



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE PRANAY VERMA

ELECTION PETITION No. 10 of 2024

HUKUM SINGH KARADA

Versus

ARUN BHIMAVAD

Appearance:

Shri Abhinav Dhanodkar - Advocate for the petitioner.

Shri Pushyamitra Bhargav and Shri Harshwardhan Sharma – Advocate for the respondent.

Shri Rahul Hardia, learned counsel for the intervenor.

Reserved on : 12.10.2024

Pronounced on : 17.02.2025

ORDER

1. The parties have been heard on application bearing **I.A. No.7086 of 2024** filed by the respondent under Order 7 Rule 11 of the CPC for rejection of the election petition.

2. This election petition has been preferred by the election petitioner for setting aside the election of the respondent to the Madhya Pradesh State Legislative Assembly from 167 Shajapur Assembly Constituency on the ground of the same being void and non-est in law and for directing re-inspection/examination of 158 invalid votes and to count the same by opening the votes contained in form 13- B.



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

3. The application for rejection of the election petition has been preferred by the respondent submitting that the election petitioner has challenged the election of the respondent on the ground provided under Clause (i) of Section 100(1)(d) of Representation of People Act, 1951 which is regarding improper acceptance of any nomination. The challenge is on the ground that the respondent in the affidavit submitted along with the nomination form as provided in Section 33-A of the Act has not furnished the details of three criminal cases registered against him. The election has also been challenged on the ground provided under Clause (iii) of Section 100 (1)(d) of the Act, 1951 which provides for illegal rejection or reception of votes.

4. Learned counsel for the respondent has submitted that the ground taken by the election petitioner under Clause (i) of Section 100 (1)(d) of the Act, 1951 on the basis of the allegations as leveled in the election petition itself is not made out. He has alleged that three criminal cases have been registered against the petitioner for offences punishable under Section 188, 341 of the IPC wherein he has been held guilty and fines have been imposed upon him. Section 33-A of the Act, 1951 mandates for a candidate to disclose additional information with regard to pendency of any case against him where offence is punishable with imprisonment for two years or more and to disclose information with regard to those cases where a candidate has been convicted and sentenced to imprisonment for one year or more. In none of the cases registered against the respondent he has been sentenced as contemplated under Section 33-A of the Act, 1951. Only fines have been imposed upon him. Clause (ii) of Section 33-A (1) of the Act, 1951 does not apply and there is no mandatory requirement to disclose any fact not stipulated in Section 33-A(1). The maximum punishment awardable under Section 188 and



341 of the IPC is six months and one month respectively. Thus on the basis of the averments as made in the election petition itself this ground is not made out.

5. It is further submitted that the ground provided under Clause (iii) of Section 100 (1)(d) of the Act, 1951 has been raised by the election petitioner on the allegation that 158 postal ballots have been improperly rejected out rightly. In case these rejected postal ballots had been counted, the petitioner would have secured majority of them and would have emerged victorious. The postal ballots were rejected as invalid without any justifiable cause or reason in order to advance cause of respondent and that they have been declared invalid on account of non-affixation of seal of Attesting Officer on Form 13-A without appreciating Clause 15.14.7 of the instructions issued by the Election Commission. The election petitioner has failed to plead the material facts to substantiate these allegations. The allegations leveled and the material pleadings made in the election petition to substantiate those allegations clearly show that the petition is only on the basis of bald allegations and completely lacks material facts. There is no pleading as to on what basis or documentary evidence the election petitioner has raised the ground that postal ballots were rejected or declared invalid on account of non-affixation of seal of Attesting Officer over Form 13-A of the postal ballots. There is no plea as to on which table and by whom the said postal ballots were declared invalid and whether any objection in oral or writing was raised by him or his counting agent at the time of scrutiny and their rejection. There is also no pleading about curtailment of right of inspection of ballot papers as provided under Rule 56(3) of the Conduct and Election Rules or any objection taken in that regard. It is hence submitted that the election petition deserves to be rejected since even if the entire allegations leveled therein are accepted to be true then also no ground is made out for setting aside the election of the respondent. Reliance has been placed by the learned



