

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

**APPLICATION (LODGING) NO.29930 OF 2024
WITH
APPLICATION (LODGING) NO.29880 OF 2024
WITH
ELECTION PETITION NO.6 OF 2024**

Ravindra Dattaram Waikar

.... ***Applicant***

In the matter of

Amol Gajanan Kirtikar and Others

....***Petitioners***

-Versus-

Ravindra Dattaram Waikar and Others

....***Respondents***

Mr. Pradeep M. Patil, *with Mr. Parvinchand B. Gole and Mr. Nimish S. Parakh i/b Mr. Amit A. Karande, for the Petitioners.*

Mr. Anil Y. Sakhare, *Senior Advocate with Mr. Utsav Trivedi, Mr. Shyamsunder Jadhav, Ms. Kavita Dhanuka, Mr. Vishal Acharya, Mr. Rohan Mirpurey, Ms. Savita Suryavanshi and Bhavya Shah i/b Mr. Chirag Shah, for Respondent No.1.*

Adv. Deepti Thorat *i/b Ashwini Jadhav, for Respondent No.5.*

Mr. Jayant Gohil *with Mr. Sunil Humbre, for Respondent No.7.*

Mr. Surindar Mohan Arora, *Respondent No.7 present-in-person.*

Mr. Rohan Satone, *Respondent No.8 present-in-person.*

Mr. Bharat Khimji Shah, *Respondent No.13 present-in-person.*

Mr. Santosh Manik Rayban, *Respondent No.20 present-in-person.*

CORAM	: SANDEEP V. MARNE, J.
RESERVED ON	: 11 DECEMBER 2024.
PRONOUNCED ON	: 19 DECEMBER 2024.

J U D G M E N T:

1) Respondent No.1 in the Election Petition, who is the Returned Candidate, has filed Application (L) No. 29930 of 2024 seeking rejection of the Election Petition under provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (**Code**). Respondent No.1 has also filed Application (L) No.29880 of 2024 for striking of various paragraphs pleaded by the Petitioner in the Election Petition under Order VI Rule 16 of the Code.

2) The Election Petition seeks declaration of election of Respondent No.1 to the 18th Lok Sabha from 27 Mumbai North-West Constituency as void under provisions of Section 100(1)(d)(iii) and (iv) of Representation of People Act, 1951 (**RP Act**). The Election Petition further seeks a declaration that the Petitioner is duly elected to the 18th Lok Sabha from 27 Mumbai North-West Constituency under Section 84 read with Section 101(a) of the RP Act.

3) Brief facts leading to filing of the Election Petition are that the Election Commission announced the schedule for 2024 General Elections to the 18th Lok Sabha on 16 March 2024, which were to be conducted in seven phases. So far as election for 27-Mumbai North-West Constituency is concerned, the same was to be held in the fifth phase. The Election Schedule for fifth phase for 27-Mumbai North-West Lok Sabha Constituency was announced by the Election Commission as follows:

SR	PARTICULARS	DATE
1.	Announcement & issue of Press Note	16.03.2024
2.	Issue of Notification	26.04.2024
3.	Last date for filing of Nominations	03.05.2024
4.	Scrutiny of Nominations	04.05.2024

5.	Last date for withdrawal of Candidature	06.05.2024
6.	Date of Poll	20.05.2024
7.	Date of counting of votes	04.06.2024
8.	Date before which election shall be completed	06.06.2024

4) Total of 21 candidates were in the fray for election from the Constituency, which included *interalia* the Petitioner from Shiv Sena (Uddhav Balasaheb Thackeray) Party and Respondent No.1 from Shiv Sena Party. The voting in pursuance to the election to the said Constituency was held on 20 May 2024. The counting of votes was conducted on 4 June 2024 and the final result was declared in Form-20, in which Petitioner secured 4,52,596 votes whereas Respondent No.1 secured 4,52,644 votes. Petitioner has given the details of votes polled by him and Respondent No.1 through Electronic Voting Machine (EVM) and Postal Votes in paragraph 7 of the Election Petition as under:

SR	CANDIDATE	PARTY	EVM VOTES	POSTAL VOTES	TOTAL VOTES
1.	Ravindra Dattaram Waikar	Shiv Sena	451094	1550	452644
2.	Amol Gajanan Kirtikar	Shiv Sena (Uddhav Balasaheb Thackeray)	451095	1501	452596

5) This is how Respondent No.1 was declared as a Returned Candidate by a narrow margin of 48 votes over the Petitioner. According to the Petitioner, he had secured one vote more than the Returned Candidate after counting of EVM votes. However, Returned Candidate secured 49 votes more in the postal ballot and accordingly he was declared elected by 48 votes.

6) Petitioner has accordingly filed the Election Petition challenging the election of Respondent No.1 on following broad grounds:

- (i) Counting agents appointed by the Election Petitioner not permitted to sit at the ARO/RO Table, despite being a statutory requirement.
- (ii) Form 17-C (Part II) not given in any of the 563 polling booths of 2 Assembly Segments (158-Jogeshwari and 164-Versova) and 276 polling booths of another Assembly Segment (163-Goregaon).
- (iii) No reasonable opportunity given to make application requesting re-count of votes and turning down the written request subsequently made.
- (iv) Usage of Mobile Phones unauthorizedly inside the counting area.
- (v) Impersonation of electors resulting in 333 votes being cast as 'Tendered Votes' which went uncounted.
- (vi) Discrepancy in the number of 'Tendered Votes' recorded in 'Form 17-C (Part-I) – Account of Votes Recorded' by the Presiding Officer and 'Form 20 – Part – II – Final Result Sheet' recorded by the Returning Officer.

7) Summons were issued to the Respondents by order dated 29 July 2024. Summons are served on all the Respondents. Written Statements are filed by Respondent No.1 and Respondent No.7. In addition to filing Written Statement, Respondent No.1 has filed Application (L) No.29930 of 2024 seeking rejection of Election Petition under Order VII Rule 11 of the Code. Respondent No.1 has also filed Application (L) No.29880 of 2024 for striking of various paragraphs pleaded by the Petitioner in the Election Petition under Order VI Rule 16 of the Code. Petitioner has filed his Replies to both the Applications. Accordingly, Application (L) No.29930 of 2024 filed for rejection of the Election Petition under Order VII Rule 11 of the Code is called out for hearing.

8) Mr. Sakhare, the learned Senior Advocate appearing for Respondent No.1 would submit that the Election Petition is liable to be

rejected as the same does not contain concise statement of material facts as required under provisions of Section 83(1)(a) of the RP Act. He would submit that the Election Petition does not disclose any cause of action. That the Petition does not set out any material fact in support of the allegations. That breach of clauses of handbook cannot be a ground to set aside election of democratically elected candidate under Section 100(1)(d) (iii) or (iv) of RP Act. That clause 1.2 of the handbook itself makes it clear that it is issued solely to give information and guidance for optimal functioning of Returning Officer and that the same is not a substitute reference for various provisions of Election Law for conduct of election. That for setting aside the election, it is incumbent for the Petitioner to plead non-compliance with provisions of either Constitution of India or of the RP Act or of any rules or orders made under the Act. That Election Petition, not being an action at common law or in equity, in absence of pleading about contravention of provisions of Constitution, RP Act or rules or orders under the Act, the Election Petition cannot be entertained. That the RP Act has been held to be a complete and self-contained Code. In support, he would rely upon judgment of the Apex Court in ***Jyoti Basu and others Versus. Debi Ghosal and others***¹.

9) Mr. Sakhare would further submit that the Election Petition is full of vague allegations. That so far as allegation of not permitting Petitioner's counting agent to sit on the table during counting of votes on 4 June 2024, the Election Petition lacks material particulars about the names of counting agents who were allegedly not allowed to sit at the counting table. That the contention is also contradictory as other averments in the Election Petition demonstrating that the agents of the Petitioner were present in the counting booths. That Petitioner has not discharged his onus of proving appointment of his counting agent as per

¹ (1982) 1 SCC 691

Rule 47 of the Conduct of Election Rules, 1961 (**Rules 1961**). Similarly, the allegation of non-supply of Form 17C (Part-II) to the counting agents as per Clause 15.16.2 of the handbook are again totally vague and lack material pleadings. That in any case, Petitioner must plead that result of the election of the Returned Candidate has been materially affected by the alleged non-observance of the guidelines in the handbook.

10) So far as the allegation of non-acceptance of demand for recounting of votes by the Returning Officer/Assistant Returning Officer is concerned, Mr. Sakhare would submit that the application for recounting of votes was submitted at 8.06 p.m. on 4 June 2024 after the result of the elections was declared at 7.54 p.m. and has rightly been rejected by the Returning Officer by citing the said reason. That even pleadings with regard to rejection of request for recounting of votes are vague not disclosing any cause of action for filing of the Election Petition.

