

PETITIONER:
ROOP LAL SATHI

Vs.

RESPONDENT:
NACHHATTAR SINGH

DATE OF JUDGMENT 02/11/1982

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
DESAI, D.A.

CITATION:
1982 AIR 1559 1983 SCR (1) 702
1982 SCC (3) 487 1982 SCALE (2) 976
CITATOR INFO :
RF 1986 SC 11 (15)
RF 1990 SC 19 (24)

ACT:
Election Symbols (Reservation and Allotment) Order 1968-Order made under Representation of the People Act, 1951.

Representation of the People Act, 1951-Trial of election petition-Provisions of O. VI, Code of Civil Procedure, 1908 applicable except as modified by sub-s. (5) of s.86.

Representation of the People Act, 1951-Cl. (a) of sub-s. (1) of s. 83-Trial of election petition-Omission of 'material facts' renders whole petition bad under O. VII, r. 11 (a), Code of Civil Procedure, 1908-Court cannot strike down portions only.

Representation of the People Act, 1951-Cl.(b) of sub-s. (1) of s. 83-Trial of election petition-Omission of 'particulars'-Court may direct 'further and better particulars' under O. VI, r. 5, Code of Civil Procedure, 1908.

HEADNOTE:

For a candidate to be deemed to be set up by a political party under paragraph 13 of the Election Symbols (Reservation and Allotment) Order 1968, it is essential that a notice in writing to that effect signed by the duly authorised office-bearer of the political party is delivered to the returning officer of the constituency not later than 3 p.m. on the last day of withdrawal of candidatures. The allotment of any symbol to a candidate by the returning officer is final under sub-r. (5) of r. 10 of the Conduct of Elections Rules, 1961 except where it is inconsistent with any directions issued by the Election Commission in that behalf.

The appellant, the respondent and one Jagmohan Singh contested the election to the Punjab Legislative Assembly from the same constituency and the respondent was declared elected. The appellant challenged the election of the respondent under s. 100(1)(d)(iv) read with s. 123(7) of the Representation of the People Act, 1951. Paragraphs 4 to 18 of the petition related to change of symbols allotted to the

candidates. It was averred therein that the last day for withdrawal of nomination papers was May 5, 1980; that a notice in writing signed by the authorised office-bearer of the Indian National Congress (I) to the effect that Jagmohan Singh was contesting as the candidate of that party

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had been delivered to the Returning Officer on that day; that the Returning Officer had on May 8, 1980, intimated by a letter that on receipt of instructions from the Election Commission a change had been effected in the symbols allotted to the candidates according to which the symbol 'hand' reserved for the Indian National Congress (I) had been allotted to the respondent; that in terms of paragraph 13 of the Symbols Order Jagmohan Singh ought to have been deemed to be the candidate set up by the Indian National Congress (I); that the Election Commission had no power to direct re-allotment of the symbol once allotted to a candidate under sub-r. (4) of r. 10 and therefore the action of the Returning Officer in recalling the allotment of the symbol 'hand' to Jagmohan Singh was in violation of the Act and the rules made thereunder. The respondent contested these averments in his written statement and referred to the circumstances in which the Election Commission had issued the instructions relating to change of symbols.

The respondent raised a preliminary objection that the averments in paragraphs 4 to 18 of the petition did not disclose any cause of action and the High Court, accepting the objection, ordered deletion of those paragraphs from the petition. The High Court held that it was incumbent on the appellant to find out the circumstances in which the Election Commission had passed the order relating to change of symbols and that in the absence of those material circumstances non-compliance with r. 10(5) or Paragraph 13 of the Symbols Order could not be spelled out. The High Court further held that the Symbols Order was not an order made under the Act and therefore s. 100(1)(d)(iv) was not attracted.

In appeal, counsel for appellant contended that paragraphs 4 to 18 of the petition contained all the material facts necessary to show that the change of symbols was in breach of r. 10(5) and paragraph 13 of the Symbols Order and the High Court was not justified in ordering their deletion.

Counsel for respondent contended that paragraphs 4 to 18 of the petition did not disclose any cause of action as there was non-disclosure of facts necessary to show how the order of the Election Commission was illegal, that the High Court was justified in striking out those paragraphs under O. VI, r. 16 of the Code of Civil Procedure, 1908 as it had no power to direct further and better particulars under O. VI, r. 5. Laying emphasis on the words "under the Act" occurring in s. 100(1)(d)(iv) he contended that the Symbols Order was not an Order made under the Act.

Allowing the appeal,

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HELD: Cl. (a) of sub-s.(1) of s. 83 of the Representation of the People Act, 1951 enjoins that an election petition shall contain a concise statement of the material facts on which the election petitioner relies. This clause is based on the provisions of O. VI, r. 2(1) of the Code of Civil Procedure, 1908 from which it is clear that the statement of material facts ought not to contain the evidence by which they are proved. Cl. (b) of sub-s. (1) of s. 83 states that an

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election petitioner must set forth full particulars of any corrupt practice on which he challenges the election of the returned candidate. This clause is based on O.VI, r. 4 of the Code and the High Court has ample power while trying an election petition to direct further and better particulars as to the nature of the claim or defence under O.VI, r.5. The word 'material' in cl. (a) means facts necessary for the purpose of formulating a complete cause of action; and if any one material fact is omitted, the statement or plaint is bad; it is liable to be struck out. The function of 'particulars' in cl. (b) is quite different; the use of particulars is intended to meet a further and quite separate requirement of pleading imposed in fairness and justice to the returned candidate. The function of 'particulars' is to fill in the picture of the election-petitioner's cause of action with information sufficiently detailed to put the returned candidate on his guard as to the case he has to meet and to enable him to prepare for trial in a case where his election is challenged on the ground of any corrupt practice. Under O.VI, r.5. 'particulars' will be ordered of the 'material facts' on which the party pleading relies for his claim or defence. If a party's pleading is defective he can also seek leave to alter and amend his own defective pleading under O.VI, r.17. There is no express rule providing for the consequence of a party failing to deliver 'particulars' required by order of the Court but the decisions are to the effect that either by the order calling for particulars or by a later order the court can direct the claim or defence to be struck out under O.VI, r.16. [724B; 723 H; 724 C-F; 726 C-E; 724 G-H; 725 A]

