

AJAY ARJUN SINGH

v.

SHARADENDU TIWARI & OTHERS

(Civil Appeal No. 8254 of 2016)

AUGUST 23, 2016

**[J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.]**

*Code of Civil Procedure, 1908 – Or. VI, r. 16 – Striking out pleadings – Application u/Or. VI, r. 16 – For striking out certain pleadings in election petition – Dismissed – On appeal, held: The purpose of the Rule is to ensure that parties to a legal proceeding are entitled to ex debito justitiae to have the case against them presented in an intelligible form – The court should exercise the power under the Rule with circumspection and on the basis of rational principle – The averments in the election petition are presumed to be factually correct until proved otherwise – In the present cases, the applicant did not disclose on which grounds contemplated u/Or. VI, r. 16, various pleadings were required to be struck out – He rather gave explanation with respect to each allegation – The moment the court is asked to examine the defence of returned candidate in an election petition, the petition can neither be dismissed for want of cause of action nor any part of the pleading can be struck out u/Or. VI, r. 16 – None of the pleadings except the pleading contained in Paragraph 14M of the election petition can be said to be irrelevant in the context of the prayer in the election petition – Therefore, only Paragraph 14M of the election petition is struck out – Representation of the People Act, 1951:*

*Representation of the People Act, 1951 – s.77, Explanations 1 and 2 – Expenditures in connection with election – Exempted expenditure – Held: While computing the expenditure in election, the expenditure incurred by Star Campaigner is exempted, but such exemption is limited only on account of travel for propagating the programme of the political party and that too when the travel expenditure is incurred by star campaigner himself – Other expenditures are not exempted.*

*Practice and Procedure – Preliminary objections – In Election petition – When to be raised – Held: Preliminary objections in election*

A *petition, if are more than one, are to be taken at the earliest point of*  
*time and in one go – Such course would avoid delay in adjudication*  
*of the election petition which are mandated to be decided within a*  
*period of six months – Later of such successive petitions must be*  
*dismissed by High Courts in limine on that count alone – Election*  
 B *Laws – Code of Civil Procedure, 1908 – Or. VI, r. 16 and Or. VII,*  
*r. 11.*

**Partly allowing the appeal, the Court**

**HELD: 1. Order VI Rule 16 of CPC authorises the court to**  
**order that any matter in any pleading before it be struck out on**  
 C **the grounds specified under clauses (a), (b) and (c) thereof. Each**  
**one of them is a distinct ground. 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**  
 D **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, if a pleading is to be struck**  
 E **out on the ground that it is scandalous, the court must first record**  
**its satisfaction that the pleading is scandalous in the legal sense**  
**and then enquire whether such scandalous allegation is called**  
**for or necessary, having regard to the nature of the relief sought**  
**in the proceeding. The authority of the court under clause (c) is**  
 F **much wider. Obviously, such authority must be exercised with**  
**circumspection and on the basis of some rational principles. The**  
**very purpose of the Rule is to ensure that parties to a legal**  
**proceeding are entitled ex debito justitiae to have the case against**  
**them presented in an intelligible form so that they may not be**  
**embarrassed in meeting the case. [Paras 5 and 6][157-D, F-G;158-**  
 A-C]

**2.1 The allegations regarding the commission of corrupt**  
**practices falling under Section 123(1) of Representation of the**  
 G **People Act, 1951 are to be found in para 19 of the election petition.**  
**The allegations are not disputed by the appellant. He chose to**  
**explain his conduct. Whether the explanation is factually correct**  
**and, if so, what are the legal implications of the said explanation**  
**are matters to be decided in trial of the election petition. If the**

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explanation is either found to be untrue or legally unacceptable, the allegation made in para 19 of the election petition is sufficient to hold that the appellant is guilty of the corrupt practice under s. 123(1). Therefore, there is no error in the order of the High Court in refusing to strike off the pleadings in para 19 of the election petition. [Paras 12 and 13] [161-A, D-E; 162-A]

3.1 Various sub-paragraphs of paragraph 14 and paragraphs 15, 16 and 17 of the election petition indicate that the excess expenditure have been incurred by the appellant and the same falls under three heads. The appellant furnished inaccurate information to the District Election Officer: (i) regarding the quantity and quality of the material used in the campaign by him; (ii) regarding the cost of the various items so used by giving false information based on deliberate under-valuation of the material actually used, and (iii) Total non-disclosure of certain expenditure incurred by him for (a) organizing a meeting of one of the top functionaries of the political party at the election, and (b) the use of a helicopter by him during the relevant period. [Para 14][162-B-D]