11) Mr. Sakhare would further submit that the allegation with regard to use of mobile phone in the counting center is not only vague but is raised only for the purpose of raising doubt or suspicion without making any specific assertion as to how the alleged use of mobile phone in the counting center has materially affected the election of the Returned Candidate. So far as allegation of alleged mismatch between total number of tendered votes reflected as per the Form 17C (Part-I) and tendered votes declared in Form-20, Mr. Sakhare would submit that the said allegation is again aimed at mere creation of suspicion in absence of any pleading that the allegation, if found to be correct, would materially affect the election of Returned Candidate. That Petitioner himself is not sure whether he is aggrieved by counting of tendered votes or whether he merely seeks create a suspicion on account of mismatch in the tendered votes. That no objection was raised with regard to the alleged mismatch in the tendered votes until

15 July 2024. By application dated 15 July 2024 Petitioner sought information and applied for certified copy of Form 17B (List of Tendered Votes) and immediately filed the Election Petition on 16 July 2024. That in absence of any concrete material with him, Petitioner has not pleaded the exact effect of the alleged mismatch in the tendered votes. That thus there is no pleading in the entire Petition as to how counting or acceptance of 213 tendered votes is illegal or violates provisions of Section 101(1)(d)(iii) of RP Act.

12) Mr. Sakhare would submit that the *sine qua non* for maintenance of Election Petition and to take the same to trial is demonstration through pleading as to how the allegations, if taken to be true, would materially affect the election of the returned candidate. He would submit that if there are no pleadings demonstrating that the result of the election is materially affected, the Court must reject the Election Petition by exercising jurisdiction under Order VII Rule 11 of the Code. In support of this contention, he would rely upon judgments of the Apex Court in **Mangani Lal Mandal Versus. Bishnu Deo Bhandari**², **Shambhu Prasad Sharma Versus. Charandas Mahant and others**³ and **Mairembam Prithviraj alias Prithviraj Singh Versus. Pukhrem Sharatchandra Singh**⁴.

13) Mr. Sakhare would rely upon judgment of the Apex Court in **Kanimozhi Karunanidhi Versus. A. Santhana Kumar and others**⁵ to demonstrate the principles summarized for maintenance of a valid Election Petition and also in support of his contention that omission of a single material fact leads to incomplete cause of action and the Election

2 (2012) 3 SCC 314

3 (2012) 11 SCC 390

4 (2017) 2 SCC 487

5 2023 SCC OnLine SC 573

Petition in such case must be dismissed under Order VII Rule 11 of the Code. That the said principles have been reiterated by the Apex Court in **Karim Uddin Barbhuiya Versus. Aminul Haque Laskar and others**⁶. He would also rely upon judgment of the Apex Court in **Karikho Kri Versus. Nuney Tayang and another**⁷ in support of his contention that a small irregularity does not affect election of democratically elected candidate in absence of pleadings that any irregularities has materially affected election of the Returned Candidate. He would also rely upon judgment of this Court in **Mahendra Tulshiram Bhingardive Versus. Anil Yeshwant Desai and others**⁸. Mr. Sakhare would accordingly pray for rejection of the Election Petition under provisions of Order VII Rule 11 of the Code.

14) The Application is opposed by Mr. Patil the learned counsel appearing for the Election Petitioner. He would submit that specific concise pleadings in support of grounds for setting aside election of Respondent No.1 under provisions of Section 100(1)(d)(iii) and (iv) of the RP Act are raised in the Election Petition. That the Election Petition conforms to the requirement under Section 83(1)(a) of the RP Act. That Election Petition clearly discloses cause of action. That therefore the Petition cannot be rejected under provisions of Order VII Rule 11 of the Code. He would rely upon judgment of the Apex Court in **Liverpool & London S.P. and I Association Ltd. vs. M.V. Sea Success I and another**⁹ in support of his contention that if the illegalities demonstrated the Election Petition are held to be correct, election of Respondent No.1 would most certainly be declared as void and that therefore Election Petition contains material averments as required under Section 83(1)(a) of the RP Act. He would rely

6 2024 SCC OnLine SC 509

7 2024 SCC OnLine SC 519

8 Application (Lodging) No.29382 of 2024 in Election Petition No. 1 of 2024 decided on 15 October 2024.

9 (2004) 9 SCC 512

upon judgment of the Apex Court in **Ashraf Kokkur Versus. K.V. Abdul Khader and others**¹⁰ in support of his contention that only cause of action is required to be disclosed and not a complete cause of action. That the expression 'material facts' plainly means facts pertaining to the subject matter and which are relied upon by the Election Petitioner. That Courts cannot insist for mechanical reproduction of the exact words of statute and it has to read the entire plaint as a whole for the purpose of examining whether the cause of action is disclosed or not. That so long as some cause of action is disclosed, the Election Petition cannot be rejected by having recourse to provisions of Order VII Rule 11 of the Code. He would also rely upon the judgment of the Apex Court in **Madiraju Venkata Ramana Raju Versus. Peddireddigari Ramchandra Reddy and others**¹¹ in support of his contention that Election Petition cannot be dissected sentence-wise or paragraph-wise for ruling that the same did not disclose cause of action. He would take me through the Reply filed opposing the Application to demonstrate as to how averments made in various paragraphs of the Election Petition disclose clear cause of action necessary for grant of relief prayed for in the Election Petition.

15) Mr. Patil would then submit that there are necessary averments in the Election Petition in support of all the illegalities relating to non-permission for counting agent to sit at the table of ARO/RO, non-supply of Form 17C (Part-II) to the counting agent, illegal rejection of demand for recounting of votes, unauthorized use of mobile phone in the counting center and improper reception of tendered votes. He would submit that the illegality highlighted by the Petitioner relating to mismatch in number of total tendered votes reflected in Form 20 (Part-II) as compared to the number reflected in Form 17C (Part-I) goes to the root of a matter and since Respondent No.1 is declared elected by narrow margin of 48

10 (2015) 1 SCC 129

11 (2018) 14 SCC 1

votes, improper reception of tendered votes after completion of counting of EVM votes would definitely affect the result of returned candidate. That even *qua* counting of EVM votes, clear discrepancy has occurred in that Petitioner had secured 650 votes more than Respondent No.1 after 26 rounds of counting whereas the Returning Officer declared that Petitioner had secured only one vote more than Respondent No.1. That perfect case for recounting of EVM votes was made out by the Petitioner. That all these allegations are clearly spelt-up through specific pleadings in the Election Petition. He would therefore submit that in the light of availability of sufficient pleadings coupled with disclosure of cause of action, the Application filed by Respondent No.1 under Order VII Rule 11 of the Code deserves to be rejected.

16) Mr. Patil would further submit that the instructions contained in the handbook have statutory force and are binding in nature and in support he would rely upon judgment of Apex Court in **Arikala Narsana Reddy Versus. Venkata Ram Reddy Reddygari and another¹²**, **Uttamrao Shivdas Jankar Versus. Ranjitsinh Vijaysinh Mohite Patil¹³**, **Ram Sukh Versus. Dinesh Aggarwal¹⁴** and **Rakesh Kumar Versus. Sunil Kumar¹⁵**.

17) Mr. Patil would rely upon judgment of the Apex Court in **Sardar Harcharan Singh Brar Versus. Sukh Darshan Singh and others¹⁶**, in support of his contention that the Election Petition is not liable to be dismissed *in limine* under Section 86 of the RP Act for alleged non-compliance of provisions of Section 83(1) or (2) of the RP Act. He would also rely upon judgment of the Apex Court in **Umesh Challiyill Versus.**

12 (2014) 5 SCC 312

13 (2009) 13 SCC 131

14 (2009) 10 SCC 541

15 (1999) 2 SCC 489

16 (2004) 11 SCC 196

K.P. Rajendran¹⁷, Ponnala Lakshmaiah Versus. Kommuri Pratap Reddy and others¹⁸, G.M. Siddeshwar Versus. Prasanna Kumar¹⁹, B. Sundara Rami Reddy Versus. Election Commissioner of India and others²⁰ and Mohd. Akbar Versus. Ashok Shahu and others²¹ in support of the same contentions.

18) On above broad submissions Mr. Patil would submit that the Petitioner must be permitted to prove the allegations levelled in the Election Petition by leading evidence. That therefore the Election Petition deserves to be taken for trial and cannot be rejected at the threshold by having recourse to powers under Order VII Rule 11 of the Code. He would pray for rejection of the Application.

19) Rival contentions of the parties now fall for my consideration.