In the instant case the question whether the order passed by the High Court could be justified under O.VI, r.16 would depend upon whether or not the election petition was in conformity with the requirements of s.83. A preliminary objection that the election petition does not contain a concise statement of material facts on which the petitioner relies is but a plea in the nature of demurrer and in deciding the question the court had to assume for this purpose that the averments contained in the petition were true. Although the High Court observed that a question of this nature had to be decided on a consideration of the averments in the election petition alone, it later on made certain observations which tend to show that the allegations in the written statement of the respondent were very much in its mind. It is no part of the statement of an election-petitioner to anticipate the defence and to state what he would have to say in answer to it. The High Court cast on the appellant the burden of disclosing facts not within his knowledge. This approach was unwarranted. The High Court was not justified in directing that the averments in paragraphs, 4 to 18 of the petition be deleted on the ground that there was non-disclosure of material facts sufficient to give rise to a cause of action under s. 100(1)(d)(iv). It is not clear from the order whether the High Court proceeded to act under O.VII, r. 11 (a) or under O.VII, r. 16. It could not have acted under O. VII, r. 11 (a) as, under that rule, when it is found that the plaint discloses no cause of action, it is obligatory to reject the plaint as a whole and not any particular portion thereof. The High Court's Order cannot also be sustained under O.VI, r.16 because there was no finding that the averments in paragraphs 4 to 18 were either unnecessary, frivolous or vexatious, or were such as may tend to prejudice, embarrass or delay the fair trial of the election, or were such as to constitute an abuse of the

process of the court. [723C; 721H; 722 A-B; 724 B; 721C; 719
G-H; 720 A-B; E-E]

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Bruce v. Odhams Press Ltd. [1936] 1 K.D. 697 and Samant N. Balakrishnan v. George Fernandez & Ors., [1969] 3 S.C.R. 603, referred to.

(b) The contention that the High Court had no power to direct further and better particulars under O.VI, r.5 cannot be accepted. Sub-s. (1) of s.87 enacts that the trial of an election petition shall be, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits, subject to the provisions of the Act and of any rules made thereunder. There are no express provisions in the Act or in the rules made thereunder to deal with a situation like the one presented in the instant case. The provisions of the Code accordingly must apply in such a case as provided by sub-s.(1) of s 87. That being so, the provisions of O.VI which are integral part of the Code come into play except to the extent modified by sub-s. (5) of s. 86. [727 A-B; 726 E-G]

Hari Vishnu Kamath v. The Election Tribunal & Anr., AIR [1958] M.P. 168; distinguished.

Bhikaji Keshao Joshi & Anr. v. Brijlal Nandlal Joshi & Ors., [1955] 2 S.C.R. 18. referred to.

2. The High Court was in error in holding that the Election Symbols (Reservation and Allotment) Order, 1968 was not an order made under the Representation of the People Act, 1951. The Act is a law made by Parliament under Art. 327 of the Constitution to provide for conduct of elections and the Conduct of Elections Rules, 1961 are rules framed by the Central Government under s. 169 in consultation with the Election Commission for regulating the mode of holding elections. Rule 5 requires the Election Commission to specify the symbols that may be chosen by candidates and the restrictions to which their choice shall be subjected. Rule 10 provides for allotment of symbols to contesting candidates by the returning officer subject to any general or special directions issued in that behalf by the Election Commission. By virtue of Art. 324 of the Constitution the authority to conduct all elections to Parliament and State Legislatures is vested in the Election Commission. The Symbols Order has been issued by the Election Commission in exercise of its powers under Art. 324 read with s. 5 and 10. The primary object of the Symbol Order is to provide for specification, reservation, choice and allotment of symbols at elections in parliamentary and assembly constituencies. It is a matter of common knowledge that elections in our country are fought on the basis of symbols. It must but logically follow as a necessary corollary that the Symbols Order is an order made under the Act. Any other view would be destructive of the very fabric of our system of holding parliamentary and assembly constituency elections in the country on the basis of adult suffrage. [718 B; 712 G; 713

B-C; 713 H; 714 A; 719 D-F]

Sadiq Ali & Anr. v. Election Commission of India & Ors., [1972] 2 S.C.R. 318, referred to.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 1106 (NCE) of 1981.

From the Judgment and Order dated the 22nd February, 1981 of the Punjab & Haryana High Court in Election Petition

No. 3 of 1980.

D.V. Patel, A.S. Sohal and M.C. Dhingra for the Appellant.

P.R. Mridul and R.S. Sodhi for the Respondent.

The Judgment of the Court was delivered by

SEN, J. This appeal by special leave is from a judgment and order of the Punjab & Haryana High Court dated February 2, 1981 by which it has directed the deletion of paragraphs 4 to 18 of the election petition filed by the appellant under s. 81 read with s. 100 of the Representation of the People Act, 1951 ('Act' for short) calling in question the election of the respondent Nachhattar Singh Gill to the State Legislative Assembly of Punjab from the Moga Assembly Constituency No. 99 on the ground that there is non-disclosure of material facts on which he alleges that the change of allotment of symbols by the Returning Officer, Moga amounted to non-compliance with the provisions of the Constitution, or of the Act, or any rules or orders made thereunder so that the result of the election, insofar as it concerns the respondent i.e. the returned candidate, is materially affected.

