

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPLICATION NO.5 OF 2016
IN
ELECTION PETITION NO.4 OF 2014

Narayan Govindrao Patil]
age 43 years, having address at Jeur,]
Taluka Karmala, Dist. Solapur.]..... Applicant.

In the matter between

Rashmi Digambar Bagal,]
age 29 years, having address at 'Digvijay',]
Vidyanagar, Karmala, Dist.Solapur 413203]..... Petitioner

versus

- 1] The Maharashtra Election Commission]
Mantralaya, Mumbai 400 032]
]
- 2] The Chief Electoral Officer,]
General Administration Department,]
5th floor, Mantralaya, Mumbai 400 032]
]
- 3] Mr. Avinash R Hadgal,]
The Returning Officer, 244 Karmala]
Assembly Constituency, Karmala, Solapur]]
]
- 4] The Election Commission of India]
having its office at Nirvachan Sadan]
Ashoka Road, New Delhi 110001]
]
- 5] The District Collector and District]
Election Officer, Collector Office,]
Solapur.]
]
- 6] Narayan Govindrao Patil]
age 43 years, having address at Jeur,]
Taluka Karmala, Dist. Solapur.]
]

- 7] State of Maharashtra, through the Chief Secretary, through the office of the Government Pleader, Original Side, High Court, Bombay.
- 8] Kamble Roheedas Rajaram
At post Shetfal, Taluka Karmala,
Dist. Solapur
- 9] Jaywantrao Namdevrao Jegtap
Satwai Farm House, Nagar Tembhurni
Bypass Road, Taluka Karmala, Dist.
Solapur 413202
- 10] Jaleendar Gokool Jadhav
Rambhapura, Taluka Karmala
Dist. Solapur
- 11] Bhise Hanuman Kisan
At Pondhwadee post Vihal,
Taluka Karmala, Dist. Solapur
- 12] Shinde Sanjay Vithalrao
At Post Nimgaon (Te), Taluka Madha
Dist. Solapur
- 13] Santosh Laxman Salunkhe
At Satoli Post Upalwate, Taluka Karmala
Dist. Solapur
- 14] Parmeshwar Dattatray Talekar
At Post Kem, Taluka Karmala Dist.Solapur]
- 15] Rahul Bapurao Deshmukh
At Post Wangi No.2 Taluka Karmala
Dist. Solapur
- 16] Shahu Shamrav Fartade
At Post Hivare, Taluka Karmala
Dist. Solapur
- 17] Shinde Sanjay Namdev,
At Post Pothare, Taluka Karmala
Dist.Solapur.

- 18] Sanjay Mahadev Shinde]
At Post Jategaon, Taluka Karmala]
Dist. Solapur.]
]
- 19] Sanjay Limbraj Shinde]
At Post Khambewadi, Taluka Karmala]
Dist. Solapur.]..... Respondents.

ALONG WITH
APPLICATION (LODGING) NO.11 OF 2016
IN
ELECTION PETITION NO.4 OF 2014

Rashmi Digambar Bagal,]
age 29 years, having address at 'Digvijay',]
Vidyanagar, Karmala, Dist.Solapur 413203]..... Applicant.

In the matter between

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Taluka Karmala, Dist. Solapur]
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At Post Nimgaon (Te), Taluka Madha]
Dist. Solapur 413210]
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| 17] | Shinde Sanjay Namdev, |] |
| | At Post Pothare, Taluka Karmala |] |
| | Dist.Solapur. |] |
| | |] |
| 18] | Sanjay Mahadev Shinde |] |
| | At Post Jategaon, Taluka Karmala |] |
| | Dist. Solapur. |] |
| | |]..... Respondents |
| 19] | Sanjay Limbraj Shinde |](Resp. nos.1-5 and 7 |
| | At Post Khambewadi, Taluka Karmala |]have been deleted by |
| | Dist. Solapur. |]order dated 10.3.2016) |

Mr. V P Sawant a/w Mr. Prabhakar M Jadhav, Ms. Tanaya Patankar and Mr. Veerdhaval Kakade for the Applicant in Application No.5 of 2016 i.e. the original Respondent No.6 in Election Petition.

Mr. A Y Sakhare, Senior Advocate, a/w Mr. J J Carlos for the Applicant in Application (L) No.11 of 2016 i.e. the original Petitioner in Election Petition.

**CORAM : R. M. SAVANT, J.
Reserved on : 19th August 2016
Pronounced on : 21st September 2016**

JUDGMENT :-

1 The above Application No.5 of 2016 has been filed by the Respondent No.6 to the above Election Petition who is the returned candidate for dismissal of the above Election Petition being No.4 of 2014 filed by Rashmi Digambar Bagal - the Election Petitioner, challenging his election.

2 The election in question is to the 244 Karmala Assembly Constituency. The elections to the Maharashtra Legislative Assembly were held on 15/10/2014 and the Election Petitioner and the Respondent No.6 were the

candidates who had contested the election to the said 244 Karmala Constituency amongst other candidates. The Respondent No.6 i.e. the Applicant in Application No.5 of 2016 was declared elected having secured 60674 votes whereas the Election Petitioner had secured 60417 votes. It is not necessary to refer to the votes secured by other candidates for the purposes of the present adjudication.

3 The election of the Respondent No.6 has been challenged principally on the ground of violation of the Rules relating to the counting of the postal ballots and especially the postal ballots numbering 788 as also on the ground that a corrupt practice was committed in respect of the said 788 votes by the Returning Officer, colluding and conniving with the Respondent No.6 herein. In terms of the affidavit filed in support of the allegations of corrupt practice, the averments made in respect thereof are in paragraphs 2(m), 2(n), 2(p), 3(xix) to 3(xxiii). In so far as paragraphs 2(m), 2(n) and 2(p) are concerned, they contain narration of facts. The allegations relating to the corrupt practice are more particularly comprised in paragraphs 3(xix) to 3(xxiii). The said paragraphs 3(xix) to 3(xxiii) for the sake of ready reference are reproduced hereunder :-

“(xix) It is submitted that the Returning Officer Respondent no.3 being aware of the small margin of votes which would be deciding factor has intentionally and with malafide motive rejected the said postal votes on arbitrary and perverse reason with a view to help the Respondent no.6. It is submitted that as stated

above out of the total 1565 postal ballots 776 ballots (+1 as NOTA) were taken up and counted as valid votes whereas 788 ballots were kept separately at 7.45 am and even though the said 776 ballots were counted yet the Returning Officer and his staff had maintained conspicuous silence as to why the said 788 postal ballots (PBs) were not being counted, inspite of an oral objection of the Petitioners counting agent that the remaining 788 postal votes ought to be counted but however the election official kept postponing the counting of said 788 PBs the counting from the electronic voting machine EVM had started. It is submitted that the such an act of delaying the result of the postal ballot and proceeding with the EVM counting itself is against the CE rules 1961, as rule 54 A clearly states,

“54A (1) The returning officer shall first deal with the postal ballot papers in the manner hereinafter provided.....
54A(11) The returning office shall count all the valid votes given by postal ballot in favour of each candidates, record the total thereof in the result sheet in Form 20 and announce the same.”

