

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

INTERIM APPLICATION (L.) NO. 5808 OF 2025

IN

ELECTION PETITION NO. 3 OF 2025

Rajendra Dhedya Gavit

.... Applicant

(Orig. Respondent)

In the matter between :

Sudhir Brijendra Jain

....Petitioner

: *Versus* :

Rajendra Dhedya Gavit

.... Respondent

WITH

ELECTION PETITION NO. 3 OF 2025

Sudhir Brijendra Jain

.... Petitioner

: *Versus* :

Rajendra Dhedya Gavit

.... Respondent

Mr. Nitin Gangal with Mr. Chandrakant Y. Tanawde, Ms. Namita Mestry, Ms. Prapti Karkera, Ms. Diksha Patil, Mr. Pramod B. Jedhe, Mr. Naresh B. Patil and Mr. Milind Choudhari for the Applicant in Interim Application (L) No.5808 of 2025 and for Respondent in Election Petition No.3 of 2025.

Smt. Neeta Karnik, Senior Advocate with Mr. Jimmy Mates Gonsalves, Mr. Shrirang P. Katneshwarkar, Mr. Kallies Albert Alphanso and Mr. Sandeep Gupta, i/b. Mr. Anthony Floriyen Foss, for Respondent in Interim Application (L) No.5808 of 2025 and for the Petitioner in Election Petition No.3 of 2025.

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON : 13 JUNE 2025.

JUDGMENT PRONOUNCED ON : 23 JUNE 2025

JUDGMENT:

1) This application is filed by the original Respondent in the Election Petition seeking rejection of the Election Petition under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (Code).

2) The Petitioner has filed the Election Petition seeking a declaration that the election of the Respondent in the General Election 2024 to the State Assembly from 130-Palghar-ST Assembly Constituency is *void*.

3) Brief facts leading to filing of the Election Petition are that Petitioner is a voter from 130-Palghar, ST Assembly Constituency who claims himself to be a Social Activist. Respondent contested the election from Assembly Constituency (130-Palghar) as an official candidate of Shiv Sena, a registered political party. The results of the elections were declared on 23 November 2024 in which Respondent was declared as the *Elected Candidate*.

4) The Petitioner has raised objections about declarations made by the Respondent in the Affidavit in Form-26 filed alongwith the nomination by the Respondent. It is contended that Respondent stated name of Smt. Rupali Gavit as his second wife (*Spouse No. 2*). According to the Petitioner, such disclosure by the Respondent is not only incorrect but

also against the format of Form No.26 prescribed under Rule 4A of the Conduct of Election Rules, 1961 (**the Election Rules**). It is contended that the second marriage of Respondent with Smt. Rupali Gavit is void under the provisions of the Hindu Marriage Act, 1955 and therefore the declaration made by the Respondent about Smt. Rupali Gavit as his second wife is false. Additionally, it is contended that in the format of Form No.26 under Rule 4A, there is no provision for making any declaration of second spouse and that therefore addition of an extra column in respect of Spouse No.2 by the Respondent is in violation of Rule 4A of the Election Rules. The Petitioner has accordingly challenged the election of Respondent under the provisions of Section 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) read with Section 123(4) of the Representation of People Act, 1951 (**the Act**).

5) This Court issued summons to the Respondent by order dated 15 January 2025. After service of summons, Respondent has appeared in the Election Petition and has filed his Written Statement. Additionally, Respondent has filed the present application seeking rejection of the Election Petition under the provisions of Order VII Rule 11 of the Code. Petitioner has filed Affidavit-in-Reply opposing the application. The application is called out for hearing.

6) Mr. Gangal, the learned counsel appearing for the Applicant/original Respondent submits that the Election Petition does not disclose any cause of action for questioning the election of the Respondent. That when averments of the Election Petition are read as a whole, it is clear that the Petition lacks the necessary averments for the purpose of maintaining challenge to the election of the Respondent under the provisions of Section 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) read with Section 123(4) of the Representation of People Act, 1951. That the entire Election Petition is premised on declarations made by the Respondent in

his Affidavit in Form No.26, in which he has declared Smt. Rupali Gavit as his Spouse No.2. That mere addition of a column in Form No.26, for the purpose of making true and correct disclosure cannot be a ground for seeking declaration of election as void. He would rely on provisions of Section 33B of the Act, under which the candidate is required to furnish information only under the Act and the Election Rules. That the said provision is in favour of the candidate which does not mandate declaration of any information not provided for under the Act and the Election Rules. That there is no prohibition or restriction on the candidate from making any voluntary disclosure of information. That declaration of information relating to marriage of the Respondent with Smt. Rupali Gavit depicts his honesty and that therefore none of the grounds under Section 100 of the Act are attracted in the present case.