At the last general elections to the State Legislative Assembly of Punjab from Moga Assembly Constituency No. 99 the appellant contested as a candidate of the Lok Dal Party. The last date for withdrawal of nomination papers was notified as May 5, 1980. It appears that on that day Shri Darbara Singh, President of the Punjab Pradesh Congress (I) Committee, intimated the Returning Officer that Jagmohan Singh had been nominated as the official candidate of the Indian National Congress (I) to contest the election. There is also on record a letter dated May 5, 1980 addressed by Shri Darbara Singh, President, Punjab Pradesh Congress (I) Committee, to the respondent stating that Jagmohan Singh had been finally selected as the official candidate of the Indian National Congress (I) from the 99-Moga Assembly Constituency in his place, and he was advised to withdraw his nomination paper.

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It appears that the Indian National Congress (I) changed its official candidate and finally selected the respondent Nachhattar Singh Gill to be the official candidate of its party. On May 7, 1980, the Returning Officer, Moga Vidhan Sabha Assembly Constituency wrote a letter to Jagmohan Singh stating that he had been directed by the Secretary, Election Commission of India, by means of a police radio message that the respondent was to be treated as the finally selected candidate, and that party's reserved symbol 'hand' be allotted to him. On May 8, 1980, the Returning Officer, Moga Vidhan Sabha Assembly Constituency, addressed a letter to all the candidates regarding the change in the allotment of election symbols to the effect:

"According to the instructions from the Chief Election Commissioner of India, certain change has been effected in the election symbols of the candidates of the election to the 99-Moga Legislative Assembly Constituency which is as under:

S.No.	Name of the Candidate	Symbol Allotted
1.	Shri Nachhattar Singh	'HAND'
2.	Shri Jagmohan Singh	"BOW & ARROW"

Accordingly, the necessary change of symbols was effected in Form 7A, the list of contesting candidates. The respondent fought the election on the reserved symbol of the Indian National Congress (I) 'hand' and secured 22,460 votes. As against this, the appellant, who was a candidate of the Lok Dal party, secured 16,686 votes while the

aforesaid Jagmohan Singh as an Independent candidate got 242 votes. The appellant was therefore defeated by the respondent by a margin of 5,774 votes. The appellant filed an election petition challenging the election of the respondent under s. 100 (1) (d) (iv) read with s. 123 (7) of the Act. The averments in paragraphs 4 to 18 related to the change of symbols allotted to the respondent viz. 'hand' instead of 'bow & arrow' allotted to Jagmohan Singh.

Upon these facts, it is averred in paragraph 12 that Jagmohan Singh alone be deemed to be set up as a candidate by the Indian National Congress (I) within the meaning of paragraph 13 of the Election Symbols (Reservation & Allotment) Order, 1968 and not the respondent, and that the candidates could withdraw their

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nomination papers under s. 37 (1) before 3 p.m. on May 5, 1980 which was notified by the Election Commission to be the last date for withdrawal of candidatures under s. 30 (c) and thereafter the Returning Officer was enjoined under s. 38 (1) to publish in the prescribed Form 7A the names and addresses of the contesting candidates together with the symbols allotted to them. It is then averred in paragraph 14:

"On a perusal of para 18 of the Symbols Order it is clear that the Election Commission has no power to issue instructions and directions to the Returning Officer of an Assembly Constituency to re-allot the symbol once allotted to a contesting candidate under sub-rule (4) of rule 10 of the Conduct of Elections Rules and to allot the symbol reserved for a National Party who has allotted the symbol to a candidate deemed to be set up by that political party under para 13 of the Symbols Order to any other person after the publication of the list of the contesting candidates in Form 7A."

In paragraph 15 after stating that Jagmohan Singh had delivered to the Returning Officer a notice in writing as provided for under paragraph 13 (b) from Shri Darbara Singh, President, Punjab Pradesh Congress (I) Committee, who was duly authorized by the Indian National Congress (I) to issue such authorization as envisaged under paragraph 13 (c), the appellant avers that the action of the Returning Officer in recalling on May 8, 1980 the allotment of the symbol 'hand' to Jagmohan Singh on May 5, 1980 and allotting the same to the respondent, was in violation of the provisions of the Act and the rules made thereunder, and the result of the election, insofar as it concerns the returned candidate i.e. the respondent, has been materially affected inasmuch as because of the change of symbol Jagmohan Singh got only 242 votes while the respondent could not have secured more than the same number if he had contested on the symbol 'bow & arrow' earlier allotted to him. If the respondent had not been allotted the reserved symbol 'hand' of the Indian National Congress (I), he could not have won the election. In paragraphs 16, 17 and 18, the appellant set out some facts showing how the result of the election, insofar as it concerns the respondent, has been materially affected by the change of allotment of symbols.

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The respondent filed a written statement controverting the allegation that there was a breach of paragraph 13 of the Symbols Order by the change of allotment of symbols made by the Returning Officer in accordance with the instructions issued by the Election Commission. It was pleaded, inter alia, that the respondent had made a declaration in the

nomination paper filed by him on May 2, 1980 to the effect that he had been selected as a candidate of the Indian National Congress (I); and that he had on May 5, 1980 furnished a notice to the Returning Officer signed and issued by Shri Darbara Singh, President, Punjab Pradesh Congress (I) Committee, in pursuance of paragraph 13 (b) of the Symbols Order. It was alleged that after the respondent had been adopted as a candidate by the Indian National Congress (I), Jagmohan Singh made an effort to get that party's ticket for the seat and produced a letter from Shri Darbara Singh dated May 5, 1980 before the Returning Officer showing that he was the official candidate of the Indian National Congress (I). When the respondent learnt of this move on the part of Jagmohan Singh, he met the President of the Indian National Congress (I) at New Delhi on the morning of May 5, 1980 and apprised her of the situation and was informed that he had been finally selected as the party candidate and there was no question of a change.