(xx) It is therefore submitted that the entire process of counting of PB's was carried out in a manner contrary to the law and it was only by 1.45 pm that after the 21st round of counting when it was clear that the result would be a close call as the contest between the Petitioner who was leading and the respondent no.6 was of a small margin of votes that the Returning Officer declared the said 788 PB's as invalid and rejected the same.

(xxi) It pertinent to note that the manner in which the 788 PBs were kept aside without rejected them or without even giving the result as per Rule 54 A (12) it is a definite conclusion that the said express rules were being violated to ensure that the PBs should be rejected so that the Resp. no.6 benefits in violation of S 100 & S123 of RP Act.

(xxii) It is pertinent to note that the counting of the PBs and declaring the said result before counting the regular ballots was mandatory and non observance mandatory and statutory rules clearly vitiates the entire rejection on PBs and is conclusive evidence of malafide on part of the Returning Officer.

(xxiii) It is pertinent to note that the Returning Officer has connived with the winning candidate to ensure the defeat of the Petitioner by keeping aside these postal votes and thus, has acted for the candidate respondent no.6 against the law and in breach of official duty as stated in section 134 of the RP Act, 1951 and thus there was a clear conspiracy between the Respondent no.6 and the Returning Officer to ensure the defeat of the Petitioner and thus the Respondent no.6 and the Returning Officer indulged in corrupt practice.”

4 The instant Application No.5 of 2016 has been filed by the Respondent No.6 for the following reliefs :-

- (a) That this Hon'ble Court be pleased to dismiss the above Election Petition at the threshold for non-compliance with the provision of the Representation of People Act, 1961 and Rules framed thereunder;
- (b) That this Hon'ble Court be pleased to strike out paragraphs 3(xxi) and (xxiii) of the Election Petition.

The Application is founded on the following grounds :-

- i] That the concise statement of facts annexed to the Election Petition is not as per the requirement of law. The Election Petitioner has not verified the concise statement of facts annexed to the Election

Petition and therefore there is no concise statement of facts as mandated by law, and therefore, the Election Petitioner has not complied with the provisions of the Representation of People Act.

- ii] In the affidavit filed in support of the allegations of corrupt practice as required under Rule 94A and as prescribed in Form 25 of the Conduct of Elections Rules, 1961 the Election Petitioner has not pleaded the material facts and particulars either in the Petition or in the affidavit, and the Petition does not disclose with any clarity, the materials on the basis of which the allegations are made thereby causing prejudice to the Respondent No.6 in dealing with the said statements.
- iii] The Election Petitioner has failed to verify the translations annexed to the Election Petition. The Election Petitioner has not mentioned whether the translation is an official translation or only an office translation. The translation at page 148 of the Election Petition is also incomplete on account of which the Respondent No.6 is prejudiced in dealing with the same.
- iv] The annexures to the Petition have not been verified as required by law. The Election Petitioner has only annexed a separate sheet

bearing the verification after the annexures and not at the foot of each annexure. The same amounts to only a formality being completed as there is no reference to the exhibit. The same therefore amounts to violation of the mandatory provisions being Sections 81 and 83 of the Representation of People Act.

v] The Election Petitioner has also failed to annex a true and correct copy of the alleged written objection as claimed to be filed by her with the Returning Officer. The copy annexed at Exhibit M shows that it is not a copy of the written objection claimed to be filed by the Election Petitioner with the Returning Officer. The said Exhibit M is addressed to the Observer. The Election Petitioner therefore has failed to supply a true and correct copy of the alleged written objection filed by the Election Petitioner with the Returning Officer. The Election Petition bears the list of documents at page 54 of the Petition. There is no averment in the Petition in respect of this annexure. This has resulted in causing prejudice to the Respondent No.6 as he is unable to effectively deal with the said annexure.

5 In so far as the above Application No.5 of 2016 filed by the Respondent No.6 is concerned, the Election Petitioner has filed her reply to the

said Application. The sum and substance of the case of the Election Petitioner in the said reply is as under :-

- a] That the objections raised by the Respondent No.6 in the said Application No.5 of 2016 are frivolous.
- b] That in so far as the concise statement is concerned, the facts comprised in the concise statement are also part of the Election Petition which has been solemnly affirmed and verified and there is also an affidavit in support of the Petition which very clearly states at paragraph 2 that the statement of facts be considered to be a part of the Petition. Hence there is a compliance of Section 83 of the Representation of the People Act.
- c] That the material particulars as regards the corrupt practice committed by the Respondent No.6 have been elaborately stated in the Election Petition and therefore the Election Petitioner had fulfilled the requirements of the Act and Rules in so far as the material facts relating to the corrupt practice are concerned.
- d] That in so far as Exhibit M is concerned, even if the correct copy of the said Exhibit M has not been annexed, the same would not

amount to violation of any mandatory provision of filing of the Election Petition but is a curable defect.

Hence the sum and substance of the case of the Election Petitioner in the said affidavit in reply is that she has complied with the provisions of Sections 81 and 83 of the Representation of the People Act (for brevity's sake hereinafter referred to as “the R.P. Act”) in the matter of filing of the Election Petition and that the objections raised by the Respondent No.6 are frivolous. It is also the case of the Election Petitioner that the defects if any are curable and that they do not warrant dismissal of the Election Petition at the threshold.