7) Mr. Gangal would rely upon provisions of Section 83 of the Act in support of his contention that the Election Petition does not contain concise statement of material facts on which the Petitioner has relied upon. That there is no averment in the Election Petition that no marriage ever took place between the Respondent and Smt. Rupali Gavit. That therefore there is no material averment in support of the contention of declaration made by the Respondent to be false. That therefore no cause of action is disclosed in the petition in support of the contention that the Respondent has indulged into corrupt practice under Section 123(4) of the Act.

8) So far as the provision of Sections 100(d)(i) and 100(1)(d)(iv) of the Act are concerned, Mr. Gangal would submit that there is no averment in the petition that the result of the election has been materially affected in any manner. That there are no averments in support of the ground under Section 100(1)(d)(i) and in absence of pleadings about improper acceptance of nomination, the petition deserves to be rejected. That similar is the position in respect of ground under Section 100(1)(d)(iv)

where non-compliance with provisions of the Act or the Election Rules has not been borne out by the pleadings in the Election Petition.

9) Mr. Gangal would submit that Section 2 of the Hindu Marriage Act, 1955 makes the provisions of the Act inapplicable to tribal persons. That Respondent is admittedly a tribal person belonging to Bhil Community and therefore there is no prohibition on performance of second marriage. That otherwise there is a custom of polygamy in the Bhil Community. All that is done by the Respondent is to make true disclosure of information relating to his marriage with Smt. Rupali Gavit. That if a candidate belongs to Muslim Community and has entered into more than one marriage, he is bound to disclose names of his spouses by adding necessary columns in Form No.26 and that therefore mere addition of columns in the Form, would not mean improper acceptance of the nomination.

10) Mr. Gangal would accordingly submit that in absence of necessary averments in the Election Petition for making out a valid ground of challenge to the election of the Respondent under Section 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) read with Section 123(4) of the Representation of People Act, 1951, the petition deserves to be rejected under the provisions of Order VII Rule 11 of the Code. In support of his contentions, Mr. Gangal would rely upon the following judgments:

- i. *Union of India Versus. Association for Democratic Reforms and another*¹
- ii. *People's Union for Civil Liberties (PUCL) and another Versus. Union of India and another*²
- iii. *Kanimozhi Karunanidhi Versus. A. Santhana Kumar and Others*³
- iv. *Ravindra Dattaram Waikar Versus. Amol Gajanan Kirthikar and others*⁴

¹ (2002) 5 SCC 294

² (2003) 4 SCC 399

³ 2023 SCC OnLine SC 573

⁴ 2024 SCC OnLine Bom 3828

- v. *Dilip Bhausahab Lande In the Matter Between Khan Mohammed Arif Lallan Versus. Dilip Bhausahab Lande and others*⁵
- vi. *Karikho Kri Versus. Nuney Tayang and another*⁶
- vii. *Karim Uddin Barbhuiya Versus. Aminul Haque Laskar and others*⁷
- viii. *Santosh Versus. Nitin Jairam Gadkari*⁸
- ix. *T. R. Baalu Versus. I. S. Purushothaman and others*⁹

11) The petition is opposed by Ms. Karnik, the learned Senior Advocate appearing for the original Petitioner. She would submit that the Election Petition contains the necessary averments for maintaining a valid challenge to the election of the Respondent. She would submit that the Election Petition must be read as a whole and upon holistic reading of the averments in the Election Petition, it can barely be contended that the petition does not disclose cause of action for challenging Respondent's election. She would submit that the averments in paras-7 and 14 of the memo of Election Petition contains the necessary averments of Respondent making false statement in his nomination form within the meaning of Section 123(4) of the Act, thereby committing corrupt practice for setting aside the election under Section 100(1)(b) of the Act. That Smt. Rupali Gavit cannot be considered as legally wedded wife of the Respondent and that therefore declaration made by him about Smt. Rupali Gavit being his wife is false to the knowledge of the Respondent. That there is necessary averment in the memo of the Petition about Smt. Rupali Gavit not being the wife of the Respondent and about falsity in the declaration made by him. She would submit that addition of unnecessary and false information about Smt. Rupali Gavit as Spouse No.2 amounts to violation of Rule 4A of the Election Rules prescribing format of filing an Affidavit by the candidate. That the Affidavit must be strictly in accordance with the said format and that there is no room for tinkering with the said

⁵ 2022 SCC OnLine Bom 94

⁶ 2024 SCC OnLine SC 519

⁷ 2024 SCC OnLine SC 509

⁸ 2025 SCC OnLine Bom 644

⁹ 2005 4 L.W. 617

format. Any change in the format would necessarily render the acceptance of nomination to be improper thereby attracting the ground prescribed under Section 100(1)(d)(i) of the Act. That the Returning Officer ought to have returned the nomination form of the Respondent after noticing modifications in the columns made by the Respondent. That since the Form was defective, the same warranted outright rejection. That once the acceptance of nomination itself is found to be erroneous and improper, it is not necessary for the Election Petitioner to additionally prove that the result of the election was materially affected by such improper acceptance of the nomination.