It is further averred that a communication was sent by Shri Buta Singh on May 5, 1980 to the Chief Election Officer, Punjab, Chandigarh and the Returning Officer, 99-Moga Assembly Constituency, in supersession of all earlier communications with regard to the Assembly Constituency, stating that the respondent was the official candidate of the Indian National Congress (I) and that the party's symbol 'hand' be allotted to him. A letter to this effect was also delivered by Smt. G. Brar, Member of Parliament to the Election Commission on the morning of May 5, 1980. Thereafter, Shri Ganesan, Secretary to the Election Commission, got in touch with the Chief Electoral Officer, Chandigarh and informed him that the respondent was the official candidate of the Indian National Congress (I). There was a mention of this talk in the telex message sent by the Secretary to the Returning Officer, Moga, with copy to the Chief Electoral Officer, Punjab on May 5, 1980.

A preliminary objection was raised on behalf of the respondent that the averments in paragraphs 4 to 18 as well as paragraphs 19A

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and 20, with which we are not concerned, do not disclose any cause of action and therefore they are liable to be deleted under Order VII, r. 11 (a) of the Code of Civil Procedure. The High Court accordingly framed a preliminary issue to the effect :

"Whether paragraphs 4 to 18, 19 (a) and 20 of the election petition have to be deleted because the averments made therein do not make out any case for setting aside the election under s. 100 (1) (d) (iv) and s. 123 (7) of the Representation of the People Act."

By the judgment under appeal, the High Court sustained the preliminary objection and directed that the averments in paragraphs 4 to 18 be struck out from the election petition. In dealing with the question, the High Court observed that the preliminary issue had to be decided upon a consideration of the pleas in the election petition and nothing averred in the written statement could be taken into account.

On a consideration of the averments in paragraphs 4 to 18 the High Court felt that the use of the word "instructions" in Annexure P-I, the letter addressed by the Returning Officer, Moga Assembly Constituency on May 8, 1980 to all the candidates intimating about the change in the allotment of election symbol to the respondent, cannot lead to an inference of their being issued under paragraph 18 of the Symbols Order. It then observes :

"The petitioner has not at all disclosed in the election petition as to what was exactly the order of the Election Commission behind the instructions in Annexure P-I, and how it was in contravention of any of the provisions of the Act, or rule, or order made thereunder."

It was urged on behalf of the respondent that before filing the election petition it was incumbent on the appellant to find out the entire circumstances in which the Election Commission passed the order as to the change of symbols and consequently issued instructions to the Returning Officer in that behalf. The High Court accepted the contention and observed that "in the absence of material circumstances, non-compliance with the provisions of r. 10 (5) of the Conduct of Election Rules, 1961, or of paragraph 13 of the Election Symbols (Reservation & Allotment) Order, 1968 could not be spelled out," Further, the High Court was of the view that

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the Symbols Order having been made by the Election Commission in exercise of the powers under Art. 324 of the Constitution read with Rs. 5 and 10 of the Conduct of Elections Rules, it cannot be said to be an order made under the Act and therefore the provisions of s. 100 (1) (d) (iv) of the Act were not attracted. Accordingly, the High Court directed that paragraphs 4 to 18 of the election petition be deleted.

It is argued by learned counsel for the appellant that under sub-s. (1) of s. 83 of the Act, an election petition must contain a concise statement of the material facts on which the election petitioner relies; the words "material facts" mean the facts necessary to formulate a complete cause of action. It is urged that all the material facts have been stated in the election petition to show that change of allotment of symbols by the Returning Officer, in compliance with the directions of the Election Commission, was in breach of r. 10 (5) and paragraph 13 of the Symbols Order which gave rise to a cause of action under s. 100 (1) (d) (iv) of the Act. According to the learned counsel, the appellant had disclosed all the facts within his knowledge and it was no part of his duty to anticipate the defence and plead facts in relation thereto. It is further urged that the High Court was in error in holding that the breach of r. 10 (5), paragraphs 13 and 18 of the Symbols Order does not constitute non-compliance with any provisions of the Constitution, or the Act, or any rules or orders made thereunder.

In reply, learned counsel for the respondent submitted that the Symbols Order was not an order made under the Act and therefore the change of allotment of symbols was a matter which fell outside the purview of s. 100 (1) (d) (iv) of the Act, It was urged that there was no breach of r. 10 (5) of the Conduct of Elections Rules or of paragraphs 13 and 18 of the Symbols Order inasmuch as the respondent was the official candidate set up by Indian National Congress (I) and he had in the nomination paper filed by him before the Returning Officer on May 3, 1980 made a declaration to the effect and had also indicated his choice of that party's reserved symbol 'hand'. Our attention was drawn to certain averments in the written statement which tend to show that the respondent was, in fact, the candidate sponsored by the Indian National Congress (I). Learned counsel made a grievance that the appellant had deliberately suppressed this fact in paragraph 7 of the election petition. Further, he urged that it was incumbent on the appellant to find out

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circumstances in which the Election Commission issued the necessary instructions as to the change of symbols under paragraph 18 of the Symbols order. It was contended that the High Court was therefore justified in striking out paragraphs 4 to 18 of the election petition on the ground that they do not disclose any cause of action. Further it was contended that the High Court had no power to order further and better particulars under Order VI, r. 5 of the Code of Civil Procedure. In support of the contention, reliance was placed on *Hari Vishnu Kamath v. The Election Tribunal, Jabalpur & Anr.* (1)

In this appeal, two questions arise. First of these is whether any breach of paragraph 13 or 18 of the Symbols Order amounts to non-compliance with the provisions of the Constitution, or the Act, or any rules or orders made under the Act and therefore the change of allotment of symbols by the Returning Officer in compliance with the directions of the Election Commission was a matter which fell within the purview of s. 100 (1) (d) (iv) of the Act. The second is whether it was incumbent on the appellant before filing the election petition to find out the circumstances in which, and the reasons for which, the Election Commission issued necessary instructions under paragraph 18 of the Symbols Order; and if so, whether failure to disclose such facts amounts to non-disclosure of material facts i.e. an incomplete cause of action under s. 100 (1) (d) (iv) of the Act and therefore the averments in paragraphs 4 to 18 of the election petition were liable to be struck out under Order VI, r. 16 of the Code of Civil Procedure, 1908.