6 In so far as Application (L) No.11 of 2016 is concerned, the same has been filed by the Election Petitioner for curing the defects in the Election Petition and thereby seeking amendments to the Election Petition which Application has been filed during the course of hearing of the above Application No.5 of 2016. The reliefs sought in the said Application (L) No.11 of 2016 filed by the Election Petitioner are reproduced herein under :-

“(a) That this Hon'ble Court be pleased to permit the applicant to :

- (i) Separately verify the concise statement of facts;
- (ii) Carry out amendment to the description of Exhibit M appearing at all places in the election petition.
- (iii) Annex true translation of the Exhibit M and

delete the existing translation at page 151 of the petition;

- (iv) Carry out such other and further amendments as this Hon'ble Court may deem it fit and proper.”

7 In so far as Application (L) No.11 of 2016 filed by the Election Petitioner is concerned, the Respondent No.6 has filed his reply to the said Application and has opposed the said Application on the ground that the Election Petitioner cannot be allowed to cure the defects in the Election Petition at this stage since a right has now accrued in favour of the Respondent No.6 on account of the said defects.

The sum and substance of the case of the Respondent No.6 in the affidavit in reply to the Application (L) No.11 of 2016 is that the Election Petitioner has defended the defects which have been pointed out in the Application No.5 of 2016 filed by the Respondent No.6 and insists that there are no defects in the Election Petition and the Election Petition complies with the provisions of Section 83. The Election Petitioner cannot be allowed to cure the defects as the defects were pointed out long back in the Written Statement which was filed by the Respondent No.6 to the Election Petition and that the instant Application (L) No.11 of 2016 has been filed by the Election Petitioner during the course of hearing of the Application No.5 of 2016 filed by the Respondent No.6. That allowing Application (L) No.11 of 2016 filed by the Election Petitioner would result in the right, if any, which has accrued to the

Respondent No.6 on account of the said defects, being taken away. That the defects are not formal in nature but are substantial which go to the root of the maintainability of the Election Petition.

8 SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.6 BY THE LEARNED COUNSEL SHRI V.P.SAWANT.

- A] That the concise statement of facts having not been verified at all, the Election Petition suffers from a substantial defect and is therefore required to be dismissed under Section 86 of the R.P. Act, read with Order VI Rule 16 or Order VII Rule 11(a) of the Code of Civil Procedure.
- B] That the source of information being not stated in the affidavit filed in support of the allegations of corrupt practice, the affidavit filed by the Election Petitioner is not an affidavit as contemplated by Rule 94A read with Form 25. That the Petition and the said affidavit lack in material particulars as to the corrupt practice and therefore the Election Petition as filed is required to be dismissed.
- C] That the annexures to the Election Petition are not verified at the foot of the annexures as required by the Act read with the Civil Procedure Code. The verification is done on a separate sheet

without any reference to the Exhibits/Annexures. Hence the verification is not as per law.

D] The document annexed at Exhibit M is not a document which is referred to in the body of the Election Petition wherein a reference is made to the written objection dated 19/10/2014 allegedly filed by the Election Petitioner with the Returning Officer. The said document is also not part of the list of documents annexed to the Election Petition. Out of the documents in the list of documents Item 13 has not been furnished to the Respondent No.6 thereby preventing the Respondent No.6 to effectively file a reply to the same.

E] That the translations annexed to the Election Petition are not verified. It is also not stated as to whether the translations are the official translations or office translations thereby the Election Petitioner has failed to take any responsibility in respect of the said translations.

F] That inspite of the defects as aforesaid being stated in the written statement filed by the Respondent No.6 as far back as in July 2015, no steps were taken or attempts were made to cure the

defects until the Application (L) No.11 of 2016 was filed in July 2016 by the Election Petitioner.

- G] That the afore-stated defects being substantial in nature, hence cannot be allowed to be rectified and cured at this point of time as the same would result in the right which has accrued in favour of the Respondent No.6 being taken away.

In support of the aforesaid contentions, the learned counsel appearing on behalf of the Respondent No.6 Shri V P Sawant relied upon the following judgments of the Apex Court as well as the learned Single Judges of this Court.

- I] *C.P. John vs. Babu M Palissery & ors. reported in (2014) 10 SCC 547*
- II] *Azhar Hussain vs. Rajiv Gandhi reported in 1986 (Supp) SCC 315*
- III] *Jaipal Singh vs. Sumitra Mahajan(Smt.) and anr. reported in (2004) 4 SCC 522*
- IV] *Jagannath Shindu Rahane vs. Manisha Manohar Nimkar reported in (1996) 5 Bom. CR 451*
- V] *Ram Sukh vs Dinesh Aggarwal reported in (2009) 10 SCC 541*
- VI] *Dhartipakar Madan Lal Agarwal vs Rajiv Gandhi reported in 1987 (supp) SCC 93*
- VII] *Ravinder Singh vs. Janmeja Singh & ors. reported in (2000) 8 SCC 191*

- VIII] *Gajanan Krishnaji Bapat & Anr. vs. Dattaji Raghobaji Meghe & ors. Reported in (1995) 5 SCC 347.*
- IX] *R. P. Moidutty vs P. T. Kunju Mohammad & Anr. Reported in (2000) 1 SCC 481*
- X] *Anant Waman Tare vs Abdul Rehman Abdul Guffur Antulay and ors. reported in 1996 (98) BLR 684*
- XI] *Ganesh Dadu Shendge vs Dilip Dnyandeo Kamble reported in 2016 SCC Online Bom. 3577.*

9 **SUBMISSIONS ON BEHALF OF THE ELECTION PETITIONER BY THE LEARNED SENIOR COUNSEL SHRI A.Y.SAKHARE**

- i] That since a concise statement of facts is already appearing in the Election Petition which has been verified, the non-verification of the concise statement of facts which is an annexure to the Election Petition does not violate the mandate of Section 83 of the R.P. Act.
- ii] That the allegations of corrupt practice in the instant case are not the allegations which are based on facts which are complicated. In the instant case the allegations are in respect of 788 postal ballots which allegations have also been set out in the memo of the Election Petition and therefore the non-verification of the concise statement of facts would have no effect in so far as the maintainability of the Election Petition is concerned.
- iii] That the affidavit in support of the allegations of corrupt practice,

refers to paragraphs of the Election Petition wherein the averments relating to corrupt practice are appearing, and therefore, the said affidavit cannot be said to be an affidavit which is not in conformity with Rule 94A read with Form 25.