12) Ms. Karnik would further submit that declaration of Smt. Rupali Gavit being spouse of the Respondent was deliberately and falsely made with a view to exert undue influence on the voters thereby attracting provisions of Section 123(4) of the Act. She would submit that there are necessary averments in ground clauses- 8, 10(m) and (n) in the Election Petition in support of the ground of undue influence. That Smt. Rupali Gavit is from local tribal community whereas the Respondent hails from Nandurbar and therefore false declaration of marriage with Smt. Rupali Gavit was deliberately made in Form 26 with a view to influence the tribal voters in the community. That the constituency was reserved for ST community and Respondent has largely benefited on account of disclosure made about his marriage with Smt. Rupali Gavit from local tribal voters in Affidavit in Form 26.

13) Ms. Karnik would accordingly submit that the memo of Election Petition contains necessary averments for taking the Election Petition to trial. That the Petitioner must be given opportunity to lead evidence to substantiate and prove the averments made in the memo of the Election Petition. That the requirement under Section 83 is to only make a concise statement of facts and it is unnecessary to plead every possible

detail. That once an averment is made that the declaration made in the nomination form is false, the Petitioner must be given an opportunity to prove the said allegation by leading evidence. In support of her contention, Ms. Karnik has relied upon following judgments:-

- i. *Liverpool & London S.P. & I Association Ltd. Versus. M.V. Sea Success I and another*¹⁰
- ii. *Sardar Harcharan Singh Brar Versus. Sukh Darshan Singh and others*¹¹
- iii. *Virender Nath Gautam Versus. Satpal Singh and others*¹²
- iv. *Ashraf Kokkur Versus. K.V. Abdul Khader and others*¹³
- v. *Kisan Shankar Kathore Versus. Arun Dattatray Sawant and others*¹⁴
- vi. *Madiraju Venkata Ramana Raju Versus. Peddireddigari Ramachandra Reddy and others*¹⁵
- vii. *Union of India Versus. Association for Democratic Reforms and another*¹⁶
- viii. *People's Union for Civil Liberties (PUCL) and another Versus. Union of India and another (supra)*
- ix. *Bhim Rao Baswanth Rao Patil Versus. K. Madan Mohan Rao and others*¹⁷
- x. *S. P. Chengalvaraya Naidu (Dead) by LRs Versus. Jagannath (Dead) by LRs and others*¹⁸
- xi. *Mairemban Prithviraj alias Prithviraj Singh Versus. Pukhrem Sharatchandra Singh*¹⁹
- xii. *Arjun Panditrao Khotkar Versus. Kailash Kushanrao Gorantyal and others*²⁰
- xiii. *Karikho Kri Versus. Nuney Tayang and another (supra)*

14) On above submissions, Ms. Karnik would pray for dismissal of the application filed by the Respondent.

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

¹⁰ (2004) 9 SCC 512
¹¹ (2004) 11 SCC 196
¹² (2007) 3 SCC 617
¹³ (2015) 1 SCC 129
¹⁴ (2014) 14 SCC 162
¹⁵ (2018) 14 SCC 1
¹⁶ (2002) 5 SCC 294
¹⁷ (2023) 18 SCC 231
¹⁸ (1994) 1 SCC 1
¹⁹ (2017) 2 SCC 487
²⁰ (2020) 7 SCC 1

16) The original Petitioner has filed the petition challenging the Respondent's election from 130-Palgahar (ST) Assembly Constituency by raising grounds under Section 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) read with Section 123(4) of the Act. It would therefore be necessary to reproduce provisions of Section 100 of the Act, which enumerates the grounds on which the election can be declared to be void. Section 100 of the Act 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.

17) Section 83 of the Act deals with contents of the 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]

18) The combined reading of provisions of Section 100 and Section 83 of the Act would mean that the Election Petition needs to contain concise statement of material facts on the basis of which grounds enumerated under Section 100 of the Act are sought to be made out. When allegation of corrupt practice is raised, the Election Petition needs to include a full statement of names of parties alleged to have committed such corrupt practice and the date and place of commission of each such practice. Therefore, an Election Petition which does not comply with the provisions of Section 83 of the Act by not disclosing either the concise statement of material facts or full particulars of corrupt practice necessarily attracts provisions of Order VII Rule 11 of the Code, under which the Election Petition can be rejected. This is because Election Petition is a statutory remedy and not an action in equity or a remedy in common law. Since the Act is a complete and self-contained Code, strict compliance with provisions of the Act is a mandatory requirement while exercising the

remedy under the said Act. Reference in this regard can be made to the Apex Court judgment in *Jyoti Basu and others Versus. Debi Ghosal and others*²¹ wherein it is held as under :-

8. 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.