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

counsel for the respondent on the decisions of *Satyanarayan Dudhani vs. Uday Kumar Singh & Ors.* 1993 Supp (2) SCC 82, *Chandrika pasad Yadav v. State of Bihar & ors*, (2004) 6 SCC 331, *M. Chinaswamy v. Palaniswamy & Ors.* (2004) 6 SCC 341, *Vadivelu V. Sundaram & Ors.* (2000) 8 SCC 355, *Hari Shankar Jain v. Sonia Gandhi*, (2001) 8 SCC 233, *Jagjit Singh v. Gyani Kartar Singh*, AIR 1966 SC 773, *Bhabhi v. Sheo Govind*, (1976)1 SCC 687, *Smt. Indira Chaturvedi v. Smt. Manvanti Pandey & Ors.* W.A.348/2017 decided on 09.08.2017 *Devki Nandan Dubey V. Purushottam Sahu W.P.15383/2016* decided on 14.12.2018, *Pankaj Sanghvi V. Shankar lalwani*, EP 41/2019 decided on 27.09.2022 and *Ramgareb & Ors. V. Ajay Singh EP 6/2024* decided on 22.08.2024.

6. Reply to the application has been filed by the petitioner and the learned counsel for the petitioner has submitted that the grounds raised by the respondent do not have any relevance at the present stage of trial since they are to be adjudicated at the stage of recording of evidence. It is further submitted that from bare reading of Section 33-A of the Act, 1951 it is apparent that respondent is obliged to follow mandate prescribed by the said Section. At the time of filing of his nomination form the respondent had submitted an affidavit sworn by him wherein he stated in Column 6 Clause 1 that he has never been guilty of any criminal case. Admittedly, the respondent has been held guilty of criminal offences for which he has also paid fines. The respondent was obliged to state his criminal antecedents in his affidavit but he has not done so violating mandatory provisions of Section 33-A of the Act, 1951. This ground is required to be adjudicated upon merits. Petitioner has sufficient cause of action to challenge the election of respondent on this ground.

7. It is further submitted that from a perusal of the election petition it is evident that the material facts for raising a ground under Section 100 (1) (d) (iii) of



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

the Act, 1951 have been sufficiently pleaded by the petitioner. The election agent of petitioner had filed an objection pertaining to recounting of rejected postal ballots. The same was to be dealt with as per provisions of Rules 63 of Conduct of Election Rules, 1961 but the same was not done. It has been specifically pleaded that the Returning Officer during process of recounting illegally and arbitrarily did not follow the procedure as prescribed. The material facts have hence been pleaded by the petitioner giving him sufficient cause of action. It is hence submitted that the application deserves to be rejected. Reliance has been placed by the learned counsel for the petitioner on the decisions of *Resurgence India v. Election Commission of India & Anr (2014) 14 SCC 189*, *Public Interest Foundation & Ors. Union of India & Anr. (2019) 3 SCC 224*, *Ram Kishan Patel V. Devendra Singh & Anr. E.P./7/2019* decided on 13.07.2020, *Virendra nath Gautam V. Satpal Singh (2007) 3 SCC 617*, *Jyoti Basu & ors. V. Debi Ghosal & Ors.(1962) 1 SCC 691* and *Yadvendra Singh jaggu V. Raksh Giri E.P./12/2019* decided on 19.09.2019.

8. I have considered the submissions of the learned counsel for the parties and have perused the record.

9. The election of the respondent has been challenged by the election petitioner on grounds provided under Section 100 (1) (d) of the Act, 1951 which is as under :

“Section 100. Grounds for declaring election to be void.

[(1) Subject to the provisions of sub-section (2) of the High court is of opinion—

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected--

(i) by the improper acceptance or any nomination, or



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
 (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,
 the High Court shall declare the election of the returned candidate to be void.”

10. The first ground taken by the election petitioner is improper acceptance of nomination form of the respondent in violation to the provisions of Section 33-A of the Act, 1951 which mandates for a candidate to furnish information in his nomination paper whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which charge has been framed or if he has been convicted of an offence and sentenced to imprisonment for one year or more. As per the election petitioner, the respondent has been convicted in three cases two of which are under Section 188 of the IPC and one is under Section 341 of the IPC. The said sections are as under:

“Section 188. Disobedience to order duly promulgated by public servant.