- iv] That there is no necessity for the Election Petitioner to state her source of information as the said aspect is a matter of trial and therefore not mentioning the source of information cannot make the affidavit defective.
- v] That wrong description of Exhibit M in the memo of Election Petition cannot be said to be a defect which is of a substantial nature and in fact is a defect which can be cured.
- vi] That incorrect translation annexed in respect of Exhibit M would also not affect the maintainability of the Election Petition as the translation is required to be furnished as per the High Court Original Side Rules and is not a requirement of the R.P. Act. In any event, the said defect is curable.
- vii] That all the defects which are the foundation of the Application No.5 of 2016 are curable and the Election Petitioner should be

allowed to cure the said defects by allowing her Application (L) No.11 o 2016 filed for the said purpose.

On behalf of the Election Petitioner the learned Senior Counsel Shri A Y Sakhare placed reliance on the following judgments of the Apex Court:-

- a] *G.M. Siddheshwar vs Prasanna Kumar reported in (2013) 4 SCC 776*
- b] *F.A. Sapa and ors. Reported in (1991) 3 SCC 375*
- c] *Chandrakant Uttam Chodankar v/s. Dayanand Rayu Mandrakar and ors. Reported in (2005) 2 SCC 188*

10 Reference to the judgments cited (supra) by the learned counsel for the parties would be made a bit later. However, it would be necessary at this stage to refer to the relevant provisions of the R P Act. The said provisions are Section 81, 83, 86 of the R.P Act, 1951 and Rule 94A of the Conduct of Elections Rules, 1961 and the same are reproduced hereunder for the sake of ready reference.

81. *Presentation of petitions :-*

(1) An election petition calling in question any election may be presented on one or more of the grounds specified in 1[sub-section (1)] of section 100 and section 101 to the 3[High Court] by any candidate at such election or any elector 6[within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election

and dates of their election are different, the later of those two dates].

Explanation.—In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

1[***]

2[(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition 6[***] and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.]

83. Contents of petition.—

(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

2[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

86. Trial of election petitions.—

(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court 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.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

94A – Form of affidavit to be filed with election petition – The affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be Form 25.”

11 A reference could now be made to the judgments cited on behalf of the Applicant – Respondent No.6.

(i) In *C.P.John's* case (supra), the Apex Court having regard to Section 83 of the R.P. Act has held that an election petition should

contain a concise statement of material facts which an election petitioner relies upon. The said material facts should be stated in a concise form. Under Section 83(1) it is obligatory on the election Petitioner to set forth full particulars of any corrupt practice which is alleged by him. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as the names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice.

In the filing of an election petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt, while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. It was held by the Apex Court that unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence

without an iota of doubt as to such allegation, the election petition cannot be entertained and will have to be rejected at the threshold.

In the context of the present Application No.5 of 2016 what is required to be noted is that the Apex Court in the said case held that when the mandatory requirement of the pleadings as stipulated under Section 83(1) of the R.P. Act and its proviso was brought to the notice of the Appellant as well as to the Court and when a specific application was filed for rejecting the election petition for want of particulars and if the election petitioner chose not to cure the defects and instead that his election petition can be proceeded with keeping the material defects on record, he cannot later on be heard to state that at any later point of time he must be given an opportunity to set right the defects.

(ii) In *Azhar Hussain's* case (supra) it was held by the Apex Court that an election petition can be dismissed for non-compliance of the provisions of Section 83 of the R.P. Act i.e. failure to plead material facts relating to the alleged corrupt practice. Since the election petition has to be tried as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to a trial of a suit, the Court trying the election petition can act in exercise of the powers conferred by

Order VI Rule 16 or Order VII Rule 11A of the Code, and dismiss the election petition. It was held that the election petition without material facts relating to corrupt practice is not an election petition in the eye of law.

(iii) In *Jaipal Singh's* case (supra) the Apex Court has held that material facts have to be pleaded and verified in the manner laid down in the Code of Civil Procedure. The failure to plead material facts results in the dismissal of the election petition.

(iv) In *Jagannath Shindu Rahane's* case (supra), a learned Single Judge of this Court has held that the election petition can be dismissed for non-compliance in the matter of verification as required under Section 83 of the R.P. Act.

(v) In *Anant Waman Tare's* case (supra) a learned Single Judge of this Court has held that non-supply of a true copy of the affidavit filed by the petitioner to the Respondent and if the said copy suffers from material defects as to the name and designation of the affirming authority, the said document would not be a true copy and hence there would be non-compliance of Section 83 of the R.P. Act.

It is further held that the concise statement of facts is an integral part of the election petition. It is required to be verified in the manner laid down in the Code of Civil Procedure for verification of pleadings. The election petition is required to be dismissed if there is non-compliance of Section 83 of the R.P. Act.

(vi) In *Ram Sukh's* case (supra) the Apex Court, relying upon the judgment in Azhar Hussain's case has held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice, though Section 83 is not mentioned in Section 86 of the R.P. Act.

(vii) In *Dhartipakar Madan Lal Agarwal's* case (supra), it was held by the Apex Court that the allegations of corrupt practice are in the nature of criminal charges. It is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of

the election petition cannot be proceeded for want of cause of action. The Court is required to scrutinize the pleadings relating to corrupt practice in a strict manner. The pleadings are regulated by Section 83 and it makes it obligatory on the election petitioner to give exactitude. If the election petition fails to make out a ground under Section 100 of the Act, it must fail at the threshold.

(viii) In *Ravinder Singh's* case (supra) the Apex Court has held that the election petition levelling a charge of corrupt practice is required by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The rationale behind this is that it is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving inquiry and save the returned candidate from being taken by surprise. In the absence of proper affidavit in the prescribed form to support the corrupt practice, the allegation pertaining thereto could not be put to trial. The defect is of a fatal nature.

(ix) In *R.P. Moidutty's* case (supra) the Apex Court has held that requirement of verification of an election petition is to clearly fix the

responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. It is held that the defect of verification is not fatal to the petition, it can be cured. It is held that unless the defect in verification was rectified, the petition could not have been tried. It is further held that for want of affidavit in the required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into and tried at all. The Apex Court in the said case wherein the defects were pointed out, but the Petitioner insisted for proceeding with the matter, held that the said case was a fit case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings as also for non-compliance of Rule 94A read with Form 25 in so far as the affidavit is concerned.

