

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
APPLICATION [L] NO.31043 OF 2023  
IN  
ELECTION PETITION NO.1 OF 2019**

|                                          |   |                  |
|------------------------------------------|---|------------------|
| Shri Sha Bra Dr. Jaisiddeshwar           | ] |                  |
| Shivacharya Mahaswamiji @                | ] |                  |
| Nurandswami Gurubasayya Hiremath         | ] |                  |
| Age: 63, Occ. Farmer,                    | ] |                  |
| R/o. Sansthan Hiremath, Gaudgaon (BU)    | ] |                  |
| Mukkam Post: Mauje Gaudgaon,             | ] |                  |
| Tal. : Akkalkot, Dist: Solapur – 413227. | ] | <b>APPLICANT</b> |

**IN THE MATTER BETWEEN:**

|                                |   |                   |
|--------------------------------|---|-------------------|
| Kirtikumar Dattatray Shivsaran | ] |                   |
| Age: 26, Occupation : Student  | ] |                   |
| Opp. Dr. Ambedkar Udyan,       | ] |                   |
| 41/187, New Budhwar Peth,      | ] |                   |
| Anand Chowk, Solapur,          | ] |                   |
| Maharashtra : 413 002.         | ] | <b>PETITIONER</b> |

V/s.

|                                          |   |                   |
|------------------------------------------|---|-------------------|
| Shri Sha Bra Dr. Jaisiddeshwar           | ] |                   |
| Shivacharya Mahaswamiji @                | ] |                   |
| Nurandswami Gurubasayya Hiremath         | ] |                   |
| Age: 63, Occ. Farmer,                    | ] |                   |
| R/o. Sansthan Hiremath, Gaudgaon (BU)    | ] |                   |
| Mukkam Post: Mauje Gaudgaon,             | ] |                   |
| Tal. : Akkalkot, Dist: Solapur – 413227. | ] | <b>RESPONDENT</b> |

a/w

## ELECTION PETITION NO.1 OF 2019

a/w

AEP [L] NO.26326 OF 2023

A/W

AEP [L] NO.28041 OF 2023

IN

## ELECTION PETITION NO.1 OF 2019

|                                |   |            |
|--------------------------------|---|------------|
| Kirtikumar Dattatray Shivsaran | ] |            |
| Age: 26, Occupation : Student  | ] |            |
| Opp. Dr. Ambedkar Udyan,       | ] |            |
| 41/187, New Budhwar Peth,      | ] |            |
| Anand Chowk, Solapur,          | ] |            |
| Maharashtra : 413 002.         | ] | PETITIONER |

V/s.

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| Shri Sha Bra Dr. Jaisiddeshwar           | ] |            |
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| Mukkam Post: Mauje Gaudgaon,             | ] |            |
| Tal. : Akkalkot, Dist: Solapur – 413227. | ] | RESPONDENT |

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Mr. S.R. Ganbavale a/w Mr. Kush M. Lahankar i/b Mr. Abhijit Patil,  
for Applicant.

Mr. Prakash Ambedkar i/b Mr. Sandeep Rankhambe, for  
Respondent.

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CORAM : PRITHVIRAJ K. CHAVAN, J.  
RESERVED ON : 4<sup>th</sup> JANUARY, 2024.  
PRONOUNCED ON : 1<sup>st</sup> APRIL, 2024.

ORDER:

1. This is an application moved by the applicant – returned  
candidate - Sha Bra Dr. Jaisiddeshwar Shivacharya Mahaswamiji @

Nurandswami Gurubasayya Hiremath under Order – VII, Rule - 11 (a) and (d) of the Code of Civil Procedure, 1908 (for short “C.P.C”) for rejection of the Election Petition on the ground that the petition neither discloses any cause of action nor is in compliance with the provisions of Section 81 (3) of The Representation of the People Act, 1951 (for short “Act”).

2. Applicant is the original respondent in the Election Petition whose election to 42<sup>nd</sup> *Solapur (SC) Lok Sabha* General Election Constituency, 2019 has been challenged by the respondent (original petitioner) by stating that the said election is void.

3. The applicant, upon receiving summons in the Election Petition filed a written statement accompanied with certain documents.

4. It is contended that the entire Election Petition hinges on a single allegation, namely the vulnerability of Electronic Voting Machines (EVMs) employed in general elections. The respondent-original petitioner contended that discrepancy of 132 votes existed between the votes cast and the votes counted.

5. The applicant contends that the respondent's Election Petition lacks specific allegations and primarily serves as a platform to address the issue of EMV usage in the electoral process. According to the applicant, this matter is akin to a Public Interest Litigation.

6. It is the specific contention of the applicant that there is non compliance of Section 81 of the Act. Section 81, sub-section (3) mandates that every Election Petition shall be accompanied by as many copies thereof as there are respondents mentioned in the Election Petition and every such copy shall be attested by the petitioner with his own signature to be a true copy of the petition. The applicant, therefore, states that till this date, the respondent has failed to provide a copy of the original Election Petition and, instead, has served an amended version. Even the amended Election Petition lacks attestation by the respondent under his own signature to confirm its accuracy as a true copy of the original petition. Neither the respondent nor his legal Counsel have affixed their signatures to the Election Petition or its annexures as "True Copy". Original copies of the Election Petition were never provided to the applicant. Copies of the amended Election Petition also lack original signature of the respondent anywhere on the Election

Petition or its annexures. It is further contended that non compliance or failure to attest the copies under his original signature as “True Copy” is fatal in the maintainability of the Election Petition. Election Petition, on this ground, alone is liable to be rejected under Section 86 (1) of the said Act.

7. It is further contended that the Election Petition is liable to be dismissed on the ground of non joinder of necessary parties as contemplated under Section 82 of the Act since, admittedly, the respondent has not joined all the candidates who contested the said election of 42<sup>nd</sup> *Solapur Lok Sabha* General Constituency, 2019.

8. It is contended that cause title of the Election Petition admits that the respondent is an ordinary resident of New *Budhwar Peth, Anand Chowk, District Solapur*. However, the entire Petition is devoid of any pertinent information as to how the respondent has been aggrieved by the election of the applicant as a Member of Parliament from the 42<sup>nd</sup> *Solapur Lok Sabha* General Elections in 2019. Additionally, the Election Petition fails to provide any details as to whether the respondent has

exercised his right to vote in *Solapur* during the said General Elections. The Election Petition is liable to be dismissed on this count also.

9. The applicant further contends that the Election Petition is also liable to be dismissed on the ground that there are no averments as to whether the respondent exercised his right to vote in *Solapur* during the said general elections. The applicant contends that the respondent averred non compliance of the provisions of Section 65 of the Act and corrupt practice by the Election Commission of India as well as Returning Officer thereby benefiting the applicant, however, no material facts or particulars have been pleaded in respect of the aforesaid allegations. He would argue that material fact herein is the EVM Machine. The Election Petition deserves to be dismissed for non disclosure of any cause of action for filing the Election Petition as contemplated under Order – VII, Rule – 11 (a) of the C.P.C.

10. According to the applicant, the Election Petition notably lacks any mention or substantive discourse concerning the concept of “Corrupt Practice”, which holds significance in the context of

Election disputes, as defined under Sections 1, 2 and 3 of the Act. The Election Petition also lacks details of any alleged corrupt practice, in the sense, the respondent has not addressed or elucidated upon any potential instances or allegations of conduct that might fall within the ambit of corrupt practices, as defined and prescribed by the statutory provisions under the Act. Even if paragraphs 4 to 11 are taken into consideration at its face value, no cause of action is disclosed, much less, grounds under Section 100 of the Act. It is contended that there is not a single material fact or particular pleaded by the respondent in support of his grievance set out in paragraph 3 of the Election Petition, or for that matter, anywhere in the Election Petition. The Election Petition, therefore, deserves to be dismissed.

11. According to the applicant, mere non compliance of the provisions of the Act cannot serve as a ground for filing an Election Petition unless and until it is specifically pleaded that the election's outcome, as it pertains to a returned candidate, has been materially affected. The applicant states that upon reviewing the Election Petition, it is evident that the respondent has not pleaded anywhere in the petition that election's result, concerning the applicant, has

been materially affected due to non compliance with the provisions of Section 65 of the Act. The respondent has failed to plead even a single material fact or particular about alleged corrupt practice on the part of the Election Commission of India and the Returning Officer. There is even no pleading in respect of a single material fact or particular about any benefit received by the applicant. None of the allegations of corrupt practice alleged by the respondent falls within the purview of Section 123 of the said Act. It has not been pointed out under which ground of Section 100 the allegations of corrupt practice fall.

12. It is further stated that an affidavit filed by the respondent is not in the prescribed form as provided by the Act and the rules framed thereunder in support of the allegations of corrupt practice. Affidavit filed by the respondent is not an affidavit in the eyes of law and, hence, failure to file an affidavit in requisite form, both in form and substance, is fatal to the maintainability of the Election Petition.

13. Paragraphs 5 to 7 of the Election Petition do not contain any single material fact or particular about alleged corrupt

practice falling within the purview of Section 123 of the said Act.

14. There is no averment in the Election Petition establishing the applicant's status as an "Elector" as envisaged under Section 21 of the Act.

15. Amendment carried out by the respondent in the Election Petition by adding paragraphs 31 (A) to 31 (D) is without any order of this Court granting leave to amend the Petition. This is in breach of Rule – 150 of the Bombay High Court (Original Side) Rules. The applicant states that there is non compliance of mandatory provisions of Section 81 (3) of the Act.

16. The applicant has placed reliance on a judgment of the Supreme Court in case of **Dahiben Vs. Arvind Bhai, 2020 (7) Supreme Court Cases, 366** wherein it is held that powers under Order VII - Rule 11 of C.P.C. may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing the summons to the Defendants, or before conclusion of the trial. The plea that once issues are framed, the matter may not necessarily

go to trial cannot be accepted. The applicant has, therefore, prayed for rejection of the Election Petition.

17. In his reply, the respondent has raised several objections and grounds to reject the application under Order-VII, Rule-11 of the C.P.C. It is contended that the Returning Officer appointed by the Election Commission of India is entrusted with the responsibility of safe custody of the Electronic Voting Machines. Custody of the Electronic Voting Machines is also the responsibility of the Returning Officer/District Election Officer. The Returning Officer of Lokshabha Constituency of 42<sup>nd</sup> Solapur admitted in his Affidavit-in-Reply to the Election Petition that there is a difference in the polled votes and the counted votes. Non tallying of votes is in contravention of Section 65 of the Act. It is contended that the applicant has not approached this Court with clean hands as application seeking rejection of the Election Petition under Order-VII, Rule-11 of the C.P.C itself is not tenable since despite service of the Election Petition upon the applicant on 10<sup>th</sup> July, 2019, a reply came to be filed on 8<sup>th</sup> August, 2023 i.e nearly after 1490 days. In view of Order-VIII, Rule-1 of the C.P.C, written statement is to be filed within 30 days of receipt of summons. The Court may extend

time by 90 days. As such, the application which has been filed after such a long delay needs to be rejected.

18. The respondent contends that the declaration of the election result without verifying whether the polled votes and counted votes are equal amounts to subversion of the rules and directions issued by the Election Commission under Article 324 of the Constitution and is the crux of the present Election Petition. There is non compliance of Section 65 and 66 of the Act as well as Rules and directions of the Election Commission. It is not true that the respondent has not complied with the requirement of Section 86 (1) of the Act. Contention of the applicant as regards non compliance of Section 81 (3) of the Act is misleading and tantamount to casting aspersion on the office of this Court. The respondent contends that he had filed six photo copies of the Election Petition before Master and Prothonotary (Judicial) of this Court. Each copy is attested by the respondent under his own signature to be a true copy. The duly attested copies have been served upon the applicant through Registered Post Acknowledgment Due. The allegations levelled by the applicant are, thus baseless and frivolous.

19. The respondent has referred sub-clause 15.30. The Election Commission of India has framed rules. The said rules provide that if there is a difference between polled votes and counted votes then the matter should be referred to the Election Commission of India and after receiving the directions from the Election Commission of India, result shall be declared as per its directions. Thus, averments set out in the Election Petition, according to the respondent, are quite relevant.

20. Material fact and legal corruption mentioned by the respondent in the Election Petition falls within the purview of Section 100, sub-section-1 (d) (ii) and (iv) of the Act. The respondent has referred Rule - 986 of the Bombay High Court Original Side Rules as well as the rules framed in regard to election petitions i.e Rule – 8 of the Election Petition Rules.

21. It is further contended that Sections 86, 108 and 116 of the Act lay down requirement for dismissal of the Election Petition. Once such provision is enacted in the Act, provisions of the C.P.C cannot be applied. The respondent has, therefore, prayed for dismissal of the application with costs.

22. I heard Mr. Ganbavale, learned Counsel for the applicant as well as Mr. Ambedkar, learned Counsel for the respondent at a considerable length.

23. The salient features highlighted by Mr. Ganbavale in support of his contention of rejection of the Election Petition are multiple, however, the main contention is that not only the Election Petition needs to be rejected in view of Order-VII, Rule-11 (d) of the C.P.C but also for non compliance of Sections 65, 82 and 86 (1) of the Act as well as for want of grounds which are required to be stated in view of Section 100 (1) (b) of the said Act. He would argue that no material facts or particulars are pleaded in respect of the allegations of corruption by the respondent. There is non compliance of Rule-94-A of the Conduct of Election Rules, 1961.

24. Mr. Ganbavale would further argue that there are several averments in the Election Petition which are factually incorrect, meaning thereby, the respondent had never contested the election and, therefore, the Election Petition cannot be continued on that ground also. He would argue that it is not known whether the respondent was an elector or a candidate for the elections of

Loksabha Constituency of 42nd *Solapur* General Elections which were held on 29<sup>th</sup> April, 2019. Certain bald statements are made in the Election Petition *sans* affidavit as per the requirement of Form No.25. Mr. Ganbavale has taken me through the contents of the Election Petition, threadbare, to highlight various lacunae and as such, prayed for dismissal of the Election Petition. In support of his contention, Mr. Ganabavale has placed reliance upon following three decisions;

- (a) **Eldeco Housing and Industries Limited Vs. Ashok Vidyarthi and others, (2023 SCC Online SC 1612);**
- (b) **Kamala and others Vs. K.T. Eshwara SA and others;**
- (c) **Dahiben Vs/ Arvindbhai Kalyanji Bhanusali through Legal Representatives, (2020) 7 SCC 366.**

in regard to Order-VII, Rule-11(d) of the C.P.C.

25. Mr. Ambedkar, learned Counsel for the respondent vehemently argued that the Election Petition involves a very vital point of national importance wherein the authenticity of Electronic Voting Machines is in question. He would invite my attention to

Section 100 (1) (d) (ii) and (iv) and 100 (2) (d) of the Act by contending that election of the aforesaid Constituency had been materially affected by corrupt practices committed in the interest of the applicant – returned candidate. Apart from the aforesaid fact, there was non compliance of the provisions of the Constitution as well as as the Act.

26. While countering the arguments of Mr. Ganbavale, Mr. Ambedkar would contend that the Election Petition contains concise statement of all the material facts on which it relies. Particulars of corrupt practices have been averred in the petition, more particularly, in paragraphs 5 and 6. Mr. Ambedkar would invite my attention to clause (b) of Article 329 of the Constitution of India which bars jurisdiction of Court in election matters. He would argue that it is not the statutory but a constitutional right to challenge the Election and, therefore, application as moved by the applicant – returned candidate belatedly, is only in order to thwart the Election Petition.

27. As far as cause of action is concerned, learned Counsel would submit that since there is breach of duty not only on the part of the

the Election Commission but also on the part of the Returning Officer which, in fact, is a cause of action to file the present Election Petition. He would argue that the Returning Officer committed breach of the duty in not referring the matter to the Election Commission but, declared the result and, therefore, it gave rise to a cause of action. Mr. Ambedkar would, however, submit that there are no specific allegations of corrupt practices. According to him, act of the Election Commission being “partisan” amounts to corrupt practice.

28. The learned Counsel would further contend that the written statement has not been filed within 90 days as it has been delayed by a considerable period and, therefore, it cannot be heard to say that the Election Petition needs to be rejected under Order-VII, Rule – 11 (d) of the C.P.C. It is submitted that there are no averments in the written statement as regards non mention of material facts in the Election Petition. Mr. Ambedkar would argue that since the evidence of Returning Officer has already been recorded on 22<sup>nd</sup> August, 2023 and in his evidence, the Returning Officer admitted difference of votes being “technical mistake”, it would not be appropriate to reject the Election Petition at this stage. The Counsel

has emphasized that will of the people has not been reflected in the aforesaid election but it was the will of the Electronic Voting Machines which is against the principles of democracy. Entire exercise of the applicant, according to Mr. Ambedkar, is only to stall the proceedings with an ulterior motive, especially when a witness has already been examined. He submits that in view of Rule – 9 (Appendix - II) of the High Court Original Side Rules, there is due compliance of Sections 83 and 86 of the Act.

29. Learned Counsel has invited my attention to Rule-11 of the High Court Original Side Rules *vis-a-vis* Section 97 of the Act which contemplates recrimination when seat claimed. The Counsel has, therefore, prayed for rejection of the application.

30. Before advertng to the averments in the Election Petition, it would be expedient to have a quick look at the provisions of Order-VII, Rule-11 (a) and (d) of the C.P.C. The underlying object of Order-VII, Rule – 11 (a) and (d) is that if in a suit, no cause of action is disclosed, or the suit is barred by any law, the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit or in the petition so that further judicial time is not wasted

if on the minute reading of the petition it is found that the same is found without any merit and does not disclose any right to sue, then the Court would be justified in exercising powers under the said provisions. It is equally true that the powers under Order-7, Rule-11 can be exercised by the Court at any stage of the suit either before registering the plaint, or before issuing summons to the defendant/respondent or before conclusion of the trial. Learned Counsel for the applicant has, therefore, rightly placed useful reliance upon a latest judgment of the Supreme Court in the case of **Eldeco Housing and Industries Limited Vs. Ashok Vidyarthi and others**,<sup>1</sup>. The Supreme Court has drawn support from its earlier decisions while discussing the scope of Order-VII, Rule-11 of the C.P.C.

31. Mr. Ganbavale has strenuously urged to dismiss the Election Petition on the ground that not only it does not disclose cause of action or a triable issues but there is non compliance of various sections of the Act viz: Section 65, 81 (3) and 82. Section 82 of the Act reads thus;

***“82. Parties to the petition.- A petitioner shall join as respondents to his petition -***

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<sup>1</sup> (2023) SCC Online SC, 1612.

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

*(b) any other candidate against whom allegations of any corrupt practice are made in the petition”.*

32. Admittedly, the respondent has not joined all the candidates who contested the said Election of 42nd *Solapur* (SC) Lok Sabha Constituency, 2019 which is mandatory and, therefore, the Election Petition can be dismissed in view of Section 86 of the said Act. Mr. Ganbavale has invited my attention to the photostat copy of final result of the election to the house of the people from 42- *Solapur* (SC) Parliamentary Constituency. Final result sheet indicates 13 candidates who were in the fray. Applicant – Sha Bra. Dr. Jai Siddeshwar Shivachary Mahaswamiji secured highest number of votes. Admittedly, except respondent’s candidate viz: Prakash Yashwant Ambedkar, none of other candidates who contested the said election have been joined for the reasons best known to the respondent. Section 86 provides that the High Court shall dismiss

an election petition which does not comply with the provisions of section 81 or section 82 or section 117 of the Act. There is no satisfactory answer to this argument of the learned Counsel for the applicant. The Election Petition, thus, can be dismissed in view of section 86 of the Act.

33. It is the contention of Mr. Ganbavale that the title clause of the Election Petition reveals that respondent is an ordinary student residing opposite Dr. Ambedkar Udyan, 41/187, *New Budhwar Peth, Anand Chowk, Solapur*. A bare look at the Election Petition reveals no information as to how and in what manner, the respondent is aggrieved by the aforesaid general election of the applicant as a Member of Parliament from 42<sup>nd</sup> Solapur General Elections, 2019. The Election Petition is *sans* any averments as to whether the respondent exercised his right to vote during the said election. Section 81 of the Act reads thus;

***“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 [sub-section (1) of section 100 and section 101 to the [High Court] by any candidate at such election or any elector [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 the dates of their election are different, the later of those two dates].*

34. It is apparent from the plain language used in Section 81 (1) that when an election is called in question in an Election Petition, it should contain one or more grounds specified in sub-section (1) of Section 100 and section 101 by any candidate at such election or any elector. Admittedly, the respondent was not a candidate. It is not even shown that he was an “Elector”, meaning thereby, he had entitled to vote at the election to which the Election Petition relates, whether he has voted at Election or not. There is absence of even this important aspect in the Election Petition as to whether the respondent had voted at such election or not. The Election Petition, thus, can also be dismissed in view of Section 86 of the Act.

35. Interestingly, before amending the petition as late as on 15<sup>th</sup> December, 2023, it has been contended by the respondent that he had duly contested the election which is factually incorrect. Subsequently, petition came to be amended and the word “campaigned” has been substituted by deleting the words “he had duly contested”. This itself indicates that the earlier

averment as regards contesting aforesaid election was factually incorrect.

36. Mr. Ganbavale has also invited my attention to one more interesting aspect of this case wherein the candidate on whose behalf the election petition has been filed himself is an arguing Counsel namely Mr. Prakash Ambedkar. I will not venture into that aspect as the moot point in this case is tenability of the petition in view of Order-VII, Rule-11 of the C.P.C.

37. The next important point which needs to be seen is as to whether the Election Petition, in its entirety, depicts any material facts or particulars pertaining to the alleged non compliance of mandatory provisions and directions issued under Section 65 of the Act as well as any material fact's relating to the allegation of corrupt practice by the Election Commission of India and the returning Officer resulting into benefiting the returned candidate.

38. Section 83 of Act reads as under;

***“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 as 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:*

*[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]”.*

39. It would be interesting to see as to whether the Election Petition contains a concise statement of material facts as regards alleged non compliance of mandatory provisions and/or corrupt practices and whether full particulars of any such corrupt practices have been put forth or averred in the Election Petition?

40. A proviso to Section 83 (1) is important, in the sense, when there are allegations of any corrupt practices, the Election Petition

shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practices and the particulars thereof. Mandate of stating material and comprehensive particulars of any alleged corrupt practices, including a full statement as well as the names of the parties alleged to have committed such corrupt practice/s, along with date and place of the alleged commission of each such practice is essential. The Election Petition notably lacks any mention or substantive disclosure consisting the details of “corrupt practices” which holds significance in the context of election disputes as defined under Section 123 of the Act.

41. Learned Counsel has not been able to point out under which of the clauses of section 123 of the Act alleged corrupt practices have been committed by the Election Commission of India and the Returning Officer.

42. The respondent has not elucidated upon any potential instances or allegations of conduct that might fall within the ambit of the ‘corrupt practice’ as defined and prescribed by the aforementioned statutory provisions. It was incumbent upon the

respondent, in accordance with the required requirements and precedents, to provide comprehensive examination and substantiation of any such allegations or implications of “corrupt practices” to establish a valid cogent Election Petition.

43. A conjoint reading of paragraph 4 to 11 of the Election Petition would indicate no cause of action, much less, any grounds as stipulated in Section 100 of the Act. Mr. Ambedkar, learned Counsel for the respondent, however, tried to convince me by inviting my attention to clause (1) (d), (ii) and (iv) of Section 100 by contending that the Election Petition is based on these points. Section 100 (1) (d) provides that subject to the provisions of subsection (2) if the High Court is of the opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected, (ii) by any corrupt practice committed in the interests of the returned candidate by any agent other than his election agent, and clause (iv) contemplates that by any non compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act. There are no averments in the Election Petition, as already stated, as regards any corrupt practices committed in the interest of the returned candidate either

by the Election Commission of India or Returning Officer. It is not the case of the respondent that any agent other than the election agent of the applicant has committed any corrupt practice. I am afraid, I cannot buy arguments of Mr. Ambedkar that the material facts of the alleged corrupt practice have been incorporated and pleaded in paragraphs 5 and 6 of the Election Petition which is reproduced hereinbelow;

*“5. In the Loksabha constituency of the **42 Solapur Parlmanetary Constituency** there are 18,50,002 of registered voters Of which 10,81,386 polled their votes. The copy of the polled votes given by Returning Officer is enclosed as EXHIBIT “A”. In normal circumstances the number of polled votes should tally with the counted votes. Petitioner’s candidates fared 1,70,007 votes, whereas the Respondent sponsored by BJP fared 5,24,985 votes. However the counted are votes 10,81,254. A copy of the counted votes 23/05/2019 as provided by Returning Officer is enclosed as EXHIBIT “B”. The petitioner says that the counted voted does not match and 132 additional votes, this is serious discrepancy in the grand total. There are 132 votes which are more than the votes polled.*

*6. That the certificate u/r 66 in form 22 came to be issued illegally in favour of the Respondent without complying with the*

*mandatory requirements under the law which is absolutely illegal and is void”.*

44. In a well-known judgment in the case of **Samant N. Balkrishna and another Vs. George Fernandez and others**,<sup>2</sup> the Hon’ble Supreme Court has enunciated the scope of Section 83 of the Act on this aspect. Every fact which shall have to be proved to formulate a complete cause of action is a material fact. In essence, material facts are the entire bundle of facts which would constitute a cause of action and which facts would have to be established by the petitioner to be entitled to the relief claimed. The difference between material facts and material particulars is explained by the Hon’ble Supreme Court in the aforesaid judgment. The relevant paragraph is extracted below;

*“29. Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of People Act. Here we have to consider sections 81, 83 and 84 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101. That as we have shown above*

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<sup>2</sup> (1963) 3 SCC 238

*creates the substantive right. Section 83 then provides that the election-petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also 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. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making*

*the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficiency of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be co-related to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of*

*action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. This distinction is brought out by the provisions of section 86 although the penalty of dismissal is taken away. Sub-section (5) of that section provides:*

*“(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.”*

*The power of amendment is given in respect of particulars but there is a prohibition against an amendment “which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition”. One alleges the corrupt practice in the material facts and they must show a complete cause of action. If a petitioner has omitted to allege a corrupt practice, he cannot be permitted to give particulars of the corrupt practice. The argument that the latter part of the fifth sub-section is directory only cannot stand in view of the contrast in the language of the two parts. The first part is enabling and the second part*

*creates a positive bar. Therefore, if a corrupt practice is not alleged, the particulars cannot be supplied. There is, however, a difference of approach between the several corrupt practices. If for example the charge is bribery of voters and the particulars give a few instances, other instances can be added; if the charge is use of vehicles for free carriage of voters, the particulars of the cars employed may be amplified. But if the charge is that an agent did something, it cannot be amplified by giving particulars of acts on the part of the candidate or vice versa. In the scheme of election law there are separate corrupt practices which cannot be said to grow out of the material facts related to another person. Publication of false statements by an agent is one cause of action, publication of false statements, by the candidate is quite a different cause of action. Such a cause of action must be alleged in the material facts before particulars may be given. One cannot under the cover of particulars of one corrupt practice give particulars of a new corrupt practice. They constitute different causes of action”.*

The Election Petition is *dehors* material facts and full particulars of the alleged corrupt practices.

45. Whenever there are allegations of corrupt practice in the petition, it is mandatory to accompany the petition with an affidavit

prescribed in a particular form indicating the allegations of such corrupt practice and particulars thereof. Rule 94A of the conduct of Election Rules provides that the affidavit referred to in the proviso of sub-section 1 of Section 83 shall be sworn before the Magistrate First Class or a Notary or Commissioner and shall be in form No.25. There is no such affidavit sworn by the respondent, much less, in form No.25 as mandated in proviso to section 83, sub section (1) of the Act.

46. Mr. Ambedkar, in order to buttress his contention has pressed into service a few decisions, however, he emphasized upon a decision of the Supreme Court in the case of **Kanimozhi Karunanidhi Vs. A. Santhana Kumar and others**<sup>3</sup>. There can be no argument that a right to elect, though fundamental it is to democracy, is neither a fundamental right nor a common law right; it is purely a statutory right. Similarly, right to be elected and the right to dispute an election are also statutory rights. Since they are statutory creations, they are subject to statutory limitations. An Election Petition is not an action at common law, nor in equity. It is a special jurisdiction to be exercised in accordance with the statute

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creating it. The concept familiar to common law and equity must remain stranger to election law unless statutorily embodied. It is equally true that the Representation of the People Act is a complete and self-contained Code within which must be found any rights claimed in relation to an election dispute.

47. Mr. Ambedkar would invite my attention to paragraphs 23 to 27 of the aforesaid judgment to buttress his point as regards material facts on which the Election Petition is related;

*“23. The law so far developed and settled by this Court with regard to the non-compliance of the requirement of Section 83(1)(a) of the EP Act, namely - "an Election petition must contain a concise statement of material facts on which the petitioner relies", is that such noncompliance of Section 83(1)(a) read with Order VII, Rule 11, CPC, may entail dismissal of the Election Petition right at the threshold. "Material facts" are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the Election petition on the basis of the facts pleaded in the petition. They must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure 1908.*

*Material facts would include positive statement of facts as also positive statement of a negative fact.*

**24.** *A Three-Judge Bench in Hari Shanker Jain vs. Sonia Gandhi (supra) had an occasion to deal with Section 83(1)(a) of the RP Act and the Court dismissed the Election petition holding that the bald and vague averments made in the election petitions do not satisfy the requirements of pleading "material facts" within the meaning of Section 83(1)(a) of the RP Act read with the requirements of Order VII Rule 11 CPC. It was observed in paras 23 and 24 as under: -*

*"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238 : (1969) 3 SCR 603: (AIR 1969 SC 1201)], Jitendra Bahadur Singh v. Krishna Behari [(1969) 2 SCC 433: (AIR 1970 SC 276)]. Merely quoting the*

*words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737: (AIR 1999 SC 2044)] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.*

*24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."*

*25. In case of Mahadeorao Sukaji Shivankar vs. Ramaratan Bapu & Ors. (2004 (7) SCC, 181: AIROnline 2004 SC, 585) a Three-Judge Bench of this Court again had an occasion to deal with the issues as to what would constitute "material facts" and what would be the consequences of not stating the "material facts" in the Election petition, as contemplated in Section 83(1)(a) of the RP Act, and the Court observed as under:*

*"6. Now, it is no doubt true that all material facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by clause (a) of Rule 11 of Order 7 of the Code. The question, however, is as to whether the petitioner had set out material facts in the election petition. The expression "material facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts are 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 existence of cause of action or defence are material facts and must be stated in the pleading of the party.*

*7. But, it is equally well settled that there is distinction between "material facts" and "particulars". Material facts are primary or basic facts which must be pleaded by the petitioner in support of the case set up by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise."*

*26. In Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar, 2009 (9) SCC, 310: (2009 AIR SCW, 6812) this Court has discussed number of earlier decisions on the issue as to when the Election petition could be dismissed summarily if it does not furnish the cause of action in exercise of powers under the Code of Civil Procedure read with Section 83 of the R.P. Act.*

*"50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.*

*51. This Court in Samant N. Balkrishna case [(1969) 3 SCC 238 :(AIR 1969 SC 1201)] has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511: (AIR 1976 SC 744 )] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are*

*essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1) (a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.*

52. In *V.Narayanaswamy v. C.P. Thirunavukkarasu* [(2000) 2 SCC 294: (AIR 2000 SC 694)] this Court reiterated the legal position that an election petition is liable to be dismissed if it lacks in material facts. In *L.R. Shivaramagowda v. T.M. Chandrashekar* [(1999) 1 SCC 666 : (AIR 1999 SC 252)] this Court again considered the importance of pleadings in an election petition alleging corrupt practice falling within the scope of Section 123 of the Act and observed as under: (SCC p. 677, para 11)

*"11. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between 'material facts' and 'material particulars'. While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment".*

53. In *Udhav Singh* case [(1977) 1 SCC 511 : AIR 1976 SC 744)] this Court observed as under: (SCC pp. 522-23, para 41)

*"41. Like the Code of Civil Procedure, this section also envisages a distinction between 'material facts' and 'material particulars'. Clause (a) of sub-section (1) corresponds to Order 6 Rule 2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between 'material facts' and 'material particulars' is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."*

*54. In H.D. Revanna case [(1999) 2 SCC 217 : AIR 1999 SC 768]] the appeal was filed by the candidate who had succeeded in the election and whose application for dismissal of the election petition in limine was rejected by the High Court. This Court noticed that it has been laid down by this Court that non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. In Harmohinder Singh Pradhan v. Ranjeet Singh Talwandi [(2005) 5 SCC 46 : (AIR 2005 SC 2379)] this Court observed thus: (SCC p. 51, para 14)*

*"14. Necessary averment of facts constituting an appeal on the ground of 'his religion' to vote or to refrain from voting would be material facts within the meaning of clause (a) of sub-section (1) of Section 83 of the Act. If such material facts are missing, they cannot be supplied later on, after the expiry of period of limitation for filing the election petition and the plea being deficient, can be directed to be struck down under Order 6 Rule 16 of the Code of Civil Procedure, 1908 and if such plea be the sole ground of filing an election petition, the petition itself can be rejected as not disclosing a cause of action under clause (a) of Rule 11, Order 7 of the Code."*

*55. In Harkirat Singh v. Amrinder Singh [(2005) 13 SCC 511 : (AIR 2006 SC 713)] this Court again reiterated the distinction between "material facts" and "material particulars" and observed as under: (SCC p. 527, paras 51-52)*

*"51. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.*

*52. All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."*

*56. In Sudarsha Avasthi v. Shiv Pal Singh [(2008) 7 SCC 604 : (AIR 2008 SC 2724)] this Court observed as under: (SCC p. 612, para 20)*

*"20. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose."*

*57. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of "material facts" on which the petitioner relies.*

*58. There is no definition of "material facts" either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to*

*formulate a complete cause of action should be termed as "material facts". All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. "Material facts" in other words mean the entire bundle of facts which would constitute a complete cause of action. This Court in Harkirat Singh case [(2005) 13 SCC 511 : (AIR 2006 SC 713)] tried to give various meanings of "material facts". The relevant para 48 of the said judgment is reproduced as under: (SCC pp. 526-27)*

*"48. 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 its 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."*

*27. In Ram Sukh vs. Dinesh Aggarwal (AIR 2010 SC 1227) (supra), this Court again while examining the maintainability of Election petition filed under Section 100(1)(d)(iv) of the RP Act, elaborately considered the*

*earlier decisions and observed that it was necessary for the election petitioner to aver specifically in what manner the result of the election in so far as it concerned the returned candidate was materially affected due to omission on the part of the Returning Officer. The Court in the said case having found that such averments being missing in the Election petition, upheld the judgment of the High Court/Election Tribunal rejecting the Election petition at the threshold. The Court observed in paras 14 to 21 as under: -*

*"14. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238 : AIR 1969 SC 1201)]. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., inter alia, laid down that:*

*i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;*

*(ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;*

*(iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;*

*(iv) material facts and particulars are distinct matters - material facts will mention statements of fact and particulars will set out*

*the names of persons with date, time and place; and*

*(v) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.*

*15. At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice the distinction between the phrases "material facts" as appearing in clause (a) and "particulars" as appearing in clause (b) of subsection (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that the opposite party is not taken by surprise.*

*16. The distinction between "material facts" and "particulars" and their requirement in an election petition was succinctly brought out by this Court in Virender Nath Gautam v. Satpal Singh [(2007) 3 SCC 617 : AIR 2007 SC 581)] wherein C.K. Thakker, J., stated thus: (SCC pp. 631-32, para 50)*

*"50. There is distinction between facta probanda (the facts required to be proved i.e. material facts) and facta probantia (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.*

*17. Now, before examining the rival submissions in the light of the aforesaid legal position, it would be expedient to deal with another submission of the learned counsel for the appellant that the High Court should not have exercised its power either under Order 6 Rule 16 or Order 7 Rule 11 of the Code to reject the election petition at the threshold. The argument is twofold viz.:*

*(i) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition, and*

*(ii) since Section 83 does not find a place in Section 86 of the Act, rejection of the petition at the threshold would amount to reading into sub-section (1) of Section 86 an*

*additional ground. In our opinion, both the contentions are misconceived and untenable.*

*18. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail.*

*19. Coming to the second limb of the argument viz. absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer res integra. A similar plea was negatived by a three-Judge Bench of this Court in Hardwari Lal v. Kanwal Singh [(1972) 1 SCC 214 : (AIR 1972 SC 515)], wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said: (SCC p. 221, para 23)*

*"23. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed."*

*20. The issue was again dealt with by this Court in Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315 : (AIR 1986 SC 1253)] . Referring to earlier pronouncements of this Court in Samant N. Balkrishna [(1969) 3 SCC 238] and Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511] wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in Azhar Hussain case [1986 Supp SCC 315 : (AIR 1986 SC 1253)] 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.*

*21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of nondisclosure of material facts as stipulated in Section 83(1) (a) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(d)(iv). For the sake of ready reference, the said provision is extracted below:*

*"100. Grounds for declaring election to be void.-*

*(1) Subject to the provisions of sub-section*

*(2) if the High Court is of opinion-*

*\*\*\**

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

*\*\*\**

*(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."*

*It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected."*

48. It is surprising as to how the ratio laid down by the Supreme Court in **Kanimozhi Karunanidhi** (supra) would be of any assistance to the learned Counsel. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of mandate of Section 83 (1) (a). The Election Petition, therefore, can be dismissed as it suffers from such vice. The Supreme Court has drawn support from various previous decisions in order to define “material facts” and “cause of action” as well as distinction between “material facts” and “particulars”.

49. In the case of **Harkirat Singh Vs. Amrinder Singh**<sup>4</sup>, the Supreme Court against reiterated the distinction between “material facts” and “material particulars”. It would be advantageous to extract paragraph 58 of the judgment which reads thus;

*58. There is no definition of "material facts" either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to formulate a complete cause of action should be termed as "material facts". All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. "Material facts" in other*

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4 (2005) 13 SCC 511

*words mean the entire bundle of facts which would constitute a complete cause of action. This Court in Harkirat Singh case [(2005) 13 SCC 511 : (AIR 2006 SC 713)] tried to give various meanings of "material facts". The relevant para 48 of the said judgment is reproduced as under: (SCC pp. 526-27)*

*"48. 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 its 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."*

50. On one hand, learned Counsel for the respondent submits that in view of the averments in paragraph 3 of the Election Petition, Election Commission of India and the Returning Officer

have indulged in serious corrupt practice for the benefit of the Returned candidate, however, while arguing the matter, he submits that there was a breach of duty on the part of the Election Commission of India and the Returning Officer which gave rise to a cause of action to file the Election Petition which has nothing to do with the alleged corrupt practices. This is incomprehensible. No sane man would accept such argument.

51. Mr. Ambedkar would emphasize that breach of the duty on the part of the Election Commission of India and the Returning Officer in not referring the matter to the Election Commission itself gave rise to a cause of action. According to him, material fact in this case is Electronic Voting Machines (EVM). I have already discussed the aspect herein before and, therefore, it is needless to reiterate the same. Merely because the matter has proceeded further by recording evidence of Returning Officer who had already admitted certain material facts in his affidavit, does not *ipso facto* mean that the application under Order-VII, Rule-11 is filed with an ulterior motive at a belated stage only to stall the proceedings further. As already stated, such an application can be made at any stage of the trial.

52. Learned Counsel for the respondent has invited my attention to Section 97 of the Act and Rule 9 of the Rules framed by this Court in regard to Election Petition under the Act. He would argue that the provisions of Order-VII, Rule-11 of the C.P.C would not apply to the Election petitions in view of Rule-9 of the High Court Original Side Rules. According to him, this Court has already presumed that there is due compliance of Sections 83 and 86 of the Act. Provisions of C.P.C would attract only in case there is some grey area. Since the application under Order-VII, Rule-11 has not been filed within 14 days, the same is not tenable. The arguments do not stand to reason in view of the decision in the case of **Kanimozhi** (supra) pressed by the learned Counsel for the respondent himself.

53. Mr. Ganbavale, on the other hand, contends that in view of an order passed by this Court on 12<sup>th</sup> July, 2023, the respondent was allowed to file an affidavit of service *qua* the returned candidate. As per the track consignment, date of service was 5<sup>th</sup> October, 2019. He submits that there was non compliance of Section 81 of the R.P. Act. Mr. Ganbavale

would further contend that even the subsequent verification in green letters is not in consonance with Section 81 of the Act.

54. The present Election Petition appears to be in the nature of a Public Interest Litigation rather than an Election Petition. The respondent has predominantly challenged the functioning of the Electronic Voting Machine (EVM) and alleged concern about its efficacy and reliability which is, indeed beyond the scope of an election dispute. This Court cannot, in an Election Petition, venture upon functioning and usage of Electronic Voting Machines (EVM) in the electoral process.

55. Mr. Ganbavale has invited my attention to paragraph 32 of the Election Petition which is essentially a prayer clause. Prayer clauses read thus;

*“32. (a) The hon’ble court may kindly be pleased to direct the Election Commission of India & Returning Officer to explain the difference in polled votes and counted votes.*

*(b) The returning officer be directed to produce the numerical number embossed of each EVM used on the date of polling.*

*(c) The returning officer be directed to produce the numerical number on the EVM produce on the date of counting.*

*(d) This Court declare that returning officer has not followed the direction laid in 15:30.*

*(e) It be declared that once the difference of votes is established between polled votes and counted votes, the powers granted to declare the result is withdrawn.*

*(f) It be declared once the difference of vote is established between polled votes and counted votes it is mandatory on returning officer to refer the matter to the election commission of India.*

*(g) It be declare that till the direction is received from Election Commission of India to returning officer in case of difference of vote, the returning officer is not empowered to declare the election result.*

*(h) It be declare that returning officer has to act according to the advice/guidelines, once the matter is referred to Election Commission of India.*

*(i) It be declare that inspite of difference of votes the Election Commission of India failed to act as per sub clause 15.30.*

*(j) It be declare that non-reference of Election Commission of India to returning officer is illegal.*

*(k) It be declare that the declaration by returning officer of election of respondent is illegal and void and without powers.*

*(l) It be declare that the declaration by returning officer of election of respondent is illegal and void and without powers.*

*(m) In absence of any tangible declare election of the respondent to be null and void, for non compliances with the laws, and therefore also declare that the certificate issued to the respondent in form 22 u/r 66 to be null and void.*

*(n) During the pendency and final hearing of this petition, direct suspension/withdrawal of the certificate issued to respondent under rules 66 in form 22 of the rules.*

*(o) As to cost”.*

56. A bare look at clauses (a) to (f) would reveal that they are beyond the scope of Section 100 of the Act. As already stated hereinabove, Election Petition is *sans* averments of any corrupt practices alleged to have been committed by the returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent as provided in clause (b) of Section 100. No doubt, a few defects in the verification of the Election Petition are not fatal to it's maintainability and the Election Petition cannot be thrown out solely on that ground as has been held by the Supreme Court in case of **Saritha S. Nair Vs. Hibi Eden,**

<sup>5</sup> wherein the Supreme Court has drawn support from a decision of three Member Bench of that Court in **F.A. Sapa Vs. Singora**.<sup>6</sup> This is on the basis that section 83 is not one of the three provisions mentioned in Section 86 (1) and, therefore, it cannot be ordinarily construed as mandatory unless it is shown as an integral part of the petition under Section 81 of the said Act. The argument of Mr. Ganbavale to that effect cannot be taken as vital and the petition cannot be dismissed on that premise. This Court on identical facts in case of **Dr. Rameshkumar Bapuraoji Gajbe Vs. Election Commission of India, New Delhi and others**<sup>7</sup> has expounded scope of Sections 81 and 83 in respect of material facts, cause of action and also as regards essential requirements for declaring an election to be void as contemplated in Section 100 of the said Act. In case of **Dr. Rameshkumar** (supra), this Court has also drawn support from the decision in case of **Samant N. Balkrishna** (supra). It is trite law that an Election Petition which is bereft of material fact/s would entail dismissal at the threshold on the premise that there are no material facts averred in the Election Petition which would lead to incomplete cause of action.

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<sup>5</sup> Special Leave Petition (Civil) No.10678 of 2020

<sup>6</sup> (1991) 3 SCC 375

<sup>7</sup> Election Petition No.6 of 2019

57. Mr. Ambedkar has emphasized on the guidelines/instructions 15:30 of the handbook for the Returning Officer issued by the Election Commission of India. Since this Court is considering an application for rejection of the Election Petition in view of Order-VII, Rule – 11 (a) and (d) of the Code of Criminal Procedure, at this stage the said issue need not be gone into as the Petition itself suffers from basic legal requirements provided in the Act.

58. In the case of **Dr. Aruna Mohan Mali Vs. Election Commission of India and others**<sup>8</sup> facts are almost identical. This Court had rejected the Election Petition under the provisions of Order-VII, Rule – 11 (a) of the C.P.C in absence of complete cause of action for declaring the election of respondent No.3 to be void under Section 100 (1) (d) (iv) of the Act.

59. Mr. Ganbavale states that the Hon'ble Supreme Court is seized of the issues concerning the functioning and efficacy of the Electronic Voting Machines (EVMs). The matter consisting the mode of conducting elections, including usage of EVMs' or ballot papers is a prerogative of the Election Commission of India in view

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of the relevant statutory provisions. The contentions in the Election Petition would also reveal that there are no specific allegations in respect of election process of 42<sup>nd</sup> Solapur (SC) Lok Sabha General Election, 2019. Essentially, concerns raised by the respondent are in respect of Electronic Voting Machines, usage, electoral system without any particular allegations targeted at election process of Solapur Constituency. It is apparent that there is no ground as contemplated under Section 100 of the Act as to how the result of the election as regards the returned candidate has been materially affected.

60. In terms of Section 119 of the Act, returned candidate is entitled to costs incurred by him, however, section gives discretion to this Court to impose costs.

61. In the given set of facts and circumstances, I am exercising my discretion not to award costs.

62. In the result, application is allowed.

63. Election Petition stands rejected under Order-VII, Rule-11 (a) (d) of the C.P.C. Security deposit stands forfeited.

64. In view of disposal of the Election Petition, pending applications, if any, also stand disposed of.

**[PRITHVIRAJ K. CHAVAN, J.]**