3.2 The allegations and counter allegations regarding the quantity and quality of the material used by the appellant during the course of his election campaign and value of such material are pure questions of fact which are required to be established on evidence. The law in this regard is that until proved otherwise, the allegations in the election petition must be presumed to be true. The burden of establishing the truth of all those allegations is essentially on the respondent/election petitioner. The values fixed by the Election Commission or its functionaries are not conclusive. There is no statutory basis for such an exercise. The valuation made by the Election Commission obviously would be based on the samples supplied by the candidates. There can never be any presumption that the candidates used the same quality of material in the actual process of campaigning. The High Court rightly rejected the application of the appellant on this count. [Paras 15 and 18][162-E-F; 164-G-H; 165-A]

3.3 Section 77 of the Representation of the People Act, 1951 obligates every candidate in an election to keep a separate current account of all expenditures in connection with the election

A between the dates on which such a candidate has been nominated  
 and the date of the declaration of result of that election. However,  
 clause (a) of explanation 1 to Section 77 of the Act declares “the  
 expenditure incurred by leaders of a political party on account of  
 travel by air or by any other means of transport for propagating  
 B programme of the political party” shall not form part of the  
 expenditure of the candidate. The expression “leaders of political  
 party” occurring in explanation 1 is itself explained in explanation  
 2 to the said Section. It can be seen from explanation 2, to qualify  
 to be called ‘a leader of the political party’ for the purpose of  
 such an election under Section 77, the name of such a person is  
 C communicated to the Election Commission and the Chief Electoral  
 Officer of the State by the concerned political party. Persons  
 whose names have been so communicated to the Election  
 Commission popularly came to be called ‘star campaigners’ in  
 connection with an election. [Paras 25, 26, 27 and 28][168-C-D;  
 D 169-B-C]

3.4 However, the entire expenditure incurred (on  
 whatsoever count) by such star campaigners or on behalf of such  
 star campaigners is not exempted under Section 77 for the  
 purpose of determining the total expenditure incurred by any  
 candidate in an election. The language of explanation 1 to Section  
 E 77 makes it clear that only the expenditure incurred by the star  
 campaigner that too on account of travel for propagating the  
 programme of the political party is excluded for the purpose of  
 computing the expenditure incurred by the candidate. In other  
 words, the expenditure incurred in connection with arrangements  
 F like erection of pandals etc. for a meeting of a star campaigner  
 does not form part of the exempted expenditure under explanation  
 1. *Secondly*, under explanation 2, the star campaigners’ travel  
 expenditure must have been incurred by the star campaigner  
 himself. It is obvious from the opening clause of explanation 1  
 “the expenditure incurred by leaders of a political party”. If such  
 G expenditure is incurred by any person other than the star  
 campaigner, different considerations would arise. [Para 29][169-  
 D-F]

3.5 The specific pleading in the election petition at  
 paragraph 14M is that the appellant used the helicopter on many

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occasions during the relevant period outside his constituency. The admitted fact is that the appellant was one of the star campaigners for the said election for the State of Madhya Pradesh. Therefore, he was required to campaign for his political party, not only in his constituency but also in other constituencies of the State. In the absence of any allegation that the appellant used the helicopter for traveling within his constituency for the purpose of campaigning, the expenditure incurred on that account, cannot be included in the election expenditure of the appellant. Therefore, paragraph 14M of the election petition is liable to be struck off and is, accordingly, struck off. [Para 31][170-D-E; 171-A]

3.6 The application i.e. filed by the appellant u/Or. VI Rule 16 CPC does not disclose on which one of the grounds contemplated under Order VI Rule 16, the various paragraphs of the election petition are required to be struck out. On the other hand, the appellant gave an elaborate explanation with respect to each of the allegations contained in the various paragraphs of the election petition which are prayed to be struck out. The moment court is asked to examine the defence of the returned candidate in an election petition, the election petition can neither be dismissed for want of cause of action nor any part of the pleading can be struck out under Order VI Rule 16. In the absence of the availability of any one of the grounds mentioned in Order VI Rule 16, CPC striking out is impermissible. [Para 30][169-G-H; 170-A]

3.7 The averments contained in the election petition at this stage must be presumed to be factually correct. The only possible scrutiny of such statement is whether those allegations are relevant in the context of the relief sought in the election petition. None of the allegations contained in the various sub paragraphs of paragraph 14, except paragraph 14M can be said to be irrelevant in the context of the prayer in the election petition. [Para 30][170-B-C]

4. The procedure adopted by the appellant in initially filing a petition under Order VII Rule 11 praying that the election petition be dismissed and filing the instant application after a long gap is to be deprecated. Preliminary objections, if any, (in cases

A where there is more than one) in an election petition are to be  
 taken at the earliest point of time and in one go. The practice  
 such as the one adopted by the appellant only tends to delay the  
 adjudication of the election petition which are mandated by the  
 Parliament to be decided within a period of six months. The  
 later of such successive petitions must be dismissed by High  
 B Courts *in limine* on that count alone. [Para 32][171-A-C]

