



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION IN EP NO. 9 OF 2023 (*Exhibit 11*)
IN
ELECTION PETITION NO.11 OF 2019

JAGDISHCHANDRA RAMESH VALVI
VERSUS
LATABAI CHANDRAKNT SONAWANE AND ORS

...
WITH

APPLICATION IN EP NO. 5 OF 2024 (*Exhibit 23*)
IN
ELECTION PETITION NO.11 OF 2019

JAGDISHCHANDRA RAMESH VALVI
VERSUS
LATABAI CHANDRAKANT SONAWANE AND OTHERS

...
Advocate for Election Petitioner:
Mrs. Priyandra G. Sontakke & Mr. Gajanan K. Sontakke

...
Advocate for the Applicant at Exhibit 11 / Respondent No.1 in EP /
Returned Candidate: Mr. Mahesh S Deshmukh
Advocate for the Applicant at Exhibit 23 / Respondent No.5 in EP:
Mr. Rahul R. Karpe

...

CORAM	:	ARUN R. PEDNEKER, J.
Date	:	03.09.2024

ORDER:

1. The present Election Petition is filed challenging the election of the returned candidate / respondent no.1 as the Member of Maharashtra Legislative Assembly from 10-Chopda (S.T.)

Assembly Constituency, in the State of Maharashtra. The returned candidate / respondent no.1 claims to belonging to “Tokre Koli”, Scheduled Tribe. In The Constitution (Scheduled Tribe) Order, 1950, Part IX – Maharashtra, “Tokre Koli” is mentioned at Serial No.28.

2. The elections to the Maharashtra Legislative Assembly were held on 21.10.2019, counting was held on 24.10.2019, returned candidate belonging to a political party Shivsena was declared elected. The election petitioner belongs to the Nationalist Congress Party. The elected candidate got 78137 votes, whereas the election petitioner receives the second highest 57608 votes.

3. Although, the election was held in the year 2019 and the petition is filed within limitation, the matter was not moved with urgency and was pending notice to all the respondents.

4. During the pendency of the Election Petition before this court, the caste certificate issued to the returned candidate was invalidated and the same is confirmed upto the Hon’ble Supreme Court. After the rejection of the caste validity certificate of the returned candidate was confirmed by the Hon’ble Supreme Court, the writ petition was filed before the Division Bench of this Court for

unseating the returned candidate by invoking powers of this court. In Writ Petition No.12336 of 2022, dated 13.01.2023, this court at para 3 has observed as under:

“3. By invoking the powers of this Court under Article 226 of the Constitution of India, the petitioner is seeking a declaration about the intervenor who has been elected as a member of the State Legislative Assembly from 10 – Chopda (ST) constituency in the elections held in 2019, was not qualified to file her nomination from the reserved category when her scheduled tribe certificate has been cancelled and the decision has reached finality up to the Supreme Court.”

This court in Writ Petition No.12336 of 2022, dated 13.01.2023, at para 12 and 15 has observed as under and dismissed the petition:

“12. ...In the matter in hand, the petitioner has already filed an election petition and should have waited for the result instead of circuitously seeking the same relief by requesting this Court to exercise the powers under Article 226. For this reason alone, the petition is liable to be dismissed.

15. Consequently, merely because the scheduled tribe certificate of the intervenor has been cancelled and the decision has reached finality, the consequences are not automatic as is contemplated under section 10 and 11 of the Maharashtra Act No. XXIII of 2001. The ordeal of resorting to the election petition under section 80-A of the R.P Act will have to be undergone for unseating a returned candidate to State Legislative Assembly who was not qualified to take part in the election to the

Legislative Council which specifically lays down that no election shall be called in question except by an election petition presented in accordance with the provisions under that Act.”

The SLP filed against the above order of the Division Bench in Writ Petition No.12336 of 2022, dated 13.01.2023 is also dismissed.

5. After invalidation of the caste certificate of respondent no.1 / returned candidate this Election Petition is taken up with some urgency. Respondent no.5 was served on 23.06.2023 and respondent no.7 was served by paper publication on 19.01.2024.

6. Respondent no.1 / returned candidate filed an application bearing number *Application in EP No.9 of 2023, Exhibit 11*, under Order VII Rule 11 of The Code of Civil Procedure, 1908 (*CPC*) read with Section 82 of the Representation of the People Act, 1951 (*R.P. Act*) for dismissal of the election petition. The respondent no.5 on being served on 23.06.2023, appeared and also filed *Application in EP No.5 of 2024, Exhibit 23*, for dismissal of the election petition. It is contended in the application at Exhibit 11 as under:

“A) That, Election Petition proper as well as affidavit filed alongwith it do not specify raises/sets out any ground/grounds specified under sub section (1) of Sec 100 and Sec 101 as compulsorily required under Sec. 81 of The Representation of the People Act, 1951 while presenting Election Petition.

B) That, verification made by petitioner to the Election Petition proper as well as affidavit filed alongwith petition proper is not made as compulsorily required under clause (c) of sub section (1) of section 83 of The Representation of the People Act, 1951.

C) That, in view of the fact that affidavit filed under Form 25 of the Conduct of Election Rules, 1961 by the petitioner the same attracts clause (b) of sub section (1) of Section 83 as well as proviso to clause (c) of sub section (1) of section 83 of The Representation of the People Act, 1951 and Rule 94-A of Conduct of Elections Rules, 1961 claiming/ alleging corrupt practice by the petitioner against respondent no.1. Perusal of affidavit under Form 25 filed by the petitioner suggest purported allegation of corrupt practice by respondent no.1, as such is not an affidavit as compulsorily required by proviso to Clause (c) of Sub Section (1) of Section 83 of The Representation of the People Act, 1951.

D) That, concise statements of the material facts on which the petitioner relies, compulsorily requires by Clause (a) of Sub Section (1) of Section 83 of The Representation of the People Act, 1951 being not specifically contained in the Election Petition proper as well as affidavit filed alongwith it, it suffers for non compliance and / or violation of mandatory provisions under Chapter II of The Representation of the People Act, 1951 and prescribed procedure under the Conduct of Elections Rules, 1961.

E) That, affidavit made to the Election Petition proper as well as affidavit filed along with by the petitioner dated 04.12.2019 is no affidavit as required by law.

F) That, the contents raised which claimed to be legal and factual submissions/ pleadings in para no. XXIV to XXXIII as per verification of Election Petition proper are vague, confusing which do not specify anything as required by the provisions of The Representation of the People Act, 1951 and the Conduct of Election Rules, 1961.

G) That, the Election Petition filed by petitioner suffers from non disclosure of mandatory declaration, in as much as suffers due to suppression of material facts while presenting Election Petition under Section 80 and 81 of The Representation of the People Act, 1951.

H) That, additional relief claimed by the petitioner, particularly relief claimed under Clause (B) under para no. XLII of Election Petition proper for declaration of petitioner to be duly elected to the Office of Member of Maharashtra Legislative Assembly from 10-Chopda Assembly Constituency, in the State of Maharashtra declared on 24.10.2019 is not claimed by fulfilling mandatory requirement as required under the provision of The Representation of the People Act, 1951 and the Conduct of Elections Rules, 1961.

I) That, reference of Section 100 of The Representation of the People Act, 1951 in various Paragraphs of Election Petition proper as well as affidavit filed alongwith it do not specify any particular clause of Sub Section (1) under Section 100 of The Representation of the People Act, 1951, as such no compliance being made by the petitioner while

presenting Election Petition which is mandatory and compulsory under Section 81 of The Representation of the People Act, 1951, instant Election Petition suffers for non compliance and / or violation of mandatory prescribed procedure.

J) That, the source of information and collection of documents as disclosed and claimed in the verification of Election Petition proper as well as affidavit filed alongwith it is not a source of information as well as collection of documents relied and filed by the Petitioner and that too without submitting any proof to that effect alongwith Election Petition proper.

2. In view of above reasons and grounds, there is non compliance as well as violation of mandatory prescribed procedure while presenting Election Petition by the Petitioner as required under Chapter II of The Representation of the People Act, 1951 and Conduct of Elections Rules, 1961, as such instant Election Petition presented by the Petitioner is not maintainable, entertainable and accordingly liable to be dismissed / rejected under Order VII Rule 11 of The Code of Civil Procedure, 1908 and accordingly it be dismissed with costs.”

7. Heard **Mr. Mahesh S. Deshmukh**, learned counsel for the returned candidate / applicant in Exhibit 11 and respondent no.1 in election petition. The learned counsel in addition to the grounds raised in the application at Exhibit 11, orally and by filing written submissions, submitted that for the elections to the State Legislature, Chapter-II of the R.P. Act deals with the qualification of the membership of State Legislature and particularly Section 5(a) of the

R.P. Act, which provides for qualification to contest elections from the reserved seat of the Scheduled Caste (*SC*) or Scheduled Tribe (*ST*), whereby such candidate is to be member of any of those castes or tribes and an elector for any assembly constituency in that State.

Mr. Deshmukh, learned counsel further submits that Section 33(2) states that, in respect of seat reserved a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying that he belongs to the particular caste or tribe of SC or ST of the State.

The learned counsel submits that conjoint reading of above referred provisions of Section 5(a) and 33(2) of the R.P. Act, in relation to election to State Legislature, wherein a particular constituency is reserved either for SC or ST, the candidate is obliged only to make a declaration that he / she belong to specified scheduled caste or scheduled tribe, as the case may be and nothing more. The R.P. Act does not contain provision in addition to declaration to be made by candidate about his specified caste or tribe notified as SC or ST in relation to the concerned State.

It is submitted that Section 36(2) of the R.P. Act controls power of Returning Officer to reject nomination. Section 36(2)(a) of

the R.P. Act empowers the Returning Officer to reject the nomination in case candidate either is not qualified or is disqualified for being chosen to fill the seat under Article 84, 102, 173 and 191 of the Constitution of India or Part-II of the R.P. Act i.e. qualifications and disqualifications of membership or as per Section 36(2)(b) if there is failure to comply with any of the provisions of Section 33 or Section 34.

It is further submitted that, the instant case relates to qualification of membership of the legislative assembly i.e. Section 5 of the R.P. Act read with Article 173 (c) of the Constitution of India.

It is further submitted that conjoint reading of Section 5(a) and Section 33(2) of the R.P. Act clearly postulates that for a candidate contesting election for reserved seat, only declaration about his / her caste or tribe which is notified as SC or ST needs to be made by the candidate contesting election from reserved seat.

It is further submitted that, in view of Section 5(a) read with Section 33(2) of the R.P. Act and Rule 4 together with Part-III of 'Form 2B' creates only obligation over the candidate contesting the reserved seat to make a declaration about his caste / tribe. There is no further requirements of producing caste certificate or caste validity certificate. Once, such a declaration is made by the candidate

as contemplated in Part-III of 'Form 2B', the returning officer does not have jurisdiction to inquire into a particular caste or tribe of the candidate so as to reject the nomination.

8. Mr. Deshmukh, learned counsel for the returned candidate / applicant in Exhibit 11 and respondent no.1 in election petition relies upon the following judgments:

- [1] Kanimozhi Karunanidhi Vs. A. Santhana Kumar & Ors., AIR OnLine 2023 SC 368*
- [2] Kanimozhi Karunanidhi Vs. A. Santhana Kumar & Ors., [2019] 0 Supreme (Mad) 2190*
- [3] Khan Mohammed Arif Lallan Vs. Dilip Bhausahab Lande, Application (L) No.20734 of 2021 in EP No.27 Of 2019*
- [4] Ram Sukh Vs. Dinesh Aggarwal, AIR 2010 SC 1227*
- [5] Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar, 2019 AIR SCW 6812*
- [6] V. Narayanaswamy Vs. C.P. Thirunavukkarasu, AIR 2000 SC 694*
- [7] Azhar Hussain Vs. Rajiv Gandhi, AIR 1986 SC 1253*
- [8] Hardwari Lal Vs. Kanwal Singh, AIR 1972 SC 515*
- [9] Samant N. Balakrishna, etc. Vs. George Fernandez and others etc., AIR 1969 SC 1201*
- [10] Pendyala Venkata Krishna Rao Vs. Pothula Rama Rao & Others, 2005 SCC OnLine AP 99*
- [11] Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and others, I.A. (Civil)/1278/2021, Dated 26.04.2023 of the Gauhati High Court*
- [12] Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and others, AIR 2024 SC 2193*
- [13] Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others, (2004) 3 SCC 137*
- [14] Dr. Sharadchandra s/o Ganpatrao Wankhede Vs. Raosaheb S/o. Dadarao Danve and others, EP/2/2019 with connected petition, Dated 05.07.2024 of Bombay High Court, Aurangabad Bench*

9. **Mr. Rahul R. Karpe**, learned counsel for the applicant in Exhibit 23 / respondent no.5 in election petition has adopted the submissions of Mr. Deshmukh in support of his application filed under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

10. **Mrs. Priyandra G. Sontakke**, learned counsel appearing for the election petitioner submits that the election petitioner has filed his say to the application at Exhibit 11 of the returned candidate under Order 7 Rule 11 and it is contended in the reply at Exhibit 13 that the petitioner filed the election petition in compliance with the provisions of Section 81, 82 and 117 of the R.P Act and further in compliance of the provisions of Conduct of Elections Rules, 1961. It is contended that returned candidate was not qualified in terms of Section 5(a) of the R.P. Act. Whereas the election petitioner belongs to the Scheduled Tribe category and has secured second highest vote in the election.

It is contended that the returned candidate does not belongs to the category on which he got elected, as such, her nomination form is improperly accepted and , thus, the election is materially affected as set out in Section 100(1)(d)(i) of the R.P. Act.

It is stated that ground No.XV to XIX and the annexed document at Exhibit K indicates that grounds as specified under Sub

section 1(a) of Section 100 and Section 101 as required under Section 81 of the R.P Act are made out.

The petitioner specifically contends that the petitioner filed the election petition taking the recourse to the grounds specified in Section 100(1)(a) of the R.P Act.

It is further submitted that election petitioner in terms of grounds set out in the petitioner bearing No.XXXIII with respect to declaring the petitioner as elected candidate being second highest in securing the votes after the returned candidate, as such, the petitioner has set out grounds under Section 100(1)(a) and Section 101 of the R.P Act.

It is submitted that there are no allegations of corrupt practice made in the election petition and no separate affidavit is required in Form 25. It is also contended that the petitioner filed the separate affidavit in support of the election petition commenced from page no.22 of the petition is in support of the election petition and not the affidavit in form 25 as set out in proviso of Clause (c) of Sub Section (1) of Section 83 of the R.P Act. The word Form 25 mentioned at page no.22 is inadvertent act on the part of the petitioner.

It is also contended that the election petition is not based on the allegations of corrupt practice and based only on Section 100(1)(a) and Section 101 of the R.P Act. As per Section 83 of the R.P Act, the verification as executed by the petitioner is sufficient for the pleadings of the election petition and there is no allegations of corrupt practice and, as such, there is no necessity to either execute the separate affidavit in support of election petition and or to file the affidavit in Form 25 of the Election Rules. The Form 25 affidavit is not applicable to the facts of the case.

It is also contended that the petitioner has filed the concise statement of the material facts, on which, the petitioner relies.

The petitioner has contended that he has pleaded factual and legal grounds in the election petition and the factual / legal grounds are mentioned in the verification of the election petition. It is stated that the petitioner has specifically pleaded that the petitioner solicited the documents from the scrutiny committee and the same are duly supplied by the scrutiny committee vide covering letter. It is specifically averred in the reply that the petitioner does not claim the disqualification of respondent no.1 on the ground of corrupt practice and the disqualification prayed by the

petitioner is on the ground of qualification of respondent no.1 as set out in Section 5(1)(a) and Section 33(2) of the R.P. Act read with Article 173(c) of the Constitution of India.

11. Mrs. Sontakke, learned counsel for the petitioner relied upon the following Judgments:

- [1] Thangjam Arunkumar Vs. Yumkham Erabot Singh and others, 2023 DGLS (SC) 912,*
- [2] A. Manju Vs. Prajwal Revanna @ Prajwal R. and others, 2022 AIR (SC) 196*
- [3] Harkirat Singh Vs. Amrinder Singh, 2006 AIR (SC) 713*
- [4] Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh, 2005 AIR (SC) 22*
- [5] G. M. Siddeshwar Vs. Prasanna Kumar, 2013 AIR (SC) 1549*
- [6] Saritha S. Nair Vs. Hibi Eden, 2021 AIR (SC) 483*
- [7] Vishwanatha Reddy Vs. Konappa Rudrappa Nadgouda, 1969 AIR (SC) 604*
- [8] Kunti W/o. Shri Lalit Mahanand Vs. The Returning Officer, Nagar Panchayat, Bagbahara and others, Civil Revision No.168 of 2012 (High Court of Chhattisgarh at Bilaspur)*

12. Having considered the rival submissions, the question that arises for consideration is, whether the petitioner has made out the ground for deciding the Election Petition or the petition needs to be dismissed at the outset for non compliance of mandatory

provisions under The Representation of the People Act, 1951 and the Constitution of India.

13. At the outset, it is necessary to note the relevant provisions of The Representation of the People Act, 1951.

SECTION 5(a)

“Section 5 - Qualifications for membership of a Legislative Assembly.-

A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless --

(a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;”

SECTION 33(2)

“33. Presentation of nomination paper and requirements for a valid nomination

(1) ...

(1A) ...

(a) ...

(b) ...

(c) ...

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.”

SECTION 36(2)(a)

“Section 36 - Scrutiny of nominations.-

(1) ...

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :--

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:--

Articles 84, 102, 173 and 191,

Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.”

SECTION 100(1)(a) & (d)

“Section 100 - Grounds for declaring election to be void

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

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963; or

(b) ...

(c) ...

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

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

(ii) ...

(iii) ...

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

...”

SECTION 101

“Section 101 - Grounds for which a candidate other than the returned candidate may be declared to have been elected

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion-

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the High Court shall, after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.”

14. The relevant provisions of The Constitution of India in this case is Article 173(c)

“Article 173 - Qualification for membership of the State Legislature

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he

(a) ...

(b) ...

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.”

15. The relevant provision of The Code of Civil Procedure, 1908 is Order VI Rule 15:

“15. Verification of pleadings

(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”

16. FORM 2B of The Conduct of Elections Rules, 1961 is reproduced as under:

FORM 2B

(See rule 4)

NOMINATION PAPER

Election to the Legislative Assembly of..... (State)

<i>Recent stamp size (2cmX2.5cm) photograph in white/off white background with full face view to be attached</i>

STRIKE OFF PART I OR PART II BELOW WHICHEVER IS NOT APPLICABLE

PART III

...

** I further declare that I am a member of the.....*
***Caste/tribe which is a scheduled ***caste/tribe of the State of..... in*
relation to..... (area) in that State.

...

17. The nomination papers filed by the returned candidate is at page no.137 onwards of the Election Petition, wherein the returned candidate at page 141 has given a declaration as under:

**"*मी आणखी असे प्रतिज्ञापन करतो कि, मी टोकरे कोळी या
**जमातीचा उमेदवार असून ती जमात महाराष्ट्र राज्य (क्षेत्र) क्षेत्राच्या
संबंधातील महाराष्ट्र राज्य राज्याची **अनुसूचित जमात आहे."**

18. With regard to the submissions of the learned counsel for the applicant that the material facts are not pleaded and in absence of material facts, the petition is not maintainable, the law on the subject is discussed in the case of **Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar, (2009) 9 SCC 310**, wherein it is held that failure to state even a single material fact will entail dismissal of the election petition. Para 61, which summarizes the legal position is reproduced below:

"61. The legal position has been crystallised by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are "material facts" which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act."

19. In the case of **Ram Sukh Vs. Dinesh Aggarwal, (2009) 10 SCC 541** the Hon'ble Supreme Court defined the material facts are primary or basic facts which have to be pleaded by the petitioner

for giving rise to cause of action, violation of which will result in dismissal of the petition.

20. Similarly, in the case of **Virender Nath Gautam Vs. Satpal Singh and Ors.**, (2007) 3 SCC 617, paras 29 and 31 are relevant and quoted below:

“29. From the relevant provisions of the Act reproduced hereinabove, it is clear that an election petition must contain a concise statement of 'material facts' on which the petitioner relies. It should also contain 'full particulars' of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.

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

the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.”

21. Similarly, in the case of **Laxmi Kant Bajpai Vs. Hazi Yaqoob and Ors., (2010) 4 SCC 81**, the Hon'ble Supreme Court relying upon the earlier judgment had made observations that the material fact required to be stated are those facts which can be considered as materials supporting the allegations made in the petition and would constitute the cause of action which the opposite party will have to meet.

22. Considering the law discussed in above Judgments to the fact of instant case, it is to be noted that in the Election Petition, at page 3, clause II, the petitioner has stated that the election is challenged on the ground that the nomination of respondent no.1 has been improperly accepted by the returning officer and the election is void due to non compliance of the provisions of the Constitution of India and the R.P. Act. It is stated in the same para that respondent no.1 does not belongs to the S.T. category. Therefore, respondent no.1 is not qualified to contest the elections from 10-Chopda (S.T.) Assembly Constituency. It is stated in the petition that 10-Chopda (S.T.) Assembly Constituency is reserved for the S.T. category for the assembly elections held in the year 2009

and 2014 and it is further continued for the Maharashtra Legislative Assembly Elections of 2019 from 10-Chopda (S.T.) Assembly Constituency.

It is stated that the returned candidate respondent no.1 belongs to Hindu Other Backward Category as seen from the oldest record of her father and the school record of respondent no.1 herself. However, respondent no.1 by suppressing material facts and by obtaining the caste certificate from Sub-Divisional Officer, Jalgaon without submitting any documents has filled nomination form from the 10-Chopda (S.T.) Assembly Constituency.

It is stated that respondent no.1 has made false statement in Part-III of the nomination form stating that she belongs to Tokre Koli (S.T.). It is stated that the entire school record of respondent no.1, her father, her sister and other relatives indicate that respondent no.1 / returned candidate belongs to Hindu (OBC) and, as such, respondent no.1 is not qualified to contest the assembly elections on the seat earmarked for S.T. category.

It is also stated that in para XV of the petition that the Information Officer of the S.C. S.T. Verification Committee to supply the necessary documents along with proposal for verification of tribe of respondent no.1 / returned candidate, which are annexed by the

petitioner to the petition at Annexure “K”. The documents at page 238 of the petition is a leaving certificate of the returned candidate, which indicates the year of admission to the school as 1976 and the returned candidate belongs to हिंदू इ. मा., at page 239 of Maharu Keshav Koli indicates caste as कोळी, at page 240 of Shobha Maharu Baviskar indicates caste as हिंदू कोळी (इ. मा.), at page 241 of Sunanda Maharu Koli indicates caste as हिंदू मागासलेला, at page 242 of Manisha Sahebrao Baviskar indicates caste as हिंदू - टोकरे कोळी (शे. ट्रा.), at page 243 Rekhabai Sahebrao Baviskar indicates caste as caste हिंदू टोकरे कोळी (शे. ट्रा.).

23. All these documents as above and other documents, which are marked with Annexure “K”, prima facie, gives rise to the triable case of that the returned candidate do not belongs to S.T. category. The documents will have to be examined at the stage of trial. Thus, all material facts required to decide this election are pleaded in the Election Petition.

24. The reliance placed by the learned counsel for the applicant / returned candidate on the case of **Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and Ors., AIR 2024 SC 2193**, is of no

assistance in the instant case, as *Karim's* case relates to the corrupt practice and for the reasons of corrupt practice the results of the elections were materially affected. As far as the present case is concerned, it only relates to the case of the returned candidate being not qualified to contest the election in terms of Section 5(a) of the R.P. Act read with Article 173(c) of the Constitution of India.

25. In the case of **Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and Ors**, AIR 2024 SC 2193, the Hon'ble Supreme Court held, at para 16, as under:

“16. Bearing in mind the aforesaid legal position, let us consider the averments and allegations made by the Respondent No. 1 in the Election Petition in which the election of the Appellant is sought to be challenged basically on two grounds: (1) that the Appellant has committed corrupt practice and (2) the result of the election in so far as it concerned the Appellant, was materially affected by the improper acceptance of his nomination. In short, the Respondent No. 1 has invoked Section 100(1)(b) and Section 100(1)(d)(i) of the Act, for declaring the election of the Appellant as void.”

26. Coming to the next submission of the learned counsel for the applicant that the election petition suffers from defects in verification of the pleadings and is not as per Order 6 Rule 15 of the CPC. The law on the subject is discussed as under.

The defect in verification of election petition or affidavit accompanying the election petition are curable defects and not fatal as has been held in the case of **H.D. Revanna Vs. G. Puttaswamy and Ors.**, (1999) 2 SCC 217.

27. The Hon'ble Supreme Court in the case of **Thangjam Arunkumar Vs. Yumkham Erabot Singh and Others**, 2023 DGLS (SC) 912, considering the law laid down in earlier case of **G. M. Siddeshwar Vs. Prasanna Kumar**, (2013) 4 SCC 776, wherein the three Judge Bench in *Siddeshwar (supra)* observed as under:

"12.

1. The principal question of law raised for our consideration is whether, to maintain an election petition, it is imperative for an election Petitioner to file an affidavit in terms of Order 6 Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1) of the Representation of the People Act, 1951. In our opinion, there is no such mandate in the Representation of the People Act, 1951 and a reading of P.A. Mohammed Riyas v. M.K. Raghavan, (2012) 5 SCC 511, which suggests to the contrary, does not lay down correct law to this limited extent.

2. Another question that has arisen is that if an affidavit filed in support of the allegations of corrupt practices of a returned candidate is not in the statutory Form 25 prescribed by the Conduct of Elections Rules, 1961, whether the election petition is liable to be

summarily dismissed. In our opinion, as long as there is substantial compliance with the statutory form, there is no reason to summarily dismiss an election petition on this ground. However, an opportunity must be given to the election Petitioner to cure the defect. Further, merely because the affidavit may be defective, it cannot be said that the petition filed is not an election petition as understood by the Representation of the People Act, 1951.

22. A plain reading of Rule 15 suggests that a verification of the plaint is necessary. In addition to the verification, the person verifying the plaint is "also" required to file an affidavit in support of the pleadings. Does this mean, as suggested by the learned Counsel for Siddeshwar that Prasanna Kumar was obliged to file two affidavits-one in support of the allegations of corrupt practices and the other in support of the pleadings?

23. A reading of Section 83(1)(c) of the Act makes it clear that what is required of an election Petitioner is only that the verification should be carried out in the manner prescribed in Code of Civil Procedure. That Order 6 Rule 15 requires an affidavit "also" to be filed does not mean that the verification of a plaint is incomplete if an affidavit is not filed. The affidavit, in this context, is a stand-alone document.

25. It seems to us that a plain and simple reading of Section 83(1)(c) of the Act clearly indicates that the requirement of an additional affidavit is not to be found therein. While the requirement of "also" filing an affidavit in support of the pleadings filed under Code of Civil Procedure may be mandatory in terms of Order 6 Rule 15(4) Code of Civil Procedure, the affidavit is not a part of the verification of the pleadings-both are quite different. While the Act does require a verification of the pleadings, the plain language of Section 83(1)(c) of the Act does not require an affidavit in support of the pleadings in an election petition. We are being asked to read a requirement that does not exist in Section 83(1)(c) of the Act.

37. A perusal of the affidavit furnished by Prasanna Kumar ex facie indicates that it was not in absolute compliance with the format affidavit. However, we endorse the view of the High Court that on a perusal of the affidavit, undoubtedly there was substantial compliance with the prescribed format. It is correct that the verification was also defective, but the defect is curable and cannot be held fatal to the maintainability of the election petition.

38. Recently, in Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788 the issue of a failure to file an affidavit in accordance with the prescribed format came up for consideration. This is what this Court had to say:

“ 28. ... The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election Petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election Petitioner by filing a proper affidavit when directed to do so.”

We have no reason to take a different view. The contention urged by Siddeshwar is rejected.”

28. The instant Election Petition is supported by verification at page 21, wherein it is stated on solemn affirmation that, what is stated in para Nos. I to III and V to XIV are true facts and also according to the true copies obtained by the Election Petitioner from

the office of Returning Officer, Chopda, Tq. Choda, District Jalgaon and from the office of Tahsil, Chopda, Tq. Chopda, District Jalgaon.

It is further stated in the verification that the contents of para Nos. IV, XV to XXIII are true facts based on true copies supplied by the Scheduled Caste, Scheduled Tribe Certificate Verification Committee, Nandurbar.

It is also stated in the verification that the contents of para Nos. XXIV to XXXIII are legal and factual submission / pleadings and para Nos. XXXIV to XLI are technical and the same are true and correct according to my knowledge and belief. The contents of para No. XLII are humble prayers.

The petition again is supported by an affidavit in support of the Election Petition titled as 'Form 25', at page 22, which also has further verification clause at page 35.

The petition is supported by a verification clause and also by an independent affidavit at page no.22 and there is sufficient compliance of the requirements of filing affidavit. The affidavit mentioned as "Form 25" in the title is merely superfluous and as an abundant precaution and in any event the verification affidavit at page no.21 & 35 clearly supports the petition in terms of Order 6 Rule 15 of the CPC, any defect thereto is also curable defect and the

petition cannot be dismissed outright as far as the defect in the affidavit is concerned.

29. Now, I deal with the issue raised by Mr. Deshmukh that once the declaration as contemplated in Part-III of 'Form 2B' of Rule 4 read with Sections 5(a) and 33(2) of the R.P. Act is made, there is no obligation to produce any document for the candidate to substantiate his claim as belonging to scheduled caste or scheduled tribe. The only obligation on the candidate contesting reserved seat is to make a declaration about his caste / tribe, which is notified as SC or ST in that State and nothing more is required in terms of Part-III of Form 2B above. Once the declaration is made in terms of the Part-III of Form 2B the Returning Officer has no powers to enter into an inquiry, whether a particular candidate contesting the reserved seat belongs to a particular caste or tribe as to reject his nomination. This submission of the learned counsel needs to be rejected for the following reasons.

Section 36(2)(a) of the R.P. Act obliges the Returning Officer to examine the nomination papers and to decide all objections, which may be made to any nomination either on such objection or on his own motion and to verify, if, the candidate is either qualified or is disqualified for being chosen to fill the seat

under any of the provisions that may be applicable namely Articles 84, 102, 173 and 191, Part-II of the R.P. Act and Section 4 and 14 of the Government of the Union Territories Act, 1963, or that there is failure to comply with any of the provisions of Sections 33 or 34 or that the signature of the candidate or the proposer in nomination paper is not genuine. The Returning Officer has to conduct summary inquiry to ascertain that the particular candidate is either qualified or disqualified in terms of the provisions of the Act and the Constitution of India.

30. The requirement of qualification of the candidate for the State Legislature is prescribed under Article 173 (C) of the Constitution of India i.e. a person shall not be qualified to be chosen to fill the seat in the legislature of the State unless he possess such other qualification as may be prescribed in that behalf by or under any law made by parliament.

31. Section 5(a) of the R.P. Act provides for qualification of membership of a state legislature assembly that, a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless; in the case of a seat reserved for the Scheduled Castes or Schedules Tribes of that State, he is a member of any of those

castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State.

32. Section 33(2) of the R.P. Act, provides that presentation of the nomination paper and requirement for a valid nomination in constituency where a seat is reserved, the candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying a particular caste or tribe of which he is a member and the area in relation to which he is a member and the area in relation to which that caste or tribe is a scheduled caste or, as the case may be, as scheduled tribe of the State.

33. The requirement of Section 33(2) of the R.P. Act is that the candidate has to make a declaration in the nomination form that he belongs to a particular scheduled caste or scheduled tribe as notified in the State. The Returning Officer under Section 36(2)(a) of the R.P. Act conducts a summary inquiry verifying that the said declaration is valid or invalid. The Returning Officer may call upon the candidate to provide some basic document (including a caste certificate or validity certificate, wherever available), on the basis of which the petitioner claims to belong to the scheduled caste or

scheduled tribe. The Returning Officer may also take into consideration, any adverse document produced by the Objectors that the candidate does not belong to a particular scheduled caste or scheduled tribe as notified in the State. The inquiry is summary in nature and may either accept or reject the nomination paper. Merely because no particular document is prescribed to ascertain the caste / tribe of the candidate contesting election to the scheduled caste / scheduled tribe seat, would not mean that no inquiry is contemplated under Section 36(2) of the R.P. Act to ascertain the scheduled caste / scheduled tribe status of the candidate.

34. I draw support from the Judgment of the Allahabad High Court, Bench at Lucknow, in the case of **Ajay Kumar Vs. Bhim Prasad Sonkar**, Election Petition No.1 of 2012, order dated 01.07.2016, at para 137, has observed as under

“ 137. Since this Court is of the opinion that petitioner has not been able to establish that he is 'Gond' and belongs to Scheduled Caste, he was not entitled to contest the election in view of Section 5 of the R.P. Act. As such, decision of Returning Officer on merits rejecting the petitioner's nomination was correct. Therefore, issue nos. 1 & 2 are decided as under:

"Petitioner's nomination was not improperly rejected as petitioner has failed to establish that he belongs to Scheduled Caste"

35. I also takes support from the Judgment of the Hon'ble Supreme Court in the case of **Ganu Ram Vs. Rikhi Ram Kaundal and others**, MANU/SC/0158/1984, wherein the Hon'ble Supreme Court has dealt with similar issue and has observed at para 4, as under:

“4....The first ground urged was that the nomination paper filed by the appellant was not in order inasmuch as it did not contain any declaration by the appellant specifying the particular caste of which he is a member and the area in relation to which the said caste has been declared to be a scheduled caste in the State. On this basis it was contended that the nomination paper of the appellant had been improperly accepted by the Returning Officer. ...”

36. The Hon'ble Supreme Court at para 8 in the fact situation had observed as under:

“8. It is manifest that the legislative purpose underlying Sub-section (2) of Section 33 of the Act is that when a nomination paper is filed in respect of a reserved seat in any constituency there must be a clear specification by the candidate of the particular caste or tribe to which he belongs and the area in relation to which that caste or tribe is a scheduled caste or scheduled tribe of the State. This requirement is fully satisfied in the present case because by producing the certificate of the Sub-Divisional Magistrate as an annexure to his nomination paper the appellant had clearly made it known that he was filing the nomination as a candidate belonging to the 'Lohar' caste, which is admittedly a scheduled caste in the entirety of the area of the State of Himachal Pradesh. It is also significant that no objection whatever was raised against the

nomination filed by the appellant at the time of scrutiny....”

37. Although, in the case of **Ganu Ram Vs. Rikhi Ram Kaundal and others** (*supra*), the candidate had not filed declaration in terms of Section 33(2) of the R.P. Act and had only filed caste certificate, the Hon’ble Supreme Court in the fact situation has held that even if the declaration as contemplated under Section 33(2) of the R.P. Act is not made the nomination filed can be validly accepted on the basis of the caste certificate. Thus, the Returning Officer in a given fact situation is entitled to look into the documents beyond the declaration under Section 33(2) of the R.P. Act to ascertain, whether the candidate belongs to scheduled caste or scheduled tribe category.

38. Similarly, in the case of **Satrucharla Vijaya Rama Raju Vs. Nimmaka Jaya Raju & others**, AIR 2006 SC 543, the Hon’ble Supreme Court in an appeal filed against the Judgment of the High Court in Election Petition upheld the Judgment of the High Court, whereby the High Court had declared that the returned candidate did not belong to the Scheduled Tribe category after considering the evidence placed on record.

39. The submission of the learned counsel for the applicant that only the declaration under Section 33(2) of the R.P. Act has to be seen and nothing else to be looked into at the time of verification of nomination is not the correct position of law. The Returning Officer is entitled to look into all these relevant documents that are produced at the stage of nomination, while conducting summary inquiry, whether a particular candidate belongs to scheduled caste or scheduled tribe.

40. This court in an Election Petition is also entitled to go into the question, whether the returned candidate, who has contested the election to the reserved seat belongs to scheduled caste or scheduled tribe as notified in the State and declare the election void if the returned candidate is found not belonging to the category under Section 100(1)(a) so also under Section 100(1)(d)(i)&(iv) of the R.P. Act. However, in an Election Petition, this court will entertain the inquiry, whether the returned candidate, who has contested the election to reserved seat belongs to scheduled caste or scheduled tribe as notified in the State only if some basic documents are produced with the Election Petition, which may, prima facie, indicate that the returned candidate does not belong to the scheduled caste or scheduled tribe category.

41. In view of this, the contentions of the applicants fail. The applications bearing number Application in EP No.9 of 2023 (Exhibit 11) filed by the returned candidate / respondent no.1 and Application in EP No.5 of 2024 (Exhibit 23) filed by respondent no.5, are rejected.

[ARUN R. PEDNEKER, J.]

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