20) Petitioner has challenged election of Respondent No.1 under provisions of Section 100(1)(d)(iii) and (iv) of the RP Act and sought his own election from 27-Mumbai North-West Constituency. The prayers in the Election Petition read thus:

PRAYER

63. In view of the material facts and particulars of the present case and the grounds urged in support thereof, it is most respectfully prayed that this Hon'ble Court may be pleased to :

- a. allow the Election Petition and declare as void the election of the Respondent No.1 i.e. Shri Ravindra Dattaram Waikar dtd. 04.06.224, published in Form 20 on 06.06.2024, to the 18th Lok Sabha from the Mumbai North-West Constituency as void under Section 100(1)(d)(iii) and (iv) of the *R.P.Act, 1951*; and
- b. declare the Election Petitioner, Shri Amol Gajanan Kirtikar, as duly elected to the 18th Lok Sabha from the 27 Mumbai North-West

17 (2008) 11 SCC 740

18 (2012) 7 SCC 788

19 (2013) 4 SCC 776

20 1991 Supp(2) SCC 624

21 (2015) 14 SCC 519

Constituency in terms of Section 84 r/w Section 101(a) of the *R.P.Act, 1951*; and;

- c. Pass such other order and direction as this Hon'ble Court may deem fit in the facts of the present case.

21) Section 100 of the RP Act provides for grounds for declaring election to be void and provides thus:

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 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(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 or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(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.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

Then the High Court may decide that the election of the returned candidate is not void.

22) For invoking the grounds enumerated under Section 100(1)(d) (iii) of the RP Act it is necessary for the Election Petitioner to plead in the Petition that the result of the election of Returned Candidate has been materially affected by improper reception, refusal or rejection of any vote or the reception of any vote which is void. Similarly for invoking the ground under Section 100(1)(d)(iv) of the RP Act, it is incumbent for the Election Petitioner to plead in his Election Petition that the result of election of the Returned Candidate has been materially affected by non-compliance with the provisions of the Constitution or the provisions of RP Act or of any Rules or orders made thereunder.

23) Section 83 of the RP Act deals with contents of Election Petition and provides thus:

83. Contents of petition.—

(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

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.

24) Thus, it is mandatory under provisions of Section 83(1)(a) of the RP Act that an Election Petition must contain a concise statement of all material facts on which the Petitioner relies. When provisions of Section 83(1)(a) of the RP Act are read in conjunction with provisions of

Section 100(1)(d)(iii) and (iv) of the RP Act, what emerges is that the Election Petition must contain a concise statement of material facts to demonstrate the ground of improper reception, refusal or rejection of any vote or reception of any vote which is void or a concise statement of material fact to demonstrate non-compliance with provisions of the Constitution or of the Act or Rules or orders made thereunder.

25) The necessary corollary of conjunctive reading of provisions of Section 83(1)(a) and Section 100(1)(d) (iii) and (iv) of the RP Act is that an Election Petition which does not disclose pleading of material facts demonstrating grounds under sub-clauses (iii) or (iv) of the clause (d) of sub-section (1) of Section 100 of the RP Act will have to be rejected by invoking powers under Order VII Rule 11 of the Code.

26) Before proceeding ahead with the examination as to whether the Election Petition filed by the Petitioner discloses concise statement of material facts demonstrating grounds under Section 100(1)(d)(iii) and (iv) of the RP Act, it would be necessary to take stock of few judgments dealing with the necessity for pleading of material facts for maintenance of an Election Petition. By now it is well settled position of law that Election Petition is a statutory remedy and not an action in equity or a remedy in common law. It is also equally well settled position that RP Act is a complete and self-contained Code. Therefore, strict compliance with the provisions of the RP Act is mandatory requirement for exercising the statutory remedy under the RP Act. Reference in this regard can be made to the judgment of the Apex Court in ***Jyoti Basu*** (supra) wherein the Apex Court has held in paragraph 8 as under:

8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right

to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. **An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it.** Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. **So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute.** We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say?

(emphasis added)

27) In **Dharmin Bai Kashyap Versus. Babli Sahu and others**²², the Apex Court has reiterated the position that where a right or a liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by the statute must be availed of in accordance with the statute and that if a statute provides for doing a thing in a particular manner it has to be done in that manner alone and in no other manner. The Apex Court has held in paragraph 17 as under:

17. There is hardly any need to reiterate the trite position of law that when it comes to the interpretation of statutory provisions relating to election law, jurisprudence on the subject mandates

²² (2023) 10 SCC 461

strict construction of the provisions [*Laxmi Singh v. Rekha Singh*, (2020) 6 SCC 812]. **Election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which has to be strictly construed.** The petitioner having failed to make any application in writing for re-counting of votes as required under Section 80 of the Nirvachan Niyam, 1995, and having failed to seek relief of declarations as required under Rule 6 of the 1995 Rules, the election petition filed by the petitioner before the Sub-Divisional Officer (R) seeking relief of re-counting of votes alone was not maintainable.

(emphasis added)

28) Having held that strict compliance with provisions of RP Act is mandatory requirement for exercise of statutory remedy, it would be appropriate to discuss the relevant case law on the subject dealing with the nature of pleadings that are required for maintainability of a valid Election Petition. In ***Mangani Lal Mandal*** (supra), the Apex Court held that the *sine qua non* for declaring an election of returned candidate to be void under Section 100(1)(d)(iv) of the RP Act is further proof of the fact that such breach or non-observance results in materially affecting the result of returned candidate. It is further held that mere violation or breach or non-observance of the provisions of Constitution, the Act, Rules or orders made thereunder would not *ipso facto* render the election of returned candidate void. The Apex Court held in paragraphs 10, 11 and 12 as under:

10. A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, **it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance.** If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non-compliance as well as establish that the result of the election has been materially affected. It is only on the basis of such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void.

11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section

100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in: (1) *Jabar Singh v. Genda Lal* [AIR 1964 SC 1200 : (1964) 6 SCR 54] ; (2) *L.R. Shivaramagowda v. T.M. Chandrashekar* [(1999) 1 SCC 666]; and (3) *Uma Ballav Rath v. Maheshwar Mohanty* [(1999) 3 SCC 357] .

12. Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellant's first wife and the dependent children born from that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election petition there is no pleading at all that the suppression of the information by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and non-disclosure of their assets and liabilities has materially affected the result of the election. There is no issue framed in this regard nor is there any evidence let in by the election petitioner. The High Court has also not formed any opinion on this aspect.

(emphasis added)

29) In *Shambhu Prasad Sharan* (supra) the Apex Court dealt with an Appeal arising out of order passed by the High Court dismissing the Election Petition on the ground that the same did not make concise statement of material facts and did not disclose of cause of action. Upholding the rejection of Petition under provisions of Order VII Rule 11 of the Code, the Apex Court held in paragraphs 15, 18 and 20 as under:

15. Suffice it to say that the case pleaded by the appellant was not one of complete failure of the requirement of filing an affidavit in terms of the judgment of this Court and the instructions given by the Election Commission but a case where even according to the appellant the affidavits were not in the required format. What is significant is that the election petition did not make any averment leave alone disclose material facts in that regard suggesting that there were indeed any outstanding dues payable to any financial institution or the Government by the

returned candidate or any other candidate whose nomination papers were accepted. The objection raised by the appellant was thus in the nature of an objection to form rather than substance of the affidavit, especially because it was not disputed that the affidavits filed by the candidates showed the outstandings to be nil.

18. From the above it is evident that the form of the nomination papers is not considered sacrosanct. What is to be seen is whether there is a substantial compliance with the requirement as to form. Every departure from the prescribed format cannot, therefore, be made a ground for rejection of the nomination paper.

20. Coming to the allegation that other candidates had also not submitted affidavits in proper format, rendering the acceptance of their nomination papers improper, **we need to point out that the appellant was required to not only allege material facts relevant to such improper acceptance, but further assert that the election of the returned candidate had been materially affected by such acceptance. There is no such assertion in the election petition.** Mere improper acceptance assuming that any such improper acceptance was supported by assertion of material facts by the appellant-petitioner, would not disclose a cause of action to call for trial of the election petition on merit unless the same is alleged to have materially affected the result of the returned candidate.

(emphasis added)

30) In *Mairembam Prithviraj alias Prithviraj Singh* (supra) the Apex Court has relied upon its judgment in *Durai Muthuswami Versus. N Nachiappan*²³, and held in paragraphs 22 and 23 as under:

22. The facts, in brief, of *Durai Muthuswami* [*Durai Muthuswami v. N. Nachiappan*, (1973) 2 SCC 45] are that the petitioner in the election petition contested in the election to the Tamil Nadu Legislative Assembly from Sankarapuram constituency. He challenged the election of the first respondent on the grounds of improper acceptance of nomination of the returned candidate, rejection of 101 postal ballot papers, ineligible persons permitted to vote, voting in the name of dead persons and double voting. The High Court dismissed the election petition by holding that the petitioner failed to allege and prove that the result of the election was materially affected by the improper acceptance of the nomination of the first respondent as required by Section 100(1)(d) of the Act. The civil appeal filed by the petitioner therein was allowed by this Court in *Durai Muthuswami* [*Durai Muthuswami v. N. Nachiappan*, (1973) 2 SCC 45] in which it was held as follows : (SCC pp. 48-49, para 3)

“3. Before dealing with the question whether the learned Judge was right in holding that he could not go into the question whether the 1st respondent's nomination has been improperly accepted because there was no allegation in the election petition that the election had been materially affected as a result of such improper acceptance, we may look into the relevant provisions of law. Under Section 81 of the Representation of the People Act, 1951 an election petition calling in question any election may

23 (1973) 2 SCC 45

be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. It is not necessary to refer to the rest of the section. Under Section 83(1)(a), insofar as it is necessary for the purpose of this case, an election petition shall contain a concise statement of the material facts on which the petitioner relies. Under Section 100(1) 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....