*Bhikaji Keshao Joshi and Another Vs. Brijlal Nandlal  
 Biyani and Ors. AIR 1965 SC 610 : 1964 SCR 642;  
 Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and  
 Ors. (2012) 7 SCC 788 : 2012 (6) SCR 851; Liverpool  
 C & London S.P. and I Assn. Ltd. Vs. M.V. Sea Success I  
 (2004) 9 SCC 512 : 2003 (5) Suppl. SCR 851 – relied  
 on.*

*Golding Vs. Wharton Salt Works (1876) 1 Q B D 374 –  
 referred to.*

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Case Law Reference

1964 SCR 642	relied on	Para 7
2012 (6) SCR 851	relied on	Para 7
2003 (5) Suppl. SCR 851	relied on	Para 8

E CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8254  
 of 2016.

From the Judgment and Order dated 17.11.2014 of the High Court  
 of Madhya Pradesh Principal Seat at Jabalpur in I. A. No. 12911 of  
 2014 in Election Petition No. 1 of 2014.

F Salman Khurshid, Sr. Adv., Vikramaditya Singh, Navin Prakash,  
 Ms. Meetu Singh, Ms. Sakshi Kotiyal, Alisha Panda, Advs. for the  
 Appellant.

Naman Nagrath, Sr. Adv., Prakash Upadhyay, Vikas Upadhyay,  
 Niha Gaur, Kaustubh Anshuraj, Advs. for the Respondents.

G Mahendra Bhैया Dixit, Respondent-in-person.

The Judgment of the Court was delivered by

**CHELAMESWAR, J.** 1. Leave granted.

2. Aggrieved by the Order dated 17.11.2014 of the order of the  
 High Court of Madhya Pradesh in I.A. No. 12911 of 2014 in Election  
 H Petition No. 1 of 2014, the unsuccessful applicant therein preferred the

instant appeal.

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3. The appellant herein is the returned candidate from 76 - Churhat Assembly constituency of the State of Madhya Pradesh in the General Elections held in the year 2013. He was a candidate sponsored by the Indian National Congress Party and won by margin of 19,356 votes. Challenging the legality of the election of the appellant, the first respondent herein, one of the other candidates at the said election, filed Election Petition No.1 of 2014.

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4. The appellant herein filed I.A. No.12911 of 2014 invoking Order VI Rule 16 of the Code of Civil Procedure, 1908 (CPC) praying various paragraphs of the election petition be struck off<sup>1</sup> on the ground that the allegations contained in those paragraphs are frivolous and vexatious etc. By the order impugned in this appeal, the said I.A. was dismissed. Hence the instant appeal.

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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.

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**"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

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(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 but 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

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<sup>1</sup> Para 25. That, the answering respondent, therefore, respectfully submits that paragraphs 14(A), 14(D) from pages 24 to 29 beginning from "in the Shadow Expense Register . . . Annexure P/19", 14(E), 14(F), 14(G) (i), 14(H) (i), 14(I), 14(L), 14(M), 14(N), 14(O), paragraphs 15 to 17 and 19 be struck off from the pleadings as the same are irrelevant, unnecessary, frivolous and vexatious.

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A category. Similarly, if a pleading is to be struck out on the ground that  
 it is scandalous, the court must first record its satisfaction that the  
 pleading is scandalous in the legal sense and then enquire whether such  
 scandalous allegation is called for or necessary having regard to the  
 nature of the relief sought in the proceeding. The authority of the court  
 under clause (c) is much wider. Obviously, such authority must be  
 B exercised with circumspection and on the basis of some rational principles.

6. The very purpose of the Rule is to ensure that parties to a legal  
 proceeding are entitled *ex debito justitia* to have the case against them  
 presented in an intelligible form so that they may not be embarrassed in  
 meeting the case<sup>2</sup>

C 7. In the context of the application of Order VI Rule 16, CPC to  
 the election petition, this Court in *Bhikaji Keshao Joshi and Another  
 Vs. Brijlal Nandlal Biyani and Others*, AIR 1965 SC 610 held that a  
 court examining an election petition may order striking out of charges  
 which are vague<sup>3</sup>

D 8. In *Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and  
 Others* (2012) 7 SCC 788, this Court considered the scope of an  
 application under Order VII Rule 11 CPC. Such an application was  
 filed by the returned candidate praying that the election petition be  
 dismissed for non-disclosure of any cause of action. This Court opined  
 E that for the purpose of determining such an application, the averments in  
 the election petition must be taken to be factually correct and thereafter  
 examine whether such averments furnish the cause of action for granting  
 the relief to the petitioner. Such a conclusion was recorded on the basis  
 of the law laid down in an earlier judgment of this Court<sup>4</sup>. We are of the

F <sup>2</sup> *Golding Vs. Wharton Salt Works*, (1876) 1 Q B D 374

<sup>3</sup> it should have ordered a striking out of such of the **charges which remained  
 vague** and called upon the petitioners to substantiate the allegations in respect of  
 those which were reasonably specific.