19) In *Kanimozhi Karunanidhi* (supra), the Apex Court has summarised the legal position in para-28 of the judgment by examining various judgments rendered in the past, 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.

²¹ (1982) 1 SCC 691

20) The Apex Court thereafter held that mere bald and vague allegations would not constitute sufficient compliance of requirement of stating material facts in the Election Petition. The Apex Court held in paras-31 to 33 as under :-

31. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition. As well settled not only positive statement of facts, even a positive statement of negative fact is also required to be stated, as it would be a material fact constituting a cause of action. The material facts which are primary and basic facts have to be pleaded by the Election petitioner in support of the case set up by him to show his cause of action and omission of a single material fact would lead to an incomplete cause of action, entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) CPC read with Section 83(1)(a) of the RP Act.

32. It is also significant to note that an affidavit in Form 26 along with the nomination paper, is required to be furnished by the candidate as per Rule 4A of the said Rules read with Section 33 of the said Act. The Returning Officer is empowered either on the objections made to any nomination or on his own motion, to reject any nomination on the grounds mentioned in Section 36(2), including on the ground that there has been a failure to comply with any of the provisions of Section 33 of the Act. However, at the time of scrutiny of the nomination paper and the affidavit in the Form 26 furnished by the Appellant-returned candidate, neither any objection was raised, nor the Returning Officer had found any lapse or non-compliance of Section 33 or Rule 4A of the Rules. Assuming that the election petitioner did not have the opportunity to see the Form No. 26 filled in by the Appellant-returned candidate, when she submitted the same to the Returning Officer, and assuming that the Returning Officer had not properly scrutinized the nomination paper of the appellant, and assuming that the election petitioner had a right to question the same by filing the Election petition under Section 100(1)(d) (iv) of the said Act, then also there are no material facts stated in the petition constituting cause of action under Section 100(1)(d)(iv) of the RP Act. In absence of material facts constituting cause of action for filing Election petition under Section 100(1)(d)(iv) of the said Act, the Election petition is required to be dismissed under Order VII Rule 11(a) CPC read with Section 13(1)(a) of the RP Act.

33. As elaborately discussed earlier, Section 83(1)(a) of RP Act mandates that an Election petition shall contain a concise statement of material facts on which petitioner relies, and which facts constitute a cause of action. Such facts would include positive statement of facts as also positive averment of negative fact. Omission of a singular fact would lead to incomplete cause of action. So far as the present petition is concerned, there is no averment made as to how there was non-compliance with provisions of the Constitution or of RP Act or of the Rules or Order made thereunder and as to how such non-compliance had materially

affected the result of the election, so as to attract the ground under Section 100(1)(d)(iv) of the RP Act, for declaring the election to be void. The omission to state such vital and basic facts has rendered the petition liable to be dismissed under Order VII, Rule 11(a) CPC read with Section 83(i)(a) of the RP Act, 1951.

21) In *Ravindra Dattaram Waikar* (supra), this Court has examined the entire case law relating to the strict requirement of pleadings for maintaining a valid Election Petition and has held in paras-26 and 31 as under:

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.

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.

22) Having set out the legal position governing the strict requirement of pleadings in the memo of Election Petition, I now proceed to examine whether the Petitioner has raised the requisite pleadings as required under Section 83 of the Act.

23) The Petitioner has sought declaration of election of the Respondent to be void by invoking provisions of Section 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) read with Section 123(4) of the Act. This is clear from the following pleadings on para-3 of the Election Petition. The same read as under:-

3. By the present Election Petition, the Petitioner is challenging an election of the Respondent for declaring the election of Respondent to be void under Sections 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) and 123(4) of the Representation of the People Act, 1951. It is case of the Petitioner that the Respondent has published Statement of Fact, which is false with regard to addition of name of 2nd Wife of the Respondent.

24) Thus, the Election Petitioner has raised the grounds of:-

- (i) Corrupt practice under Section 100(1)(b) read with Section 123(4),
- (ii) Improper acceptance of nomination under Section 100(1)(b) and 100(1)(d)(i) and
- (iii) Non-compliance with the provisions of Constitution/Act/Rules/Orders under the Act under Section 100(1)(d)(iv).