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Section 341. Punishment for wrongful restraint.

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.”

11. Under Section 188 of the IPC the maximum punishment which can be awarded is imprisonment which may extend to six months or fine which may extend to Rs.1000/- or both. Under Section 341 of the IPC the maximum punishment which may be awarded can be simple imprisonment which may extend to one month or with fine which may extend to Rs.500/- or both. Thus under neither of these sections can punishment be awarded for a period of more than six months.

12. As per the election petitioner himself, the respondent has been held guilty in two cases for offences under Section 188 of the IPC wherein fines have been imposed upon him of Rs.50/-and Rs.100/- respectively and for an offence under Section 341 of the IPC wherein fine has been imposed upon him in the sum of Rs.100/-.Thus as per the petitioner himself, the respondent has not been accused of any offence punishable with imprisonment for two years or more. He has not been convicted of an offence and sentenced for imprisonment for one year or more. For applicability of Section 33-A of the Act, 1951 it is imperative that the candidate must have been an accused for offence punishable with imprisonment with two years or more or to have been convicted of an offence and sentenced to imprisonment for one year or more. None of the aforesaid contingencies are present in this case for respondent to have disclosed the information as required



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

under Section 33-A of the Act, 1951. The respondent has neither been an accused for an offence punishable with imprisonment with two years or more nor he has been convicted for an offence and sentenced to imprisonment for one year or more. The mandatory requirement of disclosure of information as regards criminal case is only in respect of the above categories of cases meaning thereby that if any other criminal case has been registered against a candidate or if he has been convicted in any case which does not fall under any of the categories as stated in Section 33-A of the Act, 1951, there is no requirement of disclosure of such information. Thus, even accepting the contention of the petitioner that the respondent has not disclosed about registration and result of aforesaid three criminal cases against him then also the ground under Clause (i) of Section 100 (1) (d) of the Act, 1951 is not made out. Since on the facts pleaded themselves by the election petitioner no ground is made out, it would be a futile exercise to try the election petition on this ground.

13. The second ground raised by the election petitioner is illegal rejection of postal ballots in terms of Clause (iii) of Section 100 (1) (d) of the Act, 1951 contending that 158 postal ballots have been improperly rejected and had they been counted petitioner would have secured majority. The postal ballots were rejected as invalid without any justifiable cause or reason. In this regard it has been submitted by the respondent that the allegations as contained in the election petition lack material facts in their support which is violation of Section 83(1)(a) of the Act, 1951 which is as under:

“83. Contents of petition.—(1) An election petition.—

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

*****”**



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

14. The expression “material facts” has been discussed by the Apex Court in the case of *Virendra Nath Gautam Vs.*” *Satpal Singh 2007 (3) SCC 617* and has been explained as under :

“31. The expression “material facts” has neither been defined in the Act nor in the Code. According to the dictionary meaning, “material” means “fundamental”, “vital”, “basic”, “cardinal”, “central”, “crucial”, “decisive”, “essential”, “pivotal”, “indispensable”, “elementary” or “primary”. [Burton's *Legal Thesaurus* (3rd Edn.), p. 349]. The phrase “material facts”, therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, “material facts” are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be “material facts” would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

34. A distinction between “material facts” and “particulars”, however, must not be overlooked. “Material facts” are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. “Particulars”, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. “Particulars” thus ensure conduct of fair trial and would not take the opposite party by surprise.

50. There is distinction between *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia* (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

relevant facts required to be proved at the trial in order to establish the fact in issue.