<sup>4</sup> *Liverpool & London S.P. and I Assn. Ltd. Vs. M.V. Sea Success I*, (2004) 9 SCC  
 512,

G Para 8.- To the same effect is the decision of this Court in *Liverpool & London S.P.  
 and I Assn. Ltd. Vs. M.V. Sea Success I* where this Court held that the disclosure of  
 a cause of action in the plaint is a question of fact and the answer to that question  
 must be found only from the reading of the plaint itself. The court trying a suit or  
 an election petition, as the position is in the present case, shall while examining  
 whether the plaint or the petition discloses a cause of action, to assume that the  
 averments made in the plaint or the petition are factually correct. It is only if  
 despite the averments being taken as factually correct, the court finds no cause of  
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opinion the same principles of law are applicable even while adjudicating the application under Order VI Rule 16. A

9. In the light of the above principles of law, we proceed to examine the case on hand. The election of the appellant is challenged on the ground of commission of various corrupt practices falling under Section 123(1), 123(3) and 123(6) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"): B

**"123. Corrupt practices.**—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) "Bribery", that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing— C

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to— D

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward— E

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any F

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action emerging from the averments that it may be justified in rejecting the plaint....

Para 10. Applying the above principles to the case at hand, we do not see any error in the order passed by the High Court refusing to dismiss the petition in limine on the ground that the same discloses no cause of action. The averments made in the election petition if taken to be factually correct, as they ought to for purposes of determining whether a case for exercise of powers under Order 7 Rule 11 has been made out, do in our opinion, disclose a cause of action. The High Court did not, therefore, commit any error much less an error resulting in miscarriage of justice, to warrant interference by this Court in exercise of its extraordinary powers under Article 136 of the Constitution. G

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A candidate to withdraw or not to withdraw his candidature.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

(6) The incurring or authorizing of expenditure in contravention of section 77.”

i.e. bribery, soliciting votes on the ground of religion and incurring of expenditure in contravention of Section 77 of the Act.

10. The allegations regarding the commission of corrupt practices falling under Section 123(1) are to be found in para 19 of the election petition. The allegations regarding commission of corrupt practices falling under Section 123(3) are contained in paragraph 18 of the election petition, which is not one of the paragraphs which was prayed to be struck off<sup>5</sup>.

11. All the remaining paragraphs which were prayed to be struck off, pertain to the allegation of corrupt practice falling under Section 123(6). The allegations contained in each one of these paragraphs pertain to the expenditure incurred under different heads by the appellant in connection with the election campaign<sup>6</sup>. According to the Respondent the total amount of expenditure so incurred by the appellant is in excess of the limit prescribed under Section 77 of the Act.

<sup>5</sup> See Footnote 1.

<sup>6</sup> That is the admitted case (rightly) even of the appellant at para 3 of the I.A. 12911 of 2014. it is stated,

“The entire election petition is based on :-

(a) Under valuation of the items used in the election campaign  
(b) Non disclosure of expenses in respect of certain items alleged to have been used in such election”

12. The allegations contained in para 19<sup>7</sup> of the election petition are not disputed by the appellant. On the other hand, he chose to explain his conduct in para 24 of the I.A. A

“24. The answering respondent hereby respectfully submits that an amount of Rs. 20 lacs is earmarked for expenditure by every member of the M.P. Legislative Assembly every year in his constituency. A Minister and Leader of Opposition are provided Rs. 20 lacs per year for voluntary grant. The manner in which this grant is to be distributed is the sole discretion of such Minister/Leader of Opposition. The Minister/Leader of Opposition gives a list to the Secretary of the Vidhan Sabha containing the names of the persons and the amount to whom the grant is to be made. Accordingly, the drafts are issued to the persons concerned as per procedure.” B C

13. Whether the explanation is factually correct and, if so, what are the legal implications of the said explanation are matters to be decided in trial of the election petition. If the explanation is either found to be untrue or legally unacceptable, the allegation made in para 19 of the election petition is sufficient to hold that the Appellant is guilty of the corrupt practice under S. 123(1). Therefore, we do not find any error in the order of the High Court in refusing to strike off the pleadings in para D E