25) The first objection of the Petitioner is about the manner in which the Respondent has filed his Affidavit in Form 26 prescribed under Rule 4A of the Election Rules. In the said Affidavit, the Respondent made following declaration in para-4 relating to details of PAN and status of filing Income Tax Returns :

(4) Details of Permanent Account Number (PAN) and status of filing of Income Tax return:

Sr.No.	Names	PAN	The financial year for which the last Income tax has been filed	Total Income shown in Income Tax Return (in Rupees) for the last five Financial Years completed (as on 31 st March)
1	Self – RAJENDRA DHEDYA GAVIT	AAUPG8522B	2023-24	(i) 1708420/- F.Y. 2023-24 (ii) 1264470/- F.Y. 2022-23 (iii) 2277460/- F.Y. 2021-22 (iv) 2335140/- F.Y. 2020-21 (v) 4080160/- F.Y. 2019-20
2	Spouse – 1 USHA RAJENDRA GAVIT	AXEPG1946N	2023-24	(i) 632540/- F.Y. 2023-24 (ii) 512799/- F.Y. 2022-23 (iii) 1250549/- F.Y. 2021-22 (iv) 500000/- F.Y. 2020-21 (v) 500000/- F.Y. 2019-20
	Spouse – 2 RUPALI RAJENDRA GAVIT	AMDPT6017B	2023-24	(i) 905794/- F.Y. 2023-24 (ii) 749465/- F.Y. 2022-23 (iii) 592662/- F.Y. 2021-22 (iv) 502600/- F.Y. 2020-21 (v) 469561/- F.Y. 2019-20
3	HUF (if Candidate is Karta/ Coparcener)	NIL	NIL	NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE
4	Dependent – 1 SON – RAJVEER RAJENDRA GAVIT	EOVPG0484P	NIL	NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE
5	Dependent – 2	NOT APPLICABLE	NOT APPLICABLE	NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE
6	Dependent – 3	NOT APPLICABLE	NOT APPLICABLE	NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE NOT APPLICABLE

26) The objection of the Petitioner is about addition of the column 'Spouse No. 2' in the said Affidavit filed under Form 26. According

to the Petitioner the format prescribed under Rule 4A does not include any column for making declaration of income of second spouse. It is therefore contended that addition of column '*Spouse No .2*' in the Affidavit renders the nomination form to be defective and accordingly the acceptance becomes improper within the meaning of Section 100(1)(d)(iv) of the Act.

27) The Respondent, on the other hand, has defended his action by contending that he has made true and honest disclosure in the declaration about his marriage with Smt. Rupali Gavit and therefore such honest declaration would not render the nomination form to be defective. Reliance is placed on Apex Court judgment in *Union of India Versus. Association for Democratic Reforms* (supra) in which the Apex Court has highlighted the need for sufficient information to the members of a democratic society by the candidates. After noticing that there was void in the Act and the Rules, the Apex Court had issued directions to the Election Commissioner to call for information from each candidate on various aspects particularly with regard to the prosecution, conviction etc. Paras- 34, 45 and 48 of the judgment are relevant which read thus :-

34. From the aforequoted paragraph, it can be deduced that the members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves and this would include their decision of casting votes in favour of a particular candidate. If there is a disclosure by a candidate as sought for then it would strengthen the voters in taking appropriate decision of casting their votes.

45. Finally, in our view this Court would have ample power to direct the Commission to fill the void, in the absence of suitable legislation covering the field and the voters are required to be well informed and educated about contesting candidates so that they can elect a proper candidate by their own assessment. It is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. Therefore, if the candidate is directed to declare his/her spouse's and dependants' assets —immovable, movable and

valuable articles — it would have its own effect. This Court in *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] dealt with the incident of sexual harassment of a woman at work place which resulted in violation of fundamental right of gender equality and the right to life and liberty and laid down that in the absence of legislation, it must be viewed along with the role of the judiciary envisaged in the Beijing Statement of Principles of Independence of Judiciary in the LAWASIA region. The decision has laid down the guidelines and prescribed the norms to be strictly observed in all work places until suitable legislation is enacted to occupy the field. In the present case also, there is no legislation or rules providing for giving necessary information to the voters. As stated earlier, this case was relied upon in *Vineet Narain case* [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] where the Court has issued necessary guidelines to CBI and the Central Vigilance Commission (CVC) as there was no legislation covering the said field to ensure proper implementation of the rule of law.

48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

- (1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.
- (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.
- (3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.
- (4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.
- (5) The educational qualifications of the candidate.

28) It is the contention of the Petitioner that disclosure of information relating to his marriage with Smt. Rupali Gavit is in the spirit of ratio of the judgment in *Union of India Versus. Association for Democratic Reforms*. Reliance is also placed by the Respondent on the Apex Court judgment in *People's Union for Civil Liberties* (supra) by which provisions of Section 33B of the amended Act are held to be illegal. Section 33B of the Act restricts the liability of the candidate to disclose or furnish only such information which is required to be disclosed or furnished under the Act or the Rules. By referring to the judgment in *Association for Democratic*

Reforms, the Apex Court has struck down the provisions of Section 33B of the Act by observing in paras-78 and 79 as under:-

78. What emerges from the above discussion can be summarised thus:

(A) The legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court. A declaration that an order made by a court of law is void is normally a part of the judicial function. The legislature cannot declare that decision rendered by the Court is not binding or is of no effect.

