MADHYA PRADESH HIGH COURT

Hari Vishnu Kamath

Vs.

Election Tribunal, Jabalpur

Misc. Petn. No. 155 of 1957
(M. Hidayatullah, C.J. and B.K. Choudhuri, J.)

09.09.1957

ORDER

M. Hidayatullah, C.J.

1. This petition by one Sri Hari Vishnu Kamath is directed against an order passed by the Election Tribunal, Jabalpur, presided over by *Sri M. V. Bhide, on 12-8-1957*, in an election petition filed by the petitioner to question the election of Sri Magahlal Bagdi, the second respondent in the case.

2. The matter arises out of an interlocutory order by which the petitioner has been asked to supply better particulars which, according to the Tribunal, were not fully stated in the petition. An anticipatory order striking out those particulars held to be vague, has also been passed, if the order is not obeyed within the time fixed.

3. The facts of the case are simple. The election petition was presented to question the election of the second respondent on the ground-that corrupt practices were committed by the returned candidate or his election agent or other persons with the consent of the returned candidate or his election agent, or that in any event the result of the election, in so far as it concerns the returned candidate, was materially affected by corrupt practices committed in the interest of the returned candidate by persons other than the candidate or his election agent or persons acting with the consent of such candidate or his election agent, and by non-compliance with the provisions of the Constitution or of the Representation of the People Act, 1951 (hereinafter referred to as the Act) or of rules and orders made under the Act.

4. In setting up his case against the returned candidate Sri Kamath divided his petition

into three parts. The first part of the petition is to be found in pargarph 5 (I) of the petition which has been summarized by us in brief in paragraph 3 above. The second part (Paragraph 5(n)) dealt with the corrupt practices and divided them into five classes. They are briefly:

> (a) Bribery, i.e., gifts, offers or promises made by the candidate or his agent, etc., to induce voters or electors to vote for the second respondent,
> (b) undue influence exercised on the voters or the electors,
> (c) hiring and procuring of vehicles by the candidate and his agent or other persons,
> (d) publications by the said candidate or his agent or by other persons of statements of fact which were or are false, and which he or they either believed to be false or did not believe to be true, and
> (e) obtaining or procuring, or attempting to obtain or procure by the candidate or his agent or by other persons assistance for furtherance of the prospects of the returned candidate's election from persons in the service of the Government and belonging to the classes mentioned in Section 123 (7) of the Act.

Thereafter the petitioner set out the third part which described the particulars of these corrupt practices, and they are contained in paragraphs 7 to 29 of the petition. It is not necessary to refer to these particulars here.

5. When the matter came before the Tribunal the second respondent raised an objection that the particulars given in the petition were too vague and indefinite and that they should be struck out. In reply to that application the petitioner stated that he was willing to state further particulars as the Tribunal may be pleased to order, and thus the order of the Tribunal came to be made. The Tribunal scanned the petition and found fault with many of the particulars which were mentioned in paragraphs 7 to 29 of the petition on the ground that they were vague and indefinite, and ordered the petitioner to supply more particulars on pain of the particulars such as they were being struck out.
The Tribunal also ordered the petitioner to delete paragraph 5(11) of the petition which contained a list of corrupt practices in general, details of which were given in paragraphs 7 to 29 of the petition. The Tribunal also saddled the petitioner with Rs. 100/- as costs of adjournment and ordered that the verification of the petition, which was said to be defective, should be brought in line with the Code of Civil Procedure.

6. When this order was made the present petition for a writ of certiorari was filed in this Court. As a consequence of the admission of the petition, notice of which was voluntarily taken by the second respondent, we understand that the Tribunal has been pleased to stay its hands till the orders of this Court are made known.

7. The contention of the petitioner is that after the amendment of the Act in 1956 the power to order particulars does not lie with the Tribunal. The petitioner also contends that after this amendment no order of a consequential nature like the striking out of particulars can be made by the Tribunal because such power does not flow from the Act. He further contends that by striking out paragraph 5(11) of the petition the whole of the election petition is displaced and that, in fact, there will be no election petition to try. The petitioner also contends that the order awarding adjournment costs to the second respondent was illegal.