<sup>7</sup> 19. That during model code of conduct, to bribe voters, INC Candidate/respondent no.1 through his representative Shri Bharat Singh, (Vidhayak Pratinidhi) has distributed large quantity of demand drafts/cheques issued by different account maintained at T.T. Nagar Bhopal. The petitioner came across with one of the said cheques/demand draft issued in favour of one Charka Kol who is voter from polling station Dhanaha. Even during election the drafts were distributed by Bharat Singh as *Vidhayak pratinidhi*. since INC Candidate Respondent No.1 is Member of Legislative Assembly continuously and known as Vidhayak. The Election agent of petitioner has made a complaint to observer in this regard. The copy of complaint made to observer by election Agent is being filed herewith as Annexure P-53. However even then the same corrupt practice continued by representative of INC Candidate/Respondent no.1 representative Shri Bharat Singh and anti dated cheques/Demand Drafts were given to voters to influence their votes. Another such draft drawn in favour of Rajkumari Saket has been brought to the notice of petitioner who was not able to encash it as she don't have any account. When the petitioner enquired from her she disclosed that the same has been given to her by Shri Bharat Singh on 12/11/2013 with a request that “Rahul Bhaiya” has arranged the fund for her employment and have requested for vote of her and her family member. The copy of demand draft is being filed herewith as Annexure P-54. F G H

A 19 of the election petition.

14. We now examine the validity of the impugned order insofar as it pertains to the incurring of expenditure (by the appellant herein) beyond the permissible limits prescribed by law. An analysis of the allegations contained in various sub-paragraphs of paragraph 14 and in paragraphs B 15, 16 and 17 of the election petition indicates that the excess expenditure said to have been incurred by the appellant falls under three heads.

Furnishing of inaccurate information<sup>8</sup> to the District Election Officer:

C (i) regarding the quantity and quality of the material used in the campaign by the appellant herein,

(ii) regarding the cost of the various items so used by the returned candidate by giving false information based on deliberate under-valuation of the material actually used by the appellant,

D (iii) Total non disclosure of certain expenditure incurred by the appellant for (a) organizing a meeting of one of the top functionaries of the political party (Shri Rahul Gandhi) which sponsored the appellant at the election, and (b) the use of a helicopter by the appellant during the relevant period.

E 15. The allegations and counter allegations regarding the quantity and quality of the material used by the appellant during the course of his election campaign and value of such material are pure questions of fact which are required to be established on evidence. The law in this regard as already noticed is that until proved otherwise the allegations in the election petition must be presumed to be true. The burden of F establishing the truth of all those allegations is essentially on the respondent/election petitioner. We have meticulously gone through the various allegations in this regard contained in various sub-paragraphs of paragraph 14 and we are of the opinion that there is nothing which warrants striking out of all those pleadings invoking Order VI Rule 16

G <sup>8</sup> An obligation flowing from Section 78 of the RP Act, 1951

“Section 78. Lodging of account with the district election officer.—Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the district election officer an account of his election expenses which shall be a true copy of the account kept by him or H by his election agent under section 77.”

CPC. Each of the paragraphs contains allegations that the appellant incurred some expenditure (specified) under some head or the other. The sum total of such amount would exceed the permissible limits of expenditure under Section 77 of the Act. A

16. The only question which deserves our attention in this regard is that it is the case of the appellant that under the procedure that is being followed by the Election Commission a rate list has been finalized with respect to each one of the items to be utilized in the campaign by any one of the candidates at an election. The appellant's declaration of his expenditure with regard to the various items used during the process of campaign is consistent with such determination made by the Election Commission. Therefore there cannot be any further enquiry regarding the correctness of the declaration made by him about the expenditure incurred in connection with those materials. The appellant's pleading in this regard in I.A. is as follows:- B  
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"5. That, under Rule 90 of Conduct of Elections Rules, 1961 the maximum election expenses to be incurred by a candidate in respect of M.P. State Legislative Assembly election has been fixed at Rs. 16 lacs. In order to have a check over the limit of election expenses the Collector/District Election Officer prepared a rate list of various items which were sought to be used in the election campaign by appointing a Sub Committee of three responsible officers. The Committee pursuant thereto ascertained the rates of such material from open market in consultation with the representatives of major political parties and thereafter prepared a final rate list of various items used in the election. The answering respondent is filing copy of proceedings of the Collector/District Election Officer fixing the rates of different items used in the election as **Document No. 1**. The petitioner has filed a copy of rate list as Annexure-P-3. The publication of rate list preceded the proceedings held in that behalf by the District Election Officer, which the answering respondent has now filed as Document No. 1. The rate list so prepared by the Election Officer has not been disputed by any of the political party or their representatives. D  
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A 6. That, certain items which could not find place in the rate  
list so prepared by the Collector have since been included  
in the ‘shadow register’ of each candidate prepared by the  
Election Expense Observers. Such rate list and the shadow  
register are final and conclusive. The rate list and the  
B ‘shadow register’ are not open to challenge and the valuation  
in respect of such items cannot be reassessed and revalued  
by this Court in an election process.”