It is true that the legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision, therefore, it cannot enact a law which is violative of fundamental right.

(B) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.

The Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that a candidate would not be bound to furnish certain information as directed by this Court.

(C) The judgment rendered by this Court in *Assn. for Democratic Reforms* [Ed.: See full text at 2003 Current Central Legislation, Pt. II, at p. 3] has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court.

79. In the result, Section 33-B of the Amended Act is held to be illegal, null and void. However, this judgment would not have any retrospective effect but would be prospective. Writ petitions stand disposed of accordingly.

29) It is contended on behalf of the Respondent that though Section 33B of the Act has been struck down by the Apex Court, the same had not put any restriction on the candidate making any voluntary disclosure over and above the one prescribed in the Format. Infact, the Apex Court in *People's Union for Civil Liberties*, has found that restriction of liability on the candidates in disclosing or furnishing information in addition to the one provided under the Act or the Rules to be illegal and against the spirit of the ratio of its judgment in *Association for Democratic Reforms*. In my view, therefore mere disclosure of information in addition to the one required in the prescribed format would not *ipso-facto* render nomination to be defective. Therefore, addition of column for giving particulars of income and income tax of Spouse No. 2 in the Affidavit in Form 26 by the Respondent does not constitute a valid ground of challenge under Section 100(1)(d)(i) of the Act. The averments made by the Petitioner in this regard do not make out ground of improper acceptance of the nomination under Section 100(1)(d)(i) of the Act. In absence of necessary averments disclosing improper acceptance of the nomination, the Election Petition cannot be maintained and deserves rejection under Order VII Rule 11 of the Code.

30) Coming to the ground under Section 100(1)(d)(iv) of the Act, here again the ground sought to be urged is premised on modification of

Form 26 by the Respondent thereby violating the provisions of Rule 4A of the Election Rules. As a matter of fact, Rule 4A of the Election Rules provides thus :-

4A. Form of affidavit to be filed at the time of delivering nomination paper.-

The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.

31) Thus, Rule 4A mandates the candidate or his proposer, to deliver an Affidavit sworn by the candidate in Form 26. Form 26 is an Affidavit to be filed by the Candidate alongwith nomination paper making disclosure of various information required in the said Form. Para-4 of the said Affidavit deals with details of PAN and status of filing of Income-Tax Returns by the candidate himself, his/her spouse, HUF and dependents. Column No.1 of para-4 of Form 26 Affidavit mandates disclosure of details of PAN and status of filing of Income Tax Returns by the spouse. In the present case, Respondent has two spouses and has accordingly disclosed details of PAN and status of filing of Income Tax Returns by both the spouses. As observed above, the Respondent has made true and honest disclosure about details of PAN and status of filing of Income Tax Returns by both his spouses in Form 26 Affidavit. There is no averment in the petition as to how disclosure of details of PAN and status of filing of Income Tax Returns of Smt. Rupali Gavit (*Spouse No. 2*) violates provisions of Rule 4A of the Election Rules. On the other hand, non-disclosure of such details would have attracted one of the grounds for maintaining a valid Election Petition under Section 100 of the Act. However, merely because the Respondent made true disclosure of details of PAN and status of Income Tax Returns of his second spouse, it cannot be contended that there is any violation of Rule 4A of Election Rules on his part. In my view therefore the memo of Election Petition lacks concise

statement of material particulars demonstrating violation of provisions of Constitution/Act of 1951/Rules made thereunder for maintaining a valid Election Petition.

32) In my view therefore, the act of returned candidate of addition of a column in the Form 26 Affidavit for making true and honest disclosure of information would neither render the nomination form defective nor would amount to violation of provisions of the Election Rules. Respondent has contended that he belongs to *Bhil* tribal community in which custom of polygamy exists and that his second marriage is permissible. However, it is not necessary to go into the issue of validity or otherwise of the second marriage performed by Respondent. Issue is whether there is falsity in the claim made by the Respondent and whether disclosure of factum of second marriage by adding a column in the Form 26 Affidavit would attract a ground under Section 100 of the Act? The answer to the question would emphatically be in the negative. There may be cases where a candidate belonging to particular religion, in which polygamy is not prohibited, has contracted multiple marriages. If contention of Petitioner about impermissibility to add column in Form 26 Affidavit is accepted, such candidate would never be able to contest any election as disclosure of information about additional wife would attract ground under Section 100 of the Act. In my view therefore mere addition of column in Form 26 Affidavit would not attract a ground for challenging the election. Thus, no ground under Section 100(1)(d)(i) or (iv) is made out in the pleadings raised in the election petition, warranting its dismissal under order VII Rule 11 of the Code.