(b)-(c) * * *

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

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

(ii)-(iii) * * *

the High Court shall declare the election of the returned candidate to be void. Therefore, what Section 100 requires is that the High Court before it declares the election of a returned candidate is void should be of opinion that the result of the election insofar as it concerns a returned candidate has been materially affected by the improper acceptance of any nomination. Under Section 83 all that was necessary was a concise statement of the material facts on which the petitioner relies. That the appellant in this case has done. He has also stated that the election is void because of the improper acceptance of the 1st respondent's nomination and the facts given showed that the 1st respondent was suffering from a disqualification which will fall under Section 9-A. That was why it was called improper acceptance. *We do not consider that in the circumstances of this case it was necessary for the petitioner to have also further alleged that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of the 1st respondent's nomination. That is the obvious conclusion to be drawn from the circumstances of this case. There was only one seat to be filled and there were only two contesting candidates. If the allegation that the 1st respondent's nomination has been improperly accepted is accepted the conclusion that would follow is that the appellant would have been elected as he was the only candidate validly nominated. There can be, therefore, no dispute that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination because but for such improper acceptance he would not have been able to stand for the election or be declared to be elected. The petitioner had also alleged that the election was void because of the improper acceptance of the 1st respondent's nomination. In the case of election to a single-member constituency if there are more than two candidates and the nomination of one of the defeated candidates had been improperly accepted the question might arise as to whether the result of the election of the returned candidate had been materially affected by such improper reception. In such a case the question would arise as to what would have happened to the votes which had been cast in favour of the defeated candidate whose nomination had been improperly accepted if it had not been accepted. In that case it would be necessary for the person challenging the election not merely to allege but also to prove that the result of the election had been materially affected by the improper acceptance of the nomination of the other defeated candidate. Unless he succeeds in proving that if the votes cast in favour of the candidate whose nomination had been improperly accepted would have gone in the petitioner's favour and he would have*

got a majority he cannot succeed in his election petition. Section 100(1)(d)(i) deals with such a contingency. It is not intended to provide a convenient technical plea in a case like this where there can be no dispute at all about the election being materially affected by the acceptance of the improper nomination. "Materially affected" is not a formula that has got to be specified but it is an essential requirement that is contemplated in this section. Law does not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a ground. The petitioner had stated the ground on which the 1st respondent's election should be declared to be void. He had also given the material facts as required under Section 83(1)(a). We are, therefore, of opinion that the learned Judge erred in holding that it was not competent for him to go into the question whether the 1st respondent's nomination had been improperly accepted." (emphasis supplied)

23. It is clear from the above judgment in *Durai Muthuswami* [*Durai Muthuswami v. N. Nachiappan*, (1973) 2 SCC 45] that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the respondent to prove that result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected.

31) The conspectus of the above discussion is that for maintaining an Election Petition and for taking it to the stage of trial, it is necessary that there is strict compliance with the provisions of Section 83(1)(a) of the RP Act. The concise statement of material facts must constitute a complete cause of action. Failure on the part of the Election Petitioner to raise necessary pleadings to make out a case of existence of ground under Section 100(1)(d)(iii) or (iv) of the RP Act would necessarily result in dismissal of Election Petition by invoking powers under Order VII Rule 11

of the Code. The Apex Court has summed up the legal position in this regard after taking stock of various judgments rendered in the past in ***Kanimozhi Karunanidhi*** (supra) in paragraph 28 as under:

28. The legal position enunciated in afore-stated cases may be summed up as under:—

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election 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.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. **Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.**

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. **Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.**

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. 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 it as a handle for vexatious purpose.

vi. **An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.**

(emphasis and underlining added)

32) The above principles are reiterated in subsequent judgment in ***Karim Uddin Barbhuiya*** (supra), in which it is held in paragraphs 13, 14, 15, 22, 24 and 30 as under:

13. It hardly needs to be reiterated that in an Election Petition, pleadings have to be precise, specific and unambiguous, and if the

Election Petition does not disclose a cause of action, it is liable to be dismissed *in limine*. It may also be noted that the cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the RP Act. As held in *Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi*⁴ and in *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*⁵, **if the allegations contained in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the pleadings are liable to be struck off and the Election Petition is liable to be rejected under Order VII, Rule 11 CPC.**

14. A beneficial reference of the decision in case of *Laxmi Narayan Nayak v. Ramratan Chaturvedi*⁶ be also made, wherein this Court upon review of the earlier decisions, laid down following principles applicable to election cases involving corrupt practices:—

“5. This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being:

(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93] and *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442].

(2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh v. Surinder Singh* [(1973) 2 SCC 599 : (1974) 1 SCR 52], *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442] and *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93].

(3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide *Jumuna Prasad Mukhariya v. Lachhi Ram* [(1954) 2 SCC 306 : (1955) 1 SCR 608 : AIR 1954 SC 686] and *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660].

(4) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh* [(1984) 4 SCC 649].

(5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660], *M. Narayana Rao v. G. Venkata Reddy* [(1977) 1 SCC 771 : (1977) 1 SCR 490], *Lakshmi Raman Acharya v. Chandan Singh* [(1977) 1 SCC 423 : (1977) 2 SCR 412] and *Ramji Prasad Singh v. Ram Bilas Jha* [(1977) 1 SCC 260].

(6) The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660], *Mohan Singh v. Bhanwarlal* [(1964) 5 SCR 12 : AIR 1964 SC 1366] and *Ramji Prasad Singh v. Ram Bilas Jha* [(1977) 1 SCC 260].”

15. The legal position with regard to the non-compliance of the requirement of Section 83(1)(a) of the RP Act and the rejection of Election Petition under Order VII Rule 11, CPC has also been regurgitated recently by this Court in case of *Kanimozhi Karunanidhi v. A. Santhana Kumar* (supra):—

xxx

22. So far as the ground contained in clause (d) of Section 100(1) of the Act, with regard to improper acceptance of the nomination of the Appellant is concerned, there is not a single averment made in the Election Petition as to how the result of the election, in so far as the appellant was concerned, was materially affected by improper acceptance of his nomination, so as to constitute a cause of action under Section 100(1)(d)(i) of the Act. Though it is true that the Election Petitioner is not required to state as to how corrupt practice had materially affected the result of the election, nonetheless it is mandatory to state when the clause (d)(i) of Section 100(1) is invoked as to how the result of election was materially affected by improper acceptance of the nomination form of the Appellant.

24. As stated earlier, in Election Petition, the pleadings have to be precise, specific and unambiguous. If the allegations contained in Election Petition do not set out grounds as contemplated in Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the Election Petition is liable to be rejected under Order VII, Rule 11 of CPC. An omission of a single material fact leading to an incomplete cause of action or omission to contain a concise statement of material facts on which the Election petitioner relies for establishing a cause of action, would entail rejection of Election Petition under Order VII Rule 11 read with Section 83 and 87 of the RP Act.

(emphasis added)

33) The Apex Court in *Karikho Kri* (supra) held in paragraphs 40 and 41 as under:

40. Having considered the issue, we are of the firm view that every defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts, insofar as that aspect is concerned. The case law on the subject also manifests that this Court has always drawn a distinction between non-disclosure of substantial issues as opposed to insubstantial issues, which may not impact one's candidature or the result of an election. The very fact that Section 36(4) of the Act of 1951 speaks of the Returning Officer not

rejecting a nomination unless he is of the opinion that the defect is of a substantial nature demonstrates that this distinction must always be kept in mind and there is no absolute mandate that every non-disclosure, irrespective of its gravity and impact, would automatically amount to a defect of substantial nature, thereby materially affecting the result of the election or amounting to 'undue influence' so as to qualify as a corrupt practice.