(x) In *Gajanan Krishnaji Bapat's* case (supra) it is held by the Apex Court that a petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. It is reiterated in the said Judgment the reason behind it is to bind the election petitioner to the

charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise. In the said judgment the judgment of the Apex Court in *F.A.Sapa's* case has been considered.

(xi) In *Ganesh Dadu Shendge'* case (supra) a learned Single Judge of this Court has held that since the election petitioner has not given full and complete material facts and the material particulars relating to the corrupt practice, the same amounts to an incomplete cause of action and makes the petition liable for dismissal. In the said judgment the learned Single Judge has referred to judgment of the Apex Court in the matter of *Jeet Mohinder Singh v/s. Harminster Singh Jassi*, reported in (1999) 9 SCC 386 in which judgment the Apex Court has referred to its judgment in the matter of *L.R. Shivaramagowda and others v/s. T M Chandrashekhar (Dead) by LRs and others* reported in (1999) 1 SCC 666.

12 Now reference to the judgments cited on behalf of the Election Petitioner would have to be made.

(a) In *F A Sapa's* case (supra) the Apex Court has held that the

defect in the verification can be allowed to be cured if it is formal in nature and not very substantial and is capable of being cured.

In so far as whether in the affidavit in support of the allegations of corrupt practice the source of information is required to be given it was held that the failure to disclose the source of information is not fatal to the election petition. It was concluded by the Apex Court that even though a defective verification can be cured and the failure to disclose the grounds or source of information may not be fatal, failure to place them on record with promptitude may lead the court in a given case to doubt the veracity of the evidence ultimately tendered. An exception was however carved out to the extent that if the affidavit of the schedule or annexure forms an integral part of the election petition itself then strict compliance of the provisions could be insisted upon.

(b) In *G.M. Siddeshwar's* case (supra), the dismissal of the petition was sought on the ground that the petitioner had not filed an additional affidavit as required by Order VI Rule 15(4) of the Code of Civil Procedure in support of the election petition, that the affidavit filed by the election petitioner was not in the format (Form 25) prescribed by Rule 94A of the Conduct of Election Rules, 1961, that the said affidavit

did not furnish the material particulars on the basis of which allegations of corrupt practice were made and that the verification was defective. The High Court rejected the aforesaid contentions on the basis of which the dismissal of the election petition was sought, the matter was carried to the Apex Court. Since there was a divergence of views of two benches of the Apex Court on the said issue, the two judge bench of the Apex Court before whom the SLP came up for hearing directed the matter to be placed before a larger bench of the Apex Court. The matter was accordingly heard by a three judge bench of the Apex Court.

The larger bench of the Apex Court held that there is no mandate in the R.P. Act that it is imperative for the election petitioner to file an affidavit in terms of Order VI Rule 15(4) of the Code of Civil Procedure in support of the averments made in the election petition in addition to an affidavit as required to be filed by the proviso to Section 83(1) of the R.P. Act. The larger bench of the Apex Court accordingly overruled the judgment of the two judge bench in ***P.A. Mohammed Riyas v/s. M.K. Raghavan & ors.*** on the said point. The larger bench held that a composite affidavit filed in support of the election petition and corrupt practice satisfies the requirement of law.

In so far as the ground regarding the affidavit not being in the format is concerned, it was held that though the affidavit is not in absolute compliance with Form 25, there was substantial compliance. As regards verification it was held that though the verification was defective, it was curable. It was held that if there is a substantial compliance with the statutory form of the affidavit, the election petition cannot be summarily dismissed on the said ground. Hence the issue before the Apex Court was whether two affidavits were required to be filed one in support of the Petition and one in support of the allegations of corrupt practice. In the facts of the said case the Apex Court held that there was substantial compliance and therefore the election petition could not be dismissed.

Hence the principle underlined was if there is a substantial compliance and if the defects are curable, then the petition cannot be dismissed at the threshold and an opportunity to cure the defects is required to be granted.

(c) In *Chandrakant Uttam Chodankar's* case (supra) the dismissal of the election petition was sought on the ground of non-compliance of Section 81(3) in the matter of non-service of the true copies of the election petition on the Respondent after limitation for filing of the

election petition had expired. The dismissal of the election petition was also sought on the ground that the verification in the election petition was not in terms of the requirement of law. The Apex Court held that the bar of limitation shall apply to the filing of the copies of the election petition and not serving the copies on the Respondent. In the said case the Apex Court held that the copies had been filed in the Registry within limitation. The Apex Court further held that in the light of the note of the Registry of the High Court in the said case the requisite number of copies had been filed and it could not be held that there was non-compliance of Section 81(3).

In so far as verification is concerned, the Apex Court held that the verification in the election petition can be defective but that cannot be said to be fatal to the maintainability of the petition.

13 The statutory provisions which are in contention in the instant adjudication have already been reproduced herein above. In so far as Section 81 of the R.P. Act is concerned, it prescribes the manner in which the election petition calling in question an election is to be presented. In so far as Section 83 (1)(a) is concerned, it prescribes the contents of the election petition and in the context of the present adjudication the requirement is that the election petition shall contain a

concise statement of the material facts on which the Petitioner relies. In terms of Section 83(1)(b) the election petitioner is obliged to set forth full particulars of any corrupt practice that he alleges including a statement 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. In terms of Section 83(1)(c) the requirement is that the election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. Sub-section (2) of Section 83 prescribes that any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

Now coming to Section 86 of the R.PAct, it provides for the dismissal of an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

As indicated above, Section 83(1)(a) obligates upon the election petitioner to concisely set out the entire bundle of facts which constitutes a complete cause of action. In terms of Section 83(1)(b) the election petitioner is required to set forth full particulars of any corrupt practice alleged by him against the returned candidate. Then Section

83(1)(c) requires verification in the manner as laid down by Order VI Rule 15(4) of the Code of Civil Procedure. The object of requiring verification of an election petition is clearly to fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations being made which are unsupported by facts. Under Section 83(2) any schedule or annexure to the pleadings must also be verified. The object behind verifying the schedule and annexures is the same as the object behind the verification of the petition viz. to fix the responsibility on the petitioner in respect of the said schedule or annexures.