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C 9. That, the present election petition will not be maintainable  
in respect of expenses incurred by the answering respondent  
which have been accepted by the District Election Officer  
(for short, ‘DEO’) inasmuch as this Court will not sit over  
rate list or shadow register to give its own valuation of the  
election material, as the same would be beyond the scope  
of trial of election petition under the Representation of  
D People Act of 1951 (hereinafter referred to as the “1951  
Act”).

E 17. On the other hand, it is the case of the respondent that the  
determination made by the Election Commission is not conclusive of the  
prices of the material used by any candidate at the election. Apart from  
that, the actual quantity of the campaign material used by any candidate  
at an election and its cost is always a question of fact. After an election  
is concluded, it is always open to any election petitioner to demonstrate  
in an election petition that the campaign material used by the returned  
candidate is more expensive than what was determined by the Election  
F Commission, after all the value of the material depends both upon the  
quality and quantity of the material used. All these are questions of fact  
which are required to be examined and determined by the court in an  
election petition.

G 18. We accept the submission of the election petitioner. The values  
fixed by the Election Commission or its functionaries are not conclusive.  
There is no statutory basis for such an exercise. The valuation made by  
the Election Commission obviously would be based on the samples supplied  
by the candidates. There can never be any presumption that the  
candidates used the same quality of material in the actual process of  
campaigning. Apart from that the quantity and the quality of the material

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used in the election campaign and the real cost of the material actually used by any candidate are always questions of fact, which are required to be established in evidence. We are of the opinion that the High Court rightly rejected the application of the appellant on this count. A

19. The only major issue which requires an examination is regarding the third head mentioned (Para 14) above. It is once again required to be divided into two sub-headings, B

(a) The expenditure allegedly incurred in connection with the public meeting of Shri Rahul Gandhi at the District Headquarters, Sidhi on 20<sup>th</sup> November, 2013. The allegations in the regard are to be found in para 14(L) of the election petition. C

The substance of the allegation is that though the meeting was held at Sidhi which is beyond the territorial limits of Churhat Constituency (from which the parties herein contested), the appellant was not only present at such meeting but also shared the dais with Shri Rahul Gandhi (Vice-Chairman of the Indian National Congress). The appellant mobilized lot of voters from his constituency and hired vehicles for that purpose incurring expenditure. The appellant also incurred expenditure in connection with the erection of the pandals, security arrangement etc. According to the respondent, such expenditure would be Rs.13,88,073/- and the same is required to be added to the election expenditure of the appellant. D E

(b) That the appellant between 4.11.2013 to 19.11.2013<sup>9</sup> traveled on 8 occasions by chartered flights between Bhopal to Sidhi. According to the respondent, on this count alone the appellant incurred an expenditure of Rs.40 lakhs. The details of such flights and the allegations are to be found at para 14(M) of the election petition. F

20. The response of the appellant as disclosed by IA No.12911 of 2014 with regard to the abovementioned two allegations is found at paragraph nos.19 and 20. It can be seen therefrom that the appellant does not dispute that there was a public meeting in the grounds of Sanjay Gandhi College at Sidhi on 20.11.2013 attended by Shri Rahul Gandhi. According to the appellant, the venue of the meeting is within the G

<sup>9</sup> Periods relevant for the purpose of deciding the expenditure incurred under Section 77. H

- A territorial limits of 77 Sidhi Assembly Constituency but not within the territory of 76 – Churhat Assembly Constituency. The meeting was organized by one Shri Kamleshwar Dwivedi who was the candidate of the Indian National Congress Party contesting from the said constituency. The said Kamleshwar Dwivedi lodged the account under Section 78 of the Act disclosing the details of the expenditure incurred by him for conducting the aforesaid meeting which was duly accepted by the Returning Officer of 77 - Sidhi Assembly Constituency. It is the specific plea of the appellant that he was present in the said meeting because he was also one of the “star campaigners” for the Indian National Congress Party in the said election. According to the appellant, the appellant is under no legal obligation to account for the expenditure incurred for organizing the said meeting<sup>10</sup>.

D 21. It is significant to notice that there is no specific denial by the appellant of the allegation in the election petition that the appellant herein had hired a large number of vehicles<sup>11</sup> to facilitate voters from his constituency to attend the said public meeting. IA No.12911 of 2014 is absolutely silent regarding that allegation. The appellant does not even deny the allegation. We must not be understood to be holding that if the appellant had denied the allegation, such denial would suffice to strike out of the pleadings.

