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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ELECTION PETITION NO. 1 OF 2025**

Shahaji Nanai Thorat @ ... Petitioner
Shahajirao Dhondiba Thorat
Versus
The State of Maharashtra and Others ... Respondents

Mr. Prosper D'souza for the Petitioner. (appointed by the Legal Aid).
Mr. Arun Panickar a/w. Mr. Vinay Nair for Respondent Nos. 2 and 3.
Ms. P. H. Kantharia, GP a/w. Mr. Himanshu Takke, AGP for the
Respondent – State.

CORAM : GAURI GODSE, J.

RESERVED ON : 26th MARCH 2025

PRONOUNCED ON : 21st APRIL 2025

ORDER:

1. By order dated 12th March 2025 the petitioner was called upon to point out as to why the election petition should not be dismissed under Section 86(1) of The Representation of People's Act, 1951 ("the said Act") for non-compliance with the provisions of Section 81 and 82 read with Section 100(1) and 101 of the said Act.

2. Heard the learned counsel for the petitioner on the preliminary objection. Learned counsel for the petitioner submitted that the entire election petition speaks volumes about the grounds raised for

challenging the election of respondent no. 1. He submits that all the supporting documents support the petitioner's allegations as contemplated under Section 100(1)(d)(i) and Section 100(1)(a) read with Section 100(1)(d)(iv). He submits that the pleadings in the petition point out the allegations regarding the illegal acceptance of the nomination form of respondent no.1. He thus submits that respondent no. 7 lured the voters with false promises and assurances. He thus submits that respondent no. 7 indulged in corrupt practices, and thus the election of respondent no. 7 is liable to be set aside on the ground of corrupt practices as contemplated under Section 100 (1)(b), (d)(i) and d(iv). He submits that the Election Petition filed on 31st December 2024 to challenge the election declared on 23rd November 2024 is within time. He submits that the compliance under Section 117 is also done. Learned counsel for the petitioner thus submitted that there is no reason to dismiss the election petition under sub-section (1) of Section 86.

3. To consider the submissions made on behalf of the petitioner, I have perused the pleadings and the supporting documents of the election petition. The petitioner has filed this petition as an unsuccessful candidate. The prayer clause (a) of the petition prays for the cancellation of the election of the Maharashtra Legislative

Assembly Constituency 2024. The petitioner has also prayed to declare the election of the respondent no. 7 as illegal, null and void and further prayed for cancelling and setting aside the election of respondent nos. 7 to 17. The petitioner has added the Election Officers and the Election Commission as party respondents nos. 1 to 6, contrary to the mandate of Section 82 of the said Act. The learned counsel could not point out how the Election Petition would be maintainable against respondents nos. 1 to 6. The petitioner has improperly joined the election authorities as party respondents, which is not permissible under Section 82 of the said Act. Hence, the names of respondents nos. 1 to 6 must be deleted.

4. A perusal of the dates pleaded in the election petition and the record of the petition indicates that it is filed within time and there is compliance with Section 117. The Election Petition is filed to challenge the election, alleging corrupt practice and improper acceptance of nomination. However, prima facie, it appears that material particulars disclosing a complete cause of action are not pleaded. It is well established legal principle that Section 83(1)(a) of the said Act mandates that an election petition shall contain a concise statement of material facts on which the petitioner relies and which facts constitute a cause of action. If material facts are not

stated in the election petition, the same is liable to be dismissed on that ground alone. It is also well established legal principle that the pleadings with regard to the corrupt practices as stated in Section 123 of the said Act have to be precise, specific and unambiguous. Thus, if the allegation in the petition do not set out grounds as contemplated under Section 100 and do not conform to the requirement under Section 81 and 83 of the said Act, the petition is liable to be rejected under Order 7 Rule 11(a) read with Section 83 of the said Act.

5. It is also well settled legal principle that a charge of corrupt practices is in the nature of criminal charge and has got to be proved beyond doubt. Thus the elected candidate should be put to notice of the allegation against him with full particulars in as much as the result of such allegation can be drastic. The election petition can oust popularly elected representative of the people. Hence, full and complete particulars of the allegation of corrupt practices must be pleaded that is sufficient to constitute the cause of action. Therefore, failure to plead material and full particulars must result in dismissal of the election petition at the threshold. It is a well-settled legal position that the power of this Court to reject the petition under Order 7 Rule 11 of the Code of Civil Procedure 1908 is independent

of sub-section (1) of Section 86 of the said Act. However, vide Order dated 12th March 2025, the petitioner was not specifically called upon to respond as to why the Election Petition should not be rejected under clause (a) of Rule 11 of Order VII of CPC, on the ground that it does not disclose a complete cause of action. Hence, it is necessary to give an opportunity to the petitioner to respond as to why the election petition should not be rejected under Order 7 Rule 11(a) of the CPC.

6. Hence, the following order is passed :

- (i) The names of respondent nos. 1 to 6 are strucked out. The petitioner shall delete the names of respondent nos. 1 to 6. Amendment to be carried out within two weeks.
- (ii) List the petition for hearing as to why the election petition should not be rejected under clause(a) of Rule 11 of Order 7 of CPC.
- (iii) Stand over to 9th May 2025. To be listed High on Board.

[GAURI GODSE, J.]