33) Also of relevance is the position that mere demonstration of violation of provisions of Constitution/Act/Rules is not sufficient and that it is mandatory for the Petitioner to disclose concise statement of material facts to demonstrate as to how election of the returned candidate has been

materially affected by such violation. There is no pleading in the entire Election Petition to demonstrate as to how election of Respondent is materially affected on account of alleged violation of Rule 4A of the Election Rules by him. In order to maintain a valid Election Petition, the linkage must be established between the alleged violation and election getting materially affected. Reliance by Mr. Gangal on judgment of Single Judge of this Court in *Dilip Bhausahab Lande* (supra) in this regard is apposite in which necessity of establishing linkage between the illegality and result of the election has been highlighted. This Court held in para-25 as under :-

25. Thus, to get an election declared as void under the said provision, the election petitioner must aver that, on account of non-compliance with the provisions of the Constitution or of this Act or of any rules, orders made under the Act, the results of the election in so far as it concerns returned candidate was materially affected. Here, it is petitioner's case that returned candidate has committed Corrupt Practices as well as committed electoral offences and, therefore, returned candidate was required to be declared as disqualified. Petitioner in Paragraph 28 of the Petition averred that, unlawful campaign during prohibited 48 hours of the election by Uddhav Thakarey and others resulted in unlawful election process, which resulted in, election of the returned candidate by thin margin of 409 votes. In paragraph 29, 30, 31 and 32, petitioner pleaded that illegal election campaign by the senior leader of Shivsena, has influenced voters to vote for returned candidate. Therefore, it is petitioner's case that the alleged violation of the orders/model code of conduct, resulted in election of respondent no. 1 by margin of 409 votes. Section 100(1)(d)(iv) requires pleadings as to how alleged illegal campaign caused voters to vote in favour of the returned candidate. Thus, pleading of this material fact of link between illegal election campaigning and victory of returned candidate by margin of 409 votes was essential 'fact'. Thus, to say that unless such link is pleaded, it was not possible to frame the triable issue. Factually speaking, averment in paragraphs 28, 29, 30 and 31 of the Petition, are simply expressing "possible view of the petitioner; without pleading link. Therefore, in absence of link between alleged violation of model code of conduct and victory of returned candidate, how the petitioner, could assert that, because of alleged violation of 'Model Code of Conduct, four hundred and nine voters, caste their votes to returned candidate. In fact, petitioner has simply reproduced, text of Section 100(1)(d)(iv) of the Act and nothing more. Averments in paragraph no. 28 and onwards, simply suggest that the petitioner just undertook and launched roving and fishing enquiry without concrete material with them. Additionally mere 'chance' or 'likelihood' of voters being influenced by illegal campaigning would not constitute essential fact, to contend that illegal campaigning materially affected the election result of the returned candidate.

34) In *Karikho Kri* (supra), the Apex Court has held that a defect in the nomination which is substantial in character is not sufficient for maintaining a valid Election Petition. The Apex Court held in pars-40, 41, 44 and 45 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*⁴⁹, 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.

44. Though it has been strenuously contended before us that the voter's 'right to know' is absolute and a candidate contesting the election must be forthright about all his particulars, we are not inclined to accept the blanket proposition that a candidate is required to lay his life out threadbare for examination by the electorate. His 'right to privacy' would still survive as regards matters which are of no concern to the voter or are irrelevant to his candidature for public office. In that respect, non-disclosure of each and every asset owned by a candidate would not

amount to a defect, much less, a defect of a substantial character. It is not necessary that a candidate declare every item of movable property that he or his dependent family members owns, such as, clothing, shoes, crockery, stationery and furniture, etc., unless the same is of such value as to constitute a sizeable asset in itself or reflect upon his candidature, in terms of his lifestyle, and require to be disclosed. Every case would have to turn on its own peculiarities and there can be no hard and fast or straitjacketed rule as to when the non-disclosure of a particular movable asset by a candidate would amount to a defect of a substantial character. For example, a candidate and his family who own several high-priced watches, which would aggregate to a huge figure in terms of monetary value, would obviously have to disclose the same as they constitute an asset of high value and also reflect upon his lavish lifestyle. Suppression of the same would constitute 'undue influence' upon the voter as that relevant information about the candidate is being kept away from the voter. However, if a candidate and his family members each own a simple watch, which is not highly priced, suppression of the value of such watches may not amount to a defect at all. Each case would, therefore, have to be judged on its own facts.

45. So far as the ground under Section 100(1)(d)(iv) of the Act of 1951 is concerned, the provision requires that the established non-compliance with the provisions of the Constitution or the Act of 1951 or any rules or orders made thereunder necessarily has to be shown to have materially affected the result of the election insofar as it concerns the returned candidate. Significantly, the High Court linked all the non-disclosures attributed to Karikho Kri to Section 100(1)(d)(i) of the Act of 1951 but ultimately concluded that his election stood invalidated under Section 100(1)(d)(iv) thereof. Surprisingly, there is no discussion whatsoever on what were the violations which qualified as non-compliance with the provisions of either the Constitution or the Act of 1951 or the rules and orders framed thereunder, for the purposes of Section 100(1)(d)(iv), and as to how the same materially affected the result of the election.