In so far as the allegations relating to the commission of corrupt practice is concerned, at the cost of repetition it is required to be stated that they are to be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. The election petitioner is therefore required to set forth full particulars of any corrupt practice including as far as possible a full statement of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice.

It is also trite by the judgments of the Apex Court that if there is total and complete non-compliance of the provisions of Section 83 of the R.P. Act, then the petition cannot be described as an election petition and can be dismissed at the threshold [*See the judgment of the Apex Court in G.M.Siddheshwar's case (supra)*]. This is on the basis that though there is no mention of Section 83 in Section 86 of the R.P. Act, the powers under Order VI Rule 16 or Order VII Rule 11 of the Code of Civil Procedure for dismissal of the petition can be exercised. It is in the background of the aforesaid legal position that the grounds urged on behalf of the Applicant – Respondent No.6 for dismissal of the above Election Petition would have to be considered.

14 The first ground is that the concise statement of facts which is annexed to the Election Petition has not been verified. The importance of verification has been succinctly stated by the Apex Court as well as by the learned Single Judges of this Court in the judgments cited (supra).

In the instant case the Election Petitioner has chosen to separately annex a concise statement of facts to the Election Petition as an Annexure. This would necessarily imply that the Election Petitioner relies upon the said concise statement of facts in support of her

allegations of corrupt practice against the Respondent No.6. Once having chosen to file a separate concise statement of facts, which is an annexure to the Election Petition, then it was incumbent on the Election Petitioner to satisfy the mandate of Section 83(2) of the R.P.Act. The concise statement of facts was therefore required to be verified in the manner required. However, the concise statement of facts has admittedly not been verified, and therefore, one of the reliefs sought in the Application (L) No.11 of 2016 filed by the Election Petitioner is that he should be allowed to cure the said defect. In so far as non-verification of the concise statement is concerned, the learned Senior Counsel Shri A Y Sakhare appearing for the Election Petitioner sought to extricate the Election Petitioner from the said situation by contending that since the Election Petition is verified, the concise statement which is a part of the Election Petition and contains the same facts as contained in the Election Petition need not be verified. The said submission though looks attractive cannot be countenanced in the light of the statutory provisions. In the instant case the concise statement of facts is not *pari-materia* to the Petition. As indicated above, the underlying principle for verification of an Election Petition, annexure or schedule is that the responsibility for the same is to be fixed on the person who verifies the said document so that the same discourages wild and irresponsible allegations and thereby

a fishing and roving inquiry is avoided. The idea undoubtedly seems to be that an elected candidate is not unnecessarily vexed. The instant case is not a case where there is a defect in the verification but is a case where the concise statement has not been verified at all and since the same is a substantial defect the same goes to the root of the matter as regards maintainability of the Election Petition, the above Election Petition can therefore be said to be a Petition which is not an Election Petition in the eyes of law.

15 The next ground namely that the Election Petitioner has not pleaded material facts and particulars either in the Petition or in the affidavit and that the affidavit filed in support of the allegations of corrupt practice is not in terms of Rule 94A of the Conduct of Elections Rules 1961 and as prescribed in Form 25. In so far as the said ground is concerned, it is well settled by the judgments of the Apex Court that the Election Petitioner must set forth all material facts and particulars which constitutes the cause of action for him to file the Petition. Absence of even a single fact would impinge upon the cause of action and would result in the Election Petition being dismissed. (*See Azhar Hussain's case and Dhartipakar's case (supra)*).

In the context of the legal position as enunciated by the Apex Court, that the averments made in the Petition will have to be considered. As indicated above the averments relating to the corrupt practice are more particularly comprised in Paragraphs 3(xix), 3(xx), 3(xxi), 3(xxii) and 3(xxiii). The said paragraphs have already been extracted in the earlier part of this Judgment.

(a) In so far as paragraph 3(xix) is concerned, it is stated that the Returning Officer being aware of the small margin of votes which would be deciding factor has intentionally and with malafide motive rejected the said postal votes on arbitrary and perverse reason with a view to help the Respondent No.6. A reading of the said paragraph therefore discloses that no particulars as to the basis on which the conclusion of the Returning Officer acting intentionally and with malafide motive has been arrived at are mentioned, nor any reason as to why the Returning Officer conducted himself in the manner as alleged by the Election Petitioner has been stated. The said ground is therefore based on conjectures and surmises without there being any facts or particulars, either in the Election Petition or in the Affidavit in Support of the corrupt practice, which would constitute a case for an enquiry being caused.

(b) Now coming to paragraph 3(xx). On what basis the conclusion has been arrived at, that the Returning Officer declared the said 788 postal ballots as invalid, when it was clear that the context between the Election Petitioner, who was leading, and the Respondent No.6 was of a small margin of votes, has not been stated.

(c) Now coming to paragraph 3(xxi). It is stated that the Conduct of Elections Rules were being violated to ensure that the postal ballots should be rejected so that the Respondent No.6 benefits. It is not stated as to on what basis the said conclusion has been arrived at by the Election Petitioner, no particulars have been mentioned in that regard.

(d) Now coming to paragraph 3(xxii). It is stated that the action of the Returning Officer was malafide. On what basis the conclusion that the said action of the Returning Officer was malafide, according to the Election Petitioner, has not been stated.

(e) Now coming to paragraph 3(xxiii). It is stated in the said paragraph that there was conspiracy between the Respondent No.6 and the Returning Officer to ensure the defeat of the Election Petitioner. No particulars of the alleged conspiracy is mentioned and only a bald

statement is made that there was a conspiracy between the Respondent No.6 and the Returning Officer.

Hence the allegations in respect of the corrupt practice as set out in the afore-stated paragraphs are far from proving that there was any consent or connivance of the returned candidate for the manner in which the Returning Officer conducted himself, are in fact based on conjectures and surmises, and can be said to be speculative in nature. The said averments therefore do not meet the requirements for an enquiry to be conducted in respect of the same. The maintainability of the Election Petition is therefore affected.