41. The decision of this Court in *Kisan Shankar Kathore* (supra), also demonstrates this principle, as this Court undertook examination of several individual defects in the nomination of the returned candidate and found that some of them were actually insubstantial in character. This Court noted that two facets required consideration - Whether there is substantial compliance in disclosing requisite information in the affidavits filed along with the nomination and whether non-disclosure of information on identified aspects materially affected the result of the election. This Court observed, on facts, that non-disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was a *bonafide* dispute about the same. Similar was the observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-valuation and re-assessment for the purpose of tax assessment. Earlier, in *Sambhu Prasad Sharma v. Charandas Mahant*, this Court observed that the form of the nomination paper is not considered sacrosanct and what is to be seen is whether there is substantial compliance with the requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper.

34) Having broadly set out the statutory scheme as well as the principles enunciated by various judgments of the Supreme Court on requirement for setting up concise statement of material facts disclosing cause of action, I now proceed to examine whether the Election Petitioner has pleaded material facts necessary for demonstrating grounds under sub-clauses (iii) and/or (iv) of clause (d) of sub-section 1 of Section 100 of the RP Act in his Election Petition.

35) Petitioner has pleaded in the Election Petition that there is a violation of statutory Rules/Orders stipulating the procedure to be followed during the counting process. His first grouse is about the Returning Officer not permitting his counting agents to sit at the counting table in violation of statutory requirement. He has placed reliance on provisions of Section 64 of the RP Act providing for right in favour of contesting candidate, his

election and his counting agents to be present at the time of counting. He has also referred to the provisions of Section 47 relating to appointment of counting agents and Rules 52 and 53 of the Rules of 1961. Additionally, he has relied upon Clause 15.3 of handbook of Returning Officers 2023 providing for allowing the counting agent to sit on the counting table. He has also referred to various other clauses of the handbook in support of his ground of refusal to permit his counting agent sit at the ARO/RO table. However, after setting out the provisions of the RP Act, Rules and handbook, the only averments in the Election Petition relating to the allegations of non-permission for his counting agent to sit at the counting table, to be found in paragraphs 23 and 24 of the Petition are as follows:

23. It is submitted that despite the categorical stipulation in **Clause 15.3.22** of the Handbook noted above, neither the candidate, nor his election agent nor any of his counting agents were permitted to sit at the tables and computer on which the computation and compilation of data from each table is done in ENCORE at the conclusion of each round.

24. This, it is submitted, has caused serious prejudice to the Election Petitioner in as much as on account of his unavailability as well as that of his election agent or any of his counting agents at the A.R.O./R.O. table, is not only a breach of Clause 15.3.22 of the Handbook but has led to further breach of **Clause 15.16.5** noted above, which makes it mandatory upon the Returning Officer to show the Form 17 received at the R.O./A.R.O. table to the candidates/their election agents/ counting agents sitting there, to enable them to note down the results of each candidate for each polling station.

36) Thus, there are no pleadings as to which persons were appointed as Petitioner's counting agents under Section 47 of the RP Act and at which particular tables or computers they were not permitted to sit. The allegations are thus clearly vague and do not really disclose a cause of action for making out a ground under Section 100(1)(d)(iii) or (iv) of the RP Act. Most importantly, there is no positive statement that non-grant of permission to Petitioner's counting agent at the ARO/RO table has materially affected the result of election of returned candidate.

37) The next ground pleaded in the Election Petition is about non-supply of Form 17C (Part-II) to the counting agents of the Petitioner at the counting tables in respect of three out of six assembly segments. The relevant pleadings in support of this ground are to be found in paragraphs 25 to 29 of the Election Petition which read thus:

Non-supply of Form 17-C (Part-II) to the Counting Agents of the Petitioner at the Counting Tables in respect of 3 out of 6 assembly segments.

25. It is submitted that the aforementioned breach by the Election Officials gets further compounded because of the total non- supply of **Form 17-C (Part II) - Result of Counting**, in the following Assembly Segments:

S R	Assembly Segment	Nos. Polling Booth	Form 17-C (Part II) Received	Form 17-C (Part II) Not Received
1.	158-Jogeshwari	270	0	270
2.	164-Versova	293	0	293
3.	163-Goregaon	354	78	276

26. In so far as 163, Goregaon Assembly segment is concerned, out of 354 polling booths, Form 17-C (part II) has been received for 78 booths. However, the following are the **276 polling booths** in respect of which Form 17-C (Part II) has not been supplied: 10, 12, 17, 24, 29, 31-33, 37-41, 45, 46, 49, 52, 54, 59, 64, 66, 68, 73, 80, 82, 87, 92-94, 96-102, 104-110, 112, 113, 115, 116, 118-124, 126, 127, 129, 130, 132-141, 143, 144, 146-155, 157, 158, 160-354.

27. This breach i.e. non-supply of copies of Form 17-C (Part II) to the Petitioner's counting agents is in the teeth of **Clause 15.16.2** of the **Handbook** quoted above. It is submitted that the non- supply of the Form 17-C (Part II) in the said Assembly segments can clearly be discerned from the video recordings / CCTV footage on the Counting Hall, as such it is incumbent to summon the same from the D.E.O. in whose custody the said footage has been kept. In fact the Petitioner has *vide* application dtd. 15.07.2024 demanded inspection of Form 17-C (Part-II) as well as supply of certified copies thereof. Hereto annexed and marked as **Exhibit - "B"** is the true copy of the Application dated 15.07.2024 demanding Form 17-C (Part II).

28. It is submitted that the cumulative effect of the aforesaid breaches is that, on the one hand nobody from the Election Petitioner's side was present to note the numbers from the original Form 17-C (Part II), from which the data from each table was being compiled and tabulated in ENCORE system at the conclusion of each round, so that the final results declared could be tallied at the counting centre itself, with the numbers noted by the Election Petitioner, his election agent or his counting agent sitting at the A.R.O'S/R.O.'s table. On the other hand, the failure to hand over Form 17-C (Part II) in respect of the three Assembly segments i.e. mentioned above has resulted in completely denying the Election Petitioner an opportunity to cross verify the final results as well.

29. It is submitted that a perusal of the video recording / CCTV footage of the counting hall would clearly reveal that no one from the Petitioner's side was allowed to sit at the RO./ A.R.O.'s table. As such it is incumbent to summon the same from the D.E.O. in whose custody the said footage has been kept.

38) Again, in support of the ground of non-supply of Form 17C (Part-II) to the counting agents, there is no averment that the same would materially affect the result of the returned candidate. In fact, the allegation in this regard is vague and the same does not even lead to any logical conclusion to demonstrate any specific ground under Section 100 of the RP Act. The fact that the Petitioner filed an application one day before filing of the Election Petition demanding inspection of Form 17C (Part-II) as well as supply of certified copies thereof indicates his mere belief that may be in a position to make out a ground for questioning election of Respondent No.1 after going through the Form 17C (Part-II). The Election Petition is filed after 41 days of declaration of result. Petitioner had sufficient time to secure and collate the information for making out any specific ground of setting aside the election under Section 100(1)(d) (iii) or (iv) of the RP Act. He ought to have completed the exercise of conducting inspection of relevant Form 17C (Part-II) and then raised a specific pleading relating to the exact illegality or irregularity which non-supply of the said Forms has really resulted in. Petitioner has thus sought mere roving inquiry in absence of any material pleading demonstrating any specific ground for setting aside election of Respondent No.1 arising out of allegation of non-supply of Form-17C (Part II). In fact, the averment in the Petition that failure to supply Form-17C (Part II) has denied to the Election Petitioner "*an opportunity to cross-verify the final results*" again indicates that the Petitioner himself is not sure whether any illegality or irregularity has indeed occurred in the matter of counting of votes or not. Thus, the ground of non-supply of Form 17C (Part-II) is not well supported by the requisite pleadings.

39) The next ground pleaded by the Petitioner is about rejection of his demand for recounting of votes. The relevant pleadings in this regard are to be found in paragraphs 30 to 39 of the Election Petition which read thus:

Demand for Re-Count rejected hastily and in completely ignorance of Statutory instructions in that regard

30. More importantly, as per the numbers recorded by the counting agents of the Election Petitioner at the counting tables, the Election Petitioner got more than 650 votes than the Returned Candidate after the 26 rounds of counting. However, it was announced by the R.O. that the Election Petitioner got only 1 vote more than the Returned Candidate at the end of all 26 rounds, based on the entries made in Form 20.

31. Immediately thereafter, as required under Clause 15.19, the election agent of the Petitioner sought for re-count, since as per the Form – 20 announcements the Petitioner had a lead by 1 vote only, but according to the numbers noted by the counting agents of the Petitioner at the tables, the Petitioner was leading by more than 650 votes. However, his request was turned down by the R.O. and even after the election agent insisted on making the application for re-count in writing, the R.O. flatly refused saying that she will treat any such application as having been made only after the result sheet has been signed and declared.