15. It has been held by Apex Court that recounting of ballots should not be ordered as a matter of course in absence of pleading of material facts supported by contemporaneous evidence. An order of recounting of votes can be passed only when a *prima facie* case is made out and pleadings of material facts stating irregularities in counting of votes are made. Roving and fishing enquiry shall not be made while directing recounting of votes. In *Satyanarayan Dudhani V. Uday Kumar Singh and Ors.*, 1993 Supp (2) SCC 82 it was held as under:

“10. It is thus obvious that neither during the counting nor on the completion of the counting there was any valid ground available for the recount of the ballot papers. A cryptic application claiming recount was made by the petitioner-respondent before the Returning Officer. No details of any kind were given in the said application. Not even a single instance showing any irregularity or illegality in the counting was brought to the notice of the Returning Officer. We are of the view when there was no contemporaneous evidence to show any irregularity or illegality in the counting ordinarily, it would not be proper to order recount on the basis of bare allegations in the election petition. We have been taken through the pleadings in the election petition. We are satisfied that the grounds urged in the election petition do not justify for ordering recount and allowing inspection of the ballot papers. It is settled proposition of law that the secrecy of the ballot papers cannot be permitted to be tinkered lightly. An order of recount cannot be granted as a matter of course. The secrecy of the ballot papers has to be maintained and only when the High Court is satisfied on the basis of material facts pleaded in the petition and supported by the contemporaneous evidence that the recount can be ordered.”

16. In *Chandrika Prasad Yadav vs. State of Bihar & Ors.*, (2004) 6 SCC 331 it was as under:

“20. It is well settled that an order of re-counting of votes can be passed when the following conditions are fulfilled:

(i) a *prima facie* case;



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

(ii) pleading of material facts stating irregularities in counting of votes;

(iii) a roving and fishing inquiry shall not be made while directing re-counting of votes; and

(iv) an objection to the said effect has been taken recourse to.”

17. It has been further held by the Apex Court that allegations and material facts are two different things. There should be specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting. In *Vadivelu V. Sundaram & Ors., (2001) 8 SCC 355* it was held as under:

“9. In *Jitendra Bahadur Singh v. Shri Kirshna Behari* [(1969) 2 SCC 433 : AIR 1970 SC 276] the election petitioner, who claimed to be a counting agent filed election petition alleging that there was irregularity and illegality in the counting of votes. The learned Single Judge, who was trying the election petition permitted the petitioner to inspect the packets of the ballot papers containing the accepted as well as the rejected votes of the candidates. This Court, while allowing the appeal, held that the basic requirements to be satisfied before the Election Tribunal can permit the inspection of ballot papers are that (1) the petition for setting aside the election must contain an adequate statement of material facts on which the petitioner relies in support of his case, and (2) the Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of ballot papers is necessary. The material facts required to be stated are those facts, which can be considered as materials supporting the allegations made. In other words, they must be such facts as to afford a basis for the allegations made in the petition.

14. In *R. Narayanan v. S. Semmalai* [(1980) 2 SCC 537] the election petitioner challenged the election on the ground that there were a number of errors in the counting of votes and that the electoral roll itself was inaccurate. The petitioner sought for re-count of votes. The High Court ordered a re-count holding that although there was no clear evidence of any irregularity in counting in the first two rounds, there was a possibility of the counting staff being completely exhausted in the third round which may have led to erroneous sorting and counting of votes.



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

In ordering a re-count the High Court was also influenced by the fact that the margin of the “returned candidate” was only 19 votes. The order of the High Court was challenged before this Court. This Court reversed the order passed by High Court and after referring to various decisions on this point, it was held as under: (SCC pp. 547-48, para 26)

“The court would be justified in ordering re-count of the ballot papers only where:

(1) The election petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded;

(2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and

(3) The court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.”

18. In *Harishankar Jain V. Sonia Gandhi*, (2001) 8 SCC to 233 it was held as under:

“23. Section 83(1)(a) of RPA, 1951 mandates that an election petition *shall* contain a concise statement of the *material facts* on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford *a basis* for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. 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* [(1969) 3 SCC 238 : (1969) 3 SCR 603] , *Jitendra Bahadur Singh v. Krishna Behari* [(1969) 2 SCC 433] .) 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



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

positive averment of a negative fact, if necessary. In *V.S. Achuthanandan v. P.J. Francis* [(1999) 3 SCC 737] 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.

24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.”

19. Furthermore, in *Bhabhi V. Sheo Govind*, (1976) 1 SCC 687 it was also held as under :

“5. Before, however, dealing with the order passed by the learned Judge it may be necessary to refer to a number of authorities of this Court on the circumstances under which an inspection of the ballot papers, or for that matter a sample inspection, can be allowed. In the case of *Ram Sewak Yadav* the matter was considered at great length and this Court pointed out that an order for inspection could not be granted as a matter of routine but only under special circumstances and observed as follows:

“An order for inspection may not be granted as a matter of course: having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled—

(i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) the Tribunal is *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection.”