16 In so far as the affidavit is concerned, the Election Petitioner alleging a corrupt practice is required to file an affidavit in support of the allegations thereof. The said Affidavit has to be in terms of Rule 94A and in Form 25. In the instant case, the Election Petitioner has filed such an affidavit. The question is whether the said affidavit meets the requirements of the statutory provisions. In the said affidavit a reference is made to certain paragraphs of the Petition wherein the allegations of corrupt practice are appearing, especially paragraphs 3(xix) to 3(xxiii) of the Petition. In so far as the allegations of corrupt practice are

concerned, the Election Petitioner in terms of the legal position emerging out of the judgments of the Apex Court is required to set forth full particulars of any corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice, the date and place of such corrupt practice in sufficiently clear terms and precisely so as to afford the person charged a full opportunity of meeting the same. In the instant case, how subparagraphs (xix) to (xxiii) of paragraph 3 of the Election Petition are lacking in details has already been observed herein-above. Since in the affidavit in support of the allegations of corrupt practice reference is made to paragraphs 3(xix) to (xxiii), consequently the affidavit in support of the allegations of corrupt practice also suffers from the vice of lack of particulars. It would therefore have to be held that the allegations made in the Petition are vague and based on surmises and conjectures.

In so far as the affidavit is concerned, the same may be in Form 25 but the question is not of form but of substance. Though the Election Petitioner has based her allegations on the source of information which he believes to be true he has not chosen to disclose her source of information. The same therefore causes prejudice to the Respondent No.6 who is required to meet with the said allegations. The judgment of

the Apex Court in ***F.A. Sapa's*** case (supra) would not aid the Election Petitioner to get over the absence of the source of information being stated, as the Apex Court in the subsequent judgment in ***Gajanan Krishnaji Bapat's*** case (supra) has whilst dealing with the said aspect impressed upon the need of setting out the source of information in the affidavit and held that the absence of the source of information in the affidavit makes the affidavit defective. A three judge bench of the Apex Court in ***L.R. Shivaramagowda's*** case (supra) held that the affidavit accompany the Election Petition alleging corrupt practice must disclose the source of information and clearly state which allegations are based on personal knowledge and which on information received otherwise the affidavit cannot be held to be in conformity with Form 25 prescribed under Rule 94A.

Thereafter another three judge bench of the Apex Court in ***Jeet Mohinder Singh's*** case (supra) whilst setting out the contents of the election petition its forms and documents to be amended in the context of Sections 81(3) and 83 of the R.P. Act and Rule 94A and Form 25 of the Conduct of Elections Rules, 1961 has referred to the judgment of the Apex Court in ***Gajanan Krishnaji Bapat's*** case (supra). The Apex Court by referring to the judgment in ***Gajanan Krishnaji Bapat's*** case (supra)

held that the election petitioner is obliged to disclose his source of information in respect of the commission of the corrupt practice so as to bind him to make such a charge with full responsibility and to prevent any fishing and roving inquiry and save the returned candidate from being taken by surprise. In all the 3 judgments i.e. *Gajanan Krishnaji Bapat's* case (supra), *L.R.Shivaramagowda's* case (supra) and *Jeet Mohinder Singh's* case (supra), the judgment of the Apex Court in *F.A. Sapa's* case (supra) has been referred. Hence the position that emerges is that it is consistently held by the Apex Court that the source of information is required to be stated in the affidavit as otherwise the affidavit is defective. In the said context Paragraph 2 of the said Affidavit wherein paragraphs of the Election Petition comprising the averments made in respect of the corrupt practice have been referred to is relevant and is reproduced herein under :-

“2. That the statement made in paragraphs nos 2(m), 2(n), 2(p), 3(xix), 3(xx), 3(xxi), 3(xxii), 3(xxiii) of the said election petition about the commission of the corrupt practice of the Returning Office conniving with the Respondent no.6 for malafide motives and the particulars of such corrupt practice mentioned in paragraph 2(m), 2(n), 2(p), 3(xix), 3(xx), 3(xxi), 3(xxii), 3(xxiii) of the same petition and in petition are true to my information.”

Hence the allegations made in the said paragraphs of the Election

Petition are said to be true to the information of the Election Petitioner. The said paragraph does not give the source of information nor do the other paragraphs in the affidavit.

Hence in the absence of the source of information being stated, the affidavit which is filed in support of the allegations of corrupt practice is not in terms of the requirements of law and since the affidavit is filed in support of the allegations of corrupt practice, the affidavit does not meet the requirements of Section 83 of the R. P. Act and therefore the objections of the Respondent No.6 on the said ground would have to be sustained.

17 In so far as the ground of the Election Petitioner having failed to verify the translation annexed to the Petition is concerned, it is the requirement of the High Court Original Side Rules that the translation of the documents on which the Election Petitioner relies and which are annexed to the Petition has to be provided. In the instant case though the translations are provided and annexed to the Petition, it is not mentioned on the translation whether the translation is a official translation or office translation. This was required to be stated by the Election Petitioner, as he would be relying upon the said translations and

also for the Respondent No.6 to know as he would be required to deal with the documents in question. It appears that the translation of Exhibit M at page 151 is also not of the said Exhibit M thereby causing prejudice to the Respondent No.6 in the matter of effectively dealing with the said document. Non-verification of the translation in the context of the verification of the original annexure in vernacular may however amount to a formal defect, however, the fact that it is not stated either in the Petition or on the document whether the translation is an official translation or office translation as also the translation of Exhibit M being not of the said document, the said defect can be said to be a defect which adds up to the defects which are already there in the Petition and which have been dealt with in the earlier part of this Judgment and which impinges upon the maintainability of the Petition.

18 In so far as the ground of the annexures being not verified as required by law, in the instant case, the annexures have been verified by a verification which is on a separate paper. Though the verification is on a separate paper, the said verification mentions the exhibit number which is verified and therefore though the verification is not at the bottom of the annexures, the same in my view, satisfies the requirement of law and cannot be said to be a defect which warrants the dismissal of the Petition.

19 Now coming to the next ground of the Election Petitioner having failed to annex a true and correct copy of the alleged written objection dated 19/10/2014 which the Election Petitioner claims she addressed to the Returning Officer as also the translation annexed being not of the said document. It is required to be noted that the document annexed to the Election Petition is addressed to the Observer whereas the averments in the Petition relate to a document i.e. the complaint allegedly addressed by the Election Petitioner to the Returning Officer. In the Conduct of the Election Rules the Observers have a different role to play than the Returning Officer as can be seen from the definition of the term "Observer" in the Conduct of Elections Rules, 1961. The Complaint to the Returning Officer and the reference to it in the Election Petition is a fact which the Election Petitioner has stated in the course of making the allegations of corrupt practice against the Respondent No.6.