8. In answer to these contentions, curiously enough, the learned counsel for the second respondent, agrees that the ordering of better particulars is not within the competence of the Tribunal. He also agrees that paragraph 5(II) of the petition could not rightly be deleted. But he contends that the petition as it stands is vague and the particulars supplied are indefinite, and that the Tribunal was competent to order the striking out of such particulars as were not worth trying.

9. In answer to the writ nisi issued by this Court the learned Advocate-General appeared. He found himself in an unhappy position because he had to support the order of the Tribunal, but he frankly put before us his point of view and raised a preliminary objection that this Court had no jurisdiction to pass an order of certiorari in this matter because the Tribunal made the order on a request of the petitioner himself and not in invitum. He, therefore, contended on the authority of *Latchmanan Chettiar v. Commissioner of Corporation of Madras* [1] and the cases cited therein, and *J. K. Iron and Steel Co. Ltd., v. Labour Appellate Tribunal of India* [2] that this Court should dismiss the petition in limine. We shall deal with this objection at a subsequent stage of our order.

10. The main contentions of the parties centre round the effect of the amendments which have been made in the Act by the amending Act of 1956. These amendments are of a far-reaching character and have been made in various parts of the chapter

dealing with the trial of election petitions. The total effect, therefore, of these amendments has to be worked out before we can deal adequately with the order impugned before us.

We need not refer to all the sections that have been amended but we shall refer only to those which bear upon the present matter. Those sections are sections 83, 85, 90 and 92 of the Act. Unfortunately, in making the amendments Parliament did not stick to the original number of the sections but made alterations by engrafting portions of some sections into other sections and therefore there is difficulty in comparing the old and the new sections side by side. The main changes which were introduced by the amending Act concern sections 83, 85 and 90 (4) of the Act. We shall reproduce the terms of those sections:

> "83. (1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.
>
> (2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.
>
> (3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may, in its opinion, be necessary for the purpose of ensuring a fair and effectual trial of the petition."
>
> "85. If the provisions of section 81, Section 83 or section 117 are not complied with, the Election Commission shall dismiss the petition:
>
> Provided that, if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed there for, the Election Commission may, in its discretion, condone such failure."
>
> "90(4) notwithstanding anything contained in Section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of section 81, Section 83 or Section 117."

11. As against this we must now quote the cognate provisions as they emerge after the amendments in the Act. The relevant sections in this connection are Sections 83, 85 and 90. The change, which was introduced in Section 83, relevant to the present enquiry is as follows: "(1) An election petition –

> (a) shall contain a concise statement of the material facts on which the petitioner relies;
> (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice....."

Section 85 as amended reads as follows:

> "85. Procedure on receiving petition. - If the provisions of section 81 or section 82 or section 117 have not been complied with, the Election Commission shall dismiss the petition:
> Provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard."

We need not quote section 90 in its entirety. We are concerned only with sub-sections (3) and (5) as amended which read as follows:

> "90. (3) The Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, Section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under section 85.
> X X X X X X X
> (5) The Tribunal may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition."

12. Before we discuss the case it is necessary to refer to two other sections and they are Section 90 (1), which reads as follows:

"90. (1) Subject to the provisions of this Act and of any rules made there under, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (V of 1908), to the trial of suits:", and section 92 which confers on the Tribunal certain specific powers exercisable under the Code of Civil Procedure, particularly the power of discovery and inspection.

13. An examination of the scheme of the Act will show that the party filing an election petition is required to state therein two things. This is to be found in section 83 which says that an election petition shall contain a concise statement of the material facts on which the petitioner relies and shall set forth full particulars of any corrupt practice, etc. A distinction is made between a statement of the material facts land particulars of any corrupt practice. Under the unlamented Act a list of corrupt practices had to be filed. Not much difference has, however, been made, though the language has been changed, between the requirements as they existed before the amendment and after the amendment. Both before and after the amendment an election petition must contain a concise statement of the material facts and also set forth full particulars of any corrupt practice which the petitioner alleges. The distinction which has been made between "material facts" and "particulars" brings to our mind the leading case on the subject of pleadings reported in *Bruce v. Odhams Press Ltd. where Scott L. J.*[3] laid down the law in relation to Order XXV and Order XIX of the Supreme Court Rules in the following words:

"The cardinal provision in R. 4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' fact is omitted, the statement of claim is bad; it is 'demurrable' in the old phraseology, and in the new is liable to be 'struck out' under Order 25, Rule 4 : see *Philipps v. Philipps* [4] or 'a further and better statement of claim' may be ordered under Order 19, Rule 7."