20. An election petition can certainly be dismissed under the provisions of order 7 Rule 11 of the CPC on the ground of lack of material pleadings therein. In this regard reference may profitably be made to the decision of the Apex Court in the case of *Harishankar Jain V. Sonia Gandhi, (2001) 8 SCC to 233 (Supra)*.

21. In *Kanimozhi Karunanidhi V. A Santana Kumar and others 2023 SCC online SC 573* it was held by the Apex Court as under :

“23. The law so far developed and settled by this Court with regard to the non-compliance of the requirement of Section 83(1)(a) of the EP Act, namely - “an Election petition must contain a concise statement of material facts on which the petitioner relies”, is that such non-compliance of Section 83(1)(a) read with Order VII, Rule 11, CPC, may entail dismissal of the Election Petition right at the threshold. “Material facts” are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the Election petition on the basis of the facts pleaded in the petition. They must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure 1908. Material facts would include positive statement of facts as also positive statement of a negative fact.”

22. In view of the principles as laid down by the Apex Court as regards pleading of material particulars in the election petition, when the contents of the



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

present election petition are seen it is observed that as regards improper rejection of the postal ballots it has been pleaded in paragraph 5 that the election is void on account of improper refusal or rejection of postal ballots cast by voters who were in service and were on election duty. In para 6 it has been stated that total 161 postal ballots were not counted and were rejected out rightly. In case they had been counted the petitioner would have secured majority of them. From para 43 onwards it has been stated that the petitioner had appointed Shri Manoj Saxena as his election agent. The counting of postal ballots was taken up first at 8:00 a.m. Three tables were placed for their counting. Total 1899 postal ballots were received and were distributed in three tables with 654 postal ballots on table number 1, 651 on table number 2 and 594 on table number 3. Total 161 postal ballots were rejected as invalid. 40 in table number 1, 34 in table number 2 and 87 in table number 3. Out of total 1899 only 1738 postal ballots were counted in which petitioner received 898 votes and respondent received 776 votes. After completion of counting 158 postal ballots were still uncounted. The counting of postal ballots was suddenly stopped and 158 postal ballots were rejected as invalid. The reason assigned was that the same did not contain official seal of the Attesting Officer in Form 13-A as provided under Rule 24 (2) of Conduct of Election Rules. There is no requirement of declaration form in Section 13-A containing official seal of the Attesting Officer. The petitioner was not allowed to inspect the declaration form signed by the Attesting Officer. Since declaration in Form 13-A itself was rejected the Returning Officer did not open the postal ballots contained in Form 13-B. The petitioner has been supplied details of postal ballots counted on table number 1 as per which 11 were rejected on the ground that the declaration in Form 13-A was not found and 22 were rejected on scrutiny of the declaration in form. 13- A. Large number of postal ballots were rejected as invalid without any justifiable cause or reason in order to advance the case of



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

respondent. The reason assigned is not specified as a ground for rejection of postal ballots either under the rules or in the instructions issued by the Election Commission of India. These postal ballots were validly cast but have been improperly refused or rejected.

23. The relevant pleadings in this regard in the election petition are reproduced below:

“44. As per the instruction issued by the Election Commission of India, the counting Postal Ballot was taken up first and the same commenced at about 08:00 AM. Three tables were placed for counting of Postal Ballots. A total of 1899 Postal Ballots were received and the same were distributed in three tables for counting with 654 Postal Ballots on table no.1, 651 on table no.2 and 594 on table no.3.

45. The petitioner submits that out of total 1899 Postal Ballots 161 Postal Ballots were rejected as invalid. Out of these 40 Postal Ballots were rejected in table no.1, 34 in table no.2 and 87 in table no.3. Out of these total 1899 Postal Ballots only 1738 Postal Ballots were counted out of which the petitioner received 898 votes and respondent received only 776 votes. There was thus difference of 122 votes between the petitioner and the respondent in respect of the Postal Ballots.