20 In so far as the said alleged complaint is concerned, in paragraph 2(p) of the Election Petition it is stated that the Election Petitioner's counting agent immediately filed a written objection with the Returning Officer who was pleased to reject the same. Thereafter in paragraph 2(q) which is the next paragraph it is stated that on being

informed by her counting agent the Petitioner herself filed a written objection on 19/10/2014 with the Returning Officer stating that the declaration of postal ballot papers were validly attested and they ought to be counted. However, what is annexed at Exhibit-M is a document which is addressed to the Observer.

21 The document in question is therefore sought to be relied upon in support of the allegations of corrupt practice. It is trite that an Election Petitioner is required to state precisely and with sufficient clarity all facts which according to him constitute the corrupt practice.

22 The Election Petitioner now wants to change her case that she had filed the objection with the Observer and not with the Returning Officer. The Election Petitioner also wants to annex a correct translation of the said document. The question is whether she can now be permitted to amend the Election Petition to carry out the said correction. Since the discrepancy between the averments and the document annexed impinges upon the compliance of Section 83 of the R.P Act, such a correction cannot be permitted, having regard to the fact that the said document relates to a bundle of facts on which the allegations of corrupt practice are founded.

23 The attempt of the Election Petitioner to get over the said fact by contending that the same is a mistake and therefore a formal defect which is curable in my view is over simplifying the issue. Reliance placed by the learned Senior Counsel appearing on behalf of the Election Petitioner on the judgment of ***G.M.Siddheshwar's*** case (supra) is misplaced as in the facts of the said case the Apex Court held that there was substantial compliance and the defects, if any, were curable. However at the same time the Apex Court observed that if there is a total and complete non-compliance of the provisions of Section 83, then the Petition can be dismissed at the threshold. The judgment in ***G.M.Siddheshwar's*** case (supra) therefore cannot be read to mean that the defects relatable to Section 83 of the R.P. Act are curable and no election petition can be dismissed for non-compliance of Section 83. Hence the judgment in ***G.M.Siddheshwar's*** case (supra) would not aid the Election Petitioner to contend that the defects in the instant case are curable and the Election Petitioner should be allowed to carry out the necessary corrections.

24 The objection raised on the said ground does not rest there. In so far as the translation of the said document is concerned, the

translation annexed is of some other and different document. Hence apart from wrongly describing the document in the Election Petition, a translation has been annexed which is not of the said document but of some other document. The translation not being of a document which is a part of a bundle of facts on which the allegation of corrupt practice is founded. The said defect amounts to a substantial defect and cannot be overlooked as being of a formal nature. The said defect being of a substantial nature therefore cannot be allowed to be cured. The submission of the learned Senior Counsel appearing for the Election Petitioner that the requirement of providing the translation of a document is not a requirement under the R.P. Act but is a requirement under the High Court Original Side Rules and the Petition therefore cannot be dismissed on the said ground cannot be accepted. Though undoubtedly the requirement of providing a translation is under the High Court Original Side Rules, the same impinges upon the filing of the Petition. Since the document relates to a fact upon which the Election Petitioner seeks to rely upon in support of the allegations of corrupt practice, the translation cannot be allowed to be replaced by the translation of the correct document as allowing the same would result in the Election Petitioner being allowed to amend the Petition after the limitation period is long over. The contention of the learned Senior

Counsel for the Election Petitioner that the objection relating to the translation having not been raised in the Application No.5 of 2016 cannot be allowed to be raised now, also cannot be accepted. Though the objection has not been specifically raised in the Application No.5 of 2016, a general objection regarding non-compliance of Section 83 has been taken in the Application. However, in the Written Statement filed by the Respondent No.6, the said objection has been taken in paragraph 20 of the Written Statement, and therefore the Election Petitioner was very well aware of the same.

25 It is well settled by the judgments of the Apex Court that the success of a candidate who has won at an election should not be lightly interfered with. Hence any Petition seeking such interference must strictly confirm to the requirements of law. In the facts of the present case on account of the defects as above the Election Petition cannot be said to confirm to the requirements of law and in fact amounts to there being no Election Petition in the eyes of law. Hence no enquiry is warranted. The Election Petition would have to be dismissed at the threshold under Section 86 of the R.P. Act. For the conclusion, this Court has reached it is not necessary to consider prayer clause (b) of the said Application No.5 of 2016.

26 Now coming to Application (L) No.11 of 2016, the same has been filed by the Election Petitioner for curing the defects in the Election Petition and thereby seeking amendments in the Election Petition. It is required to be noted that the Written Statement has been filed by the Respondent No.6 sometime in July 2015, when some of the objections on the basis of which Application No.5 of 2016 came to be filed were raised. Thereafter the Application No.5 of 2016 came to be filed by the Respondent No.6 on 20/08/2015. In spite of the same no steps were taken to cure the defects. The Application (L) No.11 of 2016 was filed by the Election Petitioner on 20/07/2016, after the Application No.5 of 2016 was substantially heard. Hence this is not a case where on the defects being pointed out the Election Petitioner took immediate steps to cure the defects, in fact this is a case where in the reply to the said Application No.5 of 2016 the Election Petitioner maintained that there were no defects and proceeded with the hearing of the said Application No.5 of 2016. Hence on the said ground the Election Petitioner would not be entitled to any relief in the Application (L) No.11 of 2016.

27 Apart from the afore-stated reasons this Court has reached a conclusion that the defects are of a substantial nature and cannot be

allowed to be cured. If the Election Petitioner is allowed to cure the said defects, it would amount to allowing the Election Petitioner to amend the Election Petition long after the period of limitation is over. It would also result in the right which has accrued in favour of the returned candidate i.e. the Respondent No.6 being taken away.

28 Hence on both the counts no relief can be granted to the Election Petitioner in Application (L) No.11 of 2016, the same is accordingly rejected.

29 For the reasons afore-stated Application No.5 of 2016 is required to be allowed and is accordingly allowed in terms of prayer clause (a). Resultantly, the Election Petition No.4 of 2014 is dismissed under Section 86 of the R.P. Act.

[R.M.SAVANT, J]