"The function of 'particulars' under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim - gaps which ought to have been filled by appropriate statements of the various materials facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to

fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he has to meet and to enable him to prepare for trial.

Consequently in strictness particulars cannot cure a bad statement of claim. But in practice it is often difficult to distinguish between a 'material fact' and a 'particular' piece of information which it is reasonable to give the defendant in order to tell him the case he has to meet; hence in the nature of things there is often overlapping. and the practice of sometimes putting particulars into the statement of claim and sometimes delivering them afterwards either voluntarily, or upon request or order, without any reflection as to the true legal ground upon which they are to be given has become so common that it has tended to obscure the very real distinction between them."

In a case where there is no omission of material facts under Rule 4, whether particulars should be ordered is very often a matter of pure discretion because it depends on a view of fairness or convenience which is essentially a matter of degree. But where particulars are asked because the statement of claim is defective in that it omits some essential averment - i.e., some 'material fact' the question is not one of discretion, and the adoption by the defendant of the lenient remedy of an application for particulars instead of the more stringent remedy of striking out does not turn an issue of right into an issue of discretion. As *Philipps v. Philipps* (supra) is an illustration of the more stringent remedy, so *Palmer v. Palmer* [5] is an illustration of the more lenient remedy; but if in the latter case the defendant had so chosen I think he would have been entitled to the more drastic remedy."

14. The above quotation makes a distinction between 'material facts' and 'particulars'. Neither of course includes evidence which is required to prove the allegations. The same scheme is to be found in the Code of Civil Procedure, where the cause of action has to be stated with completeness and unless there is a complete cause of action the plaintiff is not entitled to judgment. Indeed the plaint can be rejected if it does not disclose a complete cause of action. Where, however, the cause of action involves narration of particulars, e.g., in a case of fraud, those particulars-have to be supplied with sufficient clarity and precision.

Unless the particulars are sufficient, an issue cannot be set down for trial. In asking for particulars the Court is not entitled to ask for the disclosure of evidence with which the material facts or the particulars are to be proved. The same scheme, as we have

pointed out above, also is to be found in the Act. Here too material facts are kept separate from particulars, and the particulars have to be full and sufficient and not vague or indefinite.

15. Following this classification it is easy to see that the petitioner divided his election petition into three parts. He made a general statement that he wanted the election of the second respondent to be declared void and he gave a list of material facts on which his claim was rested. Next he gave the particulars of the corrupt practices and put them with such definiteness as he felt he was required to do. The Tribunal ordered the striking out of para. 5 (II) of the petition. That paragraph gives a summary of the material facts on which the cause of action is based. To strike it out would be to remove the petition completely. Without an allegation such as is to be found in paragraph 5(11) the petition cannot be said to exist.
That paragraph contains the cause of action or the bundle of facts which the petitioner seeks to establish and on the strength of which he claims a decision in his favor. In our opinion, the Tribunal was in error in ordering the deletion of paragraph 5(11) of the petition. The Tribunal, with all due respect, does not appear to have borne the distinction between 'material facts' and 'particulars' in mind. The reason given by the Tribunal that the items in paragraph 5(11) ought to have been correlated to the particulars was, in our opinion, not sufficient for the order which has been passed. It is easy to correlate the particulars to the items in paragraph 5(11), and indeed the petitioner could have prefaced his particulars each time with a repetition of one of the items from paragraph 5(11).
That the petitioner put them all together in one place and then gave the particulars does not change the nature of the petition, nor can it be said that he did not comply with the requirements of the Act. In fact, the petition follows the scheme which the Act had in view, and in that sense it must be held to be properly drafted. It puts in a succinct form all the material facts on which the election of the second respondent is challenged, and it then sets out the particulars on which each of the material facts is to be sustained by evidence. In our opinion, the order of the Tribunal striking out paragraph 5(11) of the petition was clearly without jurisdiction. It is an error apparent on the face of the record and is against the course of natural justice. To order the removal of that paragraph is tantamount to denying the petitioner the right to plead the material facts in the case.