As to the first question, there can be no doubt whatever that the Symbols Order is an order made under the Act. Under Art. 324 of the Constitution, the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and the Legislature of every State and of elections to the offices of President and Vice-President held under the Constitution, vests in the Election Commission. The Act is a law made by Parliament under Art. 327 of the Constitution to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with

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such elections and the decision of doubts and disputes arising out of or in connection with such elections.

Sub-s. (1) of s. 169 of the Act provides that the Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of the Act. Sub-s. (2) thereof provides that in particular, and without prejudice to the generality of the foregoing power, the rules framed by the Central Government under sub-s.(1) may provide for all or any of the matters enumerated therein. In exercise of the powers under s. 169 of the Act, the Central Government made the Conduct of Elections Rules, 1961 for the purpose of regulating the mode of holding elections to the Houses of Parliament or to the House or either House of the Legislature of every State. Rule 5 of the Conduct of Elections Rules requires the Election Commission to specify the symbols that may be chosen by candidates in parliamentary and assembly elections and the restrictions to

which that choice shall be subject, and it provides:

"5. Symbols for elections in parliamentary and assembly constituencies-(1) The Election Commission shall, by notification in the Gazette of India and in the Official Gazette of each State, specify the symbols that may be chosen by candidates at elections in parliamentary or assembly constituencies and the restrictions to which their choice shall be subject.

(2) Subject to any general or special direction issued by the Election Commission either under sub-rule (4) or sub-rule (5) of rule 10, where at any such election, more nomination papers than one are delivered by or on behalf of a candidate, the declaration as to symbols made in the nomination paper first delivered, and no other declaration as to symbols, shall be taken into consideration under rule 10 even if that nomination paper has been rejected".

Rule 10 provides for allotment of symbols to the contesting candidates by the Returning Officer subject to any general or special
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directions issued in that behalf by the Election Commission. It, insofar as relevant, reads as follows:

"10. Preparation of list of contesting candidates:

- | | | | |
|-----|----|----|----|
| (1) | xx | xx | xx |
| (2) | xx | xx | xx |
| (3) | xx | xx | xx |

(4) At an election in a parliamentary or assembly constituency, where a poll becomes necessary, the returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall, subject to any general or special direction issued in this behalf by the Election Commission-

- (a) allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice; and
- (b) if more contesting candidates than one have indicated their preference for the same symbol, decide by lot to which of such candidates the symbol will be allotted.

(5) The allotment by the returning officer of any symbol to a candidate shall be final except where it is inconsistent with any directions issued by the Election Commission in this behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit."

The Election Symbols (Reservation & Allotment) Order, 1968 was issued by the Election Commission in exercise of its powers under Art. 324 of the Constitution read with rs. 5 and 10 of the Conduct of Elections Rules, 1961 and all other powers enabling in that behalf. The primary object and purpose of the Symbols Order, as the long title and the preamble show, is to provide for specification, reservation, choice and allotment of symbols at elections in parliamentary and assembly constituencies, for the recognition of
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political parties in relation thereto and for matters connected therewith. The purpose and object of the Symbols Order as well as the source of power under which the Order was issued is brought out in the preamble which reads:

"Whereas the superintendence, direction and control of all elections to Parliament and to the Legislature of every State are vested by the

Constitution of India in the Election Commission of India.

And, whereas it is necessary and expedient to provide in the interests of purity of election to the House of the People and the Legislative Assembly of every State and in the interests of the conduct of such elections in a fair and efficient manner, for the specification, reservation, choice and allotment of symbols for the recognition of political parties in relation thereto and for matters connected therewith.

Now, therefore, in exercise of the powers conferred by article 324 of the Constitution read with rule 5 and rule 10 of the Conduct of Elections Rules, 1961, and all other powers enabling it in this behalf, the Election Commission of India hereby makes the following Order."

It would be apparent from the provisions of the Conduct of Elections Rules, 1961 and the Election Symbols (Reservation & Allotment) Order, 1968 that when elections are imminent, allotment of symbols to candidates for elections in parliamentary and assembly constituencies is but an important stage of such elections. The provisions for registration of political parties and their recognition as National or State parties by the Commission are only for the purpose of allotment, reservation and specification of symbols at elections. The expression, "political party" is defined in paragraph 2 (h) to mean "an association or body of individuals of India registered with the Commission as a political party under paragraph 3 and includes a political party deemed to be registered with the Commission under the proviso to sub-para (2) of that paragraph." Paragraph 3 provides for registration with the Commission of associations and bodies of individuals as political parties for the purposes of the Order and paragraph 4 provides for allotment of symbols. Paragraph 5 deals with the classification of

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symbols. According to this paragraph, a 'reserved symbol' is a symbol reserved for a political party for exclusive use of that party. A symbol other than the reserved symbol has been described by the said paragraph to be a 'free symbol'. Paragraph 6 provides for the classification of political parties. The parties are either recognized political parties or unrecognized political parties and it lays down the conditions necessary for a political party to be treated as a recognized political party. If a political party is treated as a recognized political party in four or more States in accordance with paragraph 6, it shall have the status of a National party throughout the whole of India. If, on the contrary, a political party is treated as a recognized political party in less than four States, it shall enjoy the status of a State party in the State or States in which it is a recognized political party. We need not dilate upon this aspect because it is not in dispute that the Indian National Congress (I) and Lok Dal are both National parties. Paragraph 8 regulates the manner of allotment of symbols, and sub-para (I) and (3) which are relevant for our purposes read:

"8. Choice of symbols by candidates of National and State Parties and allotment thereof:

- (1) A candidate set up by a National party at any election in any constituency in India shall choose and shall be allotted, the symbol reserved for that party and no other symbol.
- (2) xx xx xx

- (3) A reserved symbol shall not be chosen by, or allotted to, any candidate in any constituency other than a candidate set up by a National party for whom such symbol has been reserved or a candidate set up by a State party for whom such symbol has been reserved in the State in which it is a State party even if no candidate has been set up by such National or State party in that constituency."