32. In any event, an application on behalf of the Election Petitioner was made then and there demanding a recount on the ground that there was a large discrepancy in votes announced *vis-à-vis* the votes recorded / noted by the counting agents of the Election Petitioner at the counting tables. It is submitted that the R.O. rejected the request and noted in the application that "*Result declared at 7:54 seven fifty four pm. Objection received at 8:06 pm*". Hereto annexed and marked as **Exhibit - "C"** is the true copy of the application for recount dated 04.06.2024 made by the Election Petitioner and Hereto annexed and marked as **Exhibit - "C-1"** is the translated copy of the application for recount dated 04.06.2024 made by the Election Petitioner.

33. This it is submitted is a total mockery of the Statutory Rules / Instructions in respect of demand of recount and consideration thereof. The procedure for recount has been provided in detail in Clause 15.19 of the Handbook and reads as follows:

"15.19 RECOUNT:

15.19.2 When the counting is complete and the Final Result Sheet in Form 20 has been prepared, RO should announce the total number of votes polled by each candidate as entered in Form 20. Then RO should pause for a minute or two. If during this period any candidate or, in his absence, his election agent or any of the counting agents, asks for a recount, RO should ascertain from him the time required for making an application for recount in writing. However, in the case, where the counting places are in different locations, application for re-count in respect of such can be presented before the ARO supervising the counting

in that Assembly Segment. The concerned ARO may deal with application for re-count with the approval of the RO as it would be difficult for candidates/agents located in other counting locations to reach the RO's location in time to make application for re-count. A candidate has option to make request for recount of polled ballot papers and/or polled EVMs of all or some of the polling stations.

15.19.3 If RO consider that the time applied for is reasonable, he shall allow it and announce the exact hour and minute up to, which RO will wait for receiving the written application for recount. RO must not sign the Final Result Sheet in Form 20 until after the expiry of the time so announced. If RO receives an application for recount, he should consider the grounds urged and decide the matter judiciously. RO may allow the application in whole or in part if it is reasonable or may reject it if it appears to be frivolous or unreasonable. But the right of a candidate to demand a recount under Rule 63 does not mean that recount can be granted for the mere asking. The party demanding recount has to make out a, prima facie case, which the counting was not accurate and recount is necessary in the interest of justice. In every case, RO should record a brief statement of reasons for the decision and should give a speaking order. ROs decision will be final.

15.19.5 After the total number of votes polled by each candidate after recount has been announced by RO, complete and sign the Result Sheet. No candidate has a right to demand a recount after RO have completed and signed the Final Result Sheet. Reject any demand for any recount of votes after RO have completed and signed the Final Result Sheet. **Entire process shall have to be video- recorded carefully.**

15.19.6 A candidate has right to file request for 2nd recount. It would be unreasonable to demand second recount if the first recount showed only minor variations from the first recount and at the same time showed a very substantial majority in favour of one candidate. **On the contrary, it would be reasonable to demand further recount where the margin between first two candidates is close and where previous recount has shown differing results."** (emphasis added)

34. As can be seen from the above, once an election agent demands a recount, he ought to be given a reasonable opportunity to make his application in writing. In the present case, the difference in votes was only 1 and in fact it was the Election Petitioner who had got that 1 extra vote and whose election agent demanded a recount. However, instead of giving him an opportunity to make the application in writing, the R.O. went on to hastily sign and declare the results in Form 20 and when the election petitioner moved an application immediately thereafter, she rejected it taking a specious excuse that the results were declared 10 mins back.

35. Be that as it may, the high-handed hastiness and palpable arbitrariness on the part of the R.O. can also be seen from the fact that she completely ignored **Clause 15.19.6** of the 2023 Handbook noted above, which provides for a candidate's right to file for a second re-count, particularly when the margin between the first two candidates is narrow. In the present case there could not have been a narrower margin than 1 vote.

36. It is submitted that all of this has been video recorded as stipulated under **Clause 15.19.5** of the 2023 Handbook and the impropriety which has materially affected the result of the election can be assessed by summoning the same from the D.E.O. in whose custody the same has been stored in terms of **Clause 19.10** of the 2023 Handbook.

37. It is submitted that the Petitioner has made several representations to the R.O. as well as the D.E.O. seeking supply of the video recording of the entire process of counting. the D.E.O. *vide* communication dtd. 14.06.2024 has rejected the same, in complete breach of Clause 19.10 of the 2023 Handbook which unambiguously states that copies of the said video recordings shall be provided upon payment of fees. Hereto annexed and marked as **Exhibit - "D"** is the true copy of the application dated 06.06.2024 made by the Petitioner to the R.O and Hereto annexed and marked as **Exhibit - "D-1"** is the translated copy of the application dated 06.06.2024 made by the Petitioner to the R.O. Hereto annexed and marked as **Exhibit - "E"** is the true copy of the application dated 11.06.2024 made by the Petitioner to the D.E.O and Hereto annexed and marked as **Exhibit "E-1"** is the translated copy of the application dated 11.06.2024 made by the Petitioner to the D.E.O. Hereto annexed and marked as **Exhibit "F"** is the true copy of the reply dated 14.06.2024 of the D.E.O and Hereto annexed and marked as **Exhibit - "F-1"** is the translated copy of the reply dated 14.06.2024 of the D.E.O. Hereto annexed and marked as **Exhibit -"G"** is the true copy of the letter dated 18.06.2024 sent by the by the Petitioner to the D.E.O. Hereto annexed and marked as **Exhibit "H"** is the true copy of the application dated 15.07.2024 filed by the Petitioner.

38. The Election Petitioner craves liberty of this Hon'ble Court to summon the video recordings of the entire counting process at the time of trial.

39. As such it is submitted that there has been absolute breach by the Election Officials during the counting process which has materially affected the result of the Election and therefore clearly attracts **Section 100(1)(d)(iv)** of the **R.P. Act, 1951**, on the basis of which the election of the Returned Candidate has to be set aside.

40) Petitioner has thus contended that the Election Officer declared that Petitioner had lead by one vote, whereas as per the numbers noted by his counting agents, he was leading by more than 650 votes and therefore application for recount was made to the Returning Officer. However, perusal of the recount application made by the Petitioner on 4 June 2024 indicates that the Returning Officer has made an endorsement thereon that the result was declared at 7.54 p.m. whereas the objection was received at 8.06 p.m. Rule 63 of the Rules 1961 deals with recount of votes and provides thus:

63. Re-count of votes.—

(1) After the completion of the counting, the returning officer shall record in the result sheet in Form 20 the total number of votes polled by each candidate and announce the same.

[(2) After such announcement has been made, a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the returning officer to re-count the votes either wholly or in part stating the grounds on which the demands such re-count.]

(3) On such an application being made the returning officer shall decide the matter and may allow the application in whole or in part or may reject it *in toto* if it appears to him to be frivolous or unreasonable.

(4) Every decision of the returning officer under sub-rule (3) shall be in writing and contain the reasons therefor.

[(5) If the returning officer decides under sub-rule (3) to allow a re-count of the votes either wholly or in part, he shall—

(a) do the re-counting in accordance with [rule 54A,] rule 56 or rule 56A, as the case may be;

(b) amend the result sheet in Form 20 to the extent necessary after such re-count; and

(c) announce the amendments so made by him.]

(6) After the total number of votes polled by each candidate has been announced under sub-rule (1) or sub-rule (5), the returning officer shall complete and sign the result sheet in Form 20 and no application for a re-count shall be entertained thereafter:

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (2).

41) Rule 64 of the Rules 1961 thereafter deals with declaration of result of election and return of election and provides thus:

64. Declaration of result of election and return of election.—

The returning officer shall, subject to the provisions of section 65 if and so far as they apply to any particular case, then—

(a) declare in Form 21C or Form 21D, as may be appropriate, the candidate to whom the largest number of valid votes have been given, to be elected under section 66 and send signed copies thereof to the appropriate authority, the Election Commission and the chief electoral officer; and

(b) Complete and certify the return of election in Form 21E, and send signed copies thereof to the Election Commission and the chief electoral officer.

42) Thus, under provisions of Rule 63 of the Rules 1961, the Returning Officer has to record the total number of votes polled by each candidate in the result sheet in Form-20 and announce the same. Immediately after such announcement and before declaration of result of election is made under Rule 64 of the Rules 1961, a candidate or his election agent or counting agent can apply in writing to the Returning Officer to recount the votes stating the grounds on which he demands such recounting. Thus, the application for recount of votes must be made during the time gap between announcement made by the Returning Officer under Rule 63 and declaration of result of election under Rule 64 of the Rules, 1961. In the present case however, Petitioner thought of filing application for recount only after result of the election was declared. Application for recount of votes was submitted at 8.06 p.m. after declaration of the result at 7.54 p.m. Thus, the pleadings in support of the ground of improper rejection of demand for recount does not disclose any valid cause of action in support of ground under Section 100(1)(d) (iii) or (iv) of the RP Act. Again, there is no positive statement in the Petition that rejection of demand for recount of votes has materially affected result of the election of the Returned Candidate.

43) The next ground pleaded by the Petitioner in his Election Petition is about unauthorized use of mobile phone in the counting center/hall. The relevant pleadings in this regard are to be found in paragraphs 40 to 46 of the Election Petition which read thus:

Unauthorized use of Mobile Phone in the Counting Centre/Hall

40. The Petitioner submits that the voting results of each round are put up on a screen at the counting centre. It is submitted that the aforesaid process of counting, announcement and screen display was done upto the 19th round. Thereafter, from the 20th to 25th rounds, the votes were not announced or displayed and nearing the end of the counting, the votes in respect of 20th to 26th rounds came to be announced. It is also pertinent to note that the CCTV footage would show that between 19th to 26th rounds, the Returning Officer continuously

off stage and seemed to be continuously interacting on her mobile phone. The same will be clear from the CCTV footage / Video Recordings of the counting hall and as such it is incumbent to summon the said recordings.

41. The usage of the phone is also in the teeth of the Instructions contained in Clause 15.4.5 and 15.4.6. of the 2023 Handbook, which stipulates that the mobile phones have to be kept in silent mode. The necessary instructions in this regard are as follows:

"15.4 OFFICIAL COMMUNICATION ROOM, MEDIA CENTER AND PUBLIC COMMUNICATION ROOM:

15.4.5 No person other than the Commission's Observer is allowed to carry a mobile phone inside the Counting Halls. In addition to the Observer, the Returning Officer or Assistant Returning Officer or the Counting Supervisor, whose mobile phone is linked to ETPBS, is also authorized to carry mobile phone, but in silent mode to receive One- Time Password (OTP) for the purpose of pre-counting of ETPBS.

15.4.6 The mobile handset will be switched ON only to receive 'OTP' and be switched off once the ETPBS system is logged in and be kept by the Observer/RO/ARO till counting is over. A declaration shall be signed by all users separately about DOs and DON'Ts for mobile usage."

42. However, as stated above, the mobile phone was being used by the R.O. in complete breach of the stipulations contained hereinabove.

43. It is further perplexing to note that one of the ENCORE operators namely, Mr. Dinesh Gurav, whose mobile phone was authorized to be carried into the counting centre, lent his phone to one Mr. Mangesh Padilkar, who is a relative of the Returned Candidate, and the latter in turn was using the same illegally at the counting place. This was observed by two independent candidates namely, Mr. Surendra Mohan Arora and Mr. Bharat Khimji Shah on whose complaint action was taken and FIR lodged almost 10 days later on 13.06.2024, only after huge media outcry. Hereto annexed and marked as **Exhibit - "I"** is the true copy of the FIR No. 201 dated 13.06.2024 and Hereto annexed and marked as **Exhibit - "I-1"** is the translated copy of the FIR No. 201 dated 13.06.2024.

44. As can be seen from the copy of the FIR the said mobile phone was linked to both the ETPBMS as well as the ENCORE system and was required to be used merely to obtain OTP. However, the same was being used in a completely unauthorized and illegal manner and would have continued to be used so had not the independent candidates made a hue and cry about it.

45. All of this clearly shows that the Statutory Rules / Instructions were being breached with brazen impunity to somehow assist the Respondent No. 1 win the elections.

46. It is therefore submitted that the election of the Returned Candidate deserves to be set aside on the ground enumerated in Section 100(1)(d) (iv) of the R.P. Act, 1951, in addition and independently of other grounds detailed in the present Election Petition.

44) Apart from the fact that the allegations are vague, there is no positive statement in the Election Petition that use of mobile phone by the Encore Operator Mr. Dinesh Gurav has materially affected result of election of the Returned Candidate.

45) The last ground urged in the Election Petition and on which Mr. Patil has led strenuous reliance is improper reception of votes cast by impersonators resulting in 333 genuine electors being forced to cast tendered votes. The relevant pleadings in this regard are to be found at paragraphs 47 to 53 of the Election Petition, which read thus:

Improper reception of votes cast by impersonators resulting in 333 genuine electors being forced to cast Tendered Votes has also materially affected the result of the election

47. It is submitted that there were as many as 333 impersonators who have cast votes in the EVMs in different polling booths as per **Form 17-C (Part -I)**, received by the Election Petitioner's agents.

48. It is however, astounding to note that while according to Form 17-C (Part-1) there are 333 Tendered Votes, the Form 20 - Final Result sheet signed by the R.O, which is supposed to record the number of 'tendered votes' based on Form 17-C (Part I) only records 213 'Tendered Votes'. A Comparative Chart containing details of the polling booth in different assembly segments (total 174 polling booths) where tendered votes were cast as seen from Form 17-C (Part I) *vis-à-vis* the details recorded by the R.O. in Form 20-Final Result Sheet is as follows:

Sr	Assembly	Total Booths	Tender Votes As per 17C	Tender Votes In Form 20-Part 2
1.	158- Jogeshwari	14	19	21
2.	159 - Dindoshi	34	63	53
3.	163 - Goregaon	28	73	36
4.	164-Versova	28	35	11
5.	165-Andheri W	40	70	60
6.	166-Andheri E	30	73	32
Total		174	333	213

Hereto annexed and marked as **Exhibit "J"** is the true copy of the detailed list of polling booth wise tendered votes east in each Assembly segment. Hereto annexed and marked as **Exhibit - "K"** are the true copies of Form 17-C (Part - 1) in respect of 174 polling booths in all the Assembly.

49. These impersonators have snatched the valuable rights of genuine voters who despite proving their identity have been left with no choice but to cast their votes

as 'Tendered Votes' in terms of Rule 49-P, instead of casting their votes in the EVM machines.

50. It is submitted that the multiple breaches / lapses that have been pleaded herein above, clearly go on to show that a systematic effort has been made to defeat the Election Petitioner, who despite all odds, has secured 1 vote more than the Returned Candidate at the end of the counting of EVM votes, while the Tendered votes according to Form 17-C (Part I) number 333. This apart from the fact that as per the noting / records made by the Election Petitioner's counting agents, the Petitioner has secured more than 650 votes in comparison to the votes secured by the Returned Candidate after completion of the EVM counting.

51. It is submitted that the Petitioner has also requested *vide* application dtd. 15.07.2024 [*vide* which he has sought for Form 17-C (Part II)] for supply of certified copy of **Form 17-B : List of Tendered Votes**, in respect of all Assembly Segments, which would further show the correct numbers.

52. In view of the aforesaid it is submitted that the scrutiny and counting of the tendered votes is absolutely necessary in this case, considering the fact that the Election Petitioner has got 1 vote more than the Returned Candidate after the counting of the EVM votes and the fact that there are 333 tendered votes.

53. It is submitted that in the past 'Tendered Votes' have been counted in similar circumstances and in the present case the non-counting of such votes has materially affected the result of the election, insofar as it concerns the respondent, by the improper reception of votes originally polled by impersonators other than the genuine electors who were constrained to tender their votes.

46) In support of this ground, there is a specific averment in paragraph 53 that *"the non-counting of such votes has materially affected the result of election"*. However, what is the exact illegality or irregularity that results out of this ground has not been pleaded by the Petitioner in paragraph 48 of the Election Petition. Petitioner has merely highlighted mismatch between the total number of tender votes as per Form 17C (Part-I) as compared to the tender votes reflected in Form-20 (Part-II). It is contended that only 213 tender votes are counted whereas the total tender votes reflected in Form 17C (Part-I) are 333. It is therefore sought to be suggested that there are missing 120 tender votes. By making an attempt to indicate missing 120 votes, an impression is created as if non-counting of those 120 tender votes has resulted in erroneous election of Respondent No.1 and non-election of the Petitioner. However, in 'Concise Statement of

Facts' filed alongwith the Election Petition, Petitioner has made following averments:

The Election Petitioner is aggrieved on account of **improper reception of void votes cast by 333 impersonators** in place of genuine electors, along with breach of rules/orders, pertaining to the counting process, by ECI officials, which has materially affected the outcome of the election results leading to Election Petitioner's defeat by a narrow margin of forty-eight (48) votes.

(emphasis and underlining added)

47) Thus in 'Concise Statement of Facts', Petitioner has pleaded that 333 tender votes were itself 'void' and that there is improper 'reception' thereof by the Returning Officer. Thus, there is apparent contradiction in the stand adopted by the Petitioner. In one breath he suggests irregularity in non-counting of 120 missing tender votes and in the next breath, he contends that all the 333 tendered votes are void and could not have been received. The Petitioner thus is not sure as to whether the tendered votes ought to be counted or not. He has merely raised a surmise by highlighting mismatch between the total number of tender votes as per Form 17C (Part-I) as compared to Form-20 (Part-II). The said surmise however is not taken to its logical end by raising a pleading that non-counting of missing 120 tender votes has materially affected result of election of Respondent No.1.

48) In paragraph 49 of the Election Petition, Petitioner has pleaded that the impersonators in respect of 333 tender votes have snatched valuable right of genuine voters despite proving their identity who were left with no alternative but to cast their vote as tendered votes under Rule 49P of Rules 1961 instead of casting their votes in EVM. However, while pleading so Petitioner has not demonstrated as to how the alleged violation of right of 333 voters in casting vote through tendered mode instead of through EVM has affected any of the right of the

Petitioner as such. Upon being queried as to whether Petitioner wants to take a position that it is impermissible to receive or count tendered votes, Mr. Patil has fairly conceded to the position that Rule 49P of the Rules 1961 permits voting through ballot paper in the event another person has already voted in place of a genuine voter. Rule 49P of the Rules 1961 provides thus:

49P. Tendered votes.—

(1) If a person representing himself to be a particular elector seeks to vote after another person has already voted as such elector, he shall, on satisfactorily answering such questions relating to his identity as the presiding officer may ask, be, instead of being allowed to vote through the balloting unit, supplied with a tendered ballot paper which shall be of such design, and the particulars of which shall be in such language or languages as the Election Commission may specify.

(2) Every such elector shall before being supplied with tendered ballot paper write his name against the entry relating to him in Form 17B.

(3) On receiving the ballot paper he shall forthwith—

(a) proceed to the voting compartment;

(b) record there his vote on the ballot paper by placing a cross mark 'X' with the instrument or article supplied for the purpose on or near the symbol of the candidate for whom he intends to vote;

(c) fold the ballot paper so as to conceal his vote;

(d) show to the presiding officer, if required, the distinguishing mark on the ballot paper;

(e) give it to the presiding officer who shall place it in a cover specially kept for the purpose; and

(f) leave the polling station.

(4) If owing to blindness or physical infirmities, such elector is unable to record his vote without assistance; the presiding officer shall permit him to take with him a companion, subject to the same conditions and after following the same procedure as laid down in rule 49N for recording the vote in accordance with his wishes.

49) The Petitioner thus cannot raise objection about reception and counting of tendered votes and has rightly not pleaded in the Election Petition that the Returning Officer could not have counted the tendered votes. Thus as conceded by Petitioner, there is no illegality or irregularity

in reception of tendered votes. Therefore, his allegation of improper reception of 333 tendered votes materially affecting outcome of election results lacks foundational pleading to demonstrate a cause of action for filing the Election Petition.

50) The Petitioner himself does not appear to be sure about the exact outcome of the surmise that he has sought to be created by pleading data of missing 120 tendered votes, which is clear from the fact that one day prior to the lodging of the Election Petition he filed an application on 15 July 2024 seeking supply of certified copy of Form 17B (List of Tendered Votes) in respect of all assembly segments. The averment in paragraph 51 that “*which would further show the correct numbers*” itself shows that Petitioner himself is not aware about the exact numbers nor has made any specific pleading about the manner in which the result of the returned candidate has materially affected by reception of 333 tendered votes.

51) The conspectus of the above discussion is that Petitioner has thoroughly failed to raise necessary pleadings disclosing cause of action, setting aside election of Respondent No.1 under any of the grounds enumerated in Section 100 of the RP Act. The Election Petition lacks concise statement of material facts on which grounds under Section 100(1) (d)(iii) or (iv) of the RP Act are sought to be made out. In absence of necessary pleadings, the Election Petition is liable to be rejected under Order VII Rule 11 of the Code.

52) What remains now is to deal with various judgments relied upon by Mr. Patil:

i) Judgment in ***Liverpool & London S.P. & I Association Ltd.*** (supra) does not deal with Election Petition and holds that cause of action

is bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. The Apex Court has held in paragraphs 139, 140, 141, 146 and 147 as under:

Rejection of plaint

139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

Cause of action

140. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence.

141. Order 7 Rule 14 of the Code of Civil Procedure provides as follows:

“14. *Production of document on which plaintiff sues or relies.*—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) Where a document or a copy thereof is not filed with the plaint under this rule, it shall not be allowed to be received in evidence on behalf of the plaintiff at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

146. It may be true that Order 7 Rule 11(a) although authorises the court to reject a plaint on failure on the part of the plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the suit. The approach adopted by the High Court, in this behalf, in our opinion, is not correct.

147. In *D. Ramachandran v. R.V. Janakiraman* [(1999) 3 SCC 267] this Court held : (SCC p. 271, para 8)

“It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the

petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.”

However, even after holistic consideration of the whole of pleadings raised by the Petitioner in his Election Petition, it cannot be stated that the Petition discloses a cause of action for making out any of the grounds enumerated under Section 100 of the RP Act.

ii) The judgments in ***Ashraf Kokkur*** (supra) and ***Madiraju Venkata Ramana Raju*** (supra) are relied upon by Mr. Patil in support of his contention that the Election Petition will have to be read as a whole and cannot be dissected sentence-wise or paragraph-wise for finding out disclosure of cause of action. There can be no dispute about the proposition that the Election Petition is required to be read as a whole. However, even after reading of all the averments in the Election Petition in their entirety, the Petitioner has failed to make out a cause of action in support of any of the grounds enumerated under Section 100 of the RP Act.

iii) The judgment in ***B. Sundera Rami Reddy*** (supra) deals with the issue of joinder of parties and is wholly irrelevant to the issue involved in the present case.

(iv) The judgment in ***Mohd. Akbar*** (supra) deals with the issue of expeditious decision of Election Petition and has no relevancy to the issue at hand.

v) The judgments in ***Arikala Narasana Reddy*** (supra), ***Uttamrao Shivdas Jankar*** (supra), ***Ram Sukh Versus. Dinesh Aggarwal*** (supra) and ***Rakesh Kumar*** (supra) deal with the issue of binding nature of instructions issued by Election Commission of India. The judgments are essentially relied upon to deal with the contentions raised by Mr. Sakhare

that handbook issued by the Election Commission cannot be treated on same pedestal of that of Rules or Orders under the Act. In my view, even if the instructions contained in the handbook are treated as binding for the purpose of attracting provisions of Section 100(1)(d)(iv) of the RP Act, the pleadings raised by Petitioner do not disclose a cause of action for making out a ground for setting aside the election of returned candidate.

vi) The judgment in ***Sardar Harcharan Singh Brar*** (supra) the Apex Court has dealt with the issue of defect in the Affidavit filed in support of Election Petition alleging corrupt practice by the winning candidate. The judgment does not deal with disclosure of cause of action for rejection of Election Petition under Order VII Rule 11 of the Code and therefore the same has no application in the present case.

vii) The judgment in ***Umesh Challiyill*** (supra) follows the ratio of the judgment in ***Sardar Harcharan Singh Brar*** (supra) and for the reasons indicated above, this judgment again would have no application to the issue at hand.

viii) The judgment in ***Ponnala Lakshmaiah*** (supra) deals with the issue of defect in the verification of the Affidavit and has relied upon ratio of the judgment in ***Sardar Harcharan Singh Brar*** (supra) and would therefore have no application to the issue at hand.

ix) The judgment in ***G.M. Siddeshwar*** (supra) has dealt with the issue of non-compliance with provisions of Section 83(1) of the RP Act for rejection of Election Petition under provisions of Section 86 of the RP Act. In the present case, Respondent No.1 has not sought rejection of Election Petition under provisions of Section 86 of the RP Act but has sought its rejection under provisions of Order VII Rule 11 of the Code.

53) I am therefore of the view that Petitioner has failed to ensure strict compliance with the requirements of statutory provisions. There is non-compliance with provisions of Section 83(1) (a) of the RP Act. Therefore, following the mandate under various judgments of the Apex Court, particularly in ***Kanimozhi Karunanidhi*** (supra) and ***Karim Uddin Barbhuiya*** (supra), even a singular omission of statutory requirement must entail dismissal of the Election Petition by having recourse to provisions of Order VII Rule 11 of the Code. In my view, the Election Petition does not disclose cause of action for making out any of the ground under Section 100(1)(d)(iii) or (iv) of the RP Act and therefore Election Petition cannot be taken to trial and is liable to be rejected by having recourse to the provisions of Order VII Rule 11 of the Code.

54) I accordingly proceed to pass the following order:

- i) Application (L) No. 29930 of 2024 is **allowed** and accordingly the Election Petition is rejected under provisions of Order 7 Rule 11 of the Code.
- ii) Election Petition No.6 of 2024 shall accordingly stand **dismissed**.
- iii) In view of dismissal of the Election Petition, nothing would survive in the Application (Lodging) No.29880 of 2024 and the same is also disposed of.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
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Digitally signed
by SUDARSHAN
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Date:
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