35) On the issue of failure to raise averment of election getting materially affected, the reliance is placed on judgment of Single Judge of this Court in *Santosh Versus. Nitin Jairam Gadkari* (supra) in which this Court held in paras-56 and 57 as under:-

56. In *Ram Sukh v. Dinesh Aggarwal*¹⁶, the Supreme Court observed that the requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in *Samant N. Balkrishna v. George Fernandez*¹⁷. Speaking for the three-Judge Bench, M. Hidayatullah, C.J, inter alia, laid down that: (i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars; (ii) omission of even a single material fact leads to an

incomplete cause of action and statement of claim becomes bad; (iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet; (iv) material facts and particulars are distinct matters — material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and (v) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.

57. Thus, by these catena of decisions, it is reiterated that it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the returned candidate is affected. The pleading is vague and does not spell out as to how the election results were materially affected because of these two factors. These facts fall short of being “material facts” as contemplated in Section 83(1)(a) of the Act to constitute a complete cause of action in relation to allegation under Section 100(1)(d)(iv) of the Act.

36) Thus, there are no averments in the petition that the Form 26 Affidavit submitted by Respondent is in violation of Election Rules. I am also unable to notice averments in the Petition containing a concise statement showing as to how the election of the candidate has been materially affected due to disclosure of name of second spouse by the Respondent.

37) Turning to the allegation of corrupt practice for making out a ground under Section 100(1)(d)(ii) read with Section 123(4) of the Act of 1951, it is seen that the Petitioner had made following averments in the petition:

7. The Petitioner states that the Respondent has failed to submit the proper and correct information as prescribed in Form 26 under Rule 4A of the said Rules and, as stated in the preceding paragraph, on his own added one more column "Spouse 2" so also on his own altered word "Spouse" with "Spouse 1", which is not as per the Original Form 26 under Rule 4A of the said Rules and, therefore, filed improper, faulty and defective Form and Affidavit and, thus, action on the part of the Returning Officer, 130-Palghar (ST) Assembly Constituency in accepting the said Form and Affidavit and in turn incomplete Nomination Form of the Respondent is illegal and against the provisions of law. The Petitioner states that the said Returning Officer also not considered a fact that the Respondent has modified the original Form 26 on his own in respect of "Spouse". The Petitioner states that the intention of the legislation in respect thereof is very clear and unambiguous and purport of the said word "Spouse" means legally wedded wife or husband of the candidate and not wives and husbands of the candidate. The Petitioner states that

the Respondent has provided information which is not as per the Form prescribed under the Rule 4A of the said Rules in respect of information of "Spouse" and, therefore, publication by the Respondent, the statement of fact by way of abovesaid Affidavit in Form 26 dated 28.10.2024, is false and in relation to the conduct of the Respondent and, thus, amounts to corrupt practices on the part of the Respondent as contemplated under Sections 123(4) of the Representation of the People Act, 1951.

38) According to the Petitioner, disclosure of Smt. Rupali Gavit as his spouse by the Respondent is a false statement, which attracts corrupt practice within the meaning of Section 123(4) of the Act. It would be necessary to reproduce provisions of sub-section (4) of Section 123 which reads thus:-

123. Corrupt practices.-

(1)

(2)

(3)

(4) The publication by a candidate or his agent or by any other person [with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal of any candidate, being, a statement reasonably calculated to prejudice the prospect of that candidate's election

39) The essential requirement for attracting a corrupt practice within the meaning of Section 123(4) of the Act is making of a statement which is not only false but the candidate must also believe it to be false or must not believe the same to be true. Such statement must relate to personal character or conduct of another candidate or in relation to the candidature or withdrawal of any candidate and is circulated to prejudice the prospects of that candidate's election. Thus, for attracting the provisions of Section 123(4) of the Act, what must be pleaded is that the candidate has published any statement relating to personal character or conduct of another candidate for prejudicing the prospects of that candidate's election and such statement is false. The memo of Election Petition does not contain any averment of Respondent publishing any

statement about personal character or conduct of any other candidate which is found to be false. The falsity alleged by the Petitioner is in relation to the statement made by him about himself, particularly about his relationship that Smt. Rupali Gavit as his spouse. It is difficult to believe that statement made by the Petitioner about his relationship with Smt. Rupali Gavit, even if found to be false, would have attracted the provisions of Section 123(4) of the Act.

40) Even if it is assumed momentarily that making of false statement with regard to Respondent's relationship with Smt. Rupali Gavit as spouse would attract provisions of sub-section (4) of