E 22. Coming to the second limb of that head regarding the cost incurred for the construction of pandals or barricades in connection with the abovementioned meeting of Shri Rahul Gandhi, the stand taken by the appellant in the abovementioned IA is that the said meeting was held

F <sup>10</sup> If expenses of such meeting have already been shown by the candidate in whose constituency the meeting was held, it was **not necessary or obligatory upon the answering respondent to account for** the expenses of such meeting which had not taken place in his Constituency. [See: IA No.12911 of 2014 , para 19 ]

G <sup>11</sup> The perusal of permission application which was obtained by INC for the said meeting, would make it clear that presence of first respondent was the individual act of the first respondent, his presence was as a candidate of 76 Churhat of INC, a large numbers of vehicle were illegally hired by INC Candidate/respondent no.1 in order to facilitate voters from his constituency 76-Churhat to attend the said public meeting. There are around 44 buses and number of taxi permit vehicle along with private vehicle were used for transportation of voters to attend said public meeting. The posters used there have photo/picture of respondent no.1, therefore, the entire expenditure of the said meeting would be included in the expenditure of first respondent, as no other candidate of any other adjoining constituencies shared the dais with Mr. Rahul Gandhi. (See: Para 14-L of the Election Petition)

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beyond the territorial limit of the assembly constituency from which the appellant contested. The Indian National Congress Party's candidate contesting from Sidhi constituency had declared the expenditure incurred in connection with the said meeting. The appellant is under no legal obligation to make any declaration of the expenditure incurred by him in connection with the said meeting.

23. It may be noted that the appellant does not make any categorical assertion that he did not incur any expenditure in connection with the said meeting.

24. Coming to the use of the Helicopter, once again it is not a case of the appellant that he did not use the helicopter as alleged by the respondent – election petitioner. His defence is that he is one of the 'star campaigners' contemplated under Section 77 of the Act. The expenditure was incurred by him for the use of the Helicopter as a 'star campaigner'. In that capacity he had to travel throughout the State holding public meetings propagating programme of the Indian National Congress Party. The expenditure for the use of the helicopter was "borne by the Indian National Congress" and, therefore, outside the purview of the election expenditure of the appellant. The relevant portion of the pleading at para 20 of the IA No.12911 of 2014 reads as follows:

**"In this view of the mater, the expenses so incurred in the use of helicopter has since been borne by the Indian National Congress, New Delhi and the same is outside the purview of election expense so far as the answering respondent is concerned by virtue of Explanation 1(a) to Section 77 referred to above. It is, however further added that the answering respondent besides being a star campaigner was also a leader of opposition in the last M.P. State Legislative Assembly. The answering respondent is otherwise a veteran leader of the Indian National Congress Party and on account of his capacity as such, he was appointed as Star Campaigner and has traveled throughout the State, holding public meetings, propagating programme of the Indian National Congress Party. The expenditure so incurred in use of helicopter in propagating the programme of the party throughout the State cannot be included in the election expense of the answering respondent in respect of his election from 76, Churhut Vidhan Sabha Constituency.**

A It is further made clear that he never used helicopter for his election campaign in 76, Churhut Vidhan Sabha Constituency. Thus, in view of Explanation 1(a) to Section 77 of the 1951 Act, the entire pleadings contained in paragraph 14(M) are liable to be struck off being absolutely vexatious and frivolous providing no cause of action for  
 B trial of election petition.”

(emphasis supplied)

25. Section 77<sup>12</sup> of the Act obligates every candidate in an election to keep a separate current account of all expenditures in connection with the election between the dates on which such a candidate has been  
 C nominated and the date of the declaration of result of that election. However, clause (a) of explanation (1) to Section 77 of the Act declares “the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party” shall not form part of the expenditure of the  
 D candidate.

26. The expression “leaders of political party” occurring in explanation 1 is itself explained in explanation 2 to the said Section.

E “Explanation 2.—For the purpose of clause (a) of Explanation 1, the expression “leaders of a political party”, in respect of any election, means,—

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

F (ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States  
 G by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the

<sup>12</sup> Section 77. Account of election expenses and maximum thereof.—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.  
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notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act.” A

27. It can be seen from explanation 2, to qualify to be called ‘a leader of the political party’ for the purpose of such an election under Section 77, the name of such a person is communicated to the Election Commission and the Chief Electoral Officer of the State by the concerned political party. Such a communication is required to be made within a period of 7 days from the notification of such election published in the gazette of India etc. B

28. Persons whose names have been so communicated to the Election Commission popularly came to be called ‘star campaigners’ in connection with an election. It is the admitted case of the parties before us that both Shri Rahul Gandhi and the appellant are star campaigners/leaders of the Indian National Congress Party for the election in question. C

