 'brief and comprehensive'. **Concise Oxford Dictionary** has given the meaning to the expression 'Concise' as 'giving a lot of information clearly and in few words'. As per **Webster Comprehensive Dictionary, International Edition**, expression has been defined as 'expressing much in brief form'. Having furnished the facts in a compendious manner, can it be said that there is no concise statement of material facts?

15. Holding an office of profit under the Government of India or Government of any State is the disqualification. Whether that ground is discernible if the election petition is read as a whole, is the simple exercise to be undertaken by the High Court, when called upon to do so under Order VII Rule 11(a) of CPC. At Paragraph-3 of the election petition, it is contended that the respondent was holding an office of profit, viz., the Chairperson of the Kerala State Wakf Board. Again, in the same paragraph, it is stated that the Chairperson of the State Wakf Board receives such remuneration as are provided

for and prescribed by the Government of Kerala. After quoting Article 191 of the Constitution, it is pleaded that any person who holds an office of profit under the State Government, is debarred from contesting the elections to the Legislative Assembly. It is again pleaded that the State of Kerala having not made any legislation on removal of disqualification of the Chairperson of the Wakf Board, the Chairperson of the Kerala State Wakf Board is disqualified under Article 191 of the Constitution. At Paragraph-6, enumerating the particulars, it is pleaded that he was holding an office of profit in having been granted honorarium, allowances and enjoying the facility of a car at State expenses and drawing other pecuniary advantages. Again, under Paragraph-7, it is stated that the first respondent was provided with chauffeur whose salary and allowances are paid also from the funds of the Government of Kerala. At Paragraph-10, it is clearly stated that "since admittedly on the date of the election, the first Respondent was holding an office of profit as Chairperson of the Kerala State Wakf Board, he was disqualified to contest the election". In Ground-A in the election petition, it is reiterated that the first respondent suffered from the disqualification under Article 191 of the Constitution of India since he was holding an office of profit as Chairperson of the Wakf Board and that he was entitled and drawing financial perquisites and allowances and pecuniary benefits from the State of Kerala as Chairperson of the Kerala State Wakf Board and, hence, he was holding an office of profit which was a disqualification under Article 191 of the Constitution of India. Thus, he was disqualified to contest the election to the Kerala State Legislative Assembly. These averments, to us, clearly disclose a cause of action, viz., the respondent was holding the position as Chairperson of the Kerala State Wakf Board and deriving financial benefits from the Kerala Government is disqualified under Article 191(1)(a) of the Constitution of India, as holding of an office of profit under the State Government of Kerala. That is the triable issue in the election petition.

16. The question whether a schedule or annexures to the election petition is an integral part of the election petition was first discussed by this Court in *Sahodrabai Rai v. Ram Singh Aharwar*[1]. It was held that a schedule or an annexure which is merely an evidence in the case and included only for the sake of adding strength to the petitioner, does not form an integral part of the election petition. It was a case where the annexures were not verified by the election petitioner as required under Section 83(2) of the RP Act.

17. The question raised in *Sahodrabai Rai* case (supra) was:

> "Whether the election petition is liable to be dismissed for contravention of Section 81(3)[2] of The Representation of the People Act, 1951 as copy of Annexure-A to the petition was not given along with the petition for being served on the respondents."

18. The issue was again considered by this Court in *M. Kamalam v. Dr. V.A. Syed Mohammed*[3]. Paragraph-5 of the said judgment reads as follows:

> "**5.** Now, the first question which arises is as to what constitutes an election petition for the purpose of Section 81 sub-section (3). Is it confined only to election petition proper or does it also include a schedule or annexure contemplated in sub-section (2) of Section 83 or a supporting affidavit referred to in the proviso to Section 83 sub-section (1)? To answer this question, we must turn to

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1. AIR 1968 SC 1079.

2. 81. Presentation of Petitioner.—XXX (3) Every election petition shall be accompained by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioners under his own signature to be a true of the petition.

3. (1978) 2 SCC 659.

Section 83 which deals with contents of an election A
petition. Sub-section (1) of that section sets out what an
election petition shall contain and provides that it 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. The proviso requires that where B
the petitioner alleges any corrupt practice, the election
petition shall also be accompanied by an affidavit in the
prescribed form in support of the allegation of such corrupt
practice and the particulars thereof. The context in which
the proviso occurs clearly suggests that the affidavit is C
intended to be regarded as part of the election petition.
Otherwise, it need not have been introduced in a section
dealing with contents of an election petition nor figured as
a proviso to a sub-section which lays down what shall be
the contents of an election petition. Sub-section (2) also
by analogy supports this inference. It provides that any D
schedule or annexure to an election petition shall be signed
by the petitioner and verified in the same manner as an
election petition. It is now established by the decision of
this Court in *Sahodrabai Rai* v. *Ram Singh Aharwar* that
sub-section (2) applies only to a schedule or annexure E
which is an integral part of the election petition and not to
a schedule or annexure which is merely evidence in the
case but which is annexed to the election petition merely
for the sake of adding strength to it. The scope and ambit
of sub-section (2) was explained in the following words by F
Hidayatullah, J., speaking on behalf of the Court in
Sahodrabai case at pp. 19-20:

> "We are quite clear that sub-section (2) of Section
> 83 has reference not to a document which is G
> produced as evidence of the averments of the
> election petition but to averments of the election
> petition which are put, not in the election petition but
> in the accompanying schedules or annexures. We
> can give quite a number of examples from which it H

> would be apparent that many of the averments of the election petition are capable of being put as schedules or annexures. For example, the details of the corrupt practice there in the former days used to be set out separately in the schedules and which may, in some cases, be so done even after the amendment of the present law. Similarly, details of the averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law then requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondent if the requirement regarding service of the election petition is to be wholly complied with. But what we have said here does not apply to documents which are merely evidence in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petitions. They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof."

It would, therefore, be seen that if a schedule or annexure is an integral part of the election petition, it must be signed by the petitioner and verified, since it forms part of the election petition. The subject-matter of sub-section (2) is thus a schedule or annexure forming part of the election petition and hence it is placed in Section 83 which deals with contents of an election petition. ..."

(Emphasis supplied)

19. All the annexures attached to the election petition in the present case have been signed and verified by the election petitioner as per the requirement under Section 83(2) of the RP

Act, as can be seen from Annexure-P1(Colly). Therefore, Annexure-P1(d) to the election petition (Annexure-D herein) forms an integral part of the election petition. There is a clear and unambiguous plea that the respondent was holding the post of Kerala State Wakf Board, holding an office of profit under the Government of Kerala and, hence, he was disqualified.

20. Annexure-D is referred at Paragraph-5 of the election petition, which reads as follows:

> "5. Even so, the first Respondent submitted his nomination before the Returning Officer in the said Constituency. Objection was taken that the first Respondent was disqualified to be chosen to fill the seat under the Constitution of India. But the same was rejected by the Returning Officer without any application of Mind. A copy of the order is produced herewith and marked as Annexure C, the date shown therein has been corrected as 29.3.2011, while its English translation is produced herewith and marked as Annexure C1 and the objection submitted by the petitioner with the forwarding letter is produced and marked as Annexure D."

21. Recently, a three-Judge Bench of this Court in *G.M. Siddeshwar v. Prasanna Kumar*[4] (Judgment is authored by one of us, Lokur, J.), had an occasion to refer to this issue. Referring to *Sahodrabai Rai* case (supra), it was held at Paragraphs-54 to 56 as follows:

> "**54.** In *Sahodrabai Rai* v. *Ram Singh Aharwar*[5] the question raised was as follows: (AIR p. 1080, para 3)
>
> > "*3.* ... 'Whether the election petition is liable to be dismissed for contravention of Section 81(3) of the Representation of the People Act, 1951 as copy of Annexure A to the petition was not given along with

4. (2013) 4 SCC 776.

5. AIR 1996 SC 1079.

A the petition for being served on the respondents.'"

55. It was noted that the contents of the pamphlet, in translation, were incorporated in the election petition. It was also noted that the trial of an election petition has to
B follow, as far as may be, the provisions of CPC. Therefore, this Court approached the problem by looking at CPC to ascertain what would have been the case if what was under consideration was a suit and not the trial of an election petition.

C **56.** It was held that where the averments are too compendious for being included in an election petition, they may be set out in the schedules or annexures to the election petition. In such an event, these schedules or annexures would be an integral part of the election petition
D and must, therefore, be served on the respondents. This is quite distinct from documents which may be annexed to the election petition by way of evidence and so do not form an integral part of the averments of the election petition and may not, therefore, be served on the
E respondents."

