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ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 6th January, 2015
16 Pausha, 1936 (Saka)

NOTIFICATION

No. 82/MIZ-LA/01/20U:- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court in CM Application No.80 of 2014 in Election Petition No. 01 of 2014.

(HERE PRINT THE JUDGMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CM. APPL NO. 80 OF 2014 IN ELECTION PETITION NO. 1 OF 2014

APPLICANT/RESPONDENT :

Sh. T. Sangkunga.

By Advocates:

Mr. A.K. Rokhum,

Mr. Lalsawirema.

OPPOSITE PARTY/PETITIONER:

1. Sh. Zoramthanga.

.... Opposite Party/Petitioner

2. Election Commission of India.
3. Chief Electoral Officer, Mizoram, Aizawl.
4. Returning Officer, 25 - East Tuipui (ST) AC,
Champhai, Mizorarn.

.... Proforma respondents/Opposite Parties.

By Advocates:

Mr. C. Lalramzauva, Sr. Adv,
Mr. K. Laldinliana,
Mr. Zoramchhana,
Ms. Lalramsangzuali,
Ms. Ruth Lalrinliani,
Mr. Johny L. Tochwawng for O.P No.I.
Mr. M. Zothankhuma, Sr. Adv.,
Mr. Lalfakawma,
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4,

BEFORE HON'BLE MR. JUSTICE L. S. JAMIR

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil Procedure, 1908, the applicant respondent No. 1 is praying for dismissal of the election petition on primarily the following three grounds :-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and,
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 {hereinafter the Act of 1951}.
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
 3. Mr. Lalsawirema, learned counsel appearing for the applicant/respondent No. 1 submits that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits

that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of

- a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992,
- b) Lalit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SC 1731,
- c) Dhartipakar Madan Lai Agarwal-vs-Shri Rajiv Gandhi reported in AIR 1987 SCC 1577,
- d) V.S. Achuthanandan-vs-PJ. Francis and Anr. reported in (2001) 3 SCC 81,
- e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315,
- f) Ram Sukh-vs- Dinesh Aggarwal reported in (2009) 10 SCC 541,
- g) K.D. Deshmukh -vs- Amritlal Jayaswal reported in AIR 1992 SC 164 and
- h) Jitu Patnaik -vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194.

4. The Opposite Party No. I/election petitioner has filed written objection against the present application. Mr. C. Lalramzauva, learned senior counsel for the election petitioner submits that in view of the mandatory nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
5. Mr. Laisawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural requirements as required under Sections 81, 82 and 117 of the Act of 1951 and, therefore, the election petition should be dismissed.
7. I have heard learned counsel appearing for the parties.
8. In Azhar Hussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
9. Relying on Section 100 (l)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election

in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A perusal of the election petition would indicate that no such adequate, clear and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.

10. The reliefs sought for by the election petitioner is quoted herein below:-

*"(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and
(ii) On the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*

11. The parties in the cause title of the election petition are also as under:-

*"Sh. Zoramthanga, S/o Darphunga (L),
R/o Ramhlun Veng, Mizoram.*

..... Petitioner.

- Vrs-

1. *Sh. T. Sangkunga, S/o Chalpianga (L),
R/o Dinthar, Aizawl.*

..... Respondent

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl,*

4. *Returning Officer, 25 - East Tuipui (ST) AC,
Champhai, Mizoram.*

..... Proforma Respondents."

12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dhartiakar Madan Lai Agarwal - vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8 as under:-

"8..... Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.1 17. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.16 and O. VI, R.17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O. VI, R.16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be

justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under O. VI, R. 11"

13. Further in the case of Ram Sukh (Supra), it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order VI Rule 16 and Order VII Rule 11. This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action.
14. Section 82 of the Act of 1951 provides as under;-
"82. Parties to the petition. - A petitioner shall join as respondents to this petition-
 - a) *Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*
 - b) *Any other candidate against whom allegations of any corrupt practice are made in the petition."*
15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951.

The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No. 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should have been made party respondents in the election petition. This has-not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of the Act of 1951.

16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed in those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another - vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.
17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost.

Sd/-
L.S. JAMIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 7th January, 2015
17 Pausha, 1936 (Saka)

NOTIFICATION

No. 82/MIZ-LA/02/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court in CM Application No.81 of 2014 in Election Petition No. 02 of 2014.

(HERE PRINT THE JUDGMENT/ORDER ATTACHED)

By order,

Sd/-
(ANUH JAIPURIAR)
SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CM. APPL NO. 81 OF 2014 IN ELECTION PETITION NO, 2 OF 2014

APPLICANT/RESPONDENT:

Sh. K. Lairinthanga.

By Advocates:

Mr. A.K. Rokhum,
Mr. Lalsawirema,

OPPOSITE PARTY/PETITIONER:

1. Sh. Lalhmingliana.
.....Opposite Party/Petitioner
2. Election Commission of India.
3. Chief Electoral Officer, Mizoram, Aizawl.
4. Returning Officer, 6-Serlui (ST) Kolasib, Mizoram.
.....Proforma respondents/Opposite Parties.

By Advocates:

Mr. C. Lalramzauva, Sr. Adv,
Mr. K. Laldinliana,
Mr. Zoramchhana,
Ms. Lalramsangzuali,
Ms. Ruth Latrinliani,
Mr. Johny L. Tochwawng for O.P No.I.

Mr. M. Zothankhuma, Sr. Adv.,
Mr. Lalfakawma,
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4.

**BEFORE
HON'BLE MR. JUSTICE L. S. JAMIR**

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil . Procedure, 1908, the applicant respondent No. 1 is praying for dismissal of the ejection petition on primarily the following three grounds:-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and,
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 (hereinafter the Act of 1951).
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lairamzauva, learned senior counsel assisted by Mr. Johny L Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
3. Mr. Lalsawirema, learned counsel appearing for the applicant/respondent No. 1 submits that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of
- a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992
 - b) Lalit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SC 1731
 - c) Dhartipakar Madan Lai Agarwal-vs-Shri Rajiv Gandhi reported in AIR 1987 SCC 1577
 - d) V.S. Achuthanandan -vs- P.J. Francis and Anr. reported in (2001) 3 SCC 81
 - e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315
 - f) Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541
 - g) K.D. Deshmukh -vs- Amritlai Jayaswai reported in AIR 1992 SC 164 and
 - h) Jitu Patnaik -vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194

4. The Opposite Party No. 1/election petitioner has filed written objection against the present application. Mr. C. Lalramzauva, learned senior counsel for the election petitioner submits that in view of the mandatory nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
5. Mr. Lalsawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural requirements as required under Sections 81, 82 and 117 of the Act of 1951 and, therefore, the election petition should be dismissed.
7. I have heard learned counsel appearing for the parties.
8. In Azhar Hussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
9. Relying on Section 100 (I)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A perusal of the election petition would indicate that no such adequate, clear and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.
10. The reliefs sought for by the election petitioner is quoted herein below:-
 - (i) *An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*

(ii) *On the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*

11. The parties in the cause title of the election petition are also as under:-
*"Sh. Laihmingliana, S/o Chhunkhuma,
R/o Ramthar Veng, Aizawl, Mizoram.*

.....Petitioner.

- Vrs-

1. *Sh. K. Lalrinthanga, MIA S/o Thanchhinga (L),
R/o Zottang, Aizawl.*

.....Respondent

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 6- Serlui (ST) AC,
Kolasib, Mizoram.*

.....Proforma Respondents."

12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dhartipakar Madan Lai Agarwal - vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8 as under:-

"8.....Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.I 17. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every elect/on petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits ' under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.16 and O. VI, R.17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O. VI, R.16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court Is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement Instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable Issues remain to be considered, it has power to reject the election petition under O. VI, R.11"

13. Further in the case of Ram Sukh (Supra), it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order VI Rule 16 and Order VII Rule 11. This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action.
14. Section 82 of the Act of 1951 provides as under :-
"82. Parties to the petition.- A petitioner shall join as respondents to this petition-
a) *Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*
b) *Any other candidate against whom allegations of any corrupt practice are made in the petition."*
15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951.
- The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No. 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should have been made party respondents in the election petition. This has not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of the Act of 1951.
16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed in those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another - vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.
17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost

Sd/-
L.S. JAMIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 7th January, 2015
17 Pausha, 1936 (Saka)

NOTIFICATION

No. 82/MIZ-LA/03/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court in CM Application No.82 of 2014 in Election Petition No. 03 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CM. APPL NO, 82 OF 2014 IN
ELECTION PETITION NO. 3 OF 2014

APPLICANT/RESPONDENT :

Sh, Lalsawta.

By Advocates:

Mr. A.K. Rokhum,

Mr. Lalsawirema.

OPPOSITE PARTY/PETITIONER:

1. Sh. Sailothanga Sailo.

.....Opposite Party/Petitioner

2. Election Commission of India.

3. Chief Electoral Officer, Mizoram, Aizawl.

4. Returning Officer, 14-Aizawl East II (ST) AC,
Aizawl, Mizoram.

.....Proforma respondents/Opposite Parties.

By Advocates:

Mr. C. Lalramzauva, Sr. Adv,

Mr. K. Laldinliana,

Mr. Zoramchhana,

Ms. Lalramsangzuali,

Ms. Ruth Lalrinliani,

Mr. Johny L. Tochwawng for O.P No.1.
Mr. M. Zothankhuma, Sr. Adv.,
Mr. Lalfakawma,
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4.

**BEFORE
HON'BLE MR. JUSTICE L. S. JAMIR**

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil Procedure, 1908, the applicant/respondent No. 1 is praying for dismissal of the election petition on primarily the following three grounds :-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and,
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 (hereinafter the Act of 1951)
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johny L Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
3. Mr. Lalsawirema, learned ounsel appearing for the applicant/respondent No. 1 submits that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of
- a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992,
 - b) Lalit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SC 1731,
 - c) Ohartipakar Madan Lai Agarwal-vs-Shri Rajiv Gandhi reported in AIR 1987 SCC 1577,
 - d) V.S. Achuthanandan -vs- P.J. Francis and Anr. reported in (2001) 3 SCC 81,
 - e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315,
 - f) Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541,

- g) K.D. Deshmukh -vs- Amritlal Jayaswal reported in AIR 1992 SC 164 and
- h) Jitu Patnaik -vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194

4. The Opposite Party No. 1/election petitioner has filed written objection against the present application. Mr. C. Lalramzauva, learned senior counsel for the election petitioner submits that in view of the mandatory nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
5. Mr. Lalsawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural requirements as required under Sections 81, 82 and 117 of the Act of 1951 and, therefore, the election petition should be dismissed.
7. I have heard learned counsel appearing for the parties.
8. In Azhar Hussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
9. Relying on Section 100 (1)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception/ refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A perusal of the election petition would indicate that no such adequate, clear and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.

10. The reliefs sought for by the election petitioner is quoted herein below:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
(ii) On the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."

11. The parties in the cause title of the election petition are also as under:-

*"Sh. Sailothanga Sailo, S/o Lalthanzama Sailo (L),
 R/o Chhing Veng, Mizoram.*

.....Petitioner.

-Vrs-

1. *Sh. Lalsawta, S/o Bawichhuaka (L),
 R/o Mission Vengthlang, Aizawl.*

.....Respondent

2. *Election Commission of India through its Secretary,
 Nirvachan Sadan, Ashoka Road, New Delhi,*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 14- Aizawl East II (ST) AC,
 Aizawl, Mizoram,*

.....Proforma Respondents."

12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dharti Pakar Madan Lai Agarwal — vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8 as under:-

"8. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as maybe in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.16 and O. VI, R.17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, It is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O. VI, R. 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice,

embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under O. VI, R. 11"

13. Further in the case of Ram Sukh (Supra), it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order VI Rule 16 and Order VII Rule 11, This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action.

14. Section 82 of the Act of 1951 provides as under:-

"82. Parties to the petition.- A petitioner shall join as respondents to this petition-

a) Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

b) Any other candidate against whom allegations of any corrupt practice are made in the petition."

15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951.

The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No. 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should have been made party respondents in the election petition. This has not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of the Act of 1951.

16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed in those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another - vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.

17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost.

Sd/-
L.S. JANIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 21st January, 2015
1 Magha, 1936 (Saka)

NOTIFICATION

No. 82/MIZ-LA/04/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court in CM Application No. 102 of 2014 in Election Petition No. 04 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CM. APPL NO. 102 OF 2014 IN
ELECTION PETITION NO. 4 OF 2014

APPLICANT/RESPONDENT:

Sh. P.C. Laithanliana.

By Advocates:

Mr. A.K. Rokhiim,
Mr. Lalsawirema.

OPPOSITE PARTY/PETITIONER:

1. Sh. Dr. K. Vanlallawma.
2. Election Commission of India.
3. Chief Electoral Officer, Mizoram, Aizawl.
4. Returning Officer, 30- Lunglei North (ST) AC,
Lunglei, Mizoram.

.....Opposite Party/Petitioner

.....Proforma respondents/Opposite Parties.

By Advocates :

Mr. C. Lalramzauva, Sr. Adv,
Mr. K. Laldinliana,
Mr. Zoramchhana,
Ms. Lairamsangzuali,
Ms. Ruth Lalrinliani,

Mr. Johny L, Tochwawng for O.P No.1.
Mr. M. Zothankhuma, Sr. Adv.,
Mr. Lalfakawma,
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4.

**BEFORE
HON'BLE MR. JUSTICE L. S. JAMIR**

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil Procedure, 1908, the applicant/respondent No. 1 is praying for dismissal of the election petition on primarily the following three grounds:-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and,
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 (hereinafter the Act of 1951).
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lairamzauva, learned senior counsel assisted by Mr. Johny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
3. Mr. Lalsawirema, learned counsel appearing for the applicant/respondent No. 1 submits that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner, is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of
- a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992
 - b) Lalit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SC 1731
 - c) Dhartipakar Madan Lai Agarwal-vs-Shri Rajiv Gandhi reported in AIR 1987 SCC 1577
 - d) V.S. Achuthanandan-vs-PJ. Francis and Anr. reported in (2001) 3 SCC 81
 - e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315
 - f) Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541

- g) K.D. Deshmukh -vs- Amritlal Jayaswal reported in AIR 1992 SC 164 and
h) Jitu Patnaik -vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194
4. The Opposite Party No. 1/election petitioner has filed written objection against the present application. Mr. C. Lalramzauva, learned senior counsel for the election petitioner submits that in view of the mandatory nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
 5. Mr. Lalsawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
 6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural requirements as required under Sections 81, 82 and 117 of the Act of 1951 and, therefore, the election petition should be dismissed.
 7. I have heard learned counsel appearing for the parties.
 8. In Azhar Hussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
 9. Relying on Section 100 (I)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A perusal of the election petition would indicate that no such adequate, clear and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.

10. The reliefs sought for by the election petitioner is quoted herein below:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
- (ii) On the basis of the Findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*

11. The parties in the cause title of the election petition are also as under:-

*"Sh. Dr. K. Vaniallawma, S/o K. Hrangkhuma (L),
R/o Serkawn, Mizoram.*

.....Petitioner.

- Vrs-

1. *Sh.P.C Lalthantiana, S/o ZanghInga (L),
R/o Bazar Veng, Lung lei.*

.....Respondent.

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 30- Lungiei North (ST) AC,
Lunglei, Mizoram.*

.....Proforma Respondents."

12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dhartipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8 as under:-

"8. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.I 17. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.16 and O. VI, R.17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O. VI, R. 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the court to examine the pleadings and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the pleadings finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the

proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under O. VI, R.11"

13. Further in the case of Ram Sukh (Supra), it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order VI Rule 16 and Order VII Rule 11. This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action,
14. Section 82 of the Act of 1951 provides as under:-

"82. Parties to the petition, - A petitioner shall join as respondents to this petition-

 - a) *Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*
 - b) *Any other candidate against whom allegations of any corrupt practice are made in the petition."*
15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951,

The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No. 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should have been made party respondents in the election petition. This has not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of the Act of 1951.
16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed in those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another - vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.
17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost.

Sd/-
L.S. JAMIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 21st January, 2015
1 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/05/2014 :- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court in CM Application No.98 of 2014 in Election Petition No. 05 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CM. APPL NO. 98 OF 2014 IN
ELECTION PETITION NO. 5 OF 2014

APPLICANT/RESPONDENT:

Sh. T.T. Zothansanga.

By Advocates:

Mr. A.K. Rokhum,
Mr. Lalsawirema.

OPPOSITE PARTY/PETITIONER:

1. Sh. T.C. Kaphmingthanga.
.....Opposite Party/Petitioner
2. Election Commission of India.
3. Chief Electoral Officer, Mizoram, Aizawl.
4. Returning Officer, 23-Champhai North, AC, Mizoram.
.....Proforma respondents/Opposite Parties.

By Advocates:

Mr. C. Lalramzauva, Sr. Adv.
Mr. K. Laldinliana
Mr. Zoramchhana
Ms. Lalramsangzuali
Ms. Ruth Lalrinliani

Mr. Johny L. Tochwawng for O.P No.1.
Mr. M. Zothankhuma, Sr. Adv.,
Mr. Lalfakawma,
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4.

**BEFORE
HON'BLE MR. JUSTICE L S. JAMIR**

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil Procedure, 1908, the applicant/respondent No. 1 is praying for dismissal of the election petition on primarily the following three grounds:-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and,
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 (hereinafter the Act of 1951).
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
3. Mr. Lalsawirema, learned counsel appearing for the applicant/respondent No. 1 submits that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of
- a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992
 - b) Lalit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SC 1731
 - c) Dhartipakar Madan Lai Agarwal-vs-Shri Rajiv Gandhi reported in AIR 1987 SCC 1577
 - d) V.S. Achuthanandan -vs- P.J. Francis and Anr. reported in (2001) 3 SCC 81
 - e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315
 - f) Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541

- g) K.D. Deshmukh -vs- Amritlal Jayaswal reported in AIR 1992 SC 164 and
- h) Jitu Patnaik -vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194

4. The Opposite Party No. 1/election petitioner has filed written objection against the present application. Mr. C. Lalramzauva, learned senior counsel for the election petitioner submits that in view of the mandatory -nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
5. Mr. Lalsawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural requirements as required under Sections 81, 82 and 117 of the Act of 1951 and, therefore, the election petition should be dismissed.
7. I have heard learned counsel appearing for the parties.
8. In Azhar Hussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
9. Relying on Section 100 (l)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A "perusal of the election petition would indicate that no such adequate, clear and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.

10. The reliefs sought for by the election petitioner is quoted herein below:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
(ii) On the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."

11. The parties in the cause title of the election petition are also as under:-

*"Sh. T.C. Kaphmingthanga, S/o Lianzinga (L),
 R/o Zarkawt, Aizawi.*

.....Petitioner.

-Vrs-

1. *Sh. T. T. Zothansanga, S/o Chawnthuta (L),
 R/o Champhai, Mizoram.*

.....Respondent

2. *Election Commission of India through its Secretary,
 Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mtzoram, Aizawl.*

4. *Returning Officer, 23-Champhai North,
 AC, Mizoram.*

.....Proforma Respondents."

12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dharti Pakar Madan Lai Agarwal - vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8 as under:-

"8. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.I 17. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.16 and O. VI, R.17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O. VI, R.16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the court to examine the pleadings and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the pleadings or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and

that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under O. VI, R.II"

13. Further in the case of Ram Sukh (Supra), 'it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order VI Rule 16 and Order VII Rule 11. This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action.
14. Section 82 of the Act of 1951 provides as under :-
"82. Parties to the petition.- A petitioner shall join as respondents to this petition-
 - a) *Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*
 - b) *Any other candidate against whom allegations of any corrupt practice are made in the petition."*
15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951.

The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No, 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should have been made party respondents in the election petition. This has not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of the Act of 1951.
16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed In those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another - vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.
17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost.

Sd/-
L.S. JAMIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 7th January, 2015
17 Pausha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/06/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court in CM Application No.83 of 2014 in Election Petition No. 06 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH**

**CM. APPL NO. 83 OF 2014 IN
ELECTION PETITION NO. 6 OF 2014**

APPLICANT/ RESPON DENT:

Sh. K.S.Thanga.

By Advocates:

Mr. A.K. Rokhum
Mr. Lalsawirema.

OPPOSITE PARTY/PETITIONER:

1. Sh. Tawnluia.

.....Opposite Party/Petitioner

2. Election Commission of India.

3. Chief Electoral Officer, Mizoram, Aizawl.

4. Returning Officer, 20- Aizawl South III (ST) AC,
Aizawl, Mizoram.

.....Proforma respondents/Opposite Parties.

By Advocates:

Mr. C. Lalramzauva, Sr. Adv,
Mr. K. Laldinliana,
Mr. Zoramchhana,
Ms. Lalramsangzuali,

Ms. Ruth Lalrinliani,
Mr. Johny L. Tochwawng for O.P No.1.
Mr. M. Zothankhuma, Sr. Adv.,
Mr. Lalfakawma,
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4.

**BEFORE
HON'BLE MR. JUSTICE L S. JAMIR**

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil Procedure, 1908, the applicant/respondent No. 1 is praying for dismissal of the election petition on primarily the following three grounds:-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and,
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 {hereinafter the Act of 1951}.
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johny L Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
3. Mr. Lalsawirema, learned counsel appearing for the applicant/respondent No. 1 submits that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of
- a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992
 - b) Lalit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SC 1731
 - c) Dharti Pakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577
 - d) V.S. Achuthanandan -vs- P.J. Francis and Anr. reported in (2001) 3 SCC 81
 - e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315

- f) Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541
 - g) K.D. Deshmukh -vs- AmritlaE Jayaswal reported in AIR 1992 SC 164 and
 - h) Jitu Patnaik -vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194
4. The Opposite Party No. 1/election petitioner has filed written objection against the present application. Mr. C. Lalramzauva, teamed senior counsel for the election petitioner submits that in view of the mandatory nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
 5. Mr. Lalsawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
 6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural requirements as required under Sections 81, 82 and 117 of the Act Of 1951 and, therefore, the election petition should be dismissed.
 7. I have heard learned counsel appearing for the parties.
 8. In Azhar Hussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
 9. Relying on Section 100 (l)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A perusal of the election petition would indicate that no such adequate, dear and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.

10. The relief's sought for by the election petitioner is quoted herein below:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
(ii) On the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."

11. The parties in the cause title of the election petition are also as under:-

*"Sh. Tawnluia, S/o Hrangkhupa (L),
R/o Kanan Veng, Mizoram.*

.....Petitioner.

- Vrs-

1. *Sh. K.S. Thanga, S/o Bualtuma (I),
R/o Venghlui, Aizawl.*

.....Respondent

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 20- Aizawl South III (ST) AC,
Aizawl, Mizoram.*

.....Proforma Respondents,"

12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dhartiakar Madan Lai Agarwal - vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8 as under:-

"8. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.16 and O. VI, R. 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act On a combined reading of Ss, 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O. VI, R.16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action It would be justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the

proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable Issues remain to be considered, it has power to reject the election petition under O. VI, R.11"

13. Further in the case of Ram Sukh (Supra), it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order VI Rule 16 and Order VII Rule 11. This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action.
14. Section 82 of the Act of 1951 provides as under :-
"82. Parties to the petition.- A petitioner shall join as respondents to this petition-
 - a) *Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*
 - b) *Any other candidate against whom allegations of any corrupt practice are made in the petition."*
15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951.

The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No. 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should have been made party respondents in the election petition. This has not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of the Act of 1951.
16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed in those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another - vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.
17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost.

Sd/-
L.S. JAMIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 22nd January, 2015
02 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/07/2014: In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court in CM Application No.84 of 2014 in Election Petition No. 07 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CM. APPL NO. 84 OF 2014 IN
ELECTION PETITION NO. 7 OF 2014

APPLICANT/RESPONDENT:

Sh. Nihar Kanti Chakma

By Advocates:

Mr. A.K. Rokhum .
Mr. Lalsawirema

OPPOSITE PARTY/PETITIONER:

1. Sh. Priti Ranjan Chakma.
2. Election Commission of India.
3. Chief Electoral Officer, Mizoram, Aizawl.
4. Returning Officer, 35-West Tuipui (ST), AC, Lunglei, Mizoram.

.....Opposite Party/Petitioner

.....Proforma respondents/Opposite Parties.

By Advocates:

Mr. C. Lalramzauva, Sr. Adv.
Mr. K. Laldinliana
Mr. Zoramchhana
Ms. Lalramsangzuali
Ms. Ruth Lalrinliani

Mr. Johny L Tochwawng for O.P No.1
Mr. M. Zothankhuma, Sr. Adv.
Mr. Lalfakawma
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4

**BEFORE
HON'BLE MR. JUSTICE L. S. JAMIR**

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil Procedure, 1908, the applicant/respondent No. 1 is praying for dismissal of the election petition on primarily the following three grounds:-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and,
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 (hereinafter the Act of 1951).
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
3. Mr. Lalsawirema, learned counsel appearing for the applicant/respondent No. 1 submits that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of
- a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992
 - b) Lalit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SC 1731
 - c) Dhartipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577
 - d) V.S. Achuthanandan -vs- P.J. Francis and Anr. reported in (2001) 3 SCC 81
 - e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315
 - f) Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541

- g) K.D. Deshmukh -vs- Amritlal Jayaswal reported in AIR 1992 SC 164 and
- h) Jitu Patnaik -vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194

4. The Opposite Party No. 1/eiection petitioner has filed written objection against the present application. Mr. C. Lalramzauva, learned senior counsel for the election petitioner submits that in view of the mandatory nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues .at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
5. Mr. Lalsawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural requirements as required under Sections 81, 82 and 117 of the Act of 1951 and, therefore, the election petition should be dismissed.
7. I have heard learned counsel appearing for the parties.
8. In Azhar Hussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
9. Relying on Section 100 (l)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A -perusal of the election petition would indicate that no such adequate, clear and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.

10. The reliefs sought for by the election petitioner is quoted herein below:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
(ii) On the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."

11. The parties in the cause title of the election petition are also as under:-

*"Sh. Priti Ran/an Chakma S/o Chitta Ranjan Chakma,
 R/o Puankhai, Mizoram.*

.....Petitioner.

- Vrs-

1. *Sh. Nihar Kanti Chakma, S/o H.K. Chakma (L),
 R/o Nunsury, Mizoram.*

.....Respondent.

2. *Election Commission of India through its Secretary,
 Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 35- West Tuipui (ST) AC,
 Lunglei, Mizoram.*

.....Proforma Respondents.

12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dharti Pakar Madan Lai Agarwal - vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8. as under:-

"8. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.I 17. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.16 and O. VI, R.17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O. VI, R.16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit It is the duty of the court to examine the plaint and it need not wait till the defendant His written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the

proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under O. VI, R. 11"

13. Further in the case of Ram Sukh (Supra), it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order VI Rule 16 and Order VII Rule 11. This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action.
14. Section 82 of the Act of 1951 provides as under :-

"82. Parties to the petition.- A petitioner shall join as respondents to this petition-

 - a) *Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*
 - b) *Any other candidate against whom allegations of any corrupt practice are made in the petition."*
15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951.

The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No. 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should "Tiave been made party respondents in the election petition. This has not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of the Act of 1951.
16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed in those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another - vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.
17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the-security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost.

Sd/-
L.S. JAMIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 7th January, 2015
17 Pausha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/08/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court In CM Application No.85 of 2014 in Election Petition No. 08 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH**

**CM. APPL NO. 85 OF 2014 IN
ELECTION PETITION NO. 8 OF 2014**

APPLICANT/RESPONDENT:

Sh. R. Lalzirliana

By Advocates:

Mr. A.K. Rokhum
Mr. Lalsawirema

OPPOSITE PARTY/PETITIONER:

1. Smt. Lalmaisawmi.
2. Election Commission of India.
3. Chief Electoral Officer, Mizoram, Aizawl.
4. Returning Officer, 9-Tawi (ST) AC,
Aizawl, Mizoram.

.....Opposite Party/Petitioner

.....Proforma respondents/Opposite Parties.

By Advocates:

Mr. C. Lalramzauva, Sr. Adv
Mr. K. Laldinliana
Mr. Zoramchhana
Ms. Lalramsangzuaii
Ms. Ruth Lalrinliani

Mr. Johny L. Tochwawng for O.P No.1
Mr. M. Zothankhuma, Sr. Adv.
Mr. Lalfakawma
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4

**BEFORE
HON'BLE MR. JUSTICE L. S. JAMIR**

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil Procedure, 1908, the applicant/respondent No. 1 is praying for dismissal of the election petition on primarily the following three grounds:-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and,
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 (hereinafter the Act of 1951).
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
3. Mr. Lalsawirema, learned counsel appearing for the applicant/respondent No. 1 submits that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of
- a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992
 - b) Lalit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SC 1731
 - c) Dhartipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577
 - d) V.S. Achuthanandan -vs- P.J. Francis and Anr. reported in (2001) 3 SCC 81
 - e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315
 - f) Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541

- g) K.D. Deshmukh -vs- Amritlal Jayaswal reported in AIR 1992 SC 164 and
h) Jitu Patnaik -vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194
4. The Opposite Party No. 1/election petitioner has filed written objection against the present application. Mr. C. Lalramzauva, learned senior counsel for the election petitioner submits that in view of the mandatory nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
 5. Mr. Lalsawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
 6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural requirements as required under Sections 81, 8.2. and 117 of the Act of 1951 and, therefore, the election petition should be dismissed.
 7. I have heard learned counsel appearing for the parties.
 8. In Azhar Hussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
 9. Relying on Section 100 (l)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A perusal of the election petition would indicate that no such adequate, clear and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.

10. The reliefs sought for by the election petitioner is quoted herein below:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
(ii) On the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."

11. The parties in the cause title of the election petition are also as under:-

*"Smt Lalmalsawmi, D/o Lalthansea (L),
R/o A-39, Zarkawt, Aizawl, Mizoram,*

.....Petitioner.

-Vrs-

1. *Sh. R. Lalzirliana, S/o Thansanga (L),
R/o Armed Veng N, Aizawl.*

.....Respondent

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 9- Tawi(ST),AC,
Aizawl, Mizoram.*

.....Proforma Respondents."

12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dharti Pakar Madan Lai Agarwal - vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8 as under:-

"8. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.I 17. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.16 and O. VI, R.17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O.VI, R.16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the

proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under O. VI, R. II"

13. Further in the case of Ram Sukh (Supra), it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order VI Rule 16 and Order VII Rule 11. This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action.
14. Section 82 of the Act of 1951 provides as under :-

"82. Parties to the petition.- A petitioner shall join as respondents to this petition-

 - a) *Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*
 - b) *Any other candidate against whom allegations of any corrupt practice are made in the petition,"*
15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951.

The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No. 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should have been made party respondents in the election petition. This has not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of the Act of 1951.
16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed in those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another - vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.
17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost.

Sd/-
L.S. JAMIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 23rd January, 2015
3 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/09/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court in CM Application No.86 of 2014 in Election Petition No. 09 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CM. APPL NO. 86 OF 2014 IN
ELECTION PETITION NO. 9 OF 2014

APPLICANT/RESPONDENT:

Sh. R.L Pianmawia.

By Advocates:

Mr. A.K. Rokhum
Mr. Lalsawirema

OPPOSITE PARTY/PETITIONER:

1. Sh. Gogo Lalremtluanga.
2. Election Commission of India.
3. Chief Electoral Officer, Mizoram, Aizavyl.
4. Returning Officer, 7- Tuivawl (ST) AC,
Champhai, Mizoram.

.....Opposite Party/Petitioner

.....Proforma respondents/opposite Parties.

By Advocates:

Mr. C. Lalramzauva, Sr. Adv
Mr. K. Laldinliana
Mr. Zoramchhana
Ms. Lalramsangzuali
Ms. Ruth Lalrinliani

Mr. Johny L. Tochwawng for O.P No.1
Mr. M. Zothankhuma, Sr. Adv.
Mr. Lalfakawma
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4

**BEFORE
HON'BLE MR. JUSTICE L S. JAMIR**

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil Procedure, 1908, the applicant/respondent No. 1 is praying for dismissal of the election petition on primarily the following three grounds:-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 (hereinafter the Act of 1951).
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
3. Mr. Lalsawirema, learned counsel appearing for the applicant/respondent No. 1 submits that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of
- a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992
 - b) Lalit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SC 1731
 - c) Dhartipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577
 - d) V.S. Achuthanandan -vs- P.J. Francis and Anr. reported in (2001) 3 SCC 81
 - e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315
 - f) Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541

- g) K.D. Deshmukh -vs- Amritlal Jayaswal reported in AIR 1992 SC 164 and
- h) Jitu Patnaik-vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194

4. The Opposite Party No. 1/election petitioner has filed written objection against the present application. Mr. C. Lalramzauva, learned senior counsel for the election petitioner submits that in view of the mandatory nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
5. Mr. Lalsawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural requirements as required under Sections 81, 82 and 117 of the Act of 1951 and, therefore, the election petition should be dismissed.
7. I have heard learned counsel appearing for the parties.
8. In Azhar Hussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
9. Relying on Section 100 (I)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A perusal of the election petition would indicate that no such adequate, clear and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.

10. The reliefs sought for by the election petitioner is quoted herein below:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
(ii) On the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."

11. The parties in the cause title of the election petition are also as under:-

*"Sh. Gogo Lalremtluanga, S/o J. Thanghuama (L),
 R/o Mission Veng, Mizoram.*

.....Petitioner.

-Vrs-

1. *Sh. R.L Pianmawia, S/o Vanlaltawna (L),
 R/o Dariawn.*

.....Respondent

2. *Election Commission of India through its Secretary,
 Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 7- Tuivawl (ST) AC,
 Champhai, Mizoram.*

.....Proforma Respondents.

12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dhartipakar Madan Lai Agarwal - vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8 as under:-

"8. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.I 17. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.16 and O. VI, R.17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O. VI, R.16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary,, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the

proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under O. VI, R.11"

13. Further in the case of Ram Sukh (Supra), it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code 4ft€kJding the powers under Order VI Rule 16 and Order VII Rule 11. This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action.
14. Section 82 of the Act of 1951 provides as under :-

"82. Parties to the petition.- A petitioner shall join as respondents to this petition-

 - a) *Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*
 - b) *Any other candidate against whom allegations of any corrupt practice are made in the petition."*
15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951.

The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No. 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should have been made party respondents in the election petition. This has not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of. the Act of 1951.
16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed in those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another - vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.
17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost.

Sd/-
L.S. JAMIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 23rd January, 2015
3 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/10/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court in CM Application No.99 of 2014 in Election Petition No. 10 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CM. APPL NO. 99 OF 2014 IN
ELECTION PETITION NO. 10 OF 2014

APPLICANT/RESPONDENT:

Sh. P.C. Zoramsangliana.

By Advocates:

Mr. A.K. Rokhum
Mr. Lalsawirema.

OPPOSITE PARTY/PETITIONER:

1. Sh. Lalchamliana.

.....Opposite Party/Petitioner

2. Election Commission of India.
3. Chief Electoral Officer, Mizoram, Aizawl.
4. Returning Officer, 5- Kolasib (ST) AC,
Kolasib, Mizoram.

.....Proforma respondents/Opposite Parties.

By Advocates:

Mr. C. Lalramzauva, Sr. Adv
Mr. K. Laldinliana
Mr. Zoramchhana
Ms. Lalramsangzuali
Ms. Ruth Lalrinliani
Mr. Johny L Tochwawng for O.P No.1
Mr. M. Zothankhuma, Sr. Adv.

Mr. Lalfakawma
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4

**BEFORE
HON'BLE MR. JUSTICE L. S. JAMIR**

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil Procedure, 1908, the applicant/respondent No. 1 is praying for dismissal of the election petition on primarily the following three grounds:-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and,
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 {hereinafter the Act of 1951}.
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johnny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
 3. Mr. Laisawirema, learned counsel appearing for the applicant/respondent No. 1 submits that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of
 - a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992
 - b) Laiit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SG 1731
 - c) Dhartipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577
 - d) V.S. Achuthanandan -vs- P J. Francis and Anr. reported in (2001) 3 SCC 81
 - e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315

- f) Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541
 - g) K.D. Deshmukh -vs- Amritlal Jayaswal reported in AIR 1992 SC 164 and
 - h) Jitu Patnaik -vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194
4. The Opposite Party No. 1/election petitioner has filed written objection against the present application. Mr. C. Lalramzauva, learned Senior counsel for the election petitioner submits that in view of the mandatory nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
 5. Mr. Lalsawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
 6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural requirements as required under Sections 81, 82 and 117 of the Act of 1951 and, therefore, the election petition should be dismissed.
 7. I have heard learned counsel appearing for the parties.
 8. In Azhar Kussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
 9. Relying on Section 100 (l)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A perusal of the election petition would indicate that no such adequate, clear and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.

10. The reliefs sought for by the election petitioner is quoted herein below:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
(ii) On the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."

11. The parties in the cause title of the election petition are also as under:-

*"Sh. Lalchamliana, S/o Ex Jem. Parala (L),
R/o Electric Veng, Mizoram.*

.....Petitioner.

-Vrs-

1. *Sh. P.C. Zoramsangliana S/o Vanhlira (L),
R/o Dawrpui Vengthar, Aizawl.*

.....Respondent.

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 5- Kolasib (ST) AC,
Kolasib, Mizoram.*

.....Proforma Respondents.

12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dhartprakar Madan Lai Agarwal - vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8 as under:-

"8. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.I 17. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court: as nearly as maybe in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.16 and O. VI, R.17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O. VI, R.16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the

proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under O. VI, R. 11"

13. Further in the case of Ram Sukh (Supra), it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order VI Rule 16 and Order VII Rule 11. This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action.

14. Section 82 of the Act of 1951 provides as under :-

"82. Parties to the petition.- A petitioner shall join as respondents to this petition-

- a) Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*
- b) Any other candidate against whom allegations of any corrupt practice are made in the petition."*

15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951.

The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No. 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should have been made party respondents in the election petition. This has not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of the Act of 1951.

16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed in those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another - vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.

17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost.

Sd/-
L.S. JAMIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 28th January, 2015
8 Magha, 1936 (Saka)

NOTIFICATION

No.82/M1Z-LA/11/2014: In pursuance of Section 06 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court in CM Application No.94 of 2014 in Election Petition No. 11 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CM. APPL NO. 94 OF 2014 IN
ELECTION PETITION NO. 11 OF 2014

APPLICANT/RESPONDENT:

Sh. Laithanzara.

By Advocates:

Mr. A.K. Rokhum
Mr. Lalsawirema.

OPPOSITE PARTY/PETITIONER:

1. Sh. Lalchhandama Ralte.

.....Opposite Party/Petitioner

2. Election Commission of India,

3. Chief Electoral Officer, Mizoram, Aizawi.

4. Returning Officer, 12- Aizawl North III (ST) AC,
Aizawl, Mizoram.

.....Proforma respondents/Opposite Parties.

By Advocates:

Mr. C. Lalramzauva, Sr. Adv
Mr. K. Laldinliana
Mr. Zoramchhana
Ms. Lalramsangzuali
Ms. Ruth Lalrinliani

Mr. Johny L Tochwawng for O.P No.1
Mr. M. Zothankhuma, Sr. Adv.
Mr. Lalfakawma
Mr. Rosangzuaia Raite for O.P Nos. 2 to 4

**BEFORE
HON'BLE MR. JUSTICE L. S. JAMIR**

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil Procedure, 1908, the applicant/respondent No. 1 is praying for dismissal of the election petition on primarily the following three grounds:-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 (hereinafter the Act of 1951).
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
3. Mr. Lalsawirema, learned counsel appearing for the applicant/respondent No. 1 submit its that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who-had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of
- a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992
 - b) Lalit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SC 1731
 - c) Dhartipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577
 - d) V.S. Achuthanandan -vs- P J. Francis and Anr. reported in (2001) 3 SCC 81
 - e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315
 - f) Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541

- g) K.D. Deshmukh -vs- Amritlal Jayaswal reported in AIR 1992 SC 164 and
h) Jitu Patnaik -vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194
4. The Opposite Party No. 1/election petitioner has filed written objection against the present application. Mr. C. Lalramzauva, learned senior counsel for the election petitioner submits that in view of the mandatory nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
 5. Mr. Lalsawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
 6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural "requirements as required under Sections 81, 82 and 117 of the Act of 1951 and, therefore, the election petition should be dismissed.
 7. I have heard learned counsel appearing for the parties.
 8. In Azhar Hussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
 9. Relying on Section 100 (l)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A perusal of the election petition would indicate that no such adequate, clear, and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.

10. The reliefs sought for by the election petitioner is quoted herein below: -
- (i) *An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
 - (ii) *On the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*
11. The parties in the cause title of the election petition are also as under:-
*"Sh. Lalchandama Ralte, S/o R.B. Laitawla,
 R/o Chanmari W, Mizoram.*
-Petitioner.*
- Vrs-*
1. *Sh. Lalthanzara, S/o H.P. Sailo (L),
 R/o Zarkawt, Aizawl.*
-Respondent*
2. *Election Commission of India through its Secretary,
 Nirvachan Sadan, Ashoka Road, New Delhi.*
 3. *Chief Electoral Officer, Mizoram, Aizawl.*
 4. *Returning Officer, 12- Aizawl North III (ST) AC,
 Aizawl, Mizoram.*
-Proforma Respondents.*
12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dharti Pakar Madan Lai Agarwal - vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8 as under:-
- "8. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.I 17. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.16 and O. VI, R.17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O. VI, R.16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or*

commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement. Instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under O. VI, R. 11"

13. Further in the case of Ram Sukh (Supra), it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order VI Rule 16 and Order VII Rule 11. This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action.
14. Section 82 of the Act of 1951 provides as under:-
"82. Parties to the petition. - A petitioner shall join as respondents to this petition-
 - a) *Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*
 - b) *Any other candidate against whom allegations of any corrupt practice are made in the petition."*
15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951.

The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No. 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should have been made party respondents in the election petition. This has not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of the Act of 1951.
16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed in those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another — vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.
17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost.

Sd/-
L.S. JAMIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 28th January, 2015
8 Magha, 1936 (Saka)

NOTIFICATION

No.82/MI2-LA/12/2014:- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 16th September, 2014 of the Gauhati High Court in CM Application No.87 of 2014 in Election Petition No. 12 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CM. APPL NO. 87 OF 2014 IN
ELECTION PETITION NO. 12 OP 2014

APPLICANT/RESPONDENT:

Sh. Lt. Col. Zosangzuala.

By Advocates:

Mr. A.K. Rokhum
Mr. Lalsawirema

OPPOSITE PARTY/PETITIONER:

1. Sh. R. Tlanghmingthanga.
.....Opposite Party/Petitioner
2. Election Commission of India.
3. Chief Electoral Officer, Mizoram, Aizawl.
4. Returning Officer, 19- Aizawl South II, AC,
Aizawl, Mizoram.

.....Proforma respondents/Opposite Parties.

By Advocates:

Mr. C. Lairamzauva, Sr. Adv
Mr. K. Laldinliana
Mr. Zoramchhana
Ms. Lalramsangzuali
Ms. Ruth Lalrinilani

Mr. Johny L. Tochwawng for O.P No.1
Mr. M. Zothankhuma, Sr. Adv.
Mr, Lalfakawma
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4

**BEFORE
HON'BLE MR. JUSTICE L S. JAMIR**

Date of hearing : 16.09.2014.
Date of Judgment : 16.09.2014.

JUDGMENT & ORDER (ORAL)

By this application under Order VII Rule 11 of Code of Civil Procedure, 1908, the applicant/respondent No. 1 is praying for dismissal of the election petition on primarily the following three grounds:-

- a) The election petition does not constitute any cause of action to proceed with the trial of the election petition.
 - b) The prayer in the election petition is beyond the relief which can be granted to an election petitioner and,
 - c) As the election petitioner has prayed for a declaration that the election of the returned candidate be declared as void and that the election petitioner should also be declared as the elected candidate, all the other contesting candidates of the particular constituency should have been made parties which has not been done so in the election petition and the same is a violation of the mandatory provision of Section 82 of the Representation of the People Act, 1951 (hereinafter the Act of 1951).
2. Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner as well as Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.
3. Mr. Lalsawirema, learned counsel appearing for the applicant/respondent No. 1 submits that a plain reading of the election petition would show that the averments made therein are purely on suspicion and apprehension of the election petitioner about the fairness of the electoral process and in particular the alleged misuse of the Electronic Voting Machines (EVMs). There is no pleadings of any material fact and the same being made on vague allegation, no further proceeding of the election petition can be done. He also submits that the election petitioner is praying for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs). This, he submits, is beyond the scope and ambit of an election petition. He further submits that when the election petitioner is praying for a declaration to declare him as the elected candidate after declaring the election of the returned candidate/applicant as void, he should have made all the candidates who had contested in the particular constituency as party respondent which is mandatory. This has not been done and therefore the election petition requires dismissal on this ground only. He has placed reliance in the case of
- a) Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Ors reported in AIR 2001 SC 2992,
 - b) Lalit Kishore Chaturvedi -vs- Jagdish Prasad Thada and Ors reported in AIR 1990 SC 1731,
 - c) Dhartipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577,
 - d) V.S. Achuthanandan -vs- P.J. Francis and Anr. reported in (2001) 3 SCC 81,
 - e) Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp) SCC 315,
 - f) Ram Sukh -vs- Dinesh Aggarwai reported in (2009) 10 SCC 541,

- g) K.D. Deshmukh -vs- Amritlal Jayaswal reported in AIR 1992 SC 164 and
h) Jitu Patnaik -vs- Sanatan Mohakud and Ors reported in (2012) 4 SCC 194
4. The Opposite Party No. 1/election petitioner has filed written objection against the present application. Mr. C. Lalramzauva, learned senior counsel for the election petitioner submits that in view of the mandatory "nature of Section 98 of the Act of 1951, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order VII Rule 11 of the Civil Procedure Code. He also submits that this Court can pass either of the 3 orders provided under Section 98 only after conclusion of the trial. Further submission has been made by the learned senior counsel appearing for the election petitioner that the election petitioner has already abandoned his prayer by declaring that he does not seek a declaration that he is the returned candidate and further submits that instead of proceeding with the present application, the applicant can raise the issues at the time of the final hearing of the election petition. He also submits that as the election petitioner is not praying for seeking a declaration to the effect that he should be the returned candidate, he may be permitted to amend the election petition.
 5. Mr. Lalsawirema, learned counsel, in reply, submits that the statutory period of 45 days has expired under Section 81 of the Act of 1951 and therefore the question of amendment of the election petition does not arise. If such amendment is allowed, it would amount to changing the very nature and character of the election petition which is also not permissible.
 6. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity and sanctity of the electoral process and also to maintain secrecy of ballot. He, therefore, submits that unsettling an electoral verdict would be very serious having wide ranging effect. He also submits that the election petition is defective inasmuch as there is no compliance of procedural requirements as required under Sections 81, 82 and 117 of the Act of 1951 and, therefore, the election petition should be dismissed.
 7. I have heard learned counsel appearing for the parties.
 8. In Azhar Hussain (Supra), it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo (Supra), the Hon'ble Supreme Court held that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Jitu Patnaik (Supra), it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
 9. Relying on Section 100 (l)(d)(iii) of the Act of 1951, the election petitioner is challenging the election of the applicant, which provides that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. Such averments are found at paragraphs 5, 6, 9 and 10 of the election petition. Section 83 of the Act of 1951 provides that an election petition shall contain a concise statement of the material facts. A perusal of the election petition would indicate that no such adequate, clear and specific averments are made. The whole election petition is based on the election petitioner's suspicion and apprehensions. There is no pleading of material facts. Therefore, this Court is of the opinion that the requirements of Section 83 of the Act of 1951 has not been fulfilled.

10. The reliefs sought for by the election petitioner is quoted herein below:-

- (i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
- (ii) On the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*

11. The parties in the cause title of the election petition are also as under:-

*"Sh. R. Tlanghmingthanga, S/o Rev. Liandova (L),
R/o Venghloi Aizawl.*

.....Petitioner.

-Vrs-

1. *Lt. Col. Zosangzuala, S/o Chalhnuna (L),
R/o Mission Veng, Aizawl.*

.....Respondent

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi,*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 19- Aizawl South-II, AC,
Aizawl, Mizoram.*

.....Proforma Respondents."

12. As regard the objection to the applicability of the provisions contained in Order VII Rule 11 of the Civil Procedure Code, the Hon'ble Supreme Court in the case of Dhartiakar Madan Lai Agarwal - vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577 has held at paragraph 8 as under:-

"8. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S.117, Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, O. VI, R.1'6 and O. VI, R.17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O.VI, R.16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, R. 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not

make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under O. VI, R. 11"

13. Further in the case of Ram Sukh (Supra), it has been held that by virtue of Section 87 of the Act of 1951, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order VI Rule 16 and Order VII Rule 11. This being the position, the Court is of the opinion that it would be open to the returned candidate to file application under Order VII Rule 11 of the Civil Procedure Code for rejection of the election petition if it does not disclose any cause of action.

14. Section 82 of the Act of 1951 provides as under:-

"82, Parties to the petition.- A petitioner shall join as respondents to this petition-

- a) *Where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and*
- b) *Any other candidate against whom allegations of any corrupt practice are made In the petition."*

15. In the present election petition, the election petitioner is praying for a direction to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Such relief, in the opinion of this Court is beyond the scope of Section 98 of the Act of 1951.

The election petitioner is also seeking for a declaration to declare the election of the applicant/respondent No. 1 as void and further to declare him as the elected candidate. This being the prayer of the election petitioner, all the contesting candidates of the particular constituency should have been made party respondents in the election petition. This has not been done in the present election petition and the same amounts to non-fulfillment of the requirements of the provision of Section 82 of the Act of 1951.

16. A Co-ordinate Bench of this Court has also dismissed connected election petition. This Court being in agreement with the judgment and order passed in those election petitions and also following the ratio laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society and Another - vs- Union of India and Others reported in (2014) 7 SCC 701 has also followed the judgment passed by the Co-ordinate Bench of this Court.

17. In view of the above, this CM application is allowed and the connected election petition is dismissed. However, it is provided that the security deposit of Rs. 2000/- may be allowed to be withdrawn by the election petitioner. No cost.

Sd/-
L.S. JAMIR
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 28th January, 2015
8 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/13/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 6th September, 2014 of the Gauhati High Court in CM Application No.88 of 2014 in Election Petition No. 13 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH

CM. APPL NO. 88 OF 2014 IN
ELECTION PETITION NO. 13 OF 2014

APPLICANT/ RESPONDENT:

Sh. H. Rohluna.

By Advocates:

Mr. A.K. Rokhum, Mr. Lalsawirema,

RESPONDENTS:

1. Sh. L Thangmawia.

.....Opposite Party/Petitioner.

2. Election Commission of India.

3. Chief Electoral Officer, Mizoram, Aizawl,

4. Returning Officer, Champhai (ST).

.....Proforma respondents/Opposite Parties.

By Advocates:

Mr. C. Lalrarnzauva, Sr. Adv

Mr. K. Laldinliana

Mr. Zoramchhana

Ms. Lalramsangzuali

Ms. Ruth Lalrinliani

Mr. Johny L Tochwawng for O.P No.1

Mr. M. Zothankhuma, Sr. Adv.

Mr. Lalfakawma,
Mr. Rosangzuala Ralte for O.P Nos. 2 to 4

**BEFORE
HON'BLE MR. JUSTICE UJJAL BHUYAN**

Dates of hearing : 3.09.2014 & 5.9.2014.
Date of Judgment : 6.09.2014.

JUDGMENT & ORDER (CAV)

Heard Mr. Laisawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johnny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner. Also heard Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.

2. This is an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 for rejection of the election petition for want of cause of action and for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 (for short 'the Act').
3. Rejection of the election petition has been sought for primarily on three grounds. Firstly, the election petition does not disclose material facts to constitute a cause of action to warrant trial of the election petition. Secondly, the prayer made in the election petition is beyond the relief which can be granted to an election petitioner under the Act. Thirdly, since the election petitioner has sought for a declaration that not only the election of the returned candidate be declared as void, he should also be declared as the elected candidate, all the other contesting candidates of the constituency should have been made parties to the election petition, which has not been done. This is a violation of the mandatory provision of Section 82 of the Act.
4. Opposite Party No. 1 i.e. the election petitioner has filed written objection. It is contended that there is no necessity to entertain and decide the misc. application at a preliminary stage. It is asserted that material facts have been pleaded in the election petition. Reliefs sought for in the election petition cannot be said to be beyond the scope of the law. Though in the election petition, the election petitioner has made further prayer for declaring him as the elected candidate after declaring the election of the applicant as void, he is not pressing the same and would be satisfied if the first part of the prayer is granted i.e. if the election of the applicant (returned candidate) is declared as void. Misc. application should, therefore, be dismissed.
5. Mr. Laisawirema, learned counsel for the applicant by referring to the averments made in the election petition submits that even a cursory reading of the averments would show that the election petition is entirely based on suspicion and apprehension of the election petitioner about the fairness of the electoral process, particularly about the alleged misuse of the Electronic Voting Machines (EVMs). Not a single material fact has been pleaded to support the ground urged. On the basis of such vague allegation, there can be no trial and the result of applicant's election cannot be subjected to enquiry. He also submits that the first prayer made in the election petition is for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs) is:-beyond the scope and ambit of an election petition. He further submits that the prayer of the election petitioner to declare him as the elected candidate after declaring the election of the applicant as void would attract the provisions of Section 82 of the Act. In the face of such prayer, all the candidates who were in the electoral fray in the particular constituency "ought to

have been made respondents in the election petition which is a mandatory requirement Non-compliance with such mandatory requirement would entail automatic dismissal of the election petition. He therefore submits that the election petition suffers from fundamental technical defects and as such proceeding further with the election petition would be totally unwarranted.

6. Mr. C. Lalramzauva, learned senior counsel for the election petitioner on the other hand submits that keeping in mind the mandatory nature of Section 98 of the Act, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order 7 Rule 11 of the Civil Procedure Code. It is only after conclusion of the trial, the High Court can pass either of the 3 orders mentioned in Section 98. He submits that since election petitioner has already declared that he does not seek a declaration to the effect that he is the returned candidate, he may be permitted to amend the election petition. He finally submits that all the issues raised by the applicant can be gone into at the final-Searing of the election petition and not at the threshold.
7. In reply, Mr. Lalsawirema, learned counsel for the applicant submits that after the statutory period of 45 days of filing election petition under Section 81 of the Act is over, there is no question of amendment of the election petition. Amendment as suggested, if granted, would change the very nature and character of the election petition, which cannot be permitted. In any case, he submits that in the absence of any formal application for amendment, such an oral prayer of the election petitioner cannot be accepted, that too, after the technical defects in the election petition were pointed out in the misc. application.
8. Though the Election Commission of India is neither a necessary party nor a proper party in an election petition in view of the clear enunciation of law by the Hon'ble Supreme Court in the case of B. Sundara Rami Reddy v. Election Commission of India reported in 1991 Supp. (2) SCC 624, the Court has none-the-less given audience to learned senior counsel appearing for the Election Commission of India since the election petitioner has himself made the Election Commission of India and its officials respondents in the election petition. Mr. M. Zothankhuma, learned senior "counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity of the electoral process while maintaining the secrecy of ballot Unsettling an electoral verdict being a serious matter having wide ramification, law mandates that there should be strict compliance of procedural requirements. Violation of the mandatory conditions, particularly those mandated in Sections 81, 82 and 117 of the Act would result in dismissal of the election petition, he submits.
9. I have heard the rival submissions and also perused the materials on record.
10. To appreciate the rival contentions, it would be apposite to briefly refer to the election petition at the outset. Election petitioner has challenged the election of the applicant as MLA in the legislative assembly elections to the Mizoram State Legislative Assembly, 2013. As can be seen from the cause title, the following are the parties to the election petition;-

*"Sh. L. Thangmawia S/o Dammunga (L)
R/o Mission Vengthlang, Aizawl.*

.....Petitioner.

- Vrs-

1. *H.Rohluna S/o H.Laldawla (L)
R/o Ramthar Veng, Aizawl*

.....Respondent

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. Chief Electoral Officer, Mizoram, Aizawl.
4. Returning Officer, 21-Lengteng, AC, Champhai, Mizoram.

.....Proforma Respondents.'

The reliefs sought for by the election petitioner are as under:-

- (i) *An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
 - (ii) *on the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*
11. Regarding the substance of the allegation and the ground for challenging the election of the applicant, election petitioner has relied upon Section 100 (I)(d) (iii) of the Act which says that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. In support of the above ground of challenge, the election petitioner has put forward the following averments:-

"5. That during the preceding MLA Elections held in Mizoram, the result of Postal Ballots used to be unfailing indicators for the final outcome of the election results. In this connection, it may briefly be stated that in the 1998 MLA General Election, the MNF Party and the MPC Party had joined hands in which as per the result of the Postal Ballots, the two Parties together had won in 24 Constituencies and in the final result, they had won in 29 Constituencies, Similarly, in the 2003 MLA General Election in which the MNF Party had fought singly, it had won in 23 Constituencies as per the Postal Ballot and in 21 Constituencies in the final result However, in the 2008 MLA General Election, in which the Election Commission of India had decided to switch over to the EVM, manufactured by the ECU Company, there occurred a drastic change in the result. Though the MNF Party had won in 20 Constituencies as per the result of the Postal Ballot, the result of the EVM had shown that the MNF Party could win only in 3 Constituencies such as in the 25-East Tuipui AC(ST) in the undivided Aizawl District, in the 32-Lunglei West AC (ST) in Lunglei District and in the 37 - Lawngtlai West AC (ST) of Lawngtlai District The result as per the postal ballot and the EVM in all the constituencies being so contradictory, the same had led to a strong suspicion against the correctness of the EVM by all the Parties other than the INC Party. It may be stated here that the MNF Party had come to its own conclusion that there was wide spread manipulation/rigging of the EVMs at the instance of the winning Party i.e. INC Party by hacking the said EVMs with the help of some experts in the field. The same EVMs which were kept by the Election Department in their safe custody were again used in all the polling booths in all the Constituencies except in the 10 Constituencies within Aizawl City where WPAT system were used in place of EVMs. It is not known why the ECIL Company could provide WPAT only for 10 Constituencies of Aizawl City while the remaining 30 Constituencies were left with no other option but to use the same EVMs used earlier and against which the MNF Party had made a number of complaints of their being hacked/manipulated. Copies of the Abstract of Postal Ballot record in different constituencies in the MLA Elections, 1998, 2003, 2008 & 2013 are at Annexures -3,4,5, & 6 respectively.

6. *That at this stage, it may be pertinent to state that due to a number of complaints against the EVM, as a device for conducting Elections, from different corners, a number of Scientists of different countries worked together to see whether there is a possibility of manipulating the EVMs for altering the election results. As per the Finding of the experts in the field published in an Article/Paper - 'Security Analysis of India's Electronic Machines', it was stated that in spite of the stand taken by the Election Commission of India that the EVMs were fully tamper-proof and that the machines were 'perfect with no need for technological improvement, the expert team in their said Paper had, after through scrutiny and analysis of the EVM, had come to the finding that the EVMs used in India are not tamper-proof and are susceptible to a range of attacks and that while the use of paperless DRE (Direct Recording Electronic) voting machines has been discontinued in California, Florida, Ireland, the Netherlands and Germany, Indian election authorities are still sticking to it and it is high time that they should immediately review the security procedures now in place and should Inspect all EVMs for evidence of fraud. Moving forward, they had suggested that India should adopt a different voting system that provides greater securities and transparency. In the said Paper it was clearly highlighted that on the basis of expert scrutiny. Observations and tests there are a number of attackers who could manipulate the EVMs and that these attacks are possible even if the voting software is completely error-free. It was found by the said expert team that the EVM firmware is stored in masked read-only memory inside the microcontroller chips, and there is no provision for extracting it or verifying its integrity. This means that if the software was modified before it was built in to the CPUs, the changes could be difficult to detect Similarly even the engineer responsible compiling the source and transmitting it to the CPU manufacturer could substitute a version containing a back door with little chance of being caught and that employees at the chip makers could alter the compiled programmed image before burning it in to the chips. It was also highlighted that attackers might try to substitute look-alike CPUs containing software that counts the votes dishonestly. And that anytime between the start of polling and the public count, dishonest election insiders or other criminals could use the clip-on device to change the votes recorded in the EVM. A copy of the said Article Dt 29/7/2010 is at Annexure-7.*

9. *That In this connection it may humbly be stated that the respondent has been declared elected in the said General MLA Election, 2013 held on 25/11/2013 on the basis of reception of the winning votes which were void. In other words, the actual and valid votes so polled in favour of the respondent were less than the votes so polled in favour of the Petitioner, and the respondent could not have been declared elected but for the reception of votes, which were void, on the basis of rigging and manipulation of some of the EVMs within the said Constituency. At this stage it may be humbly submitted that since it is not possible on the part of the petitioner to produce any documentary evidence in support of his contention as required, the Hon'ble Court shall have to constitute a committee to enquire into the allegation made herein and the said committee will have to function with the help of those having expertise in the field. In this connection it may also be noted that during the election, a number of outsiders who claimed to be the officials of the ECIL Company came to Mizoram and stationed themselves at different places where counting took place. Such persons were claiming to be supervising the functioning of the EVMs for which those personnel used to be present in and around the Polling Booths. Even when polling was over those personnel continued to be present in Aizawl and again distributed themselves at the time of counting of Votes at different counting stations. Though the Petitioner did not raise any objections to the presence of those personnel, however he had doubted the necessity of their presence. The subsequent event had confirmed his suspicion regarding the manipulation and hacking/rigging of the EVMs as well as the VVPAT Systems during the process of Election. To add salt to his already Injured and suspicious mind, one Mr. K. Chhawnthuama (as Phantom,) owner of K. V. Multipurpose (English Medium) High School*

and ordained Elder of the Durtlang Presbyterian Church, had sent two text messages to the present Chief Minister who has been elected from the 26-Serchhlp (ST) Assembly Constituency Immediately after he was declared elected. The text messages read as under:

To win an election based upon the manipulated CPU supported EVM Is such a dirty game. You are no doubt the dirtiest person alive. Even the lives of those of you who had manipulated/rigged the EVMs are at great risk. The bribe given to the DC was also no doubt high. It is hard to say how many of you will suffer. Proofs would come with photographs! There is none among the Mizos who Is more corrupted than you. You are so despicable. Considering the degree of crime you have committed, you have failed to take proper care bringing disgrace to yourself.

PHANTOM

I continue to know who you are - the dirty and despicable CM who had gone to the extent of manipulating EVM. The highest form of corruption, winning with the help of manipulated EVM is bound to be exposed. You are bringing disgrace upon yourself for acting in such a manner. How you have manipulated the EVM will be exposed with the help of photographs.

I know you through and through.

PHANTOM'

After detecting the sender of the said two text messages, the police had registered a case (i.e. CrI. Tr. No.2195 of 2013: Azl. PS. Case No. 373 of 2013 u/s 171GIPC r/w 66 A (a) (b) IT Act) against the author who had sent the said messages. The said text messages have been published in the Zaien weekly local newspaper on 22/12/2013. Copies of the text messages and their English translations are at Annexures-8 and 9 respectively.

10. That at this stage, since the Petitioner is having a serious and legitimate doubt about the correctness of the result as per the EVMs, and since the experts in the field have already come to the conclusion that EVMs in India are vulnerable to fraud as already highlighted by those experts in the Paper enclosed herein above, and in view of the fact that the results of the Election in the EVMs are highly contradictory to the results of postal ballots, it is necessary and in the interest of justice to enquire into the matter so as to bring out the true factual position."

12. Since the election petitioner has raised objection about applicability of the provisions contained in Order 7 Rule 11 of the Civil Procedure Code for rejection of an election petition at the preliminary stage, the said issue may be taken up first for consideration. Under Order 7 Rule 11 (a) of the Civil Procedure Code, a petition shall be rejected where it does not disclose a cause of action. Section 87 of the Act deals with the procedure to be followed by the High Court while adjudicating an election petition. It says that subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In Dhartipakar Madan Lai Agarwal -vs-Shri Rajiv Gandhi reported In AIR 1987 SCC 1577, the Hon'ble Supreme Court considered the question as to whether the High Court had the jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code of Civil Procedure and to reject the election petition under Order 7 Rule 11 thereof at the preliminary stage. The Apex Court clearly held that both Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure are applicable to proceedings relating to trial of an election

petition. Court has the power to reject an election petition under Order 7 Rule 11. If an election petition does not disclose a cause of action, it should be rejected at the initial stage. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. This view has been reiterated in Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541. It has been held that undoubtedly by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order 6 Rule. 16 and Order 7 Rule 11, the objective being to ensure that meaningless litigation which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the Courts. In view of the above authoritative pronouncements of the Apex Court, the objection raised by the election petitioner on this ground is rejected. This Court accordingly holds that it would be open to the returned candidate to file application under Order 7 Rule 11 of the Civil Procedure Code to seek rejection of the election[^] petition if it does not disclose any cause of action.

13. Having held so, let us now turn to the relevant provisions of the Act. While Section 80 to Section 81 deals with filing of election petition in the High Court and the manner of its presentation, Section 82 deals with parties to the election petition. Clause (a) of Section 82 is very specific. It provides that in a case where an election petitioner in addition to claiming declaration that the election of the returned candidate is void, also claims a further declaration that he himself or any other candidate has been elected, all the contesting candidates of the constituency are required to be made respondents and where no such additional declaration is sought for, only the returned candidate is to be made a party. Section 83 of the Act stipulates what should be the contents of an election petition. First and foremost, an election petition should contain a concise statement of the material facts on which the petitioner relies. If allegation is made of corrupt practice, full particulars of corrupt practice alleged are to be set out. Provisions of Section 87 has already been noticed above. Under Section 98, at the conclusion of the trial of an election petition, the High Court can either dismiss the election petition or I declare the election of the returned candidate as void and can also declare the petitioner to be the elected candidate. Section 100 lays down the grounds for declaring an election: to be void. As already noticed, in the related election petition, the election petitioner has challenged the election of the applicant on ground 100 (1) (d)(iii) i.e., the election of the applicant has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Under Section 117, the election petitioner has to deposit costs in the High Court at the time of presentation of the election petition.
14. Having noticed the above, we may now turn to Section 86 of the Act which has a decisive bearing on the case. As per Section 86 of the Act, the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act The word used is "shall", which denotes mandatory consequence of non-compliance of Sections 81,82 or 117.
15. Keeping the above in mind, let us examine the objection of the applicant regarding non-joinder of necessary party as respondents and seeking relief beyond the ambit and scope of an election petition. Since both these issues are interrelated, those are taken up together. As already noticed above, the first relief sought for by the election petitioner is to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Admittedly, such a relief is not open to an election petitioner and no order to this effect can be passed under Section 98 of the Act. Second relief sought for by the election petitioner is to declare the election of the applicant as void and thereafter to declare him as the elected candidate. If that is the prayer, under Section 82 of the

Act, all the contesting candidates of the particular constituency ought to have been joined as respondents in the election petition, which has not been done. Thus, there is no compliance of the provisions contained in Section 82 (a) of the Act. In view of the clear language of Section 86 of the Act, there is no other alternative but to dismiss the election petition for non-compliance of Section 82 of the Act. Submission made by the election petitioner that he has given up the second prayer i.e., to declare him as an elected candidate and that he should be allowed to amend the election petition cannot be acceded to at this stage, more so, when there is no formal application to that effect.

16. Though in view of the above finding, it is really not necessary to go into the other issue regarding lack of material facts in the election petition, since the same has been argued at length, it is considered appropriate to address the same.
17. As already noticed, Section 83 of the Act stipulates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. In *Azhar Hussain -vs- Rajiv Gandhi* reported in 1986 (Supp.) SCC 315, it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In *Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Others* reported in AIR 2001 SCC 2992, the Apex Court made it clear that an election petition must disclose material facts. Averments must be adequate, clear and specific. In *Rann Sukh (supra)*, it has been held that since the phrase "material facts" has neither been defined in the Act nor in the Civil Procedure Code, it has been understood by the Courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. "Material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. In *Jitu Patnaik -vs- Sanatan Mohakud and Others* reported in (2012) 4 SCC 194, it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
18. From a reading of the averments made in the election petition as extracted hereinabove, it is more than clear that the entire grievance of the election petitioner is structured on the basis of his suspicion and apprehension. No material fact has been pleaded by the election petitioner which would constitute the ground that the election of the applicant has been materially affected because of the improper reception, refusal or rejection of any valid vote or by the reception of any void vote. Suspicion and apprehension howsoever great those may be, cannot be construed as material facts as is understood in law.
19. That being the position, there is no other alternative but to hold that the election petition suffers from fundamental defects under Section 82 of the Act and also does not disclose material facts to hold trial to examine the validity of the election of the applicant.
20. Accordingly and in view of the discussions made above, this Misc. application is allowed and the related election petition is dismissed.
21. However, there shall be no order as to costs.

Sd/-
UJJAL BHUIY
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 30th January, 2015
10 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/14/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 6th September, 2014 of the Gauhati High Court in CM Application No.95 of 2014 in Election Petition No. 14 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED}

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH**

**CM. APPL NO. 95 OF 2014 IN
ELECTION PETITION NO. 14 OF 2014**

**BEFORE
HON'BLE MR. JUSTICE UJJAL BHUYAN**

Dates of hearing : 3.09.2014 & 5.9.2014.
Date of Judgment : 6.09.2014.

JUDGMENT & ORDER (CAV)

Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johny L Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner. Also heard Mr. Zothankhuma, learned senior counsel for Election Commission of India.

2. This is an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 for rejection of the election petition for want of cause of action and for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 (for short 'the Act').
3. Rejection of the election petition has been sought for primarily on three grounds. Firstly, the election petition does not disclose material facts % to constitute a cause of action to warrant trial of the election petition. Secondly, the prayer made in the election petition is beyond the relief which can be

granted to an election petitioner under the Act. Thirdly, since the election petitioner has sought for a declaration that not only the election of the returned candidate be declared as void, he should also be declared as the elected candidate, all the other contesting candidates of the constituency should have been made parties to the election petition, which has not been done. This is a violation of the mandatory provision of Section 82 of the Act.

4. Opposite Party No. 1 i.e. the election petitioner has filed written objection. It is contended that there is no necessity to entertain and decide the misc. application at a preliminary stage. It is asserted that material facts have been pleaded in the election petition. Reliefs sought for in the election petition cannot be said to be beyond the scope of the law. Though in the election petition, the election petitioner has made further prayer for declaring him as the elected candidate after declaring the election of the applicant as void, he is not pressing the same and would be satisfied if the first part of the prayer is granted i.e. if the election of the applicant (returned candidate) is declared as void. Misc. application should, therefore, be dismissed.
5. Mr. Lalsawirema, learned counsel for the applicant by referring to the averments made in the election petition submits that even a cursory reading of the averments would show that the election petition is entirely based on suspicion and apprehension of the election petitioner about: the fairness of the electoral process, particularly about the alleged misuse of the Electronic Voting Machines (EVMs). Not a single material fact has been pleaded to support the ground urged. On the basis of such vague allegation, there can be no trial and the result or applicant's election cannot be subjected to enquiry. He also submits that the first prayer made in the election petition is for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs) is beyond the scope and ambit of an election petition. He further submits that the prayer of the election petitioner to declare him as the elected candidate after declaring the election of the applicant as void would attract the provisions of Section 82 of the Act. In the face of such prayer, all the candidates who were in the electoral fray in the particular constituency ought to have been made respondents in the election petition which is a mandatory requirement. Non-compliance with such mandatory requirement would entail automatic dismissal of the election petition,, He therefore submits that the election petition suffers from fundamental technical defects and as such proceeding further with the election petition would be totally unwarranted.
6. Mr. C. Lalramzauva, learned senior counsel for the election petitioner on the other hand submits that keeping in mind the mandatory nature of Section 98 of the Act, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order 7 Rule 11 of the Civil Procedure Code. It is only after conclusion of the trial, the High Court can pass either of the 3 orders mentioned in Section 98. He submits that since election petitioner has already declared that he does not seek a declaration to the effect that he is the returned candidate, he may be permitted to amend the election petition. He finally submits that all the issues raised by the applicant can be gone into at the final hearing of the election petition and not at the threshold.
7. In reply, Mr. Lalsawirema, learned counsel for the applicant submits that after the statutory period of 45 days of filing election petition under Section 81 of the Act is over, there is no question of amendment of the election petition. Amendment as suggested, if granted, would change the very nature and character of the election petition, which cannot be permitted. In any case, he submits that in the absence of any formal application for amendment, such an oral prayer of the election petitioner cannot be accepted, that too, after the technical defects in the election petition were pointed out in the misc. application.

8. Though the Election Commission of India is neither a necessary party nor a proper party in an election petition in view of the clear enunciation of law by the Hon'ble Supreme Court in the case of B. Sundara Rami Reddy v. Election Commission of India reported in 1991 Supp. (2) SCC 624, the Court has none-the-less given audience to learned senior counsel appearing for the Election Commission of India since the election petitioner has himself made the Election Commission of India and its officials respondents in the election petition,, Mr. M, Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity of the electoral process while maintaining the secrecy of ballot. Unsettling an electoral verdict being a serious matter having wide ramification, law mandates that there should be strict compliance of procedural requirements. Violation of the mandatory conditions, particularly those mandated in Sections 81, 82 and 117 of the Act would result in dismissal of the election petition, he submits.
9. I have heard the rival submissions and also perused the materials on record.
10. To appreciate the rival contentions, it would be apposite to briefly refer to the election petition at the outset Election petitioner has challenged the election of the applicant as MLA in the legislative assembly elections to the Mizoram State Legislative Assemby, 2013. As can be seen from the cause title, the following are the parties to the election petition:-

*"Sh. H.B, Lianmunga, S/o Lalringaia (L),
R/o Chhinga Veng, Mizoram,*

.....Petitioner.

- Vrs-

1. *Sh. John Rotluangliana, S/o Israel Snagkhuma (L),
R/o Electric Veng, Aizawl.*

.....Respondent

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 26-Mamit (ST), AC,
Mamit, Mizoram.*

.....Proforma Respondents.

The reliefs sought for by the election petitioner are as under:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
- (ii) on the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be*

11. void and why the petitioner shall not be declared elected from the said constituency," Regarding the substance of the allegation and the ground for challenging the election of the applicant, election petitioner has relied upon Section 100 (I)(d) (iii) of the Act which says that if the High Court is of the opinion that the result of the election in so far it: concerns a returned candidate has been materially

affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. In support of the above ground of challenge, the election petitioner has put forward the following averments:-

“5. That during the preceding MLA Elections held in Mizoram, the result of Postal Ballots used to be unfailing indicators for the final outcome of the election results. In this connection, it may briefly be stated that In the 1998 MLA General Election, the MNF Party and the MPC Party had joined hands in which as per the result of the Postal Ballot®, the two Parties together had won in 24 Constituencies and in the final result, they had won in 29 Constituencies. Similarly, in the 2003 MIA General Election in which the MNF Party had fought singly, it had won in 23 Constituencies as per the Postal Ballot and In 21 Constituencies in the final result However, in the 2008 MLA General Election, in which the Election Commission of India had decided to switch over to the EVM, manufactured by the ECU Company, there occurred a drastic change In the result. Though the MNF Party had won in 20 Constituencies as per the result of the Postal Ballot, the result of the EVM had shown that the MNF Party could win only in 3 Constituencies such as in the 25-East Tuipui AC(ST) in the undivided Aizawl District, in the 32-Lunglei West AC (ST) in Lunglei District and in the 37 - Lawngtlai West AC (ST) of Lawngtlai District. The result as per the postal ballot and the EVM in all the constituencies being so contradictory, the same had led to a strong suspicion against the correctness of the EVM by all the Parties other than the INC Party. It may be stated here that the MNF Party had come to its own conclusion that there was wide spread manipulation/rigging of the EVMs at the instance of the winning Party i.e. INC Party by hacking the said EVMs with the help of some experts in the field. The same EVMs which were kept by the Election Department in their safe custody were again used in all the polling booths in all the Constituencies except in the 10 Constituencies within Aizawl City where VVPAT system were used in place of EVMs. It is not known why the ECU Company could provide VVPAT only for 10 Constituencies of Aizawl City while the remaining 30 Constituencies were left with no other option but to use the same EVMs used earlier and against which the MNF Party had made a number of complaints of their being hacked/manipulated. Copies of the Abstract of Postal Ballot record in different constituencies in the MLA Elections, 1998, 2003, 2008 & 2013 are at Annexures -3,4,5, & 0 respectively.

6. That at this stage, It may be pertinent to state that due to a number of complaints against the EVM, as a device for conducting Elections, from different corners, a number of Scientists of different countries worked together to see whether there is a possibility of manipulating the EVMs for altering the election results. As per the finding of the experts In the field published in an Article/Paper - ‘Security Analysis of India’s Electronic Machines’? it was stated that in spite of the stand taken by the Election Commission of India that the EVMs were fully tamper-proof and that the machines were perfect with no need for technological improvement, the expert team in their said Paper had, after thorough scrutiny and analysis of the EVM, had come to the finding that the EVMs used in India are not tamper-proof and are susceptible to a range of attacks and that while the use of paperless DRE (Direct Recording Electronic) voting machines has been discontinued in California, Florida, Ireland, the Netherlands and Germany, Indian election authorities are still sticking to it and it is high time that they should immediately review the security procedures now in place and should inspect all EVMs for evidence of fraud. Moving forward, they had suggested that India should adopt a different voting system that provides greater securities and transparency. In the said Paper it was clearly highlighted

that on the basis of expert scrutiny. Observations and tests there are a number of attackers who could manipulate the EVMs and that these attacks are possible even if the voting software is completely error-free. It was found by the said expert team that the EVM firmware is stored in masked read-only memory inside the microcontroller chips, and there is no provision for extracting it or verifying its integrity. This means that if the software was modified before it was built into the CPUs, the changes could be difficult to detect. Similarly even the engineer responsible compiling the source and transmitting it to the CPU manufacturer could substitute a version containing a back door with little chance of being caught and that employees at the chip makers could alter the compiled programmed image before burning it in to the chips. It was also highlighted that attackers might try to substitute look-alike CPUs containing software that counts the votes dishonestly. And that anytime between the start of polling and the public count, dishonest election insiders or other criminals could use the clip-on device to change the votes recorded in the EVM. A copy of the said Article Dt 29/7/2010 is at Annexure-7.

9. *That in this connection it may humbly be stated that the respondent has been declared elected in the said General MIA Election, 2013 held on 25/11/2013 on the basis of reception of the winning votes which were void. In other words, the actual and valid votes so polled in favour of the respondent were less than the votes so polled in favour of the Petitioner, and the respondent could not have been declared elected but for the reception of votes, which were void, on the basis of rigging and manipulation of some of the EVMs within the said Constituency. At this stage it may be humbly submitted that since it is not possible on the part of the petitioner to produce any documentary evidence in support of his contention as required, the Hon'ble Court shall have to constitute a committee to enquire into the allegation made herein and the said committee will have to function with the help of those having expertise in the field. In this connection it may also be noted that during the election, a number of outsiders who claimed to be the officials of the ECU Company came to Mizoram and stationed themselves at different places where counting took place. Such persons were claiming to be supervising the functioning of the EVM's for which those personnel used to be present in and around the Polling Booths. Even when polling was over those personnel continued to be present in Aizawl and again distributed themselves at the time of counting of Votes at different counting stations. Though the Petitioner did not raise any objections to the presence of those personnel, however he had doubted the necessity of their presence. The subsequent event had confirmed his suspicion regarding the manipulation and hacking/rigging of the EVMs as well as the WPAT Systems during the process of Election. To add salt to his already injured and suspicious mind, one Mr. K.Chhawnthuama (as Phantom,) owner of K.V.Multipurpose (English Medium) High School and ordained Elder of the Durtlang Presbyterian Church, had sent two text messages to the present Chief Minister who has been elected from the 26-Serchhip (ST) Assembly Constituency immediately after he was declared elected. The text messages read as under:*

To win an election based upon the manipulated CPU supported EVM is such a dirty game. You are no doubt the dirtiest person alive. Even the lives of those of you who had manipulated/rigged the EVMs are at great risk. The bribe given to the DC was also no doubt high. It is hard to say how many of you will suffer. Proofs would come with photographs! There is none among the Mizos who is more corrupted than you. You are so despicable. Considering the degree of crime you have committed,, you have failed to take proper care bringing disgrace to yourself.

PHANTOM

I continue to know who you are - the dirty and despicable CM who had gone to the extent of manipulating EVM. The highest form of corruption, winning with the help of manipulated EVM is bound to be exposed. You are bringing disgrace upon yourself for acting in such a manner. How you have manipulated the EVM will be exposed with the help of photographs.

I know you through and through.

PHANTOM'

After detecting the sender of the said two text messages, the police had registered a case (i.e. CrI. Tr. No.2195 of 2Q13: Azl. PS. Case No. 373 of 2013 u/s 171GIPC r/w 66 A (a) (b) IT Act) against the author who had sent the said messages. The said text messages have been published in the Zalen weekly local newspaper on 22/12/2013. Copies of the text messages and their English translations are at \Annexures-8 and 9 respectively.

10. 'That at this stage, since the Petitioner is having a serious and legitimate doubt about the correctness of the result as per the EVMs, and since the experts in the field have already come to the conclusion that EVMs in India are vulnerable to fraud as already highlighted by those experts in the Paper enclosed herein above, and in view of the fact that the results of the Election in the EVMs are highly contradictory to the results of postal ballots, it is necessary and in the interest of justice to enquire into the matter so as to bring out the true factual position.'

12. Since the election petitioner has raised objection about applicability of the provisions contained in Order 7 Rule 11 of the Civil Procedure Code for rejection of an election petition at the preliminary stage, the said issue may be taken up first for consideration. Under Order 7 Rule 11 (a) of the Civil Procedure Code, a plaint shall be rejected where it does not disclose a cause of action. Section 87 of the Act deals with the procedure to be followed by the High Court while adjudicating an election petition. It says that subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In Dhartipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577, the Hon'ble Supreme Court considered the question as to whether the High Court had the jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code of Civil Procedure and to reject the election petition under Order 7 Rule 11 thereof at the preliminary stage. The Apex Court clearly held that both Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure are applicable to proceedings relating to trial of an election petition. Court has the power to reject an election petition under Order 7 Rule 11. If an election petition does not disclose a cause of action it should be rejected at the initial stage. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. This view has been reiterated in Ram Sukh-vs- Dinesh Aggarwal reported in (2009) 10 SCC 541. It has been held that undoubtedly by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order 6 Rule 16 and Order 7 Rule 11, the objective being to ensure that meaningless litigation which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the Courts. In view of the above authoritative pronouncements of the Apex Court the objection raised by the election petitioner

on this ground is rejected. This Court accordingly holds that it would be open to the returned candidate to file application under Order 7 Rule 11 of the Civil Procedure Code to seek rejection of the election petition if it does not disclose any cause of action.

13. Having held so, let us now turn to the relevant provisions of the Act. While Section 80 to Section 81 deals with filing of election petition in the High Court and the manner of its presentation, Section 82 deals with parties to the election petition. Clause (a) of Section 82 is very specific. It provides that in a case where an election petitioner in addition to claiming declaration that the election of the returned candidate is void, also claims a further declaration that he himself or any other candidate has been elected, all the contesting candidates of the constituency are required to be made respondents and where no such additional declaration is sought for, only the returned candidate is to be made a party. Section 83 of the Act stipulates what should be the contents of an election petition. First and foremost, an election petition should contain a concise statement of the material facts on which the petitioner relies. If allegation is made of corrupt practice, full particulars of corrupt practice alleged are to be set out. Provisions of Section 87 has already been noticed above. Under Section 98, at the conclusion of the trial of an election petition, the High Court can either dismiss the election petition or declare the election of the returned candidate as void and can also declare the petitioner to be the elected candidate. Section 100 lays down the grounds for declaring an election to be void. As already noticed, in the related election petition, the election petitioner has challenged the election of the applicant on ground 100 (1) (d)(iii) i.e., the election of the applicant has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Under Section 117, the election petitioner has to deposit costs in the High Court at the time of presentation of the election petition.
14. Having, noticed the above, we may now turn to Section 86 of the Act which has a decisive bearing on the case. As per Section 86 of the Act) the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. The word used is "shall", which denotes mandatory consequence of non-compliance of Sections 81,82 or 117.
15. Keeping the above in mind, let us examine the objection of the applicant regarding non-joinder of necessary party as respondents and seeking relief beyond the ambit and scope of an election petition. Since both these issues are interrelated, those are taken up together. As already noticed above, the first relief sought for by the election petitioner is to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs, Admittedly, such a relief is not open to an election petitioner and no order to this effect can be passed under Section 98 of the Act. Second relief sought for by the election petitioner is to declare the election of the applicant as void and thereafter to declare him as the elected candidate. If that is the prayer, under Section 82 of the Act, all the contesting candidates of the particular constituency ought to have been joined as respondents in the election petition, which has not been done. Thus, there is 'no compliance of the provisions contained in Section 82 (a) of the Act. In view of the clear language of Section 86 of the Act, there is no other alternative but to dismiss the election petition for non-compliance of Section 82 of the Act. Submission made by the election petitioner that he has given up the second prayer i.e., to declare him as an elected candidate and that he should be allowed to amend the election petition cannot be acceded to at this stage, more so, when there is no formal application to that effect.
16. Though in view of the above finding, it is really not necessary to go into the other issue regarding lack of material facts in the election petition, since the same has been argued at length, it is considered appropriate to address the same.

17. As already noticed, Section 83 of the Act stipulates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. In *Azhar Hussain -vs- Rajiv Gandhi* reported in 1986 (Supp.) SCC 315, it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In *Ananga Uday Singh Deo -vs- F Unga Nath Mishra and Others* reported in AIR 2001 SCC 2992, the Apex Court made it clear that an election petition must disclose material facts. Averments must be adequate, clear and specific. In *Ram Sukh (supra)*, it has been held that since the phrase "material facts" has neither been defined in the Act nor in the Civil Procedure Code, it has been understood by the Courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. "Material facts" are facts upon which the plaintiffs cause of action or the defendant's defence depends. In *Jitu Patnaik -vs- Sanatan Mohakud and Others* reported in (2012) 4 SCC 194, it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
18. From a reading of the averments made in the election petition as extracted hereinabove, it is more than clear that the entire grievance of the election petitioner is structured on the basis of his suspicion and apprehension. No material fact has been pleaded by the election petitioner which would constitute the ground that the election of the applicant has been materially affected because of the improper reception, refusal or rejection of any valid vote or by the reception of any void vote. Suspicion and apprehension howsoever great those may be, cannot be construed as material facts as is understood in law.
19. That being the position, there is no other alternative but to hold that the election petition suffers from fundamental defects under Section 82 of the Act and also does not disclose material facts to hold trial to examine the validity of the election of the applicant.
20. Accordingly and in view of the discussions made above, this Misc. application is allowed and the related election petition is dismissed.
21. However, there shall be no order as to costs.

Sd/-
UJJAL BHUYAN
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 30th January, 2015
10 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/15/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 6th September, 2014 of the Gauhati High Court in CM Application No.97 of 2014 in Election Petition No. 15 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH**

**CM. Appl. No. 97 of 2014 in
Election Petition No. 15 of 2014**

**BEFORE
HON'BLE MR. JUSTICE UJJAL BHUYAN**

Dates of hearing : 3.09.2014 & 5.9.2014.
Date of Judgment : 6.09.2014.

JUDGMENT & ORDER (CAV)

Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. Johnny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner. Also heard Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.

2. This is an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 for rejection of the election petition for want of cause of action and for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 (for short We Act).
3. Rejection of the election petition has been sought for primarily on three grounds. Firstly, the election petition does not disclose material facts to constitute a cause of action to warrant trial of the election petition-Secondly, the prayer made in the election petition is beyond the relief which can be granted

to an election petitioner under the Act. Thirdly, since the election petitioner has sought for a declaration that not only the election of the returned candidate be declared as void, he should also be 'declared as the elected candidate, all the other contesting candidates of the constituency should have been made parties to the election petition, which has not been done. This is a violation of the mandatory provision of Section 82 of the Act.

4. Opposite Party No, 1 i.e. the election petitioner has filed written objection. It is contended that there is no necessity to entertain and decide the misc. application at a preliminary stage. It is asserted that material facts have been pleaded in the election petition. Reliefs sought for in the election petition cannot be said to be beyond the scope of the law. Though In the election petition, the election petitioner has made further prayer for declaring him as the elected candidate after declaring the election of the applicant as void, he is not pressing the same and would be satisfied if the first part of the prayer is granted i.e. if the election of the applicant (returned candidate) is declared as void. Misc. application should, therefore, be dismissed.
5. Mr. Lalsawirerna, learned counsel for the applicant by referring to the averments made in the election petition submits that even a cursory reading of the averments would show that the election petition is entirely based on suspicion and apprehension of the election petitioner about the fairness of the electoral process, particularly about the alleged misuse of the Electronic Voting Machines (EVMs). Not a single material fact has been -pleaded to support the ground urged. On the basis of such vague allegation, there can be no trial and the result of applicant's election cannot be subjected to enquiry. He also submits that the first prayer made in the election petition is for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs) is beyond the scope and ambit of an election petition. He further submits that the prayer of the election petitioner to declare him as the elected candidate after declaring the election of the applicant as void would attract the provisions of Section 82 of the Act. In the face of such prayer, all the candidates who were in the electoral fray in the particular constituency ought to have been made respondents in the election petition which is a mandatory requirement. Non-compliance with such mandatory requirement would entail automatic dismissal of the election petition. He therefore submits that the election petition suffers from fundamental technical defects and as such proceeding further with the election petition would be totally unwarranted.
6. Mr. Johny L. Tochwawng, learned counsel for the election petitioner on the other hand submits that keeping in mind the mandatory nature of Section 98 of the Act, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order 7 Rule 11 of the Civil Procedure Code. It is only after conclusion of the trial, the High Court can pass either of the 3 orders mentioned in Section 98. He submits that since election petitioner has already declared that he does not seek a declaration to the effect that he is the returned candidate, he may be permitted to amend the election petition. He finally submits that all the issues raised by the applicant can be gone into at the final hearing of the election petition and not at the threshold.
7. In reply, Mr, Lalsawirema, learned counsel for the applicant submits that after the statutory period of 45 days of filing election petition under Section 81 of the Act is over, there is no question of amendment of the election petition. Amendment as suggested, if granted, would change the very nature and character of the election petition, which cannot be permitted, In any case, he submits that in the absence of any formal application for amendment, such an oral prayer of the election petitioner cannot be accepted, that too, after the technical defects in the election petition were pointed out in the misc. application.

8. Though the Election Commission of India is neither a necessary party nor a proper party in an election petition in view of the clear enunciation of law by the Hon'ble Supreme Court in the case of B. Sundara Rami Reddy v. Election Commission of India reported in 1991 Supp. (2) SCC 624, the Court has none-the-less given audience to learned senior counsel appearing for the Election Commission of India since the election petitioner has himself made the Election Commission of India and its officials respondents in the election petition. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity of the electoral process while maintaining the secrecy of ballot. Unsettling an electoral verdict being a serious matter having wide ramification, law mandates that there should be strict compliance of procedural requirements. Violation of the mandatory conditions, particularly those mandated in Sections 81, 82 and 117 of the Act would result in dismissal of the election petition, he submits.
9. I have heard the rival submissions and also perused the materials on record.
10. To appreciate the rival contentions, it would be apposite to briefly refer to the election petition at the outset. Election petitioner has challenged the election of the applicant as MLA in the legislative assembly elections to the Mizoram State Legislative Assembly, 2013. As can be seen from the cause title, the following are the parties to the election petition:-

*"Sh. C Lalramzauva S/o C. Kapchawla (L),
R/o New Serchhip, Mizoram*

.....Petitioner.

- Vrs-

1. *Sh. Lal Thanhawla S/o Hmartawnphunga (L),
R/o Zarkawt, Aizawl*

.....Respondent.

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi*

3. *Chief Electoral Officer, Mizoram, Aizawl*

4. *Returning Officer, 26-Serchhip (ST), AC,
Serchhip, Mizoram.*

.....Proforma Respondents."

The reliefs sought for by the election petitioner are as under:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
- (ii) on the basis of the findings of the expert committee why the election of the respondent No, 1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*

11. Regarding the substance of the allegation and the ground for challenging the election of the applicant, election petitioner has relied upon Section 100 (I)(d) (iii) of the Act which says that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been

materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. In support of the above ground of challenge, the election petitioner has put forward the following averments:-

“5. That during the preceding MLA Elections held in Mizoram, the result of Postal Ballots used to be unfailing indicators for the final outcome of the election results. In this connection, it may briefly be stated that in the 1998 MLA General Election, the MNF Party and the MPC Party had joined hands in which as per the result of the Postal Ballots, the two Parties together had won in 24 Constituencies and in the final result, they had won in 29 Constituencies. Similarly, in the 2003 MIA General Election in which the MNF Party had fought singly, it had won in 23 Constituencies as per the Postal Ballot and in 21 Constituencies in the final result. However, in the 2008 MLA General Election, in which the Election Commission of India had decided to switch over to the EVM, manufactured by the ECU Company there occurred a drastic change in the result. Though the MNF Party had won in 20 Constituencies as per the result of the Postal Ballot, the result of the EVM had shown that the MNF Party could win only in 3 Constituencies such as in the 25-East Tuipui AC(ST) in the undivided Aizawl District, in the 32-Lunglei West AC (ST) in Lunglei District and in the 37 - Lawngtlai West AC (ST) of Lawngtlai District. The result as per the postal ballot and the EVM in all the constituencies being so contradictory, the same had led to a strong suspicion against the correctness of the EVM by all the Parties other than the INC Party. It may be stated here that the MNF Party had come to its own conclusion that there was wide spread manipulation/rigging of the EVMs at the instance of the winning Party i.e. INC Party[^] by hacking the said EVMs with the help of some experts in the field. The same EVMs which were kept by the Election Department in their safe custody were again used in all the polling booths in all the Constituencies except in the 10 Constituencies within Aizawl City where WPAT system were used in place of EVMs. It is not known why the ECIL Company could provide VVPAT only for 10 Constituencies of Aizawl City while the remaining 30 Constituencies were left with no other option but to use the same EVMs used earlier and against which the MNF Party had made a number of complaints of their being hacked/manipulated. Copies of the Abstract of Postal Ballot record in different constituencies in the MIA Elections, 1998, 2003, 2008 & 2013 are at Annexures -3,4,5, & 6 respectively.

6. That at this stage, it may be pertinent to state that due to a number of complaints against the EVM, as a device for conducting Elections, from different corners, a number of Scientists of different countries worked together to see whether there is a possibility of manipulating the EVMs for altering the election results. As per the finding of the experts in the field published in an Article/Paper - ‘Security Analysis of India’s Electronic Machines’, it was stated that in spite of the stand taken by the Election Commission of India that the EVMs were fully tamper-proof and that the machines were ‘perfect’ with no need for technological improvement, the expert team in their said Paper had, after thorough scrutiny and analysis of the EVM, had come to the finding that the EVMs used in India are not tamper-proof and are susceptible to a range of attacks and that while the use of paperless DRE (Direct Recording Electronic) voting machines has been discontinued in California, Florida, Ireland, the Netherlands and Germany, Indian election authorities are still sticking to it and it is high time that they should immediately review the security procedures now in place and should inspect all EVMs for evidence of fraud. Moving forward, they had suggested that India should adopt a different voting system that provides greater securities and transparency. In the said Paper it was clearly highlighted

that on the basis of expert scrutiny. Observations and tests there are a number of attackers who could manipulate the EVMs and that these attacks are possible even if the voting software is completely error-free. It was found by the said expert team that the EVM firmware is stored in masked read-only memory inside the microcontroller chips, and there is no provision for extracting it or verifying its integrity. This means that if the software was modified before it was built in to the CPUs, the changes could be difficult to detect. Similarly even the engineer responsible compiling the source and transmitting it to the CPU manufacturer could substitute a version containing a back door with little chance of being caught and that employees at the chip makers could alter the compiled programmed image before burning it in to the chips. It was also highlighted that attackers might try to substitute look-alike CPUs containing software that counts the votes dishonestly. And that anytime between the start of polling and the public count, dishonest election insiders or other criminals could use the clip-on device to change the votes recorded in the EVM. A copy of the said Article Dt 29/7/2010 is at Annexure-7.

9. *That in this connection it may humbly be stated that the respondent has been declared elected in the said General MIA Election, 2013 held on 25/11/2013 on the basis of reception of the winning votes which were void. In other words, the actual and valid votes so polled in favour of the respondent were less than the votes so polled in favour of the Petitioner, and the respondent could not have been declared elected but for the reception of votes, which were void, on the basis of rigging and manipulation of some of the EVMs within the said Constituency, At this stage it may be humbly submitted that since it is not possible on the part of the petitioner to produce any documentary evidence in support of his contention as required, the Hon'ble Court shall have to constitute a committee, to enquire into the allegation made herein and the said committee will have to function with the help of those having expertise in the Held. In this connection it may also be noted that during the election, a number of outsiders who claimed to be the officials of the ECU Company came to Mizoram and stationed themselves at different places where counting took place. Such persons were claiming to be supervising the functioning of the EVMs for which those personnel used to be present in and around the Polling Booths. Even when polling was over those personnel continued to be present in Aizawl and again distributed themselves at the time of counting of Vote.. ' at different counting stations. Though the Petitioner did not raise any objections to the presence of those personnel, however he had doubted the necessity of their presence. The subsequent event had confirmed his suspicion regarding the manipulation and hacking/rigging of the EVMs as well as the VVPA T Systems during the process of Election. To add salt to his already injured and suspicious mind, or®. Mr. K.Chhawnthuama (as Phantom,) owner of K. V.Multipurpose (English Medium) High School and ordained Elder of the Durtlang Presbyterian Church, had sent two text messages to the present Chief Minister who has been elected from the 26-Serchhip (ST) Assembly Constituency immediately after he was declared elected. The text messages read as under:*

To win an election based upon the manipulated CPU supported EVM is such a dirty game. You are no doubt the dirtiest person alive. Even the lives of those of you who had manipulated/rigged the EVMs are at great risk. The bribe given to the DC was also no doubt high. It is hard to say how many of you will suffer. Proofs would come with photographs! There is none among the Mizos who is more corrupted than you. You are so despicable. Considering the degree of crime you have committed, you have failed to take proper care bringing disgrace to yourself.

PHANTOM

I continue to know who you are - the dirty and despicable CM who had gone to the extent of manipulating EVM. The highest form of corruption,, winning with the help of manipulated EVM is bound to be exposed. You are bringing disgrace upon yourself for acting in such a manner. How you have manipulated the EVM will be exposed with the help of photographs.

I know you through and through.

PHANTOM'

After detecting the sender of the said two text messages, the police had registered a case (i.e. CrI. Tr. Ng.2195 of 2013: AzI. PS. Case No. 373 of 2013 u/s 171G IPC r/w 66 A (a) (b) IT Act) against the author who had sent the said messages. The said text messages have been published in the Zalen 'weekly local newspaper on 22/12/2013. Copies of the text messages and their English translations are at Annexures-8 and 9 respectively.

10. That at this stage, since the Petitioner is having a serious and legitimate doubt about the correctness of the result as per the EVMs, and since the experts in the Held have already come to the conclusion that EVMs in India are vulnerable to fraud as already highlighted by those experts in the Paper enclosed herein above, and in view of the fact that the results of the Election in the EVMs are highly contradictory to the results of postal ballots, it is necessary and in the interest of justice to enquire into the matter so as to bring out the true factual position."

12. Since the election petitioner has raised objection about applicability of the provisions contained in Order 7 Rule 11 of the Civil Procedure Code for rejection of an election petition at the preliminary stage, the said issue may be taken up first for consideration. Under Order 7 Rule 11 (a) of the Civil Procedure Code, a plaint shall be rejected where it does not disclose a cause of action. Section 87 of the Act deals with the procedure to be followed by the High Court while adjudicating an election petition. It says that subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In *Dftartipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi* reported in AIR 1987 SCC 1577, the Hon'ble Supreme Court considered the question as to whether the High Court had the jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code of Civil Procedure and to reject the election petition under Order 7 Rule 11 thereof at the preliminary stage. The Apex Court clearly held that both Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure are applicable to proceedings relating to trial of an election petition. Court has the power to reject an election petition under Order 7 Rule 11. If an election petition does not disclose a cause of action, it should be rejected at the initial stage. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act, This view has been reiterated in *Ram Sukh -vs- Dinesh Aggarwal* reported in (2009) 10 SCC 541. It has been held that undoubtedly by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order 6 Rule 16 and Order 7 Rule 11, the objective being to ensure that meaningless litigation which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the Courts. In view of the above authoritative pronouncements of the Apex Court, the objection raised by the election petitioner on this ground is .rejected. This Court accordingly holds that it would be open to the returned candidate to

file application under Order 7 Rule 11 of the Civil Procedure Code to seek rejection of the election petition if it does not disclose any cause of action.

13. Having held so, let us now turn to the relevant provisions of the Act. While Section 80 to Section 81 deals with filing of election petition in the High Court and the manner of its presentation, Section 82 deals with parties to the election petition. Clause (a) of Section 82 is very specific, It provides that in a case where an election petitioner in addition to claiming declaration that the election of the returned candidate is void, also claims a further declaration that he himself or any other candidate has been elected, all the contesting candidates of the constituency are required to be made respondents and where no such additional declaration is sought for, only the returned candidate is to be made a party. Section 83 of the Act stipulates what should be the contents of an election petition. First and foremost, an election petition should contain a concise statement of the material facts on which the petitioner relies. If allegation is made of corrupt practice, full particulars of corrupt practice alleged are to be set out. Provisions of Section 87 has already been noticed above. Under Section 98, at the conclusion of the trial of an election petition, the High Court can either dismiss the election petition or declare the election of the returned candidate as void and can also declare the petitioner to be the elected candidate. Section 100 lays down the grounds for declaring an election to be void. As already noticed, in the related election petition, the election petitioner has challenged the election of the applicant on ground 100 (1) (d)(iii) i.e., the election of the applicant has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Under Section 117, the election petitioner has to deposit costs in the High Court at: the time of presentation of the election petition.
14. Having noticed the above, we may now turn to Section 86 of the Act which has a decisive bearing on the case. As per Section 86 of the Act, the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, The word used is "shall", which denotes mandatory consequence of non-compliance of Sections 81,82 or 117.
15. Keeping the above in mind, let us exam in the objection of the applicant regarding non-joinder of necessary party as respondents and seeking relief beyond the ambit and scope of an election petition. Since both these issues are interrelated, those are taken up together. As already noticed above, the first relief sought for by the election petitioner is to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Admittedly, such a relief is not open to an election petitioner and no order to this effect can be passed under Section 98 of the Act. Second relief sought for by the election petitioner is to declare the election of the applicant as void and thereafter to declare him as the elected candidate. If that is the prayer, under Section 82 of the Act, all the contesting candidates of the particular constituency ought to have been joined as respondents In the election petition, which has not been done. Thus, there is no compliance of the provisions contained in Section 82 (a) of the Act. in view of the clear language of Section 86 of the Act, there is no other alternative but to dismiss the election petition for non-compliance of Section 82 of the Act. Submission made by the election petitioner that he has given up the second prayer Lei to declare him as an elected candidate and that he should be allowed to amend the election petition cannot be acceded to at this stage, more so, when there is no formal application to that effect.
16. Though in view of the above finding, it is really not necessary to go into the other issue regarding lack of material facts in the election petition, since the same has been argued at length, it is considered appropriate to address the same.

17. As already noticed, Section 83 of the Act stipulates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. In *Azhar Hussain -vs- Rajiv Gandhi* reported in 1986 (Supp.) SCC 315, it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In *Ananga Uday Singh Deo -vs- Ranga Math Mishra and Others* reported in AIR 2001 SCC 2992, the Apex Court made it clear that an election petition must disclose material facts. Averments must be adequate, clear and specific. In *Ram Sukh (supra)*, it has been held that since the phrase "material facts" has neither been defined in the Act nor in the Civil Procedure Code, it has been understood by the Courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action, "Material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. In *Jitu Patnaik -vs- Sanatan Moheikud and Others* reported in (2012) 4 SCC 194, it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
18. From a reading of the averments made in the election petition as extracted hereinabove, it is more than clear that the entire grievance of the election petitioner is structured on the basis of his suspicion and apprehension. No material fact has been pleaded by the election petitioner which would constitute the ground that the election of the applicant has been materially affected because of the improper reception, refusal or rejection of any valid vote or by the reception of any void vote. Suspicion and apprehension howsoever great those may be, cannot be construed as material facts as is understood in law.
19. That being the position, there is no other alternative but to hold that the election petition suffers from fundamental defects under Section 82 of the Act and also does not disclose: material facts to hold trial to examine the validity of the election of the applicant.
20. Accordingly and in view of the discussions made above, this Misc. application is allowed and the related election petition is dismissed.
21. However, there shall be no order as to costs.

Sd/-
UJJAL BHUYAN
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 30th January, 2015
10 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/16/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 6th September, 2014 of the Gauhati High Court in CM Application No.100 of 2014 in Election Petition No. 16 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH**

**CM. APPL NO. 100 OF 2014 IN
ELECTION PETITION NO. 16 OF 2014**

**BEFORE
HON'BLE MR. JUSTICE UJJAL**

Dates of hearing : 3.09.2014 & 5.9.2014.
Date of Judgment : 6.09.2014.

JUDGMENT & ORDER (CAV)

Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johnny L Tochhawng, learned counsel appearing for the Opposite Party No. 1/election petitioner. Also heard Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.

2. This is an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 for rejection of the election petition for want of cause of action and for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 (for short 'the Act).
3. Rejection of the election petition has been sought for primarily on three grounds. Firstly, the election petition does not disclose material facts to constitute a cause of action to warrant trial of the election

petition. Secondly, the prayer made in the election petition is beyond the relief which can be granted to an election petitioner under the Act. Thirdly, since the election petitioner has sought for a declaration that not only the election of the returned candidate be declared as void, he should also be declared as the elected candidate, all the other contesting candidates of the constituency should have been made parties to the election petition, which has not been done. This is a violation of the mandatory provision of Section 82 of the Act.

4. Opposite Party No. 1 i.e. the election petitioner has filed written objection. It is contended that there is no necessity to entertain and decide the misc. application at a preliminary stage. It is asserted that material facts have been pleaded in the election petition. Reliefs sought for in the election petition cannot be said to be beyond the scope of the law. Though in the election petition, the election petitioner has made further prayer for declaring him as the elected candidate after declaring the election of the applicant as void, he is not pressing the same and would be satisfied if the first part of the prayer is granted i.e. if the election of the applicant (returned candidate) is declared as void. Misc. application should, therefore, be dismissed.
5. Mr. Lalsawirema, learned counsel for the applicant by referring to the averments made in the election petition submits that even a cursory reading of the averments would show that the election petition is entirely based on suspicion and apprehension of the election petitioner about the fairness of the electoral process, particularly about the alleged misuse of the Electronic Voting Machines (EVMs). Not a single material fact has been pleaded to support the ground urged. On the basis of such vague allegation, there can be no trial and the result of applicant's election cannot be subjected to enquiry. He also submits that the first prayer made in the election petition is for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs) is beyond the scope and ambit of an election petition. He further submits that the prayer of the election petitioner to declare him as the elected candidate after declaring the election of the applicant as void would attract the provisions of Section 82 of the Act. In the face of such prayer, all the candidates who were in the electoral fray in the particular constituency ought to have been made respondents in the election petition which is a mandatory requirement. Non-compliance with such mandatory requirement would entail automatic dismissal of the election petition. He therefore submits that the election petition suffers from fundamental technical defects and as such proceeding further with the election petition would be totally unwarranted.
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prayer of the election petitioner cannot be accepted, that too, after the technical defects in the election petition were pointed out in the misc. application.

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*"Sh. Rasik Mohan Chdkma, S/o Shukra Moni Chakma,
R/o Kamlanagar.*

.....Petitioner.

-Vrs-

1. *Dr. B.D. Chakma, S/o Gunaban Chakma,
R/o Burapansuri-L*

.....Respondent.

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 36-Tuichawng, AC,
Lunglei, Mizoram.*

.....Proforma Respondents."

The reliefs sought for by the election petitioner are as under:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
- (ii) on the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*

11. Regarding the substance of the allegation and the ground for challenging the election of the applicant, election petitioner has relied upon Section 100 (l)(d) (iii) of the Act which says that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. In support of the above ground of challenge, the election petitioner has put forward the following averments:-

"5. That during the preceding MLA Elections held in Mizoram, the result of Postal Ballots used to be unfailing indicators for the final outcome of the election results. In this connection, it may briefly be stated that in the 1998 MLA General Election, the MNF Party and the MPC Party had joined hands in which as per the result of the Postal Ballot, the two Parties together had won in 124 Constituencies and in the final result, they had won in 29 Constituencies. Similarly, in the 2003 MLA General Election in which the MNF Party had fought singly, it had won in 23 Constituencies as per the Postal Ballot and in 21 Constituencies in the final result. However, in the 2008 MLA General Election, in which the Election Commission of India had decided to switch over to the EVM, manufactured by the ECIL Company, there occurred a drastic change in the result. Though the MNF Party had won in 20 Constituencies as per the result of the Postal Ballot, the result of the EVM had shown that the MNF Party could win only in 3 Constituencies such as in the 25-East Tuipui AC(ST) in the undivided Aizawl District, in the 32-Lunglei West AC (ST) in Lunglei District and in the 37 - Lawngtlai West AC (ST) of Lawngtlai District. The result as per the postal ballot and the EVM in all the constituencies being so contradictory, the same had led to a strong suspicion against the correctness of the EVM by all the Parties other than the INC Party. It may be stated here that the MNF Party had come to its own conclusion that there was wide spread manipulation/ rigging of the EVMs at the instance of the winning Party i.e. INC Party by hacking the said EVMs with the help of some experts in the field. The same EVMs which were kept by the Election Department in their safe custody were again used in all the polling booths in all the Constituencies except in the 10 Constituencies within Aizawl City where WPAT system were used in place of EVMs. It is not known why the ECIL Company could provide WPAT only for 10 Constituencies of Aizawl City while the remaining 30 Constituencies were left with no other option but to use the same EVMs used earlier and against which the MNF Party had made a number of complaints of their being hacked/manipulated. Copies of the Abstract of Postal Ballot record in different constituencies in the MIA Elections, 1998, 2003, 2008 & 2013 are at Annexures -3,4,5, & 6 respectively.

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Indian election authorities are still sticking to it and it is high time that they should immediately review the security procedures now in place and should inspect all EVMs for evidence of fraud. Moving forward, they had suggested that India should adopt a different voting system that provides greater securities and transparency. In the said Paper it was clearly highlighted that on the basis of expert scrutiny. Observations and tests there are a number of attackers who could manipulate the EVMs and that these attacks are possible even if the voting software is completely error-free. It was found by the said expert team that the EVM firmware is stored in masked read-only memory inside the microcontroller chips, and there is no provision for extracting it or verifying its integrity. This means that if the software was modified before it was built in to the CPUs, the changes could be difficult to detect. Similarly even the engineer responsible compiling the source and transmitting it to the CPU manufacturer could substitute a version containing a back door with little chance of being- caught and that employees at the chip makers could alter the compiled programmed image before burning it in to the chips. It was also highlighted that attackers might try to substitute look-alike CPUs containing software that counts the votes dishonestly. And that anytime between the start of polling and the public count, dishonest election insiders or other criminals could use the clip-on device to change the votes recorded in the EVM, A copy of the said Article Dt 29/7/oiO is at Annexure-7.

9. That in this connection it may humbly be stated that the respondent has been declared elected in the said General MIA Election, 2013 held on 25/11/2013 on the basis of reception of the winning votes which were void. In other words, the actual and valid votes so polled in favour of the respondent were less than the votes so polled in favour of the Petitioner, and the respondent could not have been declared elected but for the reception of votes, which were void, on the basis of rigging and, manipulation of some of the EVMs within the said Constituency. At this stage it may be humbly submitted that since it is not possible on the part of the petitioner to produce any documentary evidence in support of his contention as required, the Hon'ble Court shall have to constitute a committee to enquire into the allegation made herein and the said committee will have to function with the help of those having expertise in the field. In this connection it may also be noted that during the election, a number of outsiders who claimed to be the officials of the ECIL Company came to Mizoram and stationed themselves at different places where counting took place. Such persons were claiming to be supervising the functioning of the EVMs for which those personnel used to be present in and around the Polling Booths. Even when polling was over those personnel continued to be present in Aizawl and again distributed themselves at the time of counting of Votes at different counting station^ Though the Petitioner did not raise any objections to the presence of those personnel/however he had doubted the necessity of their presence. The subsequent event had confirmed his suspicion regarding the manipulation .and hacking/rigging of the EVMs as well as the WPAT Systems \during the process of Election. To add salt to his already injured land suspicious mind, one Mr. K.Chhawnthuama (as Phantom,) owner of K. V. Multipurpose (English Medium) High School and ordained Elder of the Durtlang Presbyterian Church, had sent two text messages to the present Chief Minister who has been elected from the 26-Serchhip (ST) Assembly Constituency immediately after he was declared elected. The text messages read as under:

To win an election based upon the manipulated CPU supported EVM is such a dirty game. You are no doubt the dirtiest person alive. Even the lives of those of you who had manipulated/rigged the EVMs are at great risk. The bribe given to the DC was also no doubt high. It is hard to say how many of you will suffer. Proofs would come with photographs!

There is none among the Mizos who is more corrupted than you. You are so despicable. Considering the degree of crime you have committed, you have failed to take proper care bringing disgrace to yourself.

PHANTOM

I continue to know who you are - the dirty and despicable CM who had gone to the extent of manipulating EVM. The highest form of corruption, winning with the help of manipulated EVM is bound to be exposed. You are bringing disgrace upon yourself for acting in such a manner. How you have manipulated the EVM will be exposed with the help of photographs.

I know you through and through.

PHANTOM'

After detecting the sender of the said two text messages, the police had registered a case (i.e. CrI. Tr. No,2195 of 2013: Azi. PS, Case No. 373 of 2013 u/s 17 1G IPC r/w 66 A (a) (b) IT Act) against the author Who had sent the said messages. The said text messages have been published in the Zalen weekly local newspaper on 22/12/2013. Copies of the text messages and their English anslations are at Annexures~8 and 9 respectively.

10. that at this stage, since the Petitioner is having a serious and legitimate doubt about the correctness of the result as per the EVMs, and since the experts in the field have already come to the conclusion that EVMs in India are vulnerable to fraud as already highlighted by those experts in the Paper enclosed herein above, and in view of the fact that the results of the Election in the EVMs are highly contradictory to the results of postal ballots, it is necessary and in the interest of justice to enquire into the matter so as to bring out the true factual position,"

12. Since the election petitioner has raised objection about applicability of the provisions contained in Order 7 Rule 11 of the Civil Procedure Code for rejection of an election petition at the preliminary stage, the said issue may be taken up first for consideration. Under Order 7 Rule 11 (a) of the Civil Procedure Code, a plaint shall be rejected where it does not disclose a cause of action. Section 87 of the Act deals with the procedure to be followed by the High Court while adjudicating an election petition. It says that subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In Dhartiakar Madan Lai Agarwal -vs-Shri Rajiv Gandhi reported in AIR 1987 SCC 1577, the Hon'ble Supreme Court considered the question as to whether the High Court had the jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code of Civil Procedure and to reject the election petition under Order 7 Rule 11 thereof at the preliminary stage. The Apex Court clearly held that both Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure are applicable to proceedings relating to trial of an election petition. Court has the power to reject an election petition under Order 7 Rule 11. If an election petition does not disclose a cause of action, it should be rejected at the initial stage. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. This view has been reiterated in Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541. It has been held that undoubtedly by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can

invoke powers under the Civil Procedure Code including the powers under Ordep6 Rule 16 and Order 7 Rule 11, the objective being to ensure that meaningless litigation which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the Courts. In view; of the above authoritative pronouncements of the Apex rejected. This Court accordingly holds that it would be open to the returned candidate to file application under Order 7 Rule 11 of the Civil Procedure Code to seek rejection of the election petition if it does not disclose any cause of action.

13. Having held so, let us now turn to the relevant provisions of the Act. While Section 80 to Section 81 deals with filing of election petition in the High Court and the manner of its presentation, Section 82 deals with parties to the election petition, Clause (a) of Section 82 is very specific. It provides that in a case where an election petitioner in addition to claiming declaration that the election of the returned candidate is void, also claims a further declaration that he himself or any other candidate has been elected, all the contesting candidates of the constituency are required to be made respondents and where no such additional declaration is sought for, only the returned candidate is to be made a party. Section 83 of the Act stipulates what should be the contents of an election petition. First and foremost, an election petition should contain a concise statement of the material facts on which the petitioner relies. If allegation is made of corrupt practice, full particulars of corrupt practice alleged are to be set out. Provisions of Section 87 has already been noticed above. Under Section 98, at the conclusion of the trial of an election petition, the High Court can either dismiss the election petition or declare the election of the returned candidate as void and can also declare the petitioner to be the elected candidate. Section 100 lays down the grounds for declaring an election to be void. As already noticed, in the related election petition, the election petitioner has challenged the election of the applicant on ground 100 (1) (d)(iii) i.e., the election of the applicant has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Under Section 117, the election petitioner has to be deposit costs in the High Court at the time of presentation of the election petition.
14. Having noticed the above, we may now turn to Section 86 of the Act which has a decisive bearing on the case. As per Section 86 of the Act, the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. The word used is "shall", which denotes mandatory consequence of non-compliance of Sections 81,82 or 117.
15. Keeping the above in mind, let us examine the objection of the applicant regarding non-joinder of necessary party as respondents and seeking relief beyond the ambit and scope of an election petition. Since both these issues are interrelated, those are taken up together. As already noticed above, the first relief sought for by the election petitioner is to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs, Admittedly, such a relief is not open to an election petitioner and no order to this effect can be passed under Section 98 of the Act. Second relief sought for by the election petitioner is to declare the election of the applicant as void and thereafter to declare him as the elected candidate. If that is the prayer, under Section 82 of the Act, all the contesting candidates of the particular constituency ought to have been joined as respondents in the election petition, which has not been done. Thus, there is no compliance of the provisions contained in Section 82 (a) of the Act. In view of the clear language of Section 86 of the Act, there is no other alternative but to dismiss the election petition for non-compliance of Section 82 of the Act. Submission made by the election petitioner that he has given up the second prayer i.e., to declare him as an elected candidate and that he should be allowed to amend the election petition cannot be acceded to at this stage, more so, when there is no formal application to that effect.

16. Though in view of the above finding, it is really not necessary to go into the other issue regarding lack of material facts in the election petition, since the same has been argued at length, it is considered appropriate to address the same.
17. As already noticed, Section 83 of the Act stipulates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. In Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp.) SCC 315, it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Others reported in AIR 2001 SCC 2992, the Apex Court made it clear that an election petition must disclose material facts. Averments must be adequate, dear and specific. In Ram Sukh (supra), it has been held that since the phrase "material facts" has neither been defined in the Act nor in the Civil Procedure Code, it has been understood by the Courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. "Material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. In 3itu Patnaik-vs- Sanatan Mohakud and Others reported in (2012) 4 SCC 194, it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
18. From a reading of the averments made in the election petition as extracted hereinabove, it is more than clear that the entire grievance of the election petitioner is structured on the basis of his suspicion and apprehension. No material fact has been pleaded by the election petitioner which would constitute the ground that the election of the applicant has been materially affected because of the improper reception, refusal or rejection of any valid vote or by the reception of any void vote. Suspicion and apprehension howsoever great those may be, cannot be construed as material facts as is understood in law.
19. That being the position, there is no other alternative but to hold that the election petition suffers from fundamental defects under Section 82 of the Act and also does not disclose material facts to hold trial to examine the validity of the election of the applicant.
20. Accordingly and in view of the discussions made above, this Misc. application is allowed and the related election petition is dismissed.
21. However, there shall be no order as to costs.

Sd/-
UJJAL BHUYAN
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 30th January, 2015
10 Magha, 1936 (Saka)

NOTIFICATION

No. 82/M1Z-LA/17/2014 - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 6th September, 2014 of the Gauhati High Court in CM Application No.89 of 2014 in Election Petition No. 17 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH**

**CM. APPL NO. 89 OF 2014 IN
ELECTION PETITION NO. 17 OF 2014**

**BEFORE
HON'BLE MR. JUSTICE UJKJAL BHUXAN**

Dates of hearing : 3.09,2014 & 5.9.2014.
Date of Judgment : 6.09.2014.

JUDGMENT & ORDER (CAV)

Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No, 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johnny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner. Also heard Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.

2. This is an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 for rejection of the election petition for want of cause of action and for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 (for short We Act).
3. Rejection of the election petition has been sought for primarily on three grounds. Firstly, the election petition does not disclose material facts to constitute a cause of action to warrant trial of the election

petition, Secondly, the prayer made in the election petition is beyond the relief which can be granted to an election petitioner under the Act. Thirdly, since the election petitioner has sought for a declaration that not only the election of the returned candidate be declared as void, he should also be declared as the elected candidate, all the other contesting candidates of the constituency should have been made parties to the election petition, which has not been done. This is a violation of the mandatory provision of Section 82 of the Act

4. Opposite Party No. 1 i.e. the election petitioner has filed written objection. It is contended that there is no necessity to entertain and decide the misc. application at a preliminary stage. It is asserted that material facts have been pleaded in the election petition. Reliefs sought for in the election petition cannot be said to be beyond the scope of the law. Though in the election petition, the election petitioner has made further prayer for declaring him as the elected candidate after declaring the election of the applicant as void, he is not pressing the same and would be satisfied if the first part of the prayer is granted i.e. if the election of the applicant (returned candidate) is declared as void. Misc. application should, therefore, be dismissed.
5. Mr. Lalsawirema, learned counsel for the applicant by referring to the averments made in the election petition submits that even a cursory reading of the averments would show that the election petition is entirely based on suspicion and apprehension of the election petitioner about the fairness of the electoral process, particularly about the alleged misuse of the Electronic Voting Machines (EVMs). Not a single material fact has been pleaded to support the ground urged. On the basis of such vague allegation, there can be no trial and the result of applicant's election cannot be subjected to enquiry. He also submits that the first prayer made in the election petition is for constitution of an enquiry committee of experts to scrutinize the 'correctness of the election result: by checking the Electronic Voting Machine; (EVMs) is beyond the scope and ambit of an election petition. He further submits that the prayer of the election petitioner to declare him as the elected candidate after declaring the election of the applicant as void would attract the provision:; of Section 82 of the Act In the face of such prayer, till the candidates who were in the electoral fray in the particular constituency ought to have been made respondents in the election petition which is a mandatory requirement. Non-compliance with such mandatory requirement would entail automatic dismissal of the election petition. He therefore submits that the election petition suffers from fundamental technical defects and as such proceeding further with the election petition would be totally unwarranted.
6. Mr. C. Lalramzauva, learned senior counsel for the election petitioner on the other hand submits that keeping in mind the mandatory nature of Section 98 of the Act, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order 7 Rule 11 of the Civil Procedure Code. It is only after conclusion of the trial, the High Court can pass either of the 3 orders mentioned in Section 98. He submits that since election petitioner has already declared that he does not seek a declaration to the effect that he is the returned candidate, he may be permitted to amend the election petition. He finally submits that all the issues raised by the applicant can be gone into at the final hearing of the election petition and not at the threshold.
7. In reply, Mr, Lalsawirema, learned counsel for the applicant-submits that after the statutory period of 45 days of filing election petition under Section 81 of the Act is over, there is no question of amendment of the election petition. Amendment as suggested, if granted, would change the very nature and character of the election petition, which cannot be permitted. In any case, he submits that in the absence of any formal application for amendment, such an oral prayer of the election petitioner

cannot be accepted, that too, after the technical defects in the election petition were pointed out in the misc. application.

8. Though the Election Commission of India is neither a necessary party nor a proper party in an election petition in view of the clear enunciation of law by the Hon'ble, Supreme Court in the case of B. Sundara Rami Reddy v. Election Commission of India reported in 1991 Supp. (2) SCC 624, the Court has none-the-less given audience to learned senior counsel appearing for the Election Commission of India since the election petitioner has himself made the Election Commission of India and its official respondents in the election petition. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity of the electoral process while maintaining the secrecy of ballot. Unsettling an electoral verdict being a serious matter having wide ramification, law mandates that there should be strict compliance of procedural requirements. Violation of the mandatory conditions, particularly those mandated in Sections 81, 82 and 117 of the Act would result in dismissal of the election petition, he submits.
9. I have heard the rival submissions and also perused the materials on record.
10. To appreciate the rival contentions, it would be apposite to "briefly refer to the election petition at the outset. Election petitioner has challenged the election of the applicant as MLA in the legislative assembly elections to the Mizoram State Legislative Assembly, 2013. As can be seen from the cause title, the following are the parties to the election petition:-

*"Sh. Dr. R. Laithangliana, S/o R. Dengchhunga (L),
R/o Kanan, Aizawl.*

.....Petitioner.

- Vrs-

1. *Sh. Chalrosanga Ralte S/o Rothangpuia,
R/o Tuikual South, Aizawi,*

.....Respondent

2. *Section Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 32-Lunglei West,
AC, Mizoram,*

.....Pro forma Respondents."

The reliefs sought for by the election petitioner are as under:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
- (if) on the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*

11. Regarding the substance of the allegation and the ground for challenging the election of the applicant, election petitioner has relied upon Section 100 (l)(d) (iii) of the Act which says that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. In support of the above ground of challenge, the election petitioner has put forward the following averments:-

"5. That during the preceding MLA Elections held in Mizoram, the result of Postal Ballots used to be unfailing indicators for the Final outcome of the election results. In this connection, it may briefly be stated that in the 1998 MLA General Election, the MNF Party and the MPC Party had joined hands in which as per the result of the Postal Ballot, the two Parties together had won in 24 Constituencies and in the final result, they had won in 29 Constituencies, Similarly, in the 2003 MLA General Election in which the MNF Party had fought singly, it had won in 23 Constituencies as per the Postal Ballot and In 21 Constituencies in the final result However, in the 2008 MLA General Election in which the Election Commission of India had decided to switch over to the EVM, manufactured by the ECIL Company, there occurred a drastic change in the result Though the MNF Party had won in 20 Constituencies as per the result of the Postal Ballot, the result of the EVM had shown that the MNF Party could win only in 3 Constituencies such as in the 25-East Tuipui AC(5T) in the undivided Aizawl District, in the 32-Lunglei West AC (ST) in Lunglei District and in the 37 - Lawngtlai West; AC (ST) of Lawngtlai District The result as per the postal ballot and the EVM in all the constituencies being so contradictory, the same had led to a strong suspicion against the correctness of the EVM by all the Parties other than the INC Party. It may be stated here that the MNF Party had come to its own conclusion that there was wide spread manipulation/rigging of the EVMs at the instance of the winning Party i.e. INC Party by hacking the said EVMs with the help of some experts in the field. The same EVMs which were kept by the Election Department in their safe custody were again used in all the polling booths in all the Constituencies except in the 10 Constituencies within Aizawl City where VVPA T system were used in place of EVMs. It is not known why the ECU Company could provide VVPAT only for 10 Constituencies of Aizawl City while the remaining 30 Constituencies were left with no other option but to use the same EVMs used earlier and against which the MNF Party had made a number of complaints of their being hacked/manipulated. Copies of the Abstract of Postal Ballot record in different constituencies in the MIA Elections, 1998, 2003, 2008 & 2013 are at Annexures —3,4,5, & 6 respectively.

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review the security procedures now in place and should inspect all EVMs for evidence of fraud. Moving forward, they had suggested that India should adopt a different voting system that provides greater securities and transparency. In the said Paper it was clearly highlighted that on the basis of expert scrutiny. Observations and tests there are a number of attackers who could manipulate the EVMs and that these attacks are possible even if the voting software is completely error-free. It was found by the said expert team that the EVM firmware is stored in masked read-only memory inside the microcontroller chips, and there is no provision for extracting it or verifying its integrity. This means that if the software was mod/fled before it was built in to the CPUs, the changes could be difficult to detect. Similarly even the engineer responsible compiling the source and transmitting it to the CPU manufacturer could substitute a version containing a back door with little chance of being caught and that employees at the chip makers could alter the compiled programmed image before burning it in to the chips. It was also highlighted that attacker, might try to substitute look-alike CPUs containing software that counts the votes dishonestly. And that anytime between the start of polling and the public count, dishonest election insiders or other criminals could use the clip-on device to change the votes recorded in the EVM. A copy of the said Article PL 29/7/2010 is at Annexure-7,

9. That in this connection it may humbly be stated that the respondent has been declared elected in the said General MLA % Election, 2013 held on 25/11/2013 on the basis of reception of the winning votes which were void. In other words, the actual and valid votes so polled in favour of the respondent were less than the votes so polled in favour of the Petitioner, and the respondent could not have been declared elected but for the reception of votes, which were void, on the basis of rigging and manipulation of some of the EVMs within the said Constituency. At this stage it may be humbly submitted that since it is not possible on the part of the petitioner to produce any documentary evidence in support of his contention as required, the Hon'ble Court shall have to constitute a committee to enquire into the allegation made herein and the said committee will have to function with the help of those having expertise in the field. In this connection it may also be noted that during the election, a number of outsiders who claimed to be the officials of the ECU Company came to Mizoram and stationed themselves at different places where counting took place, such persons were claiming to be supervising the functioning of the EVMs for which those personnel used to be present in and around the Polling Booths. Even when polling was over those personnel continued to be present in Aizawl and again distributed themselves at the time of counting of votes at different counting stations. Though the Petitioner did not raise any objections to the presence of those personnel, however he had doubted the necessity of their presence. The subsequent event had confirmed his suspicion regarding the manipulation and hacking/rigging of the EVMs as well as the WPAT Systems during the process of Election. To add salt to his already injured and suspicious mind, one Mr. K. Chhawnthuama (as Phantom,) owner of K. V. Multipurpose (English Medium) High School and ordained Elder of the Durtlang Presbyterian Church, had sent two text messages to the present Chief Minister who has been elected from the 26-Serchhip (ST) Assembly Constituency immediately after he was declared elected. The text messages read as under:

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Considering the degree of crime you have committed, you have failed to take proper care bringing disgrace to yourself:

PHANTOM

I continue to know who you are - the duty and despicable CM who had gone to the extent of manipulating EVM. The highest form of corruption, winning with the help of manipulated EVM is bound to be exposed. You are bringing disgrace upon yourself for acting in such a manner. How you have manipulated the EVM will be exposed with the help of photographs.

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After detecting the sender of the said two text messages, the police had registered a case (i.e. Cri. Tr. No,2195 of 2013: Azl. PS. Case No. 373 of 2013 u/s 171GIPC r/w 66 A (a) (b) IT Act) against the author who had sent the said messages. The said text messages have been published in the Zalen weekly local newspaper on 22/12/2013. Copies of the text messages and their English translations are at Annexures-8 and 9 respectively.

10. That at this stage, since the Petitioner is having a serious and legitimate doubt about the correctness of the result as per the EVMs, and since the experts in the field have already come to the conclusion that EVMs in India are vulnerable to fraud as already highlighted by those experts in the Paper enclosed herein above, and in view of the fact that the results of the Election in the EVMs are highly contradictory to the results of postal ballots, it is necessary and in the interest of justice to enquire into the matter so as to bring out the true factual position".

12. Since the election petitioner has raised objection about applicability of the provisions contained in Order 7 Rule 11 of the Civil Procedure Code for rejection of an election petition at the preliminary stage, the said issue may be taken up first for consideration. Under Order 7 Rule 11 (a) of the Civil Procedure Code, a plaint shall be rejected where it does not disclose a cause of action. Section 87 of the Act deals with the procedure to be followed by the High Court while adjudicating an election petition. It says that subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In *Dharmipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi* reported in AIR 1987 SCC 1577, the Hon'ble Supreme Court considered the question as to whether the High Court had the jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code of Civil Procedure to reject the election petition under Order 7 Rule 11 thereof at the preliminary stage. The Apex Court clearly held that both Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure are applicable to proceedings relating to trial of an election petition. Court has the power to reject an election petition under Order 7 Rule 11. If an election petition does not disclose a cause of action, it should be rejected at the initial stage. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. This view has been reiterated in *Ram Sukh -vs- Dinesh Aggarwal* reported in (2009) 10 SCC 541. It has been held that undoubtedly by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order Rule 16 and Order 7 Rule 11, the objective being to ensure that meaningless litigation which is otherwise bound to proye

abortive should not: be permitted to occupy the judicial time “of the Courts I In view of the above authoritative pronouncements of the Apex Court, the objection raised by the election petitioner on this ground is rejected. This Court accordingly holds that it would be open to the returned candidate to file application under Order 7 Rule 11 of the Civil Procedure Code to seek rejection of the election petition if it does not disclose any cause of action.

13. Having held so, let us now turn to the relevant provisions of the Act. While Section 80 to Section 81 deals with filing of election petition in the High Court and the manner of its presentation, Section 82 deals with parties to the election petition. Clause (a) of Section 82 is very specific. It provides that in a case where an election petitioner in addition to claiming declaration that the election of the returned candidate is void, also claims a further declaration that he himself or any other candidate has been elected, all the contesting candidates of the constituency are required to be made respondents and where no such additional declaration is sought for, only the returned candidate is to be made a party. Section 83 of the Act stipulates what should be the contents of an election petition. First and foremost, an election petition should contain a concise statement of the material facts on which the petitioner relies. If allegation is made of corrupt practice, full particulars of corrupt practice alleged are to be set out. Provisions of Section 87 has already been noticed above. Under Section 98, at the conclusion of the trial of an election petition, the High Court can either dismiss the election petition or declare the election of the returned candidate as void and can also declare the petitioner to be the elected candidate. Section 100 lays down the grounds for declaring an election to be void. As already noticed, in the related election petition, the election petitioner has challenged the election of the applicant on ground 100 (1) (d)(iii) i.e., the election of the applicant has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Under Section 117, the election petitioner has to deposit costs in the High Court at the time of presentation of the election petition.
14. Having noticed the above, we may now turn to Section 86 of the Act which has a decisive bearing, on the case. As per Section 86 of the Act, the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. The word used is “shall”, which denotes mandatory consequence of non-compliance of Sections 81, 82 or 117,
15. Keeping the above in mind, let us examine the objection of the applicant regarding non-joinder of necessary party as respondents and seeking relief beyond the ambit and scope of an election petition. Since both these issues are interrelated, those are taken up together. As already noticed above, the first relief sought for by the election petitioner is to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Admittedly, such a relief is not open to an election petitioner and no order to this effect can be passed under Section 98 of the Act. Second relief sought for by the election petitioner is to declare the election of the applicant as void and thereafter to declare him as the elected candidate. If that is the prayer, under Section 82 of the Act, all the contesting candidates of the particular constituency ought to have been joined as respondents in the election petition, which has not been done. Thus, there is no compliance of the provisions contained in Section 82 (a) of the Act. In view of the clear language of Section 86 of the Act, there is no other alternative but to dismiss the election petition for non-compliance of Section 82 of the Act. Submission made by the election petitioner that he has given up the second prayer i.e., to declare him as an elected candidate and that he should be allowed to amend the election petition cannot be acceded to at this stage, more so, when there is no formal application to that effect.

16. Though in view of the above finding, it is really not necessary to go into the other issue regarding lack of material facts in the election petition, since the same has been argued at length, it is considered appropriate to address the same.
17. As already noticed, Section 83 of the Act stipulates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. In Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp.) SCC 315, it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Others reported in AIR 200JL SCC 2992, the Apex Court made it clear that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Ram Sukh (supra), it has been held that since the -phrase "material facts" has neither been defined in the Act nor in the Civil Procedure Code, it has been understood by the Courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. "Material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. In Jitu Patnaik -vs- Sana tan Mohakud and Others reported in (2012) 4 SCC 194, it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure of state even a single material fact will entail dismissal of an election petition
18. From a reading of the averments made in the election petition as extracted hereinabove, it is more than clear that the entire grievance of the election petitioner is structured on the basis of his suspicion and apprehension. No material fact has been pleaded by the election petitioner Which Would constitute the ground that the election of the applicant has been materially affected because of the improper reception, refusal or rejection of any valid vote or by the reception of any void vote. Suspicion and apprehension howsoever great those may be, cannot be construed as material facts as is understood in law.
19. That being the position, there is no other alternative but to hold that the election petition suffers from fundamental defects under Section 12 of the Act and also does not disclose material facts to hold trial to examine the validity of the election of the applicant
20. Accordingly and in view of the discussions made above, this misc. application is allowed and the related election petition is dismissed.
21. However, there shall be no order as to costs.

Sd/-
UJJAL BHUYAN
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 30th January, 2015
10 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/18/2014: In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 6th September, 2014 of the Gauhati High Court in CM Application No.90 of 2014 in Election Petition No. 18 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH**

**CM. APPL NO. 90 OF 2014 IN
ELECTION PETITION NO. 18 OP 20**

**BEFORE
HON'BLE MR. JUSTICE UJJAL BHUYAN**

Dates of hearing : 3.09.2014 & 5.9.2014.
Date of Judgment : 6.09.2014.

JUDGMENT & ORDER (CAV)

Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johnny L Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner. Also heard Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.

2. This is an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 for rejection of the election petition for want of cause of action and for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 (for short 'the Act').
3. Rejection of the election petition has been sought for primarily on three grounds. Firstly, the election petition does not disclose material facts to constitute a cause of action to warrant trial of the election petition. Secondly, the prayer made in the election petition is beyond the relief which can be granted to an election petitioner under the Act. Thirdly, since the election petitioner has sought for a declaration

that not only the election of the returned candidate be declared as void, he should also be declared as the elected candidate, all the other contesting candidates of the constituency should have been made parties to the election petition, which has not been done. This is a violation of the mandatory provision of Section 82 of the Act.

4. Opposite Party No. 1 i.e. the election petitioner has filed written objection. It is contended that there is no necessity to entertain and decide a misc. application at a preliminary stage. It is asserted that material facts have been pleaded in the election petition. Reliefs sought for in the election petition cannot be said to be beyond the scope of the law. Though in the election petition, the election petitioner has made further prayer for declaring him as the elected candidate after declaring the election of the applicant as void, he is not pressing the same and would be satisfied if the first part of the prayer is granted i.e. if the election of the applicant (returned candidate) is declared as void. Misc. application should, therefore, be dismissed.
5. Mr. Lalsawirema, learned counsel for the applicant by referring to the averments made in the election petition submits that even a cursory reading of the averments would show that the election petition is entirely based on suspicion and apprehension of the election petitioner about the fairness of the electoral process, particularly about the alleged misuse of the Electronic Voting Machines (EVMs). Not a single material fact has been pleaded to support the ground urged. On the basis of such vague allegation, there can be no trial and the result of applicant's election cannot be subject-matter to enquiry. He also submits that the first prayer made in the election petition is for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs) is beyond the scope and ambit of an election petition. He further submits that the prayer of the election petitioner to declare him as the elected candidate after declaring the election of the applicant as void would attract the provisions of Section 82 of the Act. In the face of such prayer, all the candidates who were in the electoral fray in the particular constituency ought to have been made respondents in the election petition which is a mandatory requirement. Non-compliance with such mandatory requirement would entail automatic dismissal of the election petition. He therefore submits that the election petition suffers from fundamental technical defects and as such proceeding further with the election petition would be totally unwarranted.
6. Mr. C. Lalramzauva, learned senior counsel for the election petitioner on the other hand submits that keeping in mind the mandatory nature of Section 98 of the Act, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order 7 Rule 11 of the Civil Procedure Code. It is only after conclusion of the trial, the High Court can pass either of the 3 orders mentioned in Section 98. He submits that since election petitioner has already declared that he does not seek a declaration to the effect that he is the returned candidate, he may be permitted to amend the election petition. He finally submits that all the issues raised by the applicant can be gone into at the final hearing of the election petition and not at the threshold.
7. In reply, Mr. Lalsawirema, learned counsel for the applicant submits that after the statutory period of 45 days of filing election petition under Section 81 of the Act is over, there is no question of amendment of the election petition. Amendment as suggested, if granted, would change the very nature and character of the election petition, which cannot be permitted. In any case, he submits that in the absence of any formal application for amendment, such oral prayer of the election petitioner cannot be accepted, that too, after the technical defects in the election petition were pointed out in the misc. application.

8. Though the Election Commission of India is neither a necessary party nor a proper party in an election petition in view of the clear enunciation of law by the Hon'ble Supreme Court in the case of B. Sundara Rami Reddy v. Election Commission of India reported in 1991 Supp. (2) SCC 624, the Court has none-the-less given audience to learned senior counsel appearing for the Election Commission of India since the election petitioner has himself made the Election Commission of India and its officials respondents in the election petition. Mr. M. Zothankhuma, learned senior counsel appearing for the Section Commission of India submits that the scheme of the election law is to uphold the purity of the electoral process while maintaining the secrecy of ballot. Unsettling an electoral verdict being a serious matter having wide ramification, law mandates that there should be strict compliance of procedural requirements. Violation of the mandatory conditions, particularly those mandated in Sections 81, 82 and 117 of the Act would result in dismissal of the election petition, he submits.
9. I have heard the rival submissions and also perused the materials on record.
10. To appreciate the rival contentions, it would be apposite to briefly refer to the election petition at the outset. Election petitioner has challenged the election of the applicant as MLA in the legislative assembly elections to the Mizoram State Legislative Assembly, 2013. As can be seen from the cause title, the following are the parties to the election petition:-

*"Sh. Joseph Lalzawmliana, S/o Z.D. Malsawma,
R/o Electric Veng, Lung lei.*

.....Petitioner.

- Vrs -

1. *Sh. Zodintluanga, S/o Rothangpuia,
R/o Tuikual South, Aizawl.*

.....Respondent

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 34-Thorang, AC,
Mizoram.*

.....Proforma Respondents."

The reliefs sought for by the election petitioner are as under:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
- (ii) on the basis of the Findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*

11. Regarding the substance of the allegation and the ground for challenging the election of the applicant, election petitioner has relied upon Section 100 (I)(d) (iii) of the Act which says that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been

materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the ejection of the returned candidate to be void, In support of the above ground of challenge, the election petitioner has put forward the following averments:-

“5. That during the preceding MLA Elections held in Mizoram, the result of Postal Ballots used to be unfailing indicators for the final outcome of the election results. In this connection, it may briefly be stated that in the 1998 MLA General Election, the MNF Party and the MFC Party had Joined hands in which as per the result of the Postal Ballots, the two Parties together had won in 24 Constituencies and in the final result, they had won in 29 Constituencies. Similarly, in the 2003 MLA General Election in which the MNF Party had fought singly, it had won in 23 Constituencies as per the Postal Ballot and in 21 Constituencies in the final result However, in the 2008 MLA General Election, in which the Election Commission of India had decided to switch over to the EVM, manufactured by the ECIL Company, there occurred a drastic change in the result Though the MNF Party had won in 20 Constituencies as per the result of the Postal Ballot, the result of the EVM had shown that the MNF Party could win only in 3 Constituencies such as in the 25-East Tuipui AC (ST) in the undivided Aizawl District, in the 32-Lunglei West AC (ST) In Lunglei District and in the 3/ - Lawngtlai West AC (ST) of Lawngtlai District The result as per the postal ballot and the EVM in all the constituencies being so contradictory, the same had led to a strong suspicion against the correctness of the EVM by all the Parties other than the INC Party. It may be stated here that the MNF Party had come to its own conclusion that there was wide spread manipulation/rigging of the EVMs at the instance of the winning Party i.e. INC Party by hacking the said EVMs with the help of some experts in the field. The same EVMs which were kept by the Election Department in their safe custody were again used in all the polling booths in all the Constituencies except in the 10 Constituencies within Aizawl City where WPAT system were used in place of EVMs, It is not known why the ECIL Company could provide VVPAT only for 10 Constituencies of Aizawl City while the remaining 30 Constituencies were left with no other option but to use the same EVMs used earlier and against which the MNF Party had made a number of complaints of their being hacked/manipulated. Copies of the Abstract of Postal Ballot record in different constituencies in the MIA Elections, 1998, 2003/2008 & 2013 are at Annexures -3,4,5, & 6 respectively.

6. That at this stage, it may be pertinent to state that due to a number of complaints against the EVM, as a device for conducting Elections, from different corners, a number of Scientists of different countries worked together to see whether there is a possibility of manipulating the EVMs for altering the election results. As per the finding of the experts in the field published in an Article/Paper - ‘Security Analysis of India’s Electronic Machines’, it was stated that in spite of the stand taken by the Election Commission of India that the EVMs were fully tamper-proof and that the machines were perfect’ with no need for technological improvement, the expert team in their said Paper had, after thorough scrutiny and analysis of the EVM, had come to the finding that the EVMs used in India are not tamper-proof and are susceptible to a range of attacks and that while the use of paperless DRE (Direct Recording Electronic) voting machines has been discontinued in California, Florida, Ireland, the Netherlands and Germany, Indian election authorities are still sticking to it and it is high time that they should immediately review the security procedures now in place and should inspect all EVMs for evidence of fraud. Moving forward, they had suggested that India should adopt a different voting system

that provides greater securities and transparency. In the said Paper it was dearly highlighted that on the basis of expert scrutiny. Observations and tests there are a number of attackers who could manipulate the EVMs and that these attacks are possible even if the voting software is completely error-free. It was found by the said expert team that the EVM firmware is stored in masked read-only memory Inside the microcontroller chips, and there is no provision for extracting it or verifying its Integrity, This means that if the software was modified before it was built in to the CPUs, the changes could be difficult to detect Similarly even the engineer responsible compiling the source and transmitting it to the CPU manufacturer could substitute, a version containing a back door with little chance of being caught and that employees at the chip makers could alter the complied programmed Image before burning it in to the chips. It was also highlighted that attackers might t/y to substitute look-alike CPUs containing software that counts the votes dishonestly. And that anytime between the start of polling and the public count, dishonest election insiders or other criminals could use the clip-on device to change the votes recorded in the EVM. A copy of the said Article Dt 29/7/2010 is at Annexure-7.

9. *That in this connection it may humbly be stated that the respondent has been declared elected in the said General MLA Election, 2013 held on 25/11/2013 on the basis of reception of the winning votes which were void. In other words, the actual and valid votes so polled in favour of the respondent were less than the votes so polled in favour of the Petitioner, and the respondent could not have been declared elected but for the reception of votes, which were void, on the basis of rigging and manipulation of some of the EVMs within the said Constituency, At this stage it may be humbly submitted that since it is not possible on the part of the petitioner to produce any documentary evidence in support of his contention as required, the Hon'ble Court shall have to constitute a committee to enquire into the allegation made herein and the said committee will have to function with the help of those having expertise in the field. In this connection it may also be noted that during the election, a number of outsiders who claimed to be the officials of the ECIL Company came to Mizoram and stationed themselves at different places where counting took place. Such persons were claiming to be supervising the functioning of the EVMs for which those personnel used to be present in and around the Polling Booths. Even when polling was over those personnel continued to be present in Aizawl and again distributed themselves at the time of counting of Votes at different counting stations. Though the Petitioner did not raise any objections to the presence of those personnel, however he had doubted the necessity of their presence. The subsequent-event had confirmed his suspicion regarding the manipulation and hacking/rigging of the EVMs as well as the VVPAT Systems \ during the process of Election. To add salt to his already injured and suspicious mind, one Mr. K.Chhawnthuama (as Phantom,) owner of K. V.Muitipurpose (English Medium) High School and ordained Eider of the Durtlang Presbyterian Church, had sent two text messages to the present Chief Minister who has been elected from the 26-Serchhip (5T) Assembly Constituency immediately after he was declared elected. The text messages read as under:*

"To win an election based upon the manipulated CPU supported EVM is such a dirty game. You are no doubt the dirtiest person alive. Even the lives of those of you who had manipulated/rigged the EVMs are at great risk. The bribe given to the DC was also no doubt high. It is hard to say how many of you will suffer. Proofs would come with photographs! There is none among the Mizos who is more corrupted than you. You are so despicable. Considering the degree of crime you have committed, you have failed to take proper care bringing disgrace to yourself.

PHANTOM

I continue to know who you are - the dirty and despicable CM who had gone to the extent of manipulating EVM. The highest form of corruption, winning with the help of manipulated EVM is bound to be exposed. You are bringing disgrace upon yourself for acting in such a manner. How you have manipulated the EVM will be exposed with the help of photographs.

I know you through and through.

PHANTOM'

After detecting the sender of the said two text messages, the police had registered case (i.e. Cri.Tr. No.2195 of 2013: Azi. P.S. Case No. 373 Of 2013 u/s 171G IPC r/w 66 A (a) (b) IT Act) against the author who had sent the said messages. The said text messages have been published in the Zalen weekly local newspaper on 22/12/2013. Copies of the text messages and their English translations are at Annexures-8 and 9 respectively.

10. That at this stage, since the Petitioner is having a serious and legitimate doubt about the correctness of the result as per the EVMs, and since the experts in the field have already come to the conclusion that EVMs in India are vulnerable to fraud as already highlighted by those experts in the Paper enclosed herein above, and in view of the fact that the results of the Election in the EVMs are highly contradictory to the results of postal ballots, It is necessary and in the interest of justice to enquire into the matter so as to bring out the true factual position,"

12. Since the election petitioner has raised objection about applicability of the provisions contained in Order 7 Rule 11 of the Civil Procedure Code for rejection of an election petition at the preliminary stage, the said issue may be taken up first for consideration. Under Order 7 Rule 11 (a) of the Civil Procedure Code, a plaint shall be rejected where it does not disclose a cause of action. Section 87 of the Act deals with the procedure to be followed by the High Court while adjudicating an election petition. It says that subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In *Dhartipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi* reported in AIR 1987 SCC 1577, the Hon'ble Supreme Court considered the question as to whether the High Court had the jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code of Civil Procedure and to reject the election petition under Order 7 Rule 11 thereof at the preliminary stage. The Apex Court clearly held that both Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure are applicable to proceedings relating to trial of an election petition. Court has the power to reject an election petition under Order 7 Rule 11. If an election petition does not disclose a cause of action, it should be rejected at the initial stage. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. This view has been reiterated in *Ram Sukh -vs- Dinesh Aggarwal* reported in (2009) X0 SCC 541. It has been held that undoubtedly by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order 6 Rule 16 and Order 7 Rule 11, the objective being to ensure that meaningless litigation which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the Courts. In view of the above authoritative pronouncements of the Apex Court, the objection raised by the election petitioner on this ground is rejected. This Court accordingly holds that it would be open to the returned candidate to file

application under Order 7 Rule 11 of the Civil Procedure Code to seek rejection of the election petition if it does not disclose any cause of action.

13. Having held so, let us now turn to the relevant provisions of the Act. While Section 80 to Section 81 deals with filing of election petition in the High Court and the manner of its presentation, Section 82 deals with parties to the election petition. Clause (a) of Section 82 is very specific. It provides that in a case where an election petitioner in addition to claiming declaration that the election of the returned candidate is void, also claims a further declaration that he himself or any other candidate has been elected, all the contesting candidates of the constituency are required to be made respondents and where no such additional declaration is sought for, only the returned candidate is to be made a party. Section 83 of the Act stipulates what should be the contents of an election petition. First and foremost, an election petition should contain a concise statement of the material facts on which the petitioner relies. If allegation is made of corrupt practice, full particulars of corrupt practice alleged are to be set out. Provisions of Section 87 has already been noticed above. Under Section 98, at the conclusion of the trial of an election petition, the High Court can either dismiss the election petition or declare the election of the returned candidate as void and can also declare the petitioner to be the elected candidate. Section 100 lays down the grounds for declaring an election to be void, As already noticed, in the related election petition, the election petitioner has challenged the election of the applicant on ground 100 (1) (d)(iii) i.e., the election of the applicant has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Under Section 117, the election petitioner has to deposit costs in the High Court at the time of presentation of the election petition.
14. Having noticed the above, we may now turn to Section 86 of the Act which has a decisive bearing on the case. As per Section 86 of the Act, the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. The word used is "shall", which denotes mandatory consequence of non-compliance of Sections 81,82 or 117.
15. Keeping the above in mind, let us examine the objection of the applicant regarding non-joinder of necessary party as respondents and seeking relief beyond the ambit and scope of an election petition. Since both these issues are interrelated, those are taken up together. As already noticed above, the first relief sought for by the election petitioner is to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Admittedly, such a relief is not open to an election petitioner and no order to this effect can be passed under Section 98 of the Act. Second relief sought for by the election petitioner is to declare the election of the applicant as void and thereafter to declare him as the elected candidate. If that is the prayer, under Section 82 of the Act, all the contesting candidates of the particular constituency ought to have been joined as respondents in the election petition, which has not been done. Thus, there is no compliance of the provisions contained in Section 82 (a) of the Act. In view of the clear language of Section 86 of the Act, there is no other alternative but to dismiss the election petition for non-compliance of Section 82 of the Act. Submission made by the election petitioner that he has given up the second prayer i.e., to declare him as an elected candidate and that he should be allowed to amend the election petition cannot be acceded to at this stage, more so, when there is no formal application to that effect.
16. Though in view of the above finding, it is really not necessary to go into the other issue regarding lack of material facts in the election petition, since the same has been argued at length, it is considered appropriate to address the same.

17. As already noticed, Section 83 of the Act stipulates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. In Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp.) SCC 315, it has been held by the Apex Court that: if essential particulars are not pleaded election petition is to be dismissed. In Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Others reported in AIR 2001 SCC 2992, the Apex Court made it clear that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Ram Sukh (supra), it has been held that since the phrase "material facts" has neither been defined in the Act nor in the Civil Procedure Code, it has been understood by the Courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. "Material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. In Jitu Patnaik -vs- Sanatan Mohakud and Others reported in (2012) 4 SCC 194, it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
18. From a reading of the averments made in the election petition as extracted hereinabove, it is more than dear that the entire grievance of the election petitioner is structured on the basis of his suspicion and apprehension. No material fact has been pleaded by the election petitioner which would constitute the ground that the election of the applicant has been materially affected because of the improper reception, refusal or rejection of any valid vote or by the reception of any void vote. Suspicion and apprehension howsoever great those may be, cannot be construed as material facts as is understood in law.
19. That being the position, there is no other alternative but to hold that the election petition suffers from fundamental defects under Section 82 of the Act and also does not disclose material facts to hold trial to examine the validity of the election of the applicant
20. Accordingly and in view of the discussions made above, this Misapplication is allowed and the related election petition is dismissed.
21. However, there shall be no order as to costs.

Sd/-
UJJAL BHUYAN
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 30th January, 2015
10 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/19/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 6th September, 2014 of the Gauhati High Court in CM Application No.91 of 2014 in Election Petition No. 19 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH**

**CM. APPL HO. 91 OF 2014 IN
ELECTION PETITION NO. 19 OF 2014**

**BEFORE
HON'BLE MR. JUSTICE UJJAL BHUYAN**

Dates of hearing : 3.09.2014 & 5.9.2014.
Date of Judgment : 6.09.2014.

JUDGMENT & ORDER (CAV)

Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johnny L Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner. Also heard Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.

2. This is an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 for rejection of the election petition for want of cause of action and for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 (for short We Act).
3. Rejection of the election petition has been sought for primarily on three grounds. Firstly, the election petition does not disclose material facts to constitute a cause of action to warrant trial of the election petition. Secondly, the prayer made in the election petition is beyond the relief which can be granted to an election petitioner under the Act, Thirdly, since the election petitioner has sought for a declaration

that not only the election of the returned candidate be declared as void, he should also be declared as the elected candidate, all the other contesting candidates of the constituency should have been made parties to the election petition, which has not been done. This is a violation of the mandatory provision of Section 82 of the Act.

4. Opposite Party No. 1 i.e. the election petitioner has filed written objection. It is contended that there is no necessity to entertain and decide the misc. application at a preliminary stage. It is asserted that material facts have been pleaded in the election petition. Reliefs sought for in the election petition cannot be said to be beyond the scope of the law. Though in the election petition, the election petitioner has made further prayer for declaring him as the elected candidate after declaring the election of the applicant as void, he is not pressing the same and would be satisfied if the first part of the prayer is granted i.e. if the election of the applicant (returned candidate) is declared as void. Misc. application should, therefore, be dismissed.
5. Mr. Lalsawirema, learned counsel for the applicant by referring to the averments made in the election petition submits that even a cursory reading of the averments would show that the election petition is entirely based on suspicion and apprehension of the election petitioner about the fairness of the electoral process, particularly about the alleged misuse of the Electronic Voting Machines (EVMs). Not a single material fact has been pleaded to support the ground urged, On the basis of such vague allegation, there can be no trial and the result of applicant's election cannot be subjected to enquiry. He also submits that the first prayer made in the election petition is for constitution of an enquiry committee of experts to scrutinize :he correctness of the election result by checking the Electronic Voting Machines (EVMs) is beyond the scope and ambit of an election petition. He further submits that the prayer of the election petitioner to declare him as the elected candidate after declaring the election of the applicant as void would attract the provisions of Section 82 of the Act. In the face of such prayer, ail the candidates who were in the electoral fray in the particular constituency ought to have been made respondents in the election petition which is a mandatory requirement. Non-compliance with such mandatory requirement would, entail automatic dismissal of the election petition. He therefore submits that the election petition suffers from fundamental technical defects and as such proceeding further with the election petition would be totally unwarranted.
6. Mr. C. Lalramzauva, learned senior counsel for the election petitioner on the other hand submits that keeping in mind the mandatory nature of Section 98 of the Act, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order 7 Rule 11 of the Civil Procedure Code. It is only after conclusion of the trial, the High Court can pass either of the 3 orders mentioned in Section 98. He submits that since election petitioner has already declared that he does not seek a declaration to the effect that he is the returned candidate, he may be permitted to amend the election petition. He finally submits that all the issues raised by the applicant can be gone into at the final hearing of the election petition and not at the threshold.
7. In reply, Mr. Lalsawirema, learned counsel for the applicant submits that after the statutory period of 45 days of filing election petition under Section 81 of the Act is over, there is no question of amendment of tie election petition. Amendment as suggested, if granted, would change the very nature and character of the election petition, which cannot: be permitted. In any case, he submits that in the absence of any formal application for amendment, such an oral prayer of the election petitioner cannot be accepted, that too, after the technical defects in the election petition were pointed out in the misc. application.

8. Though the Election Commission of India is neither a necessary party nor a proper party in an election petition in view of the char enunciation of law by the Hon'ble Supreme Court in the case of B. Sundara Rami Reddy v. Election Commission of India reported in 1993. Supp. (2) SCC 624, the Court has none-the-less given audience to learned senior counsel appearing for the Election Commission of India since the election petitioner has himself made the Election Commission of India and its officials respondents in the election petition. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity of the electoral process while maintaining the secrecy of ballot. Unsettling an electoral verdict being a serious matter having wide ramification, law mandates that there should be strict compliance of procedural requirements. Violation of the mandatory conditions, particularly those mandated in Sections 81, 82 and 117 of the Act would result in dismissal of the election petition, he submits.
9. I have heard the rival submissions and also perused the materials on record.
10. To appreciate the rival contentions, it would be apposite to briefly refer to the election petition at the outset. Election petitioner has challenged the election of the applicant as MLA in the legislative assembly elections to the Mizoram State Legislative Assembly, 2013. As can be seen from the cause title, the following are the parties to the election petition:-

*"Sh. Vanupa Zathang S/o Zaduna (L),
R/o Chanmari, Lawngtlai.*

.....Petitioner.

-Vrs-

1. *Sh. H. Zothangllana S/o H. Hrangchunga (L),
R/o Chanmari L-IV, Lawngtlai.*

.....Respondent.

2. *Election Commission Of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 38-Lawngtlai East, AC,
Mizoram.*

.....Proforma Respondents.

The reliefs sought for by the election petitioner are as under:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
(ii) on the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."

11. Regarding the substance of the allegation and the ground for challenging the election of the applicant, election petitioner has relied upon Section 100 (I)(d) (iii) of the Act which says that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been

materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. In support of the above ground of challenge, the election petitioner has put forward the following averments:-

"5. That during the preceding MLA Elections held in Mizoram, the result of Postal Ballots used to be unfailing indicators for the final outcome of the election results. In this connection, it may briefly be stated that in the 1998 MLA General Election, the MNF Party and the MPC Party had joined hands in which as per the result of the Postal Ballots, the two Parties together had won in 24 Constituencies and in the final result, they had won in 29 Constituencies, Similarly, in the 2003 MIA General Election in which the MNF Party had, fought singly, it had won in 23 Constituencies as per the Postal Ballot and in 21 Constituencies in the final result However, in the 2008 MIA General Election, in which the Election Commission of India had decided to switch over to the EVM, manufactured by the ECIL Company, there occurred a drastic change in the result Though the MNF Party had won in 20 Constituencies as per the result of the Postal Ballot, the result of the EVM had shown that the MNF Party could win only in 3 Constituencies such as in the 25-East Tuipui AC(ST) in the undivided Aizawl District, in the 32-Lunglei West AC (ST) in Lunglei District and in the 37 - Lawngtlai West AC (ST) of Lawngtlaj District The result as per the postal ballot and the EVM in all the constituencies being so contradictory, the same had led to a strong suspicion against the correctness of the EVM by all the Parties Other than the INC Party. It may be stated here that the MNF Party had come to its own conclusion that there was wide spread manipulation/rigging of the EVMs at the instance of the winning Party i.e. INC Party by hacking the said EVMs with the help of some experts in the field. The same EVMs which were kept by the Election Department in their safe custody were again used in all the polling booths in all the Constituencies except in the 10 Constituencies within Aizawl City where WPAT system were used in place of EVMs. It is not known why the ECIL Company could provide VVPA T only for 10 Constituencies of Aizawl City while the remaining 30 Constituencies were left with no other option but to use the same EVMs used earlier and against which the MNF Party had made a number of complaints of their being hacked/manipulated. Copies of the Abstract of Postal Ballot record in different constituencies in the NLA Elections, 1998, 2003, 2008 & 2013 are at Annexures -3,4,5, & 6 respectively.

6. That at this stage, it may be pertinent to state that due to a number of complaints against the EVM, as a device for conducting Elections, from different corners, a number of Scientists of different countries worked together to see whether there is a possibility of manipulating the EVMs for altering the election results. As per the finding of the experts in the field published in an Article/Paper - 'Security Analysis of India's Electronic Machines', it was stated that in spite of the stand taken by the Election Commission of India that the EVMs were fully tamper-proof and that the machines were 'perfect' with no need for technological improvement, the expert team in their said Paper had, after thorough scrutiny and analysis of the EVM, had come to the finding that the EVMs used in India are not tamper-proof and are susceptible to a range of attacks and that while the use of paperless DRE (Direct Recording Electronic) voting machines has been discontinued in California, Florida, Ireland, the Netherlands and Germany, Indian election authorities are still sticking to it and it is high time that they should immediately review the security procedures now in place and should inspect all EVMs for evidence of fraud. Moving forward, they had suggested that India should adopt a different voting system

that provides greater securities and transparency, In the said Paper it was clearly highlighted that on the basis of expert scrutiny. Observations and tests there are a number of attackers who could manipulate the EVMs and that these attacks are possible even if the voting software is completely error-free. It was found by the said expert team that the EVM firmware is stored in masked read-only memory inside the microcontroller chips, and there is no provision for extracting it or verifying its integrity. This means that if the software was modified before it was built in to the CPUs, the changes could be difficult to detect. Similarly even the engineer responsible compiling the source and transmitting it to the CPU manufacturer could substitute a version containing a back door with little chance of being caught and that employees at the chip makers could alter the compiled programmed Image before burning it in to the chips. It was also highlighted that attackers might try to substitute look-alike CPUs containing software that counts the votes dishonestly. And that anytime between the start of polling and the public count, dishonest election insiders or other criminals could use the clip-on device to change the votes recorded in the EVM. A copy of the said Article Dt 29/7/2010 is at Amwxure-7.

9. *That in this connection it may humbly be stated that the respondent has been declared elected in the said General MIA Election, 2013 held on 25/11/2013 on the basis of reception of the winning votes which were void. In other words, the actual and valid votes so polled in favour of the respondent were less than the votes so polled in favour of the Petitioner, and the respondent could not have been declared elected but for the reception of votes, which were void, on the basis of rigging and manipulation of some of the EVMs within the said Constituency, At this stage it may be humbly submitted that since it is not-possible on the part of the petitioner to produce any documentary evidence In support of his contention as required, the Hon'ble Court shall have to constitute a committee to enquire into the allegation made herein and the said committee will have to function with the help of those having expertise in the field. In this connection it may also be noted that during the election, a number of outsiders who claimed to be the officials of the ECIL Company came to Mizoram and stationed themselves at different places where counting took place. Such persons were claiming to be supervising the functioning of the EVMs for which those personnel used to be present in and around the Polling Booths. Even when polling was over those personnel continued tm be present in Aizawl and again distributed themselves at the time of counting of Votes at different counting stations. Though the Petitioner did not raise any objections to the presence of those personnel, however he had doubted the necessity of their presence. The subsequent event had confirmed his suspicion regarding the manipulation and hacking/rigging of the EVMs as well as the VVPAT Systems during the process of Election. To add salt to his already Injured and suspicious mind, one Mr, K.Chhawnthuama (as Phantom,) owner of K.V.Muitipurpose (English Medium) High School and ordained Elder of the Durtlang Presbyterian Church, had sent two text messages to the present Chief Minister who has been elected from the 26-Serchhip (ST) Assembly Constituency immediately alter he was declared elected. The text messages read as under ;*

To win an election based upon the manipulated CPU supported EVM is such a dirty game. You are no doubt the dirtiest person alive. Even the lives of those of you who had manipulated/rigged the EVMs are at great risk. The bribe given to the DC was also no doubt high. It is hard to say how many of you will suffer. Proofs would come with photographs! There is none among the Mizos who is more corrupted than you. You are so despicable. Considering the degree of crime you have committed, you have failed to take proper care bringing disgrace to yourself.

PHANTOM

I continue to know who you are - the dirty and despicable CM who had gone to the extent of manipulating EVM. The highest form of corruption, winning with the help of manipulated EVM is bound to be exposed. You are bringing disgrace upon yourself for acting in such a manner. How you have manipulated the EVM will be exposed with the help of photographs.

I know you through and through.

PHANTOM'

After detecting the sender of the said two text messages, the police had registered a case (i.e. Cri. Tr. No.2195 of 2013: Azl. PS. Case No, 373 of 2013 u/s 171GIPC r/w 66 A (a) (b) IT Act) against the author who had sent the said messages. The said text messages have been published in the Zalen weekly local newspaper on 22/12/2013. Copies of the text messages and their English translations are at Annexures-3 and 9 respectively.

10. That at this stage, since the Petitioner is having a serious and legitimate doubt about the correctness of the result as per the EVMs, and since the experts in the field have already come to the conclusion that EVMs in India are vulnerable to fraud as already highlighted by those experts in the Paper enclosed herein above, and in view of the fact that the results of the Election in the EVMs are highly contradictory to the results of postal ballots, it is necessary and in the interest of justice to enquire into the matter so as to bring out the true factual position."

12. Since the election petitioner has raised objection about applicability of the provisions contained in Order 7 Rule 11 of the Civil Procedure Code for rejection of an election petition at the preliminary stage, the said issue may be taken up first for consideration. Under Order 7 Rule 11 (a) of the Civil Procedure Code, a petition shall be rejected where it does not disclose a cause of action. Section 87 of the Act deals with the procedure to be followed by the High Court while adjudicating an election petition. It says that subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In Phartiipakar Madam Lai Agarwai -vs- Shri Rajiv Gandhi reported in AIR 1907 SCC 1577, the Hon'ble Supreme Court considered the question as to whether the High Court had the jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code of Civil Procedure and to reject the election petition under Order 7 Rule 11 thereof at the preliminary stage. The Apex Court clearly held that both Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure are applicable to proceedings relating to trial of an election petition. Court has the power to reject an election petition under Order 7 Rule 11. If an election petition does not disclose a cause of action, it should be rejected at the initial stage. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. This view has been reiterated in Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541. It has been held that undoubtedly by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order 6 Rule 16 and Order 7 Rule 11, the objective being to ensure that meaningless litigation which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the Courts. In view of the above authoritative pronouncements of the Apex Court, the objection raised by the election petitioner on this ground is rejected. This Court accordingly holds that it would be open to the returned candidate to file

application under Order 7 Rule II of the Civil Procedure Code to seek rejection of the election petition if it does not disclose any cause of action.

13. Having held so, let us now turn to the relevant provisions of the Act. While Section 80 to Section 81 deals with filing of election petition in the High Court and the manner of its presentation, Section 82 deals with parties to the election petition. Clause (a) of Section 82 is very specific. It provides that in a case where an election petitioner in addition to claiming declaration that the election of the returned candidate is void, also claims a further declaration that he himself or any other candidate has been elected, all the contesting candidates of, the constituency are required to be made respondents and where no such additional declaration is sought for, only the returned candidate is to be made a party. Section 83 of the Act stipulates what should be the contents of an election petition. First and foremost, an election petition should contain a concise statement of the material facts on which the petitioner relies. If allegation is made of corrupt practice, full particulars of corrupt practice alleged are to be set out. Provisions of Section 87 has already been noticed above. Under Section 98, at the conclusion of the trial of an election petition, the High Court can either dismiss the election petition or declare the election of the returned candidate as void and can also declare the petitioner to be the elected candidate. Section 100 lays down the grounds for declaring an election to be void. As already noticed, in the related election petition, the election petitioner has challenged the election of the applicant on ground 100 (1) (d)(iii) i.e., the election of the applicant has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Under Section 117, the election petitioner has to deposit costs in the High Court at the time of presentation of the election petition.
14. Having noticed the above, we may now turn to Section 86 of the Act which has a decisive bearing on the case. As per Section 86 of the Act, the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, The word used is "shall", which denotes mandatory consequence of non-compliance of Sections 81,82 or 117.
15. Keeping the above in mind, let us examine the objection of the applicant regarding non-joinder of necessary party as respondents and seeking relief beyond the ambit and scope of an election petition. Since both these issues are interrelated, those are taken up together. As already noticed above, the first relief sought for by the election petitioner is to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs, Admittedly, such a relief is not open to an election petitioner and no order to this effect can be passed under Section 98 of the Act. Second relief sought for by the election petitioner is to declare the election of the applicant as void and thereafter to declare him as the elected candidate. If that is the prayer, under Section 82 of the Act, all the contesting candidates of the particular constituency ought to have been joined as respondents in the election petition, which has not been done. Thus, there is no compliance of the provisions contained in Section 82 (a) of the Act. In view of the clear language of Section 86 of the Act, there is no other alternative but to dismiss the election petition for non-compliance of Section 82 of the Act. Submission made by the election petitioner that he has given up the second prayer i.e., to declare him as an elected candidate and that he should be allowed to amend the election petition cannot be acceded to at this stage, more so, when there is no formal application to that effect.
16. Though in view of the above finding, it is really not necessary to go into the other issue regarding lack of material facts in the election petition, since the same has been argued at length, it is considered appropriate to address the same.

17. As already noticed., Section 83 of the Act stipulates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. In Azhar Hussain ~vs- Rajiv Gandhi reported in 1986 (Supp.) SCC 315, it has been held by the Apex Court that if in-essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo -vs- Ranga Math Mishra and Others reported in AIR 2001 SCC 2992, the Apex Court made it clear that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Ram Sukh (supra), it has been held that since the phrase "material facts" has neither been defined in the Act nor in the Civil Procedure Code, it has been understood by the Courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. "Material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. In Jitu Patnaik ~vs- Sanatan Mohakud and Others reported in (2012) 4 SCC 194, it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
18. From a reading of the averments made in the election petition as extracted hereinabove, it is more than clear that the entire grievance of the election petitioner is structured on the basis of his suspicion and apprehension. No material fact has been pleaded by the election petitioner which would constitute the ground that the election of the applicant has been materially affected because of the improper reception, refusal or rejection of any valid vote or by the reception of any void vote. Suspicion and apprehension howsoever great those may be, cannot be construed as material facts as is understood in law.
19. That being the position, there is no other alternative but to hold that the election petition suffers from fundamental defects under Section 82 of the Act and also does not disclose material facts to hold trial to examine the validity of the election of the applicant.
20. . Accordingly and in view of the discussions made above, this Misc. application is allowed and the related election petition is dismissed.
21. However, there shall be no order as to costs.

Sd/-
UJJAL BHUYAN
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 30th January, 2015
10 Magha, 1936 (Saka)

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.....Petitioner.

- Vrs -

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(ii) on the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."

11. Regarding the substance of the allegation and the ground for challenging the election of the applicant, election petitioner has relied upon Section 100 (I)(d) (iii) of the Act which says that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been

materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. In support of the above ground of challenge, the election petitioner has put forward the following averments:-

“5. That during the preceding MLA Elections held in Mizoram, the result of Postal Ballots used to be unfailing indicators for the final outcome of the election results. In this connection, it may briefly be stated that in the 1998 MLA General Election, the MNF Party and the MPC Party had joined hands in which as per the result of the Postal Ballots, the two Parties together had won in 24 Constituencies and in the final result, they had won in 29 Constituencies, Similarly, in the 2003 MLA General Election in which the MNF Party had fought singly, it had won in 23 Constituencies as per the Postal Ballot and in 21 Constituencies in the final result However, in the 2008 MLA General Election, in which the Election Commission of India had decided to switch over to the EVM, manufactured by the ECIL Company, there occurred a drastic change in the result Though the MNF Party had won in 20 Constituencies as per the result of the Postal Ballot, the result of the EVM had shown that the MNF Party could win only in 3 Constituencies such as in the 25-East Tuipui AC(ST) in the undivided Aizawl District, in the 32-Lunglei West AC (ST) in Lunglei District and in the 37 - Lawngtlai West AC (ST) of Lawngtlai District The result as per the postal ballot and the EVM in all the constituencies - being so contradictory, the same had led to a strong suspicion against the correctness of the EVM by all the Parties other than the INC Party. It may be stated here that the MNF Party had come to its own conclusion that there was wide spread manipulation/rigging of the EVMs at the instance of the winning Party i.e. INC Party by hacking the said EVMs with the help of some experts In the field. The same EVMs which were kept by the Election Department in their safe custody were again used in all the polling booths in all the Constituencies except in the 10 Constituencies within Aizawl City where WPA T system were used in place of EVMs. It is not known why the ECU Company could provide WPA T only for 10 Constituencies of Aizawl City while the remaining 30 Constituencies were left with no other option but to use the same EVMs used earlier and against which the MNF Party had made a number of complaints of their being hacked/manipulated. Copies of the Abstract of Postal Ballot record in different constituencies in the MIA Elections, 1998, 2003, 2008 & 2013 are at Annexures -3,4,5, & 6 respectively.

6. That at this stage, it may be pertinent to state that due to a number of complaints against the EVM, as a device for conducting Elections, from different corners, a number of Scientists of different countries worked together to see whether there is a possibility of manipulating the EVMs for altering the election results. As per the finding of the experts in the field published in an Article/Paper - ‘Security Analysis of India’s Electronic Machines’, it was stated that in spite of the stand taken by the Election Commission of India that the EVMs were fully tamper-proof and that the machines were ‘perfect’ with no need for technological improvement, the expert team in their said Paper had, after thorough scrutiny and analysis of the EVM, had come to the finding that the EVMs used in India are not tamper-proof and are susceptible to a range of attacks and that while the use of paperless ORE (Direct Recording Electronic) voting machines has been discontinued in California, Florida, Ireland, the Netherlands and Germany, Indian election authorities are still sticking to it and it is high time that they should Immediately review the security procedures now in place and should inspect all EVMs for evidence of fraud. Moving forward, they had suggested that India should adopt a different voting system

that provides greater securities and transparency, In the said Paper it was clearly highlighted that on the basis of expert scrutiny. Observations and tests there are a number of attackers who could manipulate the EVMs and that these attacks are possible even if the voting software is completely error-free. It was found by the said expert team that the EVM firmware is stored In masked read-only memory Inside the microcontroller chips, and there is no provision for extracting it . or verifying its integrity. This means that if the software was modified before it was built in to the CPUs, the changes could be difficult to detect. Similarly even the engineer responsible compiling the source and transmitting it to the CPU manufacturer could substitute a version containing a back door with little chance of being caught and that employees at the chip makers could alter the compiled programmed Image before burning It In to the chips. It was also highlighted that attackers might try to substitute look-alike CPUs containing software that counts the votes dishonestly. And that anytime between the start of polling and the public count, dishonest election insiders or other criminals could use the clip-on device to change the votes recorded in the EVM. A copy of the said Article DL 29/7/2010 is at Annexure-7.

9. *That in this connection it may humbly be stated that the respondent has been declared elected in the said General MLA Election, 2013 held on 25/11/2013 on the basis of reception of the winning votes which were void. In other words, the actual and valid votes so polled in favour of the respondent were less than the votes so polled in favour of the Petitioner, and the respondent could not have been declared elected but for the reception of votes, which were void, on the basis of rigging and manipulation of some of the EVMs within the said Constituency. At this stage it may be humbly submitted that since it is not possible on the part of the petitioner to produce any documentary evidence in support of his contention as required, the Hon'ble Court shall have to constitute a committee to enquire into the allegation made herein and the said committee will have to function with the help of those having expertise in the Held. In this connection it may also be noted that during the election, a number of outsiders who claimed to be the officials of the ECU Company came to Mizoram and stationed themselves at different places where counting took place. Such persons were claiming to be supervising the functioning of the EVM's for which those personnel used to be present in and around the Polling Booths. Even when polling was over those personnel continued to be present in Aizawl and again distributed themselves at the time of counting of Votes at different counting stations. Though the Petitioner did not raise any objections to the presence of those personnel, however he had doubted the necessity of their presence. The subsequent event had confirmed his suspicion regarding the manipulation and hacking/rigging of the EVMs as well as the WPAT Systems during the process of Election. To add salt to his already injured and suspicious mind, one Mr. K.Chhawthuama (as Phantom,) owner of K. V.Multipurpose (English Medium) High School and ordained Elder of the Durtlang Presbyterian Church, had sent two text messages to the present Chief Minister who has been elected from the 26-Serchhip (ST) Assembly Constituency/ immediately after he was declared elected. The text messages read asunder:*

'To win an election based upon the manipulated CPU supported EVM is such a dirty game. You are no doubt the dirtiest person alive. Even the lives of those of you who had manipulated/rigged the EVMs are at great risk. The bribe given to the DC was also no doubt high. It is hard to say how many of you will suffer Proofs would come with photographs! There is none among the Mizos who is more corrupted than you. You are so despicable. Considering the degree of crime you have committed, you have failed to take proper care bringing disgrace to yourself.

PHANTOM

I continue to know who you are - the dirty and despicable CM who had gone to the extent of manipulating EVM. The highest form of corruption, winning with the help of manipulated EVM is bound to be exposed. You are bringing disgrace upon yourself for acting in such a manner. How you have manipulated the EVM will be exposed with the help of photographs.

I know you through and through.

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After detecting the sender of the said two text messages, the police had registered a case (i.e. CrI.Tr. No.2195 of 2013: Azl. PS. Case No. 373 of 2013 u/s 171GIPCr/w 66 A (a) (b) IT Act) against the author who had sent the said messages. The said text messages have been published in the Zalen weekly local newspaper on 22/12/2013. Copies of the text messages and their English translations are at Annexures-8 and 9 respectively.

10. That at this stage, since the Petitioner is having a serious and legitimate doubt about the correctness of the result as per "he EVMs, and since the experts in the field have already come to the conclusion that EVMs in India are vulnerable to fraud as already highlighted by those experts in the Paper enclosed herein above, and in view of the fact that the results of the Election in the EVMs are highly contradictory to the results of postal ballots, it is necessary and in the interest of justice to enquire into the matter so as to bring out the true factual position."

12. Since the election petitioner has raised objection about applicability of the provisions contained in Order 7 Rule 11 of the Civil Procedure Code for rejection of an election petition at the preliminary stage, the said issue may be taken up first for consideration. Under Order 7 Rule 11 (a) of the Civil Procedure Code, a plaint shall be rejected where it does not disclose a cause of action. Section 87 of the Act deals with the procedure to be followed by the High Court while adjudicating an election petition. It says that subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In Dhartipakar Madan Lai Agarwal -vs- Shri Rajiv Gandhi reported in AIR 1987 SCC 1577, the Hon'ble Supreme Court considered the question as to whether the High Court had the jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code of Civil Procedure and to reject the election petition under Order 7 Rule 11 thereof at the preliminary stage. The Apex Court clearly held that both Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure are applicable to proceedings relating to trial of an election petition. Court has the power to reject an election petition under Order 7 Rule 11. If an election petition does not disclose a cause of action, it should be rejected at the initial stage. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. This view has been reiterated in Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541. It has been held that undoubtedly by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order 6 Rule 16 and Order 7 Rule 11, the objective being to ensure that meaningless litigation which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the Courts. In view of the above authoritative pronouncements of the Apex Court, the objection raised by the election petitioner on this ground is rejected. This Court accordingly holds that it would be open to the returned candidate to file

application under Order 7 Rule 11 of the Civil Procedure Code to seek rejection of the election petition if it does not disclose any cause of action.

13. Having held so, let us now turn to the relevant provisions of the Act. While Section 80 to Section 81 deals with filing of election petition in the High Court and the manner of its presentation, Section 82 deals with parties to the election petition. Clause (a) of Section 82 is very specific. It provides that in a case where an election petitioner in addition to claiming declaration that the election of the returned candidate is void, also claims a further declaration that he himself or any other candidate has been elected, all the contesting candidates of the constituency are required to be made respondents and where no such additional declaration is sought for, only the returned candidate is to be made a party. Section 83 of the Act stipulates what should be the contents of an election petition. First and foremost, an election petition should contain a concise statement of the material facts on which the petitioner relies. If allegation is made of corrupt practice, full particulars of corrupt practice alleged are to be set out. Provisions of Section 87 has already been noticed above. Under Section 98, at the conclusion of the trial of an election petition, the High Court can either dismiss the election petition or declare the election of the returned candidate as void and can also declare the petitioner to be the elected candidate. Section 100 lays down the grounds for declaring an election to be void. As already noticed, in the related election petition, the election petitioner has challenged the election of the applicant on ground 100 (1) (d)(iii) i.e., the election of the applicant has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Under Section 117, the election petitioner has to deposit costs in the High Court at the time of presentation of the election petition.
14. Having noticed the above, we may now turn to Section 86 of the Act which has a decisive bearing on the case. As per Section 86 of the Act, the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. The word used is "shall", which denotes mandatory consequence of non-compliance of Sections 81,82 or 117,
15. Keeping the above in mind, let us examine the objection of the applicant regarding non-joinder of necessary party as respondents and seeking relief beyond the ambit and scope of an election petition. Since both these issues are interrelated, those are taken up together. As already noticed above, the first relief sought for by the election petitioner is to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Admittedly, such a relief is not open to an election petitioner and no order to this effect can be passed under Section 98 of the Act. Second relief sought for by the election petitioner is to declare the election of the applicant as void and thereafter to declare him as the elected candidate. If that is the prayer, under Section 82 of the Act, all the contesting candidates of the particular constituency ought to have been joined as respondents in the election petition, which has not been done. Thus, there is no compliance of the provisions contained in Section 82 (a) of the Act. In view of the clear language of Section 86 of the Act, there is no other alternative but to dismiss the election petition for non-compliance of Section 82 of the Act. Submission made by the election petitioner that he has given up the second prayer i.e., to declare him as an elected candidate and that he should be allowed to amend the election petition cannot be acceded to at this stage, more so, when there is no formal application to that effect.
16. Though in view of the above finding, it is really not necessary to go into the other issue regarding lack of material facts in the election petition, since the same has been argued at length, it is considered appropriate to address the same.

17. As already noticed, Section 83 of the Act stipulates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. In *Azhar Hussain -vs- Rajiv Gandhi* reported in 1986 (Supp.) SCC 315, it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In *Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Others* reported in AIR 2001 SCC 2992, the Apex Court made it clear that an election petition must disclose material facts. Averments must be adequate, clear and specific. In *Ram Sukh (supra)*, it has been held that since the phrase "material facts" has neither been defined in the Act nor in the Civil Procedure Code, it has been understood by the Courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. "Material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. In *Jitu Patnaik -vs- Sanatan Mohakucl and Others* reported in (2012) 4 SCC 194, it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
18. From a reading of the averments made in the election petition as extracted hereinabove, it is more than clear that the entire grievance of the election petitioner is structured on the basis of his suspicion and apprehension. No material fact has been pleaded by the election petitioner which would constitute the ground that the election of the applicant has been materially affected because of the improper reception, refusal or rejection of any valid vote or by the reception of any void vote. Suspicion and apprehension howsoever great those may be, cannot be construed as material facts as is understood in law.
19. That being the position, there is no other alternative but to hold that the election petition suffers from fundamental defects under Section 82 of the Act and also does not disclose material facts to hold trial to examine the validity of the election of the applicant.
20. Accordingly and in view of the discussions made above, this Misc. application is allowed and the related election petition is dismissed.
21. However, there shall be no order as to costs.

Sd/-
UJJAL BHUYAN
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 30th January, 2015
10 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/21/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 6th September, 2014 of the Gauhati High Court in CM Application No.103 of 2014 in Election Petition No. 21 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH**

**CM. APPL NO. 103 OF 2014 IN
ELECTION PETITION NO. 21 OF 2014**

**BEFORE
HON'BLE MR. JUSTICE UJJAL BHUYAN**

Dates of hearing : 3.09.2014 & 5.9.2014.
Date of Judgment : 6.09.2014.

JUDGMENT & ORDER (CAV)

Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lairamzauva, learned senior counsel assisted by Mr. Johnny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner. Also heard Mr, M. Zothankhuma, learned senior counsel for Election Commission of India.

2. This is an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 for rejection of the election petition for want of cause of action and for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 (for short 'the Act').
3. Rejection of the election petition has been sought for primarily on three grounds. Firstly, the election petition does not disclose material facts to constitute a cause of action to warrant trial of the election petition. Secondly, the prayer made in the election petition is beyond the relief which can be granted

to an election petitioner under the Act. Thirdly, since the election petitioner has sought for a declaration that not only the election of the returned candidate be declared as void, he should also be declared as the elected candidate, all the other contesting candidates of the constituency should have been made parties to the election petition, which has not been done. This is a violation of the mandatory provision of Section 82 of the Act.

4. Opposite No. 1 i.e. the election petitioner has filed written objection. It is contended that there is no necessity to entertain and decide the misc. application at a preliminary stage. It is asserted that material facts have been pleaded in the election petition. Reliefs sought for in the election petition cannot be said to be beyond the scope of the law. Though in the election petition, the election petitioner has made further prayer for declaring him as the elected candidate after declaring the election of the applicant as void, he is not pressing the same and would be satisfied if the first part of the prayer is granted i.e. if the election of the applicant (returned candidate) is declared as void. Misc. application should, therefore, be dismissed.
5. Mr. Lalsawirema, learned counsel for the applicant by referring to the averments made in the election petition submits that even a cursory reading of the averments would show that the election petition is entirely based on suspicion and apprehension of the election petitioner about the fairness of the electoral process, particularly about the alleged misuse of the Electronic Voting Machines (EVMs). Not a single material fact has been pleaded to support the ground urged. On the basis of such vague allegation, there can be no trial and the result of applicant's election cannot be subjected to enquiry. He also submits that the first prayer made in the election petition is for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs) is beyond the scope and ambit of an election petition. He further submits that the prayer of the election petitioner to declare him as the elected candidate after declaring the election of the applicant as void would attract the provisions of Section 82 of the Act. In the face of such prayer, all the candidates who were in the electoral fray in the particular constituency ought to have been made respondents in the election petition which is a mandatory requirement. Non-compliance with such mandatory requirement would entail automatic dismissal of the election petition. He therefore submits that the election petition suffers from fundamental technical defects and as such proceeding further with the election petition would be totally unwarranted.
6. Mr. C. Lalramzauva, learned senior counsel for the election petitioner on the other hand submits that keeping in mind the mandatory nature of Section 98 of the Act, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order 7 Rule 11 of the Civil Procedure Code. It is only after conclusion of the trial, the High Court can pass either of the 3 orders mentioned in Section 98. He submits that since election petitioner has already declared that he does not seek a declaration to the effect that he is the returned candidate, he may be permitted to amend the election petition. He finally submits that all the issues raised by the applicant can be gone into at the final hearing of the election petition and not at the threshold.
7. In reply, Mr. Lalsawirema, learned counsel for the applicant submits that after the statutory period of 45 days of filing election petition under Section 81 of the Act is over, there is no question of amendment of the election petition. Amendment as suggested, if granted, would change the very nature and character of the election petition, which cannot be permitted. In any case, he submits that in the absence of any formal application for amendment, such an oral prayer of the election petitioner cannot be accepted, that too, after the technical defects in the election petition were pointed out in the misc. application.

8. Though the Election Commission of India is neither a necessary party nor a proper party in an election petition in view of the clear enunciation of law by the Hon'ble Supreme Court in the case of B. Sundara Rami Reddy v. Election Commission of India reported in 1991 Supp.(2) SCC 624, the Court: has none-the-less given audience to learned senior counsel appearing for the Election Commission of India since the election petitioner has himself made the Election Commission of India and its officials respondents in the election petition. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity of the electoral process while maintaining the secrecy of ballot. Unsettling an electoral verdict being a serious matter having wide ramification, law mandates that there should be strict compliance of procedural requirements. Violation of the mandatory conditions, particularly those mandated in Sections 81, 82 and 117 of the Act would result in dismissal of the election petition, he submits.
9. I have heard the rival submissions and also perused the materials on record.
10. To appreciate the rival contentions, it would be apposite to briefly refer to the election petition at the outset. Election petitioner has challenged the election of the applicant as MLA in the legislative assembly elections to the Mizoram State Legislative Assembly, 2013. As can be seen from the cause title, the following .are the parties to the election petition :-

*"Sh. C. Ramhluna, S/o Mangiura (L)' R/o M-8, Shivaji Tillah,
Aizawl Mizoram.*

.....Petitioner.

-Vrs-

1. *Sh. C. Ngunlianchunga, S/o Thathmunga (L),
R/o Lawngtlai, Mizoram.*

.....Respondent

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, 37-lawngtlai West (ST)AC,
Lawngtlai, Mizoram.*

.....Proforma Respondents."

The reliefs sought for by tje election petitioner are as under:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
(ii) on the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."

11. Regarding the substance of the allegation and the ground for challenging the election of the applicant, election petitioner has relied upon Section 100 (l)(d) (iii) of the Act which says that if the High Court is of the opinion that the result: of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. In support of the above ground of challenge, the election petitioner has put forward the following averments:-

"5. That during the preceding MLA Elections held in Mizoram, the result of Postal Ballots used to be unfailing indicators for the final outcome of the election results. In this connection, it may briefly be stated that in the 1998 MLA General Election, the MNF Party and the MPC Party had joined hands in which as per the result of the Postal Ballots, the two Parties together had won in 24 Constituencies and in the final result, they had won in 29 Constituencies. Similarly, in the 2003 MLA General Election in which the MNF Party had fought singly, it had won in 23 Constituencies as per the Postal Ballot and In 21 Constituencies in the final result However, in the 2008 MLA General Election, in which the Election Commission of India had decided to switch over to the EVM, manufactured by the ECU Company, there occurred a drastic change in the result. Though the MNF Party had won in 20 Constituencies as per the result of the Postal Ballot, the result of the EVM had shown that the MNF Party could win only in 3 Constituencies such as in the 25-East Tuipui AC(ST) in the undivided Aizawl District, in the 32-Lunglei West AC (ST) in Lunglei District and in the 37 - Lawntlai West AC (ST) of Lawngtlai District The result as per the postal ballot and the EVM in all the constituencies being so contradictory, the same had led to a strong suspicion against the correctness of the EVM by all the Parties other than the INC Party. It may be stated here that the MNF Party had come to its own conclusion that there was wide spread manipulation/rigging of the EVMs at the instance of the winning Party i.e. INC Party by hacking the said EVMs with the help of some experts in the Held. The same EVMs which were kept by the Election Department in their safe custody were again used in all the polling booths in all the Constituencies except in the 10 Constituencies within Aizawl City where WPAT system were used in place of EVMs. It is not known why the ECU Company could provide WPAT only for 10 Constituencies of Aizawl City while the remaining 30 Constituencies were left with no other option but to use the same EVMs used earlier and against which the MNF Party had made a number of complaints of their being hacked/manipulated. Copies of the Abstract of Postal Ballot record in different constituencies in the MLA Elections, 1998, 2003, 2008 & 2013 are at Annexures -3,4,5, & 6 respectively.

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Indian election authorities are still sticking to it and it is high time that they should immediately review the security procedures now in place and should inspect all EVMs for evidence of fraud. Moving forward, they had suggested that India should adopt a different voting system that provides greater securities and transparency. In the said Paper it was clearly highlighted that on the basis of expert scrutiny. Observations and tests there are a number of attackers who could manipulate the EVMs and that these attacks are possible even if the voting software is completely error-free. It was found by the said expert team that the EVM firmware is stored in masked read-only memory inside the microcontroller chips, and there is no provision for extracting it or verifying its integrity. This means that if the software was modified before it was built in to the CPUs, the changes could be difficult to detect. Similarly even the engineer responsible compiling the source and transmitting it to the CPU manufacturer could substitute a version containing a back door with little chance of being caught and that employees at the chip makers could alter the compiled programmed image before burning it in to the chips. It was also highlighted that attackers might try to substitute look-alike CPUs containing software that counts the votes dishonestly. And that anytime between the start of polling and the public count, dishonest election insiders or other criminals could use the clip-on device to change the votes recorded in the EVM. A copy of the said Article Dt 29/7/2010 is at Annexure-7.

9. *That in this connection it may humbly be stated that the respondent has been declared elected in the said General MLA Election, 2013 held on 25/11/2013 on the basis of reception of the winning votes which were void. In other words, the actual and valid votes so polled in favour of the respondent were less than the votes so polled in favour of the Petitioner, and the respondent could not have been declared elected but for the reception of votes, which were void, on the basis of rigging and manipulation of some of the EVMs within the said Constituency. At this stage it may be humbly submitted that since it is not possible on the part of the petitioner to produce any documentary evidence in support of his contention as required, the Hon'ble Court shall have to constitute a committee to enquire into the allegation made herein and the said committee will have to function with the help of those having expertise in the field. In this connection it may also be noted that during the election, a number of outsiders who claimed to be the officials of the ECIL Company came to Mizoram and stationed themselves at different places where counting took place. Such persons were claiming to be supervising the functioning of the EVM's for which those personnel used to be present in and around the Polling Booths. Even when polling was over those personnel continued to be present in Aizawl and again distributed themselves at the time of counting of Votes at different counting stations. Though the Petitioner did not raise any objections to the presence of those personnel, however he had doubted the necessity of their presence. The subsequent event had confirmed his suspicion regarding the manipulation and hacking/rigging of the EVMs as well as the WPAT Systems during the process of Election. To add salt to his already Injured and suspicious mind, one Mr. K. Chhawnthuma (as Phantom,) owner of K. V. Multipurpose (English Medium) High School and ordained Elder of the Durtlang Presbyterian Church, had sent two text messages to the present Chief Minister who has been elected from the 26-Serchhip (ST) Assembly Constituency immediately after he was declared elected. The text messages read as under:*

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There is none among the Mizos who is more corrupted than you. You are so despicable. Considering the degree of crime you have committed,, you have failed to take proper care bringing disgrace to yourself

PHA
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I continue to know who you are - the dirty and despicable CM who had gone to the extent of manipulating EVM. The highest form of corruption, winning with the help of manipulated EVM is bound to be exposed. You are bringing disgrace upon yourself for acting in such a manner. How you have manipulated the EVM will be exposed with the help of photographs.

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After detecting the sender of the said two text messages, the police had registered a case (i.e. Cri. Tr. No.2195 of 2013: Azl. PS. Case No, 373 of 2013 u/s 171G IPCr/w 66 A (a) (b) IT Act) against the author who had sent the said messages. The said text messages have been published in the Zalen weekly local newspaper on 22/12/2013. Copies of the text messages and their English translations are at Annexures-8 and 9 respectively.

10. That at this stage, since the Petitioner is having a serious and legitimate doubt about the correctness of the result as per the EVMs, and since the experts in the field have already come to the conclusion that EVMs in India are vulnerable to fraud as already highlighted by those experts in the Paper enclosed herein above,, and in view of the fact that the results of the Election in the EVMs are highly contradictory to the results of postal ballots, it is necessary and in the interest of justice to enquire into the matter so as to bring out the true factual position,"

12. Since the election petitioner has raised objection about applicability of the provisions contained in Order 7 Rule 11 of the Civil Procedure Code for rejection of an election petition at the preliminary stage, the said issue may be taken up first for consideration. Under Order 7 Rule 11 (a) of the Civil Procedure Code, a petition shall be rejected where it does not disclose a cause of action. Section 87 of the Act deals with the procedure to be followed by the High Court while adjudicating an election petition. It says that subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In Dharti Pakar Madan Lai Agarwal -vs- Sihri Rajiv Gandhi reported in AIR 1987 SCC 1577, the Hon'ble Supreme Court considered the question as to whether the High Court had the jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code of Civil Procedure and to reject the election petition under Order 7 Rule 11 thereof at the preliminary stage. The Apex Court clearly held that both Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure are applicable to proceedings relating to trial of an election petition. Court has the power to reject an election petition under Order 7 Rule 11. If an election petition does not disclose a cause of action, it should be rejected at the initial stage. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. This view has been reiterated in Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541. It has been held that undoubtedly by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can

invoke powers under the Civil Procedure Code including the powers under Order 6 Rule 16 and Order 7 Rule 11, the objective being to ensure that meaningless litigation which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the Courts. In view of the above authoritative pronouncements of the Apex Court, the objection raised by the election petitioner on this ground is rejected. This Court accordingly holds that it would be open to the returned candidate to file application under Order 7 Rule 11 of the Civil Procedure Code to seek rejection of the election petition if it does not disclose any cause of action.

13. Having held so, let us now turn to the relevant provisions of the Act. While Section 80 to Section 81 deals with filing of election petition in the High Court and the manner of its presentation, Section 82 deals with parties to the election petition. Clause (a) of Section 82 is very specific. It provides that in a case where an election petitioner in addition to claiming declaration that the election of the returned candidate is void, also claims a further declaration that he himself or any other candidate has been elected, all the contesting candidates of the constituency are required to be made respondents and where no such additional declaration is sought for, only the returned candidate is to be made a party. Section 83 of the Act stipulates "what should be the contents of an election petition. First and foremost, an election petition should contain a concise statement of the material facts on which the petitioner relies. If allegation is made of corrupt practice, full particulars of corrupt practice alleged are to be set out. Provisions of Section 87 has already been noticed above. Under Section 98, at the conclusion of the trial of an election petition, the High Court can either dismiss the election petition or declare the election of the returned candidate as void and can also declare the petitioner to be the elected candidate, Section 100 lays down the grounds for declaring an election to be void. As already noticed, in the related election petition, the election petitioner has challenged the election of the applicant on ground 100 (1) (d)(iii) i.e., the election of the applicant has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Under Section 117, the election petitioner has to deposit costs in the High Court at the time of presentation of the election petition.
14. Having noticed the above, we may now turn to Section 86 of the Act which has a decisive bearing on the case. As per Section 86 of the Act, the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. The word used is "shall", which denotes mandatory consequence of non-compliance of Sections 81, 82 or 117.
15. Keeping the above in mind, let us examine the objection of the applicant regarding non-joinder of necessary party as respondents and seeking relief beyond the ambit and scope of an election petition. Since both these issues are interrelated, those are taken up together. As already noticed above, the first relief sought for by the election petitioner is to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Admittedly, such a relief is not open to an election petitioner and no order to this effect can be passed under Section 98 of the Act. Second relief sought for by the election petitioner is to declare the election of the applicant as void and thereafter to declare him as the elected candidate. If that is the prayer, under Section 82 of the Act, all the contesting candidates of the particular constituency ought to have been joined as respondents in the election petition, which has not been done. Thus, there is no compliance of the provisions contained in Section 82 (a) of the Act. In view of the clear language of Section 86 of the Act, there is no other alternative but to dismiss the election petition for non-compliance of Section 82 of the Act. Submission made by the election petitioner that he has given up the second prayer i.e., to declare him as an elected candidate and that he should be allowed to amend the election petition cannot be acceded to at this stage, more so, when there is no formal application to that effect.

16. Though in view of the above finding, it is really not necessary to go into the other issue regarding lack of material facts in the election petition, since the same has been argued at length, it is considered appropriate to address the same.
17. As already noticed, Section 83 of the Act stipulates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. In Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp.) SCC 315, it has been held by the Apex Court that: if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo -vsTM Ranga Nath Mishra and Others reported in AIR 2001 SCC 2992, the Apex Court made it clear that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Ram Sukh (supra), it has been held that since the phrase "material facts" has neither been defined in the Act nor in the Civil Procedure Code, it has been understood by the Courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. "Material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. In Jitu Patnaik -vs- Sanalan Mohakud and Others reported in (2012) 4 SCC 194, it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
18. From a reading of the averments made in the election petition as extracted hereinabove, it is more than clear that the entire grievance of the election petitioner is structured on the basis of his suspicion and apprehension. No material fact has been pleaded by the election petitioner which would constitute the ground that the election of the applicant has been materially affected because of the improper reception, refusal or rejection of any valid vote or by the reception of any void vote. Suspicion and apprehension howsoever great those may be, cannot be construed as material facts as is understood in law.
19. That being the position, there is no other alternative but to hold that the election petition suffers from fundamental defects under Section 82 of the Act and also does not disclose material facts to hold trial to examine the validity of the election of the applicant.
20. Accordingly and in view of the discussions made above, this Misc. application is allowed and the related election petition is dismissed.
21. However, there shall be no order as to costs.

Sd/-
UJJAL BHUYAN
JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 30th January, 2015
10 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/22/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 6th September, 2014 of the Gauhati High Court in CM Application No.93 of 2014 in Election Petition No. 22 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH**

**CM. APPL NO. 93 OF 2014
IN ELECTION PETITION NO. 22 OF 2014**

**BEFORE
HON'BLE MR. JUSTICE UJJAL BHUYAN**

Dates of hearing : 3.09.2014 & 5.9.2014.
Date of Judgment : 6.09.2014.

JUDGMENT & ORDER (CAV)

Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr. C. Lalramzauva, learned senior counsel assisted by Mr. Johnny L. Tochwang, learned counsel appearing for the Opposite Party No. 1/election petitioner. Also heard Mr. M. Zothankhuma, learned senior counsel for Election Commission of India.

2. This is an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 for rejection of the election petition for want of cause of action and for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 (for short 'the Act').

3. Rejection of the election petition has been sought for primarily on three grounds. Firstly, the election petition does not disclose material facts to constitute a cause of action to warrant trial of the election petition. Secondly, the prayer made in the election petition is beyond the relief which can be granted to an election petitioner under the Act. Thirdly, since the election petitioner has sought for a declaration that not only the election of the returned candidate be declared as void, he should also be declared as the elected candidate, all the other contesting candidates of the constituency should have been made parties to the election petition, which has not been done. This is a violation of the mandatory provision of Section 82 of the Act.
4. Opposite Party No, 1 i.e. the election petitioner has filed written objection. It is contended that there is no necessity to entertain and decide the misc. application at a preliminary stage. It is asserted that material facts have been pleaded in the election petition. Reliefs sought for in the election petition cannot be said to be beyond the scope of the law. Though in the election petition, the election petitioner has made further prayer for declaring him as the elected candidate after declaring the election of the applicant as void, he is not pressing the same and would be satisfied if the first part of the prayer is granted i.e. if the election of the applicant [returned candidate) is declared as void. Misc. application should, therefore, be dismissed.
5. Mr. Lalsawirema, learned counsel for the applicant by referring to the averments made in the election petition submits that even a cursory reading of the averments would show that the election petition is entirely based on suspicion and apprehension of the election petitioner about the fairness of the electoral process, particularly about the alleged misuse of the Electronic Voting Machines (EVMs). Not a single material fact has been pleaded to support the ground urged. On the basis of such vague allegation, there can be no trial and the result of applicant's election cannot be subjected to enquiry. He also submits that the first prayer made in the election petition is for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs) is beyond the scope and ambit of an election petition. He further submits that the prayer of the election petitioner to declare him as the elected candidate after declaring the election of the applicant as void would attract the provisions of Section 82 of the Act. In the face of such prayer, all the candidates who were in the electoral fray in the particular constituency ought to have been made respondents in the election petition which is a mandatory requirement. Non-compliance with such mandatory requirement would entail automatic dismissal of the election petition. He therefore submits that the election petition suffers from fundamental technical defects and as such proceeding further with the election petition would be totally unwarranted.
6. Mr. C. Lalramzauva, learned senior counsel for the election petitioner on the other hand submits that keeping in mind the mandatory nature of Section 98 of the Act, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order 7 Rule 11 of the Civil Procedure Code. It is only after conclusion of the trial, the High Court can pass either of the 3 orders mentioned in Section 98. He submits that since election petitioner has already declared that he does not seek a declaration to the effect that he is the returned candidate, he may be permitted to amend the election petition. He finally submits that all the issues raised by the applicant can be gone into at the final hearing of the election petition and not at the threshold.
7. In reply, Mr. Lalsawirema, learned counsel for the applicant submits that after the statutory period of 45 days of filing election petition under Section 81 of the Act is over, there is no question of amendment of the election petition. Amendment as suggested, if granted, would change the very nature and

character of the election petition, which cannot be permitted. In any case, he submits that in the absence of any formal application for amendment, such an oral prayer of the election petitioner cannot be accepted, that too, after the technical defects in the election petition were pointed out in the misc. application.

8. Though the Election Commission of India is neither a necessary party nor a proper party in an election petition in view of the clear enunciation of law by the Hon'ble Supreme Court in the case of B. Sundara Rami Reddy v. Election Commission of India reported in 1991 Supp. (2) SCC 624, the Court has none-the-less given audience to learned senior counsel appearing for the Election Commission of India since the election petitioner has himself made the Election Commission of India and its officials respondents in the election petition, Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity of the electoral process while maintaining the secrecy of ballot,, Unsettling an electoral verdict being a serious matter having wide ramification, law mandates that there should be strict compliance of procedural requirements. Violation of the mandatory conditions, particularly those mandated in Sections 81, 82 and 117 of the Act would result in dismissal of the election petition, he submits.
9. I have heard the rival submissions and also perused the materials on record.
10. To appreciate the rival contentions, it would be apposite to briefly refer to the election petition at the outset. Election petitioner has challenged the election of the applicant as MLA in the legislative assembly elections to the Mizoram State Legislative Assembly, 2013. As can be seen from the cause title, the following are the parties to the election petition:-

*"Sh. Saikapthianga, S/o Lalhuliana (L),
R/o Zotlang, Mizoram.*

.....Petitioner.

- Vrs -

1. *Sh. Lalrinmawia Ralte S/o Lalthansanga (L),
R/o New Secretariat Complex, Khatla, Aizawl.*

.....Respondent

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawl.*

4. *Returning Officer, I-Hachhek (ST), AC,
Mamit, Mizoram,*

.....Proforma Respondents,"

The reliefs sought for by the election petitioner are as under:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*

(ii) *on the basis of the findings of the expert committee why the election of the respondent No.1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*

11. Regarding the substance of the allegation and the ground for challenging the election of the applicant, election petitioner has relied upon Section 100 (I)(d) (iii) of the Act which says that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. In support of the above ground of challenge, the election petitioner has put forward the following averments:-

"5. That during the preceding MLA Elections held in Mizoram, the result of Postal Ballots used to be unfailing indicators for the final outcome of the election results. In this connection, it may briefly be stated that in the 1998 MLA General Election, the MNF Party and the MPC Party had joined hands in which as per the result of the Postal Ballots, the two Parties together had won in 24 Constituencies and in the final result, they had won in 29 Constituencies. Similarly, in the 2003 MIA Genera! Election in which the MNF Party had fought singly, it had won in 23 Constituencies as per the Postal Ballot and in 21 Constituencies in the final result. However, in the 2008 MLA General Election, In which the Election Commission of India had decided to switch over to the EVM, manufactured by the ECI.L Company, there occurred a drastic change in the result Though the MNF Party-had won in 20 Constituencies as per the result of the Postal Ballot, the result of the EVM had shown that the MNF Party could win only in 3 Constituencies such as in the 25-East Tuipui AC(ST) in the undivided Aizawl District, in the 32-Lunglei West: AC (ST) in Lunglei District and in the 37 - Lawngtlai West AC (ST) of Lawngtlai District The result as per the postal ballot and the EVM in all the constituencies being so contradictory, the same had ted to a strong suspicion against the correctness of the EVM by all the Parties other than the INC Party. It may be stated here that the MNF Party had come to its own conclusion that there was wide spread manipulation/rigging of the EVMs at the instance of the winning Party i.e. INC Party by hacking the said EVMs with the help of some experts in the field. The same EVMs which were kept by the Election Department in their safe custody were again used in all the polling booths in all the Constituencies except in the 10 Constituencies within Aizawl City where WPAT system were used in place of EVMs. It is not known why the ECU Company could provide WPAT only for 10 Constituencies of Aizawl City while the remaining 30 Constituencies were left with no other option but to use the same EVMs used earlier and against which the MNF Party had made a number of complaints of their being hacked/manipulated. Copies of the Abstract of Postal Ballot record in different constituencies in the MLA Elections, 1998, 2003, 2008 & 2013 are at Annexures -3,4,5, & 6 respectively,

6. That at this stage, it may be pertinent to state that due to a number of complaints against the EVM, as a device for conducting Elections, from different corners, a number of Scientists of different countries worked together to see whether there is a possibility of manipulating the EVMs for altering the election results. As per the finding of the experts in the field published in an Article/Paper - 'Security Analysis of India's Electronic Machines', it was stated that in spite of the stand taken by the Election Commission of India that the EVMs were fully tamper-proof and that the machines were 'perfect with no need for technological improvement, the

expert team in their said Paper had, after thorough scrutiny and analysis of the EVM, had come to the finding that the EVMs used in India are not tamper-proof and are susceptible to a range of attacks and that while the use of paperless DRE (Direct Recording Electronic) voting machines has been discontinued in California, Florida, Ireland, the Netherlands and Germany, Indian election authorities are still sticking to it and it is high time that they should immediately review the security procedures now in place and should inspect all EVMs for evidence of fraud. Moving forward, they had suggested that India should adopt a different voting system that provides greater securities and transparency. In the said Paper it was clearly highlighted that on the basis of expert scrutiny. Observations and tests there are a number of attackers who could manipulate the EVMs and that these attacks are possible even if the voting software is completely error-free. It was found by the said expert team that the EVM firmware is stored in masked read-only memory inside the microcontroller chips, and there is no provision for extracting it or verifying its integrity. This means that if the software was modified before it was built in to the CPUs, the changes could be difficult to detect. Similarly even the engineer responsible compiling the source and transmitting it to the CPU manufacturer could substitute a version containing a back door with little chance of being caught and that employees at the chip makers could alter the compiled programmed image before burning it in to the chips. It was also highlighted that attackers might try to substitute look-alike CPUs containing software that counts the votes dishonestly. And that anytime between the start of polling and the public count, dishonest election insiders or other criminals could use the clip-on device to change the votes recorded in the EVM. A copy of the said Article Dt 29/7/2010 is at Annexure-7.

9. *That in this connection it may humbly be stated that the respondent has been declared elected in the said General Mi A Election, 2013 held on 25/11/2013 on the basis of reception of the winning votes which were void. In other words, the actual and valid votes so polled in favour of the respondent were less than the votes so polled in favour of the Petitioner, and the respondent could not have been declared elected but for the reception of votes, which were void, on the basis of rigging and manipulation of some of the EVMs within the said Constituency, At this stage it may be humbly submitted that since it is not possible on the part of the petitioner to produce any documentary evidence in support of his contention as required, the Hon'ble Court shall have to constitute a committee to enquire into the allegation made herein and the said committee will have to function with the help of those having expertise in the field. In this connection it may also be noted that during the election, a number of outsiders who claimed to be the officials of the ECIL Company came to Mizoram and stationed themselves at different places where counting took place. Such persons were claiming to be supervising the functioning of the EVMs for which those personnel used to be present in and around the Polling Booths. Even when polling was over those personnel continued to be present in Aizawl and again distributed themselves at the time of counting of Votes at different counting stations. Though the Petitioner did not raise any objections to the presence of those personnel, however he had doubted the necessity of their presence. The subsequent event had confirmed his suspicion regarding the manipulation and hacking/rigging of the EVMs as well as the VVPAT Systems during the process of Election. To add salt to his already injured and suspicious mind, one Mr. K. Chhawnthuama (as Phantom,) owner of K.V. Multipurpose (English Medium) High School and ordained Elder of the Durtlang Presbyterian Church, had sent two text messages to the present Chief Minister who has been elected from the 26-Serchhip (ST) Assembly Constituency immediately after he was declared elected. The text messages read as under:*

To win an election based upon the manipulated CPU supported EVM is such a dirty game. You are no doubt the dirtiest person alive. Even the lives of those of you who had manipulated/rigged the EVMs are at great risk. The bribe given to the DC was also no doubt high. It is hard to say how many of you will suffer. Proofs would come with photographs! There is none among the Mizos who is more corrupted than you. You are so despicable. Considering the degree of crime you have committed, you have failed to take proper care bringing disgrace to yourself

PHANTOM

I continue to know who you are — the dirty and despicable CM who had gone to the extent of manipulating EVM. The highest form of corruption, winning with the help of manipulated EVM is bound to be exposed. You are bringing disgrace upon yourself for acting in such a manner. How you have manipulated the EVM will be exposed with the help of photographs.

I know you through and through.

PHANTOM'

After detecting the sender of the said two text messages, the police had registered a case (i.e. CrI. Tr. No.2195 of 2013: Azl. PS. Case No. 373 of 2013 u/s 171GIPC r/w 66 A (a) (b) IT Act) against the author who had sent the said messages. The said text messages have been published in the Zalen weekly local newspaper on 22/12/2013. Copies of the text-messages and their English translations are at Annexures-8 and 9 respectively.

10. That at this stage, since the Petitioner is having a serious and legitimate doubt about the correctness of the result as per the EVMs, and since the experts in the field have already come to the conclusion that EVMs in India are vulnerable to fraud as already highlighted by those experts in the Paper enclosed herein above, and in view of the fact that the results of the Election in the EVMs are highly contradictory to the results of postal ballots, it is necessary and in the interest of Justice to enquire into the matter so as to bring out the true factual position."

12. Since the election petitioner has raised objection about applicability of the provisions contained in Order 7 Rule 11 of the Civil Procedure Code for rejection of an election petition at the preliminary stage, the said issue may be taken up first for consideration. Under Order 7 Rule 11 (a) of the Civil Procedure Code, a plaint shall be rejected where it does not disclose a cause of action. Section 87 of the Act deals with the procedure to be followed by the High Court while adjudicating an election petition. It says that subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In Dhartipakar Madan Lai Agarwal -vs-Shri Rajiv Gandhi reported in AIR 1987 SCC 1577, the Hon'ble Supreme Court considered the question as to whether the High Court had the jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code of Civil Procedure and to reject the election petition under Order 7 Rule 11 thereof at the preliminary stage. The Apex Court clearly held that both Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure are applicable to proceedings relating to trial of an election petition, Court has the power to reject an election petition under Order 7 Rule 11. If an election petition does not disclose a cause of action, it should be rejected at the initial stage. Cause of action

in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. This view has been reiterated in Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541. It has been held that undoubtedly by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order 6 Rule 16 and Order 7 Rule 11, the objective being to ensure that meaningless litigation which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the Courts. In view of the above authoritative pronouncements of the Apex Court, the objection raised by the election petitioner on this ground is rejected. This Court accordingly holds that it would be open to the returned candidate to file application under Order 7 Rule 11 of the Civil Procedure Code to seek rejection of the election petition if it does not disclose any cause of action.

13. Having held so, let us now turn to the relevant provisions of the Act. While Section 80 to Section 81 deals with filing of election petition in the High Court and the manner of its presentation, Section 82 deals with parties to the election petition. Clause (a) of Section 82 is very specific. It provides that in a case where an election petitioner in addition to claiming declaration that the election of the returned candidate is void, also claims a further declaration that he himself or any other candidate has been elected, all the contesting candidates of the constituency are required to be made respondents and where no such additional declaration is sought for, only the returned candidate is to be made a party. Section 83 of the Act stipulates "what should be the contents of an election petition. First and foremost, an election petition should contain a concise statement of the material facts on which the petitioner relies. If allegation is made of corrupt practice, full particulars of corrupt practice alleged are to be set out. Provisions of Section 87 has already been noticed above. Under Section 98, at the conclusion of the trial of an election petition, the High Court can either dismiss the election petition or declare the election of the returned candidate as void and can also declare the petitioner to be the elected candidate. Section 100 lays down the grounds for declaring an election to be void. As already noticed, in the related election petition, the election petitioner has challenged the election of the applicant on ground 100 (1) (d)(iii) i.e., the election of the applicant has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Under Section 117, the election petitioner has to deposit costs in the High Court at the time of presentation of the election petition.
14. Having noticed the above, we may now turn to Section 86 of the Act which has a decisive bearing on the case. As per Section 86 of the "Act the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. The word used is "shall", which denotes mandatory consequence of non-compliance of Sections 81,82 or 117.
15. Keeping the above in mind, let us examine the objection of the applicant regarding non-joinder of necessary party as respondents and seeking relief beyond the ambit and scope of an election petition. Since both these issues are interrelated, those are taken up together. As already noticed above, the first relief sought for by the election petitioner is to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Admittedly, such a relief is not open to an election petitioner and no order to this effect can be passed under Section 98 of the Act, Second relief sought for by the election petitioner is to declare the election of the applicant as void and thereafter to declare him as the elected candidate. If that is the prayer, under Section 82 of the Act, all the contesting candidates of the particular constituency ought to have been joined as respondents in the election petition, which has not been done. Thus, there is "no compliance of the provisions

contained in Section 82 (a) of the Act. In view of the clear language of Section 86 of the Act, there is no other alternative but to dismiss the election petition for non-compliance of Section 82 of the Act. Submission made by the election petitioner that he has given up the second prayer i.e., to declare him as an elected candidate and that he should be allowed to amend the election petition cannot be acceded to at this stage, more so, when there is no formal application to that effect.

16. Though in view of the above finding, it is really not necessary to go into the other issue regarding lack of material facts in the election petition, since the same has been argued at length, it is considered appropriate to address the same.
17. As already noticed, Section 83 of the Act stipulates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. In *Azhar Hussain vs- Rajiv Gandhi* reported in 1986 (Supp.) SCC 315, it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In *Ananga Uday Singh Deo vs- Ranga Nath Mishra and Others* reported in AIR 2001 SCC 2992, the Apex Court made it clear that an election petition must disclose material facts. Averments must be adequate, clear and specific. In *Ram Sukh (supra)*? it has been held that since the phrase "material facts" has neither been defined in the Act nor in the Civil Procedure Code, it has been understood by the Courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action, "Material facts" are facts upon which the plaintiffs cause of action or the defendant's defence depends. In *Jitu Patnaik vs- Sanatan MotiakMd and Others* reported in (2012) 4 SCC 194, it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
18. From a reading of the averments made in the election petition as extracted hereinabove, it is more than clear that the entire grievance of the election petitioner is structured on the basis of his suspicion and apprehension. No material fact has been pleaded by the election petitioner which would constitute the ground that the election of the applicant has been materially affected because of the improper reception, refusal or rejection of any valid vote or by the reception of any void vote. Suspicion and apprehension howsoever great those may be, cannot be construed as material facts as is understood in law.
19. That being the position, there is no other alternative but to hold that the election petition suffers from fundamental defects under Section 82 of the Act and also does not disclose material facts to hold trial to examine the validity of the election of the applicant.
20. Accordingly and in view of the discussions made above, this Misc. application is allowed and the related election petition is dismissed.
21. However, there shall be no order as to costs.

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JUDGE

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated : 30th January, 2015
10 Magha, 1936 (Saka)

NOTIFICATION

No.82/MIZ-LA/23/2014: - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 6th September, 2014 of the Gauhati High Court in CM Application No.101 of 2014 in Election Petition No. 23 of 2014.

(HERE PRINT THE JUDGEMENT/ORDER ATTACHED)

By order,

Sd/-
ANUJ JAIPURIAR
SECRETARY
ELECTION COMMISSION OF INDIA

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZAWL BENCH**

**CM, APPL. NO. 101 OF 201
IN ELECTION PETITION NO. 23 OF 2014**

**BEFORE
HON'BLE MR. JUSTICE UJJAL BHUYAN**

Dates of hearing : 3.09.2014 & 5.9.2014.
Date of Judgment : 6.09.2014.

JUDGMENT & ORDER (CAV)

Heard Mr. Lalsawirema, learned counsel for the applicant/respondent No. 1 (returned candidate) and Mr, C. Lalramzauva, learned senior counsel assisted by Mr. Johny L. Tochwawng, learned counsel appearing for the Opposite Party No. 1/election petitioner. Also heard Mr. M, Zothankhuma, Seamed senior counsel for Election Commission of India.

2. This is an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 for rejection of the election petition for want of cause of action and for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 (for short 'the Act').
3. Rejection of the election petition has been sought for primarily on three grounds. Firstly, the election petition does not disclose material facts to constitute a cause of action to warrant trial of the election

petition. Secondly, the prayer made in the election petition is beyond the relief which can be granted to an election petitioner under the Act. Thirdly, since the election petitioner has sought for 3 declaration that not only the election of the returned candidate be declared as void, he should also be declared as the elected candidate, all the other contesting candidates of the constituency should have been made parties to the election petition, which has not been done. This is a violation of the mandatory provision of Section 82 of the Act.

4. Opposite Party No. 1 i.e. the election petitioner has filed written objection. It is contended that there is no necessity to entertain and decide the misc. application at a preliminary stage. It is asserted that material facts have been pleaded in the election petition. Reliefs sought for in the election petition cannot be said to be beyond the scope of the law. Though in the election petition, the election petitioner has made further prayer for declaring him as the elected candidate after declaring the election of the applicant as void, he is not pressing the same and would be satisfied if the first part of the prayer is granted i.e. if the election of the applicant (returned candidate) is declared as void. Misc. application should, therefore, be dismissed.
5. Mr. Lalsawirema, learned counsel for the applicant by referring to the averments made in the election petition submits that even a cursory reading of the averments would show that the election petition is entirely based on suspicion and apprehension of the election petitioner about the fairness of the electoral process, particularly about the alleged misuse of the Electronic Voting Machines (EVMs). Not a single material fact has been pleaded to support the ground urged. On the basis of such vague allegation, there can be no trial and the result of applicant's election cannot be subjected to enquiry. He also submits that the first prayer made in the election petition is for constitution of an enquiry committee of experts to scrutinize the correctness of the election result by checking the Electronic Voting Machines (EVMs) is beyond the scope and ambit of an election petition. He further submits that the prayer of the election petitioner to declare him as the elected candidate after declaring the election of the applicant as void would attract the provisions of Section 82 of the Act. In the face of such prayer, all the candidates who were in the electoral fray in the particular constituency ought to have been made respondents in the election petition which is a mandatory requirement. Non-compliance with such mandatory requirement would entail automatic dismissal of the election petition. He therefore submits that the election petition suffers from fundamental technical defects and as such proceeding further with the election petition would be totally unwarranted.
6. Mr. C. Lalramzauva, learned senior counsel for the election petitioner on the other hand submits that keeping in mind the mandatory nature of Section 98 of the Act, an election petition cannot be rejected at the preliminary stage by invoking the provisions of Order 7 Rule 11 of the Civil Procedure Code. It is only after conclusion of the trial, the High Court can pass either of the 3 orders mentioned in Section 98. He submits that since election petitioner has already declared that he does not seek a declaration to the effect that he is the returned candidate, he may be permitted to amend the election petition. He finally submits that all the issues raised by the applicant can be gone into at the final hearing of the election petition and not at the threshold.
7. In reply, Mr, Lalsawirema, learned counsel for the applicant submits that after the statutory period of 45 days of filing election petition under Section 81 of the Act is over, there is no question of amendment of the election petition. Amendment as suggested, if granted, would change the very nature and character of the election petition, which cannot be permitted. In any case; he submits that in the absence of any formal application for amendment, such an oral prayer of the election petitioner

cannot be accepted, that too, after the technical defects in the election petition were pointed out in the misc. application.

8. Though the Election Commission of India is neither a necessary party nor a proper party in an election petition in view of the clear enunciation of law by the Hon'ble Supreme Court in the case of B. Sundara Rami Reddy v. Election Commission of India reported in 1991 Supp. (2) SCC 624, the Court has none-the-less given audience to learned senior counsel appearing for the Election Commission of India since the election petitioner has himself made the Election Commission of India and its officials respondents in the election petition. Mr. M. Zothankhuma, learned senior counsel appearing for the Election Commission of India submits that the scheme of the election law is to uphold the purity of the electoral process while maintaining the secrecy of ballot. Unsettling an electoral verdict being a serious matter having wide ramification, law mandates that there should be strict compliance of procedural requirements. Violation of the mandatory conditions, particularly those mandated in Sections 81, 82 and 117 of the Act would result in dismissal of the election petition, he submits.
9. I have heard the rival submissions and also perused the materials on record.
10. To appreciate the rival contentions, it would be apposite to briefly refer to the election petition at the outset. Election petitioner has challenged the election of the applicant as MLA in the legislative assembly elections to the Mizoram State Legislative Assembly, 2013, As can be seen from the cause title, the following are the parties to the election petition:-

*"Dr. K. Pachhunga, S/o K. Hramluia (L),
R/o Lung lawn, Mizoram.*

.....Petitioner.

- Vrs-

1. *Sh. S. Laldingllana S/o Lalchungnunga (L),
R/o Chanmani I, Lunglei.*

.....Respondent.

2. *Election Commission of India through its Secretary,
Nirvachan Sadan, Ashoka Road, New Delhi.*

3. *Chief Electoral Officer, Mizoram, Aizawi.*

4. *Returning Officer, 33-Lunglei South (ST), AC,
Lunglei, Mizoram.*

.....Proforma Respondents."

The reliefs sought for by the election petitioner are as under:-

- "(i) An enquiry committee consisting of experts recommended by the petitioner as well as by the respondents shall not be constituted for the purpose of scrutinizing the correctness of the result of the election by checking the EVMs concerned with the help of a scientific device, and*
- (ii) on the basis of the findings of the expert committee why the election of the respondent No. 1 shall not be declared to be void and why the petitioner shall not be declared elected from the said constituency."*

11. Regarding the substance of the allegation and the ground for challenging the election of the applicant, election petitioner has relied upon Section 100 (l)(d) (HI) of the Act which says that if the High Court is of the opinion that the result of the election in so far it concerns a returned candidate has been materially affected by improper reception, refusal or rejection of any vote or by the reception of any vote which is void, the High Court shall declare the election of the returned candidate to be void. In support of the above ground of challenge, the election petitioner has put forward the following averments:-

"5, That during the preceding MLA Elections held in Mizoram, the result of Postal Ballots used to be unfailing indicators for the final outcome of the election results. In this connection, it may briefly be stated that in the 1998 MIA General Election, the MNF Party and the MPC Party had joined hands In which as per the result of the Postal Ballots, the two Parties together had won in 24 Constituencies and in the final result they had won in 29 Constituencies. Similarly, in the 2003 MLA General Election In which the MNF Pasty had fought singly, it had won in PJ Constituencies as per the Postal Ballot and in 21 Constituencies in the final result However, in the 2008 MLA General Election, In which the Election Commission of India had decided to switch over to the EVM, manufactured by the ECIL Company, there occurred a drastic change in the result. Though the MNF Party had won in 20 Constituencies as per the result of the Postal Ballot, the result of the EVM had shown that the MNF Party could win only in 3 Constituencies such as in the 25-East Tuipui AC(ST) in the undivided Aizawl District, in the 32-Lunglei West AC (ST) in Lunglei District and in the 37 - Lawngtlai West AC (ST) of Lawngtlai District. The result as per the postal ballot and the EVM in all the. constituencies being so contradictory, the same had led to a strong suspicion against the correctness of the EVM by ail the Parties other than the INC Party, It may be stated here that the MNF Party had come to its own conclusion that there was wide spread manipulation/rigging of the EVMs at the instance of the winning Part]/ i.e. INC Party by hacking the said EVMs with the help of some experts in the field. The same EVMs which were kept by the Election Department in their safe custody were again used in all the polling booths in all the Constituencies except in the 10 Constituencies within Aizawl City where WPA T system were used in place of EVMs. It is not known why the ECU Company could provide VVPAT only for 1.0 Constituencies of Aizawl City while the remaining 30 Constituencies were left with no other option but to use the same EVMs used earlier and against which the MNF Part}' had made a number of complaints of their being hacked/manipulated. Copies of the Abstract of Postal Ballot record in different constituencies in the MLA Elections, 1998, 2003, 2008 & 20X3 are at Annexures -3,4,5, & 6 respectively.

6. That at this stage, it may be pertinent to state that due to a number of compliant against the EVM, as a device for conducting Elections, from different corners, a number of Scientists of different countries worked together to see whether there is a possibility of manipulating the EVMs for altering the election results. As per the finding of the experts in the field published in an Article/Paper - 'Security Analysis of India's Electronic Machines',, it was stated that in spite of the stand taken by the Election Commission of India that the EVMs were fullykamper-pivof and that the machines were 'perfect' with no need for technological improvement, the expert team in their said Paper had, after thorough scrutiny and analysis of the EVM, had come to the finding that the EVMs used in India are not tamper-proof and are succceptible to a range of attacks and that while the use of paperless ORE (Direct Recording Electronic) voting machines has been discontinued In California, Florida, Ireland, the Netherlands and Germany, Indian election authorities are still sticking to it and it is high time that they should immediately

review the security procedures now in place and should inspect all EVMs for evidence of fraud. Moving forward, they had suggested that India should adopt a different-voting system that provides greater securities and transparency. In the said Paper it was clearly highlighted that on the basis of expert scrutiny. Observations and tests there are a number of attackers who could manipulate the EVMs and that these attacks are possible even if the voting software is completely error-free. It was found by the said expert team that the EVM firmware is stored in masked read-only memory inside the microcontroller chips, and there is no provision for extracting it or verifying its integrity. This means that if the software was modified before it was built in to the CPUs, the changes could be difficult to detect. Similarly even the engineer responsible compiling the source and transmitting it to the CPU manufacturer could substitute a version containing a back door with little chance of being caught and that employees at the chip makers could alter the compiled programmed image before burning it in to the chip. It was also highlighted that attackers might try to substitute look-alike CPUs containing software that counts the votes dishonestly. And that anytime between the start of polling and the public count, dishonest election insiders or other criminals could use the clip-on device to change the votes recorded in the EVM. A copy of the said Article Dt. 29/7/2010 is at Amwxure-7.

9. *That in this connection it may humbly be stated that the respondent has been declared elected in the said General MLA Election, 2013 held on 25/11/2013 on the basis of reception of the winning votes which were void. In other words, the actual and valid votes so polled in favour of the respondent were less than the votes so polled in favour of the Petitioner, and the respondent could not have been declared elected but for the reception of votes, which were void, on the basis of rigging and manipulation of some of the EVMs within the said Constituency. At this stage it may be humbly submitted that since it is not possible on the part of the petitioner to produce any documentary evidence in support of his contention as required, the Hon'ble Court shall have to constitute a committee to enquire into the allegation made herein and the said committee will have to function with the help of those having expertise in the field. In this connection it may also be noted that during the election, a number of outsiders who claimed to be the officials of the ECU Company came to Mizoram and stationed themselves at different places where counting took place. Such persons were claiming to be supervising the functioning of the EVMs for which those personnel used to be present in and around the Polling Booths. Even when polling was over those personnel continued to be present in Aizawl and again distributed themselves at the time of counting of votes at different counting stations. Though the Petitioner did not raise any objections to the presence of those personnel, however he had doubted the necessity of their presence. The subsequent event had confirmed his suspicion regarding the manipulation and hacking/rigging of the EVMs as well as the VVPAT Systems during the process of Election. To add salt to his already injured and suspicious mind, one Mr. K. Chhawnthuama (as Phantom,) owner of K. V. Multipurpose (English Medium) High School and ordained Elder of the Durtlang Presbyterian Church, had sent two text messages to the present Chief Minister who has been elected from, the 26-Serchhip (ST) Assembly Constituency immediately after he was declared elected. The text messages read as under :*

To win an election based upon the manipulated CPU supported EVM is such a dirty game. You are no doubt the dirtiest person alive. Even the lives of those of you who had manipulated/rigged the EVMs are at great risk. The bribe given to the DC was also no doubt high, It is hard to say how many of you will suffer. Proofs would come with photographs! There is none among the Mizos who is more corrupted than you. You are so despicable.

Considering the degree of crime you have committed, you have failed to take proper care bringing disgrace to yourself

PHANTOM

I continue to know who you are - the dirty and despicable CM who had gone to the extent of manipulating EVM. The highest form of corruption, winning with the help of manipulated EVM is bound to be exposed. You are bringing disgrace upon yourself for acting in such a manner. How you have manipulated the EVM will be exposed with the help of photographs.

I know you through and through.

PHANTOM'

After detecting the sender of the said two text messages, the police had registered a case (i.e. Cri.Tr. No.2195 of 2013: Azi. P.S. Case No, 373 of 2013 u/s 17 1G IPC r/w 66 A (a) (b) IT Act) against the author who had sent the said messages. The said text messages have been published in the Zalen weekly local newspaper on 22/12/2013. Copies of the text messages and their English translations are at Annexures-8 and 9 respectively,

10. That at this stage, since the Petitioner is having a serious -and legitimate doubt about the correctness of the result as per the EVMs, and since the experts in the field have already come to the conclusion that EVMs in India are vulnerable to fraud as already highlighted by those experts in the Paper enclosed herein above, and in view of the fact that the results of the Election in the EVMs are highly contradictory to the results of postal ballots, it is necessary and in the interest of justice to enquire into the matter so as to bring out the true factual position,"

12. Since the election petitioner has raised objection about applicability of the provisions contained in Order 7 Rule 11 of the Civil Procedure Code for rejection of an election petition at the preliminary stage, the said issue may be taken up first for consideration. Under Order 7 Rule; 11 (a) of the Civil Procedure Code, a plaint shall be rejected where it does not disclose a cause of action,. Section 87 of the Act deals with the procedure to be followed by the High Court while adjudicating an election petition. It says that subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In Dhattipakar Madan Lai Agarwal -vs-Shri Rajiv Gandhi reported in AIR 1987 SCC 1577, the Hon'ble Supreme Court considered the question as to whether the High Court had the jurisdiction to strike out pleadings under Order 6 Rule 16 of the Code of Civil Procedure and to reject the election petition under Order 7 Rule 11 thereof at the preliminary stage. The Apex Court clearly held that both Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure are applicable to proceedings relating to trial of an election petition. Court has the power to reject an election petition under Order 7 Rule 11. If an election petition does not disclose a cause of action, it should be rejected at the initial stage. Cause of action in questioning the validity, of election must relate to the grounds specified in Section 100 of the Act. This view has been reiterated in Ram Sukh -vs- Dinesh Aggarwal reported in (2009) 10 SCC 541. It has been held that undoubtedly by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code applied to the trial of an election petition and the High Court trying an election petition can invoke powers under the Civil Procedure Code including the powers under Order 6 Rule 16 and

Order 7 Rule 11, the objective being to ensure that meaningless litigation which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the Courts. In view of the above authoritative pronouncements of the Apex Court; the Objection¹ raised by the election petitioner on this ground is rejected. This Court 'accordingly holds that it would be open to the returned candidate to file application under Order 7 Rule 11 of the Civil Procedure Code to seek rejection of the election petition if it does; not disclose any cause of action.

13. Having held so, let us now turn to the relevant provisions of the Act. While Section 80 to Section 81 deals with filing of election petition In the High Court and the manner of its presentation. Section 82 deals with parties to the election petition. Clause (a) of Section 82 is very specific. It provides that in a case where an election petitioner in addition to claiming declaration that the election of the returned candidate is void,, also claims a further declaration that he himself or any other candidate has been elected, all the contesting candidates of the constituency are required to be made respondents and where no such additional declaration is sought for, only the returned candidate is to be made a party. Section 83 of the Act stipulates what should: be the contents of an Election petition. First and foremost, an election petition should contain a concise statement of the material facts on which the petitioner relies. If allegation is made of corrupt practice, full particulars of corrupt practice alleged are to be set out. Provisions of Section 87 has already been noticed above. Under Section 98, at the conclusion of the trial of an election petition, the High Court can either dismiss the election petition or declare the election of the returned candidate as void and can also declare the petitioner to be the elected candidate. Section 100 lays down the grounds for declaring an election to be void. As already noticed, in the related election petition, the election petitioner has challenged the election of the applicant on ground 100 (1) (d)(iii). i.e., the election of the applicant has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Under Section 117, the election petitioner has to be deposit costs in the High Court at the time of presentation of the election petition.
14. Having noticed the above, we may now turn to Section 86 of the Act which has a decisive bearing on the case. As per Section 86 of the Act, the High Court shall dismiss an election petition which does not comply "with the provisions of Section 81 or Section 82 or Section 117 of the Act, The word used is "shall", which denotes mandatory consequence of non-compliance of Sections 81,82 or 117.
15. Keeping the above in mind, let us examin the objection of the applicant regarding non-joinder of necessary party as respondents arid seeking relief beyond the ambit and scope of an election petition. Since both these issues are interrelated, those are taken up together, As already noticed above, the first relief sought for by the election petitioner is to constitute an enquiry committee of experts to scrutinize correctness of the election result by checking the EVMs. Admittedly, such a relief is not open to an election petitioner and no order to this effect can be passed under Section 98 of the Act. Second relief sought for by the election petitioner is to declare the election of the applicant as void and thereafter to declare him as the elected candidate. If that is the prayer, under Section 82 of the Act, all the contesting candidates of the particular constituency ought to have been joined as respondents in the election petition, which has not been done. Thus, there is no compliance of the provisions contained in Section 82 (a) of the Act. In view of the clear language of Section 86 of the Act, there is no other alternative but to dismiss the election petition for non-compliance of Section 82 of the Act. Submission made by the election petitioner that he has given up the second prayer i.e., to declare him as an elected candidate and that he should be allowed to amend the election petition cannot be acceded to at this stage, more so, when there is no formal application to that effect.

16. Though in view of the above finding, it is really not necessary to go into the other issue regarding lack of material facts in the election petition, since the same has been argued at length, it is considered appropriate to address the same,
17. As already noticed, Section 83 of the Act stipulates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. In Azhar Hussain -vs- Rajiv Gandhi reported in 1986 (Supp.) SCC 315, it has been held by the Apex Court that if essential particulars are not pleaded, election petition is to be dismissed. In Ananga Uday Singh Deo -vs- Ranga Nath Mishra and Others reported in AIR 2001 SCC 2992, the Apex Court made it clear that an election petition must disclose material facts. Averments must be adequate, clear and specific. In Ram Sukh (supra), it has been held that since the phrase "material facts" has neither been defined in the Act nor in the Civil Procedure Code, it has been understood by the Courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. "Material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. In Jitu Patnaik -vs- Sanatan Mohakud and Others reported in (2012) 4 SCC 194, it has been held that all basic or primary facts which must be proved at the trial for establishing cause of action or defence are material facts, which would however depend on facts of each case. Bare allegations are never treated as material facts. Failure to state even a single material fact will entail dismissal of an election petition.
18. From a reading of the averments made in the election petition as extracted hereinabove, it is more than clear that the entire grievance of the election petitioner is structured on the basis of his suspicion and apprehension. No material fact has been pleaded by the election petitioner which would constitute the ground that the election of the applicant has been materially affected because of the improper reception, refusal or rejection of any valid vote or by the reception of any void vote. Suspicion and apprehension howsoever great, those may be, cannot be construed as material facts as is understood in law.
19. That being the position, there is no other alternative but to hold that the election petition suffers from fundamental defects under Section 82 of the Act and also does not disclose material facts to hold trial to examine the validity of the election of the applicant.
20. Accordingly and in view of the discussions made above, this Misc. application is allowed and the related election petition is dismissed.
21. However, there shall be no order as to costs.

Sd/-
UJJAL BHUYAN
JUDGE