Paragraphs 9 to 12 deal with certain restrictions on the allotment of symbols, concessions to certain candidates as well as choice of symbols for some categories of candidates with which we are not concerned. Paragraph 13 specifies as to when a candidate shall be

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deemed to be set up as a candidate by a political party and reads as under:

"13 When a candidate shall be deemed to be set up by a political party-For the purpose of this Order a candidate shall be deemed to be set up by a political party if, and only if,

- (a) the candidate has made a declaration to this effect in his nomination paper;
- (b) a notice in writing to that effect has, not later than 3 P.M. on the last day of withdrawal of candidatures, been delivered to the returning officer of the constituency; and
- (c) the said notice is signed by the president, the secretary or any other office-bearer of the party and the president, secretary or such other office-bearer is authorised by the party to send such notice and the name and specimen signature of the president, the secretary or such other office-bearer are communicated in advance to the returning officer of the constituency and to the Chief Electoral Officer of the State."

Paragraph 18 which is important for our purposes is in these terms:

"18. Power of Commission to issue instructions and directions-The Commission may issue instructions and directions:

- (a) for the clarification of any of the provisions of this Order;
- (b) for the removal of any difficulty which may arise in relation to the implementation of any such provisions; and
- (c) in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this order makes no

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provision or makes insufficient provision, and provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections."

In our judgment, the High Court was clearly in error in holding that the Symbols Order was not an order made under the Act and therefore the change of allotment of symbols by the Returning Officer in compliance with the directions issued by the Election Commission, even if it was in breach of paragraph 13 thereof, did not amount to non-compliance with the provisions of the Constitution, or the Act, or any rules or orders made under the Act and therefore the matter fell outside the ambit of s. 100 (1) (d) (iv) of the Act. It is however urged by learned counsel for the respondent that

the Symbols Order was not an order made under the Act. Emphasis is laid on the words "under the Act" occurring in s. 100 (1) (d) (iv) of the Act. We are afraid, the argument is too tenuous to be accepted. The Symbols Order was issued by the Election Commission under Art. 324 of the Constitution in exercise of its undoubted powers of superintendence, direction and control of the conduct of all elections to Parliament and Legislature of every State. It is also relatable to rules 5 and 10 of the Conduct of Elections Rules framed by the Central Government in exercise of their powers under s. 169 of the Act. Rule 4 of the Conduct of Elections Rules provides that every nomination paper presented under s. 33 of the Act shall be in Forms 2A to 2E, as may be appropriate. The Forms 2A and 2B require the candidate to choose symbol. Under r. 5 (1) the Election Commission by notification may specify the symbols that may be chosen by candidates at elections to parliamentary and assembly constituencies. Under r. 10 (4) the Returning Officer shall consider the choice of symbols expressed by contesting candidates and "subject to any general or special direction issued by the Election Commission" allot different symbols to different candidates. The allotment of symbols by the Returning Officer is final under sub-r. (5) of r. 10 except where it is inconsistent with any directions issued by the Election Commission in that behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit.

In *Sadiq Ali & Anr. v. Election Commission of India & Ors.* (1) Khanna, J. speaking for the court, after setting out the scheme of

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the Symbols Order, explained the reasons which led to the introduction of symbols, in these words:

"It is well known that overwhelming majority of the electorate are illiterate. It was realised that in view of the handicap of illiteracy, it might not be possible for the illiterate voters to cast their votes in favour of the candidate of their choice unless there was some pictorial representation on the ballot paper itself whereby such voters might identify the candidate of their choice. Symbols were accordingly brought into use. Symbols or emblems are not a peculiar feature of election law of India. In some countries, details in the form of letters of alphabet or numbers are added against the name of each candidate while in others, resort is made to symbols or emblems. The object is to ensure that the process of election is as genuine and fair as possible and that no elector should suffer from any handicap in casting his vote in favour of a candidate of his choice."

The Symbols Order made by the Election Commission in exercise of its power under Art 324 of the Constitution read with rs. 5 and 10 of the Conduct of Elections Rules and all other powers enabling it in that behalf, are in the nature of general directions issued by the Election Commission to regulate the mode of allotment of symbols to the contesting candidates. It is a matter of common knowledge that elections in our country are fought on the basis of symbols. It must but logically follow as a necessary corollary that the Symbols Order is an order made under the Act. Any other view would be destructive of the very fabric of our system of holding parliamentary and assembly constituency elections in the country on the basis of adult suffrage.

As to the second question, there can be no doubt whatever that the High Court was not justified in directing

that the averments in paragraphs 4 to 18 of the election petition be deleted on the ground that there was non-disclosure of material facts sufficient to give rise to a cause of action under s. 100 (1) (d) (iv) of the Act.

The order passed by the High Court directing the striking out of paragraphs 4 to 18 of the election petition can hardly be supported. It is not clear from the order that the High Court

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proceeded to act under Order VII, r. II (a) or under Order VI, r. 16 of the Code in passing the order that it did. It is rightly conceded that the High Court could not have acted under Order VII, r. II (a) of the Code. Where the plaint discloses no cause of action it is obligatory upon the Court to reject the plaint as a whole under Order VII, r. II (a) of the Code, but the rule does not justify the rejection of any particular portion of a plaint: Mulla's Civil Procedure Code, 13th Edn., Vol. 1, p. 755. It is therefore necessary to consider whether the order passed by the High Court could be justified under order VI, r. 16 of the Code, which reads as follows:

"16.Striking out pleadings-The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the Court."