22. Further, at Paragraph-57, there is also reference to *M. Kamalam* case (supra) and it is held as follows:

*"**57.** In M. Kamalam v. V.A. Syed Mohammed this Court*
F *followed Sahodrabai Rai and held that a schedule or an annexure which is an integral part of an election petition must comply with the provisions of Section 83(2) of the Act. Similarly, the affidavit referred to in the proviso to Section 83(1) of the Act where the election petition*
G *alleges corrupt practices by the returned candidate also forms a part of the election petition. If the affidavit, at the end of the election petition is attested as a true copy, then there is sufficient compliance with the requirement of Section 81(3) of the Act and would tantamount to attesting*
H *the election petition itself."*

23. The pleadings, if taken as a whole, would clearly show A
that they constitute the material facts so as to pose a triable
issue as to whether the first respondent is disqualified to contest
election to the Kerala State Legislative Assembly while holding
an office of profit under the State government as Chairperson
of the Kerala State Wakf Board. B

24. The question is not whether the Chairperson of the
Kerala State Wakf Board is an office of profit or not. That is
the issue to be tried. Question is whether the petitioner has
raised such a question in the election petition. The
disqualification under the Constitution of India being, holding C
an office of profit under the State Government. Petitioner has
furnished all the material particulars in that regard. Therefore,
the petition discloses a cause of action.

25. After all, the inquiry under Order VII Rule 11(a) of CPC D
is only as to whether the facts as pleaded disclose a cause of
action and not complete cause of action. The limited inquiry is
only to see whether the petition should be thrown out at the
threshold. In an election petition, the requirement under Section
83 of the RP Act is to provide a precise and concise statement E
of material facts. The expression 'material facts' plainly means
facts pertaining to the subject matter and which are relied on
by the election petitioner. If the party does not prove those facts,
he fails at the trial (see *Philipps v. Philipps and others*[6]; *Mohan
Rawale v. Damodar Tatyaba alias Dadasaheb and others*[7]). F

26. This Court in *Azhar Hussain v. Rajiv Gandhi*[8], at
Paragraph-11, has held that:

> "**11.** ... Whether in an election petition a particular fact is
> material or not and as such required to be pleaded is G

6. (1878) 4 QBD 127, 133.
7. (1994) 2 SCC 392, 399.
8. 1986 Supp SCC 315. H

dependent on the nature of the charge levelled and the circumstances of the case. ..."

The charge levelled is that the respondent holds an office of profit as the Chairperson of the Kerala State Wakf Board and in that capacity he enjoys the profits attached to that office from the Government of Kerala.

27. In *V.S. Achuthanandan v. P.J. Francis and another*[9], a three-Judge Bench of this Court has taken the view that only because full particulars are not given, an election petitioner is not to be thrown out at the threshold. To quote Paragraph-15:

> "**15.** ... An election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon, and in the light of the special circumstances of the case. .."

28. Again at Paragraph-16 of *V.S. Achuthanandan* case (supra), it was held that:

> "**16. ...** So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood. ..."

xxx xxx xxx

9. (1999) 3 SCC 737.

10. (2001) 8 SCC 233.

> "... the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. ..."

(Emphasis supplied)

29. In *Hari Shanker Jain v. Sonia Gandhi*[10], a three-Judge Bench of this Court held that the expression 'cause of action' would mean facts to be proved, if traversed, in order to support his right to the judgment of the court and that the function of the party is to present a full picture of the cause of action with such further information so as to make opposite party understand the case he will have to meet. To quote Paragraph-23:

> "**23.** ... The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna* v. *George Fernandez*, *Jitendra Bahadur Singh* v. *Krishna Behari.*) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan* v. *P.J. Francis* this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition."

A 30. In *Syed Dastagir v. T.R. Gopalakrishna Setty*[11], while referring to the pleadings, it has been held at Paragraph-9 that:

> "**9.** ... In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and B science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a C plea. ..."
>
> " **...** So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."

D

31. In *Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express*[12], this Court at Paragraph-12 held that:

> "**12.** ... The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it E does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking F those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard G to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the

11. (1999) 6 SCC 337.

H 12. (2006) 3 SCC 100.

court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint." A

32. In a recent decision in *Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others*[13], this Court had held at Paragraphs-17 and 29 that: B

> "**17.** ... The courts need to be cautious in dealing with requests for dismissal of the petitions at the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed." C
>
> (Emphasis supplied)

xxx xxx xxx D

> "**29.** ... An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in Sections 100 and 123 of the Act cannot obviously be recognised and respected as the decision of the majority of the electorate. The courts are, therefore, E duty-bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hypertechnical in their approach and without being oblivious of the ground realities."

F

33. Finally, as cautioned by this Court in *Raj Narain v. Indira Nehru Gandhi and another*[14], it was held that:

> "**19.** Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are G not mere formulae to be observed as rituals. Beneath the

13. (2012) 7 SCC 788.

14. (1972) 3 SCC 850. H

A words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it. ..."

(Emphasis supplied)

B 34. Guided by the settled principles of law referred to above, we are of the view that the election petition having disclosed a cause of action, it should not have been thrown out at the threshold. The impugned order and judgment are hence set aside. The appeals are allowed. The election petition is
C remitted to the High Court for trial in accordance with law.

35. There is no order as to costs.

Rajendra Prasad Appeals allowed.