29. However, the entire expenditure incurred (on whatsoever count) by such star campaigners or on behalf of such star campaigners is not exempted under Section 77 for the purpose of determining the total expenditure incurred by any candidate in an election. The language of explanation I to Section 77 makes it clear that only the expenditure incurred by the star campaigner that too on account of travel for propagating the programme of the political party is excluded for the purpose of computing the expenditure incurred by the candidate. In other words, the expenditure incurred in connection with arrangements like erection of pandals etc. for a meeting of a star campaigner does not form part of the exempted expenditure under explanation 1. *Secondly*, under explanation II, the star campaigners’ travel expenditure must have been incurred by the star campaigner himself. It is obvious from the opening clause of explanation 1 “the expenditure incurred by leaders of a political party”. If such expenditure is incurred by any person other than the star campaigner, different considerations would arise. D  
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30. The application i.e. IA No. 12911 of 2014 does not disclose on which one of the grounds contemplated under Order VI Rule 16, the various paragraphs of the election petition are required to be struck out. On the other hand, the appellant gave an elaborate explanation with respect to each of the allegations contained in the various paragraphs of the election petition which are prayed to be struck out. The moment G

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- A court is asked to examine the defence of the returned candidate in an election petition, the election petition can neither be dismissed for want of cause of action nor any part of the pleading can be struck out under Order VI Rule 16. In the absence of the availability of any one of the grounds mentioned in Order VI Rule 16, CPC striking out is impermissible. As observed by this Court in the context of the application under Order VII Rule 11, the averments contained in the election petition at this stage must be presumed to be factually correct. The only possible scrutiny of such statement is whether those allegations are relevant in the context of the relief sought in the election petition. None of the allegations contained in the various sub paragraphs of paragraph 14, except paragraph 14M, can be said to be irrelevant in the context of the prayer in the election petition.

31. The specific pleading in the election petition at paragraph 14M is that the appellant herein used the helicopter on many occasions during the relevant period only between Bhopal and Sidhi, both of which are outside the constituency of the appellant<sup>13</sup>. The admitted fact is that the appellant was one of the star campaigners for the said election for the State of Madhya Pradesh. Therefore, he was required to campaign for his political party, not only in his constituency but also in other constituencies of the State. In the absence of any allegation that the appellant used the helicopter for traveling within 76-Churahat constituency for the purpose of campaigning, the expenditure incurred on that account, in our opinion, cannot be included in the election expenditure of the

- <sup>13</sup> "M. .... During election between 4/11/2013 to 19/11/2013 there were eight charter flights between Bhopal to Sidhi/Churahat which respondent no.1 has used these flights to come from his Kerwa Kothi Bhopal to assembly constituency 76-Churahat for his election campaign. In fact the first respondent on the date of filing of nomination has used charter flight to arrive at District Head Quarter at Sidhi and thereafter proceeded to Churahat. The details are as under:

- |       |            |                          |
|-------|------------|--------------------------|
| i)    | 4/11/2013  | (Panwar) Sidhi to Bhopal |
| ii)   | 05/11/2013 | Bhopal to Sidhi (Panwar) |
| iii)  | 08/11/2013 | Bhopal to Sidhi (Panwar) |
| iv)   | 11/11/2013 | Bhopal to Sidhi (Panwar) |
| v)    | 12/11/2013 | Sidhi (Panwar) to Bhopal |
| vi)   | 16/11/2013 | Bhopal to Sidhi (Panwar) |
| vii)  | 18/11/2013 | Bhopal to Sidhi (Panwar) |
| viii) | 19/11/2013 | Sidhi (Panwar) to Bhopal |

- The estimated cost of these charter flight would be Rs.40,00,000/- (Forty Lac) (@ Rs.Five Lakh per flight). True copy of permission of these flights are cumulatively filed as Annexure P-42.

appellant. Therefore, paragraph 14M of the election petition is liable to be struck off and is, accordingly, struck off. A

32. Before parting with this case, we would like to place on record that the procedure adopted by the appellant in initially filing a petition under Order VII Rule 11 petition<sup>14</sup>, praying that the election petition be dismissed and filing the instant application after a long gap<sup>15</sup> is to be deprecated. Preliminary objections, if any, (in cases where there is more than one) in an election petition are to be taken at the earliest point of time and in one go. The practice such as the one adopted by the appellant only tends to delay the adjudication of the election petition which are mandated<sup>16</sup> by the Parliament to be decided within a period of six months. We declare that the later of such successive petitions must be dismissed by High Courts *in limine* on that count alone. B C

33. The appeal is, therefore, partly allowed striking out only paragraph 14M of the election petition. D

Kalpana K. Tripathy

Appeal partly allowed.

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<sup>14</sup> Filed on 1.7.2014

<sup>15</sup> I.A. No. 12911/2014 in Election Petition No.1/2014 was filed on 11.9.2014

<sup>16</sup> S. 86(7), The Representation of the People Act. 1951