The order passed by the High Court directing that paragraphs 4 to 18 of the election petition be struck out cannot be sustained on the terms of Order VI, r. 16 of the Code. There is no finding reached by the High Court that the averments in paragraphs 4 to 18 of the election petition are either unnecessary, frivolous or vexatious, or that they are such as may tend to prejudice, embarrass or delay the fair trial of the election, nor is there any finding that the averments therein are such as to constitute an abuse of the process of the court. That being so, the High Court had no power to direct the striking out of paragraphs 4 to 18 of the election petition.

It is submitted by learned counsel for the respondent that there is non-disclosure of the necessary facts by the appellant in paragraphs 4 to 18 of the election petition to show as to how the order of the Election Commission was illegal, or as to how there was non-compliance with the provisions of the Constitution, or the Act, or any rules or orders made under the Act within the meaning of s. 100 (1) (d) (iv) of the Act. He urges that it was incumbent on the appellant to

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find out the circumstances in which the Election Commission issued the necessary instructions as to the change of symbols under paragraph 18 of the Symbols Order. It is contended that the High Court was therefore justified in striking out paragraphs 4 to 18 of the election petition on the ground that they do not disclose any cause of action inasmuch as the averments therein do not constitute a plea of non-compliance with the provisions of the Constitution, or the Act, or any rules or orders made under the Act so as to attract s. 100 (1) (d) (iv) of the Act. These contentions, in our opinion, cannot be given effect to.

The approach of the High Court in dealing with the preliminary issue appears to be wholly unwarranted. In

dealing with the question whether or not paragraphs 4 to 18 of the election petition disclose any cause of action, the High Court has cast on the appellant the burden of disclosing facts not within his knowledge. It speaks of his duty to produce evidence prima facie to show that the change of allotment of symbols by the Returning Officer to the respondent was in contravention of r. 10 (5) of the Conduct of Elections Rules read with paragraph 13 of the Symbols Order. It then observes that the onus was on him to establish as to how and under what circumstances the Election Commission issued the instructions in question. It accepts the contention of the respondent that it was incumbent on the appellant to set himself on an inquiry into these circumstances. According to the High Court, failure to disclose the circumstances which led the Election Commission to issue directions or instructions to the Returning Officer to effect a change in the allotment of symbols, amounts to non-disclosure of material facts which must entail in deletion of the averments in paragraphs 4 to 18 by which the appellant seeks relief under s. 100 (1) (d) (iv) of the Act. We are afraid, the High Court has viewed the matter from a wrong perspective.

We find it difficult to comprehend the reasoning adopted by the High Court that there was non-disclosure of material facts. True it is that it begins the judgment by observing that a question of this nature, as it must be so, has to be decided on a consideration of the averments in the election petition alone, and the allegations in the written statement cannot be taken into account. A preliminary objection that the election petition is not in conformity with s. 83 (1) (a) of the Act i.e. it does not contain the concise statement of the material facts on which the petitioner relies is but a plea in the

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nature of demurrer and in deciding the question the Court has to assume for this purpose that the averments contained in the election petition are true. Unfortunately, while deciding the preliminary issue the High Court has made certain observations which tend to show that the allegations in the written statement were very much present in its mind. In repelling the contention of the appellant that the instructions issued by the Election Commission for re-allotment of symbols were referable to paragraph 18 of the Symbols Order, the High Court observes:

"Upon the use of word "instructions" in Annexure P-1, it was sought to be inferred that the issuance thereof could only be within the ambit of para 18 of the Symbols Order, since the change of Symbols was outside the ambit of para 18 therefore the said change was illegal. The argument has not impressed me, inasmuch as in the normal course of things the Election Commission, having passed an order, issues instructions, for its compliance. As such, the use of the "instructions" in any communication cannot lead to an inference of their being issued under the said para 18 of the Symbols Order."

It then goes on to observe:

"The petitioner has not at all disclosed in the election petition as to what was exactly the order of the Election Commission behind the instructions in Annexure P-1 and how it was in contravention of the provisions of the aforesaid Act or the rules or order made thereunder."

It proceeds to say:

"Thus, the argument of the learned counsel for the

returned candidate proceeded that before filing the election petition it was incumbent upon the petitioner to find out the entire circumstances in which the Election Commission passed the order as to the change of symbols and consequently issued instructions vide Annexure P-1 to the Returning Officer."

In coming to the conclusion that there was non-disclosure of material facts, the High Court observes:

"In the complete absence of the material circumstances, non-compliance with the aforesaid provisions could not be

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spelt out and hence in the election petition none of the said provisions has been specifically sought.... I direct that paras 4 to 18 of the election petition be deleted."

These observations made by the High Court proceed on a misconception of law.

It is therefore necessary to consider whether the order passed by the High Court could be justified under Order VI, r. 16 of the Code. That would depend on whether or not the election petition is in conformity with the requirements of s. 83 of the Act, which reads as follows:

"83. Contents of Petition-(1) An election petition-

- (a) shall contain a concise statement of the material facts on which the petitioner relies.
 - (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
 - (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings: Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.
- (2) Any schedule of annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

Cl. (a) of s. 83 is based on the provisions of Order VI, r.2(1) of the Code which states the basic or cardinal rules of pleadings and is in the following terms:

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"2. Pleading to state material facts and not evidence- Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim in defence, as the case may be, but not the evidence by which they are to be proved."

Cl. (a) of sub-s. (1) of s. 83 of the Act enjoins that an election petition shall contain a concise statement of the material facts on which the election petitioner relies. It is no part of the statement of claim of an election petitioner to anticipate the defence and to state what he would have to say in answer to it. Cl. (b) of sub-s.(1) of s. 83 interdicts that an election petitioner must set forth full particulars of any corrupt practice on which he challenges the election of the returned candidate under s. 123(7) including as full statement as possible of the names of the parties alleged to have committed such corrupt

practice and the date and place of the commission of each such practice. It is more or less based on Order VI, r.4 of the Code which reads:

"4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

The High Court has ample power while trying an election petition to direct further and better particulars as to the nature of the claim or defence under Order VI, r. 5 of the Code which reads:

"5. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in an pleading may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just."

Under Order VI, r.5, particulars will be ordered of the material facts on which the party pleading relies for his claim or defence. If a party's pleading is defective he can also seek leave to alter and amend his own defective pleading under Order VI, r.17. There is no express rule providing for the consequence of a party failing to deliver particulars required by order of Court. but the decisions are

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to the effect that either by the order calling for particulars or by a later order the Court can direct the claim or defence to be struck out under Order VI, r. 16 of the Code.

There is distinction between "material facts" and "particulars" The word "material facts" show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between "material facts" and "particulars" was brought out by Scott, L.J. in *Bruce v. Odhams Press Ltd.* (1) in the following passage:

"The cardinal provision in r. 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" fact is omitted, the statement of claim is bad: it is "demurrable" in the old phraseology, and in the new is liable to be "struck out" under O. xxv, r. 4; See *Philips v. Philips* (2): or "a further and better statement" of claim may be ordered under O.XIX r. 7.

The function of "particulars" under r. 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim-gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he has to meet and to enable him to prepare for trial."

The dictum of Scott, L.J. in *Bruce's* case, supra, has been quoted with approval by this Court in *Samant N. Balakrishan*

v. George Fernandez & Ors.(3) and while observing that the requirements of

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s. 83 are mandatory, the distinction between material facts and particulars was brought out in the following terms:

"The word "material" shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet."

Thus, the word "material" in material facts under s. 83 of the Act means facts necessary for the purpose of formulating a complete cause of action; and if any one "material" fact is omitted, the statement or plaint is bad; it is liable to be struck out. The function of "particulars" is quite different, the use of particulars is intended to meet a further and quite separate requirement of pleading imposed in fairness and justice to the returned candidate. Their function is to fill in the picture of the election petitioner's cause of action with information sufficiently detailed to put the returned candidate on his guard as to the case he has to meet and to enable him to prepare for trial in a case where his election is challenged on the ground of any corrupt practice.

Sub-s. (1) of s. 87 of the Act enacts that the trial of an election petition shall be, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits, subject to the provisions of the Act and of any rules made thereunder. There are no express provisions in the Act or in the rules made thereunder as contemplated under sub-s. (1) of s. 87 of the Act to deal with the situation like the present. The provisions of the Code accordingly must apply in such a case as provided by sub-s. (1) of s. 87 of the Act. That being so, the provisions of Order VI which are integral part of the Code come into play except to the extent modified by sub-s. (5) of s. 86 of the Act.

Learned counsel for the respondent however contends that the High Court had no power to direct further and better particulars under Order VI, r. 5 of the Code. In support of the contention, reliance is placed on the decision of the Madhya Pradesh High

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Court in Hari Vishnu Kamath v. The Election Tribunal & Anr. (1) It is urged that the particulars given in the petition were insufficient to formulate a cause of action and, therefore the High Court had the power to strike out the pleadings under Order VI, r. 16 of the Code. The contention cannot, in our opinion, be accepted. In Bhikaji Keshao Joshi & Anr. v. Brijlal Nandlal Joshi & Ors, (2) the Court recognized a power in the Tribunal to direct particulars of a corrupt practice and to strike out the pleadings in a case where there was a default in compliance with a previous order directing particulars. Thereafter, there was a change brought about in law by Act 27 of 1956. Sub-s. (5) of s. 90 introduced by that Act recast the old sub-s. (3) of s. 83 and took away the power of the Election Tribunal to order further and better particulars of corrupt practice while retaining the power to allow amendment or amplification though the language used was slightly different.

The decision of the Madhya Pradesh High Court in Hari

Vishnu Kamath's case, (supra) on which reliance is placed is inapplicable. A question arose whether the Election Tribunal was justified in directing furnishing of better particulars of certain corrupt practices. There, the High Court was dealing with the Act as it stood after its amendment by Act 27 of 1956. In view of the change in law brought about, the High Court held that the rule as laid down by this Court in Bhikaji Keshao Joshi's case, (supra) was no longer applicable. After the repeal of sub-s. (3) of s. 83 of the Act by Act 27 of 1956, which introduced in its place sub-s. (5) of s. 90, conferring power on the Tribunal to allow amendment or amplification of particulars, the High Court held that the word "allowed" meant allowed on an application and therefore there was no power left with the Tribunal under sub-s. (5) of s. 90 to direct the furnishing of better particulars and that there would equally be no power to strike out the pleadings for default of furnishing particulars, if directed. It was however, held that it was open to the Tribunal to find that the particulars given in a petition were insufficient for trial. It is evident that the decision of the High Court turned on the provisions of sub-s. (5) of s. 90, which is identical to sub-s. (5) of s. 86 of the Act, but both these provisions relate to allowing an amendment of the election petition subject to such terms as to costs or otherwise with a view to furnish the particulars of any corrupt practice. The decision of the

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Madhya Pradesh High Court in Hari Vishnu Kamath's case, (supra) is therefore distinguishable.

It must accordingly be held that the High Court was not justified in striking out paragraphs 4 to 18 of the election petition acting presumably under Order VI, r. 16 of the Code of Civil Procedure, 1908 on the ground that the facts stated therein were not sufficient to formulate a complete cause of action under s. 100(1) (d)(iv) of the Representation of the People Act, 1951 i.e. due to non-disclosure of material facts.

In the result, the appeal succeeds and is allowed with costs. The judgment of the High Court striking out the averments in paragraphs 4 to 18 of the election petition is set aside and it is directed to proceed with the trial according to law.

H.L.C.

Appeal allowed.

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