49. The petitioner submits that immediately after the counting of the votes cast through EVM was over nearly 158 Postal Ballots were still uncounted. From the trend emerging from the Postal Ballots it was reflected that majority of Postal Ballots were being cast in favour of the petitioner. Since, there was a narrow margin of only 28 votes between the petitioner and the respondent, the counting of Postal Ballots was suddenly stopped and all the remaining 158 Postal Ballots were rejected as invalid. The reason assigned for rejection of 158 Postal Ballots was that the same did not contain the official seal of the Attesting Officer in Form 13-A as provided under Rule 24 (2) of the Conduct of Election Rules.

51. The petitioner submits that there is no requirement of the declaration form in 13-A containing the official seal of the Attesting Officer. Rule 24 (2) of the conduct of Election Rules, 1961 specifically provides that the elector shall sign the declaration in Form 13-A in the presence of and have the



>NEUTRAL CITATION NO. 2025:MPHC-IND:3358</div>

signature attested by the stipendiary Magistrate or such other specified officer to whom he is personally known or to whose satisfaction he has been identified. The Attesting Officer is merely required to put his signature identifying the signature and identity of the elector.

53. The petitioner was not even allowed to inspect the declaration form signed by the Attesting Officer. Since, the declaration in Form 13-A itself was rejected, the Returning Officer did not open the Postal Ballots contained in Form 13-B and the same were out rightly rejected.

54. The petitioner has been supplied the details of the Postal Ballots counted on table no.1. As per the details furnish in the said form, total 11 Postal Ballots were rejected on the ground that the declaration in Form 13-A was not found and 22 votes were rejected on scrutiny of the declaration in Form 13-A. In all 33 Postal Ballots were rejected in table no.1 itself. In the table of particulars of the Postal Ballots it was mention that total 619 Postal Ballots have been rejected. A copy of the details of Postal Ballots counted in table no.1 is annexed herewith as ANNEXURE P/9.

57. The petitioner submits and asserts that such large numbers of Postal Ballots were rejected as invalid without any justifiable cause or reason in order to advance the cause of respondent. The reason assigned for rejection of total 158 votes was that the same did not contain the official seal of the officer attesting the signature and identity of the elector in Form 13-A, The same is not specified as a ground for rejection of Postal Ballots either under the Rules or the instructions issued by the Election Commission of India. All these 158 Postal Ballots were validly cast and therefore, the same have been improperly refused or rejected and therefore, the same constitutes a ground for setting aside the election under Section 100 (1) (d) (iii) of the Representation of the People Act, 1951.”

24. The documents which have been filed by the election petitioner in support of aforesaid pleadings are the details of postal ballots counted at table number one wherein it has been stated that out of 654 postal ballots received total 33 have been rejected for reasons of non-conformity with Form 13-A, 13-B and 13-C. Annexure P/10 is the final counting details of postal ballots wherein it has



been stated that out of 1899 postal ballots received 161 have been rejected and the valid postal ballots are 1738 in number. Annexure P/11 is the counting proceeding in which it has been recorded that at the instance of Shri Manoj Saxena, the Election Agent of the petitioner he has been permitted inspection of the rejected postal ballots. It has also been recorded that an application preferred by Shri Manoj Saxena for recounting of the ballots paper which had been rejected was made on which the same were recounted but the result thereof has remained the same i.e. their rejection.

25. Though the petitioner has pleaded that the postal ballots were rejected or declared invalid on account of non-affixation of seal of Attesting Officer in form 13-A but there is absolutely no pleading as to on what basis such averment has been made. There is no document whatsoever in support of this pleading. The pleading is in isolation and hypothetical and can always be made in respect of any rejected postal ballots. The same was mandatorily required to be supported by some assertion of the manner in acquiring actual factual knowledge that rejection of the postal ballots has been on that ground. The same is however totally absent. Mere assertion without pleading the material facts in support thereof would be inconsequential. There is also no pleading as to on which table and by which person the postal ballots were declared invalid. The only document is as regards table number 1. However, there is no document as regards table number 2 and 3 when as per the petitioner himself there were three tables for counting of postal ballots. The rejection has not been stated to have been done by any particular person. There is no assertion that at the time when the postal ballots were rejected as invalid any objection either oral or in writing was made either by the petitioner or his counting agent. The petitioner has not also pleaded that he had made a prayer for inspection of the ballot paper under Rule 56(3) of the Conduct of



Election Rules but his right for the same was curtailed. On the other hand, the proceedings Annexure P/5 and Annexure P/11 themselves demonstrate that at the request of the agent of the petitioner he was permitted to inspect the rejected ballot papers.

26. The petitioner has also not pleaded that at the time of rejection of the postal ballots as invalid he had either raised an objection or that he was not afforded any opportunity of raising an objection. No reason has been given anywhere in the entire election petition as to why no such objection was raised. It is not stated that the petitioner or his election agent was not permitted to raise any such objection or that the objection was raised but was not recorded on each and every occasion each vote was rejected. It is not petitioner's case that the postal ballots were rejected behind his back.

27. There is no pleading that at the time of rejection of all or any of the postal ballots attention was drawn of the Returning Officer to Clause 15.14.7 of the instructions. There is no pleading nor any document to show that any objection at any point of time was raised. Though it is contented that the postal ballots were rejected on the ground that the same did not contain the official seal of the officer attesting the signature and identity of the elector in Form 13-A but there is absolutely no document or evidence in any form to substantiate the said fact. Nowhere either in the election petition or in the documents annexed therewith is there any material to disclose the reasons of rejection of postal ballots. There is not a word as to whether all the postal ballots were rejected for the same reason or how many of them were rejected on account of non-affixture of seal of Attesting Officer. Pertinently the serial number of postal ballots which have been improperly rejected has not been mentioned nor has it been mentioned as to on which table by which officer which serial number of postal ballot was rejected.



28. No application filed by the petitioner for recount of the rejected postal ballots has been filed along with the election petition leading to passing of order dated 03.12.2023 Annexure P/11. The order also does not disclose that the petitioner or his agent had raised objection as regards the manner/ground of rejection of postal ballots. In the order, it has been specifically recorded that on the prayer of the election agent of the petitioner he was permitted to inspect the rejected postal ballots.

29. Though it has been pleaded by the petitioner that process of counting of postal ballots was delayed but has not stated as to on which table and if on all tables and by which officer the counting was delayed. It has also not been stated whether any objection was raised by the petitioner or his agent either orally or in writing in this regard. Though the petitioner has stated that he was likely to secure majority of postal ballots due to which their counting was stopped but the material facts in this regard have not been pleaded. No source has been pleaded from where the petitioner acquired knowledge that the postal ballots were rejected by the Returning Officer on the ground that the Attesting Officer has not affixed his official seat. Though it is stated that the postal ballots were rejected to advance the case of respondent but it has not been pleaded as to when and by whom the same was done. Though the petitioner pleads that if the improperly rejected postal ballots had been counted, majority of them would have been polled in his favour and he would have emerged victorious, but this statement is not backed by any concrete particulars. Though it is stated that the agent had submitted an application, but the same has not been produced nor its contents have been pleaded.

30. From a careful, minute and meaningful perusal of the pleadings as made in the election petition it is evident that only pleadings have been made



without being backed by any material particulars as are required to be furnished. No document has been produced to support the pleadings. Even if the entire pleadings as made in the election petition as a whole are taken to be true then, in my opinion, they do not fulfill the conditions of pleading of material facts as are required to be pleaded. The election petition does not disclose any *prima facie* case. It is drafted in such a manner that the ground raised therein can be copied and pasted in just about every other election petition where ground of rejection of postal ballots is raised questioning the election of any other parliamentary seat anywhere. The pleadings as made in the election petition are vague and lack material facts and amount to non-fulfillment of the requirements as envisaged under Section 83 (1) (a) of the Act, 1951.

31. In view of the aforesaid discussion, taking into consideration the totality of the pleadings as made by the election petitioner, I am of the view that this is a fit case for invoking the powers conferred upon this Court by Order 7 Rule 11 of the CPC and to reject the election petition at this stage itself. Accordingly **I.A. No.7086 of 2024** is hereby allowed and the election petition is hereby dismissed.

(PRANAY VERMA)
JUDGE

jyoti