16. This brings us to the next point, viz. whether the particulars can be ordered to be

amended. Here we witnessed a battle of tactics. The petitioner was very keen that he should not be ordered to supply the details which the other side alleged ought to have been included in the particulars. The learned counsel for the second respondent also played a game of tactics. He really did not want that those details should be supplied. His contention, therefore, was that the Tribunal could not order the inclusion of those details. Apparently, the second respondent does not find it profitable to have the petition amplified in this manner, because he hopes to succeed on account of the inadequacy of the particulars. We have, however, to forget what the stand the parties take because the point has been argued before us as a matter of law, and we have therefore, apart from concession of counsel, to give our decision on the interpretation of the sections involved.

17. It will be noticed that the amendment which was made in the Act in 1956 affected drastic changes in the third sub-section of section 83 and also in Sections 85 and 90. The case before us was argued as if these amendments can be taken separately. Indeed little was said about the amendment of section 85 and Section 90(4) was not even mentioned, and no wonder counsel in the case were arguing at cross purposes with regard to sub-section (3) of section 83 of the old Act, even though both were agreed that the Tribunal cannot order better particulars.

> We shall begin by analyzing the third subsection of section 83 as it stood before the amendment. It was there stated that the Tribunal -
> (a) may allow the particulars included in the list of particulars to be amended, or
> (b) order such further and better particulars in regard to any matter referred to therein,
> to ensure a fair and effectual trial of the petition. It would appear from this that the Tribunal was not only empowered to allow amendment of the petition if asked for, but also to make an order asking for better particulars.
> When the Tribunal orders better particulars to be included some penalty has to be imposed for disobedience of its order, and that penalty was indicated in Sections 85 and 90(4). It was laid down therein that if the provisions of section 83 were not complied with, the Election Commission "shall dismiss the petition'" and a like power was also conferred on the Tribunal. Thus if the Tribunal found that its orders were flouted all that it had to do was to dismiss the petition. There was thus a clear departure from the Code of Civil Procedure.
> Under the Code of Civil Procedure the Court can order better particulars. That

provision is to be found in the 5th rule of Order VI. The penalty for not supplying the better particulars is the striking out of the pleading. The provision for that is to be found in. the 16th rule of the same Order. By enacting Sections 85 and 90(4) in the way it was done in old Act Parliament stepped up the penalty for the disobedience of the Tribunal's order. The penalty which follows from the 11th rule of order VII, viz. the rejection of the plaint was made applicable to a contumacious petitioner who did not supply the particulars which the Tribunal 'ordered.'

18. Now we turn to the amendments which have been made. It will be noticed that in the amended Act the portion with regard to the powers of the Tribunal 'to make an order' for further particulars has been deleted. Side by side with that there is a deletion of section 83 or Section 90(5) from the list of sections in section 85 or Section 90(3) of the Act. In other words, the Tribunal is not now empowered 'to order' further and better particulars, and necessarily there is to be no dismissal of the election petition as a result of disobedience.

19. What we have said so far comes to this. Previous to the amendment, the third sub-section to section 83 and Sections 85 and 90 (4) combined in themselves the provisions of the 5th and 17th rules of Order VI and a power of punishment in the shape of dismissal of the petition equal to the rejection of a plaint under the 11th rule of Order VII. In this way the Code of Civil Procedure was modified in relation to election petitions.

20. The amendments to which we have referred in the previous paragraphs change both the above matters. The 5th sub-section of section 90 is pertinent thereto. In that sub-section the effect of the old third sub-section of section 83 has been reproduced with the difference that there is no mention of an order which the Tribunal may pass with regard to further and better particulars. Similarly, the penalty of dismissal of the petition is deleted. Now, the rule of interpretation is that when the Legislature amends an Act by deleting something which was there, then in the absence of an intention to the contrary the deletion must be taken to be deliberate: see *D. R. Fraser and Co. v. Minister of National Revenue* [6] per Lord Macmillan. The question that arises is: is the intention to be gathered only from the amendment of Section 83(3) or is to be gathered from the amendment of Section 83(3) read with the amendment of Sections 85 and

90(4)? We have stated already that in the one instance there was the deletion of the enabling provision which enabled the Tribunal to order better particulars, and in Sections 85 and 90(4) there is the deletion of the penalty, viz. that the petition, if not amended as ordered, shall be dismissed. In our opinion, the amendments have to be taken together. Unless we take the amendments together we are likely to be confused and reach diverse results such as appeared in the course of arguments before us. To take a consistent view the amendments of the two sections must be read as part and parcel of the same intention. Under the Code of Civil Procedure, the disobedience of an order asking for better particulars does not entail a dismissal of the suit. It only leads to the striking cut of the vague and indefinite pleas. In our opinion, the parties are now relegated to the position of the Code of Civil Procedure. But the power of the Tribunal to order better particulars is taken away so that the Tribunal does not now intervene to ask for particulars. It has been left to the petitioner to apply or not for an amendment of the pleas by supplying better particulars. But if a plea is found to be indefinite or vague and is thus not sufficient for trial the question which naturally arises is whether the Tribunal is bound to try that plea at all.
Refusal to try a plea is really tantamount to striking out of that plea. The question, therefore, boils down to this, whether by virtue of the Code of Civil Procedure, which has been applied as far as may be, the Tribunal is enabled to say that such and such particulars do not raise an issue of sufficient definiteness to go to trial, which is really an order to strike out a plea.

21. If the matter were as simple as that, we would have had no further difficulty, but Sri Mandlekar argued that the Code of Civil Procedure is applied only to "trials." He said that under section 92 certain specific powers exercisable under the Code of Civil Procedure have been made expressly available, and in Section 90(1) there is a general mention of the powers exercisable by Civil Courts in the trial of suits. In that section there is also the provision that the Code of Civil Procedure is to apply subject to the provisions of the Act and any rules made thereunder. Sri Mandlekar's argument is that the word 'trial' means trial after the issues are struck. According to him, the word 'trial' cannot mean the course of litigation between the presentation of the election petition and the settling of issues. This contention of the learned counsel is a little late in the day because the Supreme Court in *Harish Chandra v. Triloki Singh* [7] has ruled that the word 'trial' in Section 90 (1) covers the entire period from the first seisin of the election petition by the Tribunal to its disposal. We are bound by the opinion of their Lordships of the Supreme Court, and we may say with the profoundest respect that our

opinion is also the same. The word 'trial' undoubtedly has two meanings. It may mean the trial of a controversy that arises from an issue. It may equally mean the trial of an election petition or a complaint or an action from beginning to end. In cur opinion, the word used in Section 90(1) of the Act means the latter. In this sense, which has been approved by their Lordships of the Supreme Court, the word 'trial' covers the entire process of litigation from the acceptance of the election petition for trial to its disposal.

22. The first sub-section to section 90 of the Act makes the rules of the Code of Civil Procedure applicable as nearly as may be, subject to the provisions of the Act and any rules made there under. What we have to see first is whether there is any express or contrary provision in the Act which would cut out the application of the Code of Civil Procedure. In the same case to which we have referred their Lordships of the Supreme Court also emphasized this aspect. We have, therefore, to search for an express provision in this context. The only provision which we find is the provision in the third (sic. fifth?) sub-section of Section 90. It says that the Tribunal may allow any particulars to be amended or simplified so as to bring the real controversy before it. In other words, this sub-section reproduces the purport of the 17th Rule of O. 6 of the Code of Civil Procedure. Whether or not the Tribunal can order better particulars is a matter which falls to be decided upon the intention underlying the amendment. In our opinion, when the Act previously contained a specific provision for the ordering of better particulars and that has been deleted, the action of the Legislature must be taken to be deliberate. In other words, the position at present is that if the provisions of Rule 17 of Order VI of the Code of Civil Procedure are reflected in the 5th sub-section of section 90 the provisions of the 5th rule of Order VI are not so reflected. They were included before the amendment but are not to be found now. In our opinion, the amendment which is deliberate cannot lead to the application of the Code of Civil Procedure to order better particulars. This we say, not because of the words 'subject to the provisions of the Act and of any rules made there under' contained in Section 90, but on a principle of interpretation of statutes which compels us to hold that the amendment must be taken to be deliberate. If the Legislature felt that those provisions were to be invoked there was really no need for them to recast the 3rd sub-section of section 83 as the 5th sub-section to Section 90, omitting those provisions and recasting sub-section (4) to section 90 as sub-section (3) of the same section in the Act.

23. The question then is that if the particulars are not found adequate what is the Tribunal to do? Is it compelled to try an indefinite or vague allegation not sufficiently

particularized or is it enabled to strike out such an allegation? In our opinion, the fact that Sections 85 and 90(4) were amended to remove the penalty which was more drastic than was contained in the Code of Civil Procedure now enables the Tribunal to decide in limine whether a particular issue shall be tried or not. The petitioner making the election petition is at liberty to ask for amendment and amplification of any indefinite or vague pleas by supplying better particulars. If the petitioner does not make the necessary amendment, the Tribunal is not compelled to try an indefinite issue. We must remember the distinction which was made by Scott L. J. in the case to which we referred earlier. There, reference was made to two cases, viz. 1878-4 QBD 127(D), and 1892-1 QB 319(E). In the former, the drastic remedy of striking out of pleas was invoked. In the latter, the party was asked to supply better particulars. His Lordship indicated that the fact that discretion is exercised does not mean that the right cannot be enforced. The same position follows here. Though the Tribunal cannot order better particulars to be supplied, it has the power to say that the particulars do not lead to an issue. In other words, the Tribunal may not be empowered to act as was done in *Palmer v. Palmer* (supra), but it certainly can act as was done in *Philipps v. Philipps* (supra). It is an inherent right of a Tribunal deciding anything to say that the matters offered before it do not lead to a proper issue. If they do not, and if the Tribunal is not enabled by law to ask for a rectification of the averments, it certainly cannot be said to be beyond its powers to say that it shall not try an Indefinite charge. In our opinion, the Tribunal, if it found that a particular allegation was indefinite and vague, was entitled to say that it shall not form the subject-matter of the trial. It need not order that the averment be corrected or additional pleas be made. It can only leave it out after expressing its opinion that it is indefinite and shall not be tried. Under the law as it stands, the party who has to suffer by such an opinion has the option of supplying better particulars, but if he does not, it is his misfortune.

24. We now come to another argument in the case, viz. whether the Tribunal has power to strike out pleadings. Even before the amendment of the Act, the Supreme Court in *Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani* [8] adverted to the fact that the Tribunal did possess powers under the 16th rule of O. VI of the Code of Civil Procedure. The amendments to which we have referred do not show that the power has in any way been taken away. Previously, the Tribunal could order better particulars, and if not obeyed, the Election Commissioner or the Tribunal was to dismiss the petition. Now in our opinion, the Tribunal is competent to say that it shall not try a particular allegation and that it shall be scored out. In so far as the Tribunal is

concerned, a vague or indefinite particular is a particular not made at all, and it does not exist before it for trial.

25. Here we do not express any opinion as to whether the Tribunal was light in holding that a particular averment was not sufficient. We are not exercising the powers of an appellate Court. We are only looking into the jurisdiction of the Tribunal and also whether its orders include any error apparent on their face or are against the course of natural justice. We are not here to correct the errors of the Tribunal in matters which it has decided with jurisdiction, all that we have done is to find that the Tribunal did possess the jurisdiction which it has exercised, viz. of apprising the party that certain particulars shall not go to trial. We have however, found on an interpretation of the meaning and amendment of the Act that the Tribunal was not competent to order the petitioner to supply better particulars and to strike out those pleas in default. In our opinion, the Tribunal could, without asking the petitioner to supply better particulars and imposing a penalty, say that those issues shall not go to trial. Perhaps, in the interest of an expeditious trial the law contemplates that the Tribunal should take the election petition as it is. The intention of Parliament seems to be that the petition as originally made should remain as it is without the Tribunal going to the trouble of asking that it should be improved, thus leaving it to the party to amend the petition. This, obviously enough, can only be before the Tribunal exercises its powers of striking out indefinite pleas. An application for amendment must be decided on its merits, but the Tribunal is not to take action sou motu. It can only pronounce upon the inadequacy of the particulars.

26. It was contended by Sri Dabir that we should not examine the particulars and their adequacy. We agree with the contention of the learned counsel; but we do so not because the second respondent did not ask for such a relief before the Tribunal, but because we think that in a matter arising under Article 226 of the Constitution we should not at an interlocutory stage decide upon the correctness of orders made with jurisdiction. It was open to the Tribunal to reach the conclusion that certain particulars were insufficient for trial. If the Tribunal has erred in reaching that conclusion we think that it is not a matter which should be corrected by us in the exercise of the extraordinary jurisdiction which this Court possesses either under Article 226 or under Article 227 of the Constitution. It is a matter which can be rectified on appeal, and that is not the stage at which we now are.

27. This brings us to the last contention and that was raised by the learned Advocate General - that this Court should not exercise the powers under Article 226 of the Constitution because the petitioner himself had invited the Tribunal to give its decision. No doubt, the petitioner probably in all good faith said that he felt that the particulars were sufficient but that if anything was wanting he was willing to supply it. All that he wanted was a decision by the Tribunal whether the particulars were regarded by it as sufficient for trial or not. If the Tribunal had merely said that the particulars were not sufficient and could not go to trial, the petitioner if so advised, would have made an application for amendment. The order of striking out particulars, therefore, was not invited by the petitioner. No doubt, the second respondent had asked the Tribunal to strike out the particulars. We cannot, however, say that in the context of facts such as they were the Tribunal was not competent to order the striking out of the vague allegations. The petitioner should have been ready to make an application for amendment in case it was found that the particulars were not sufficient, and should have immediately put in the application. The Tribunal, however understood both the offers as well as the challenge to be a part of one transaction. It felt that it had the power to order better particulars and to impose a limit of time for their supply and on failure of the petitioner to comply with the direction to order the striking out of the details. In one matter it was wrong, but in the other matter it was correct. It went wrong when it ordered the particulars. It could have ordered the particulars to be struck out, unless the petitioner took time and it was granted for their correction.

28. We do not think that the attitude of the petitioner before the Tribunal militates against the exercise of our powers under Article 226 or Article 227 of the Constitution. There was no surrender to the jurisdiction of the Tribunal as in the cases which were cited by the learned Advocate-General. It seems that the parties themselves did not know what the resultant position under the amending Act was and felt that the proper course was that they should make their applications: one for striking out and one for supply of particulars. In our opinion, such an undertaking by the petitioner cannot be carried to the extreme to which the Advocate-General wants us to carry it. The petitioner had never at any time refused to supply better particulars. He has still a chance to do so before the pleadings are struck out. Fortunately for the petitioner, the Court passed an erroneous order, and the petitioner still has time to move the Tribunal. But the petitioner cannot prevent the Tribunal from striking out the particulars. In view of all that we have said, We have no doubt that the Tribunal will be able to

remold its order in accordance with law.

29. In the result, we held that the order of the Tribunal directing deletion of paragraph 5 (II) of the petition was clearly void and without jurisdiction and is contrary to law. That direction of the Tribunal is therefore quashed. As regards the order to supply the particulars, we think that the Tribunal's order could be quashed, because it was erroneous and without jurisdiction. The order striking out the particulars would have been good if it was not conditioned as it is. With these observations the petition is allowed, though in essence partially. In view of the partial success of the parties in the arguments before us, there shall be no order about costs. The amount of security deposited shall be refunded to the petitioner.

Petition allowed partly.

Cases Referred.

1. ILR 50 Mad 130 (FB)
2. AIR 1953 All 624
3. 1938-1 KB 697 at pp. 712-13
4. (1878) 4 QB 127
5. (1892) 1 QB 319
6. 1949 AC 24
7. AIR 1957 SC 444
8. 1955-2 SCR 428: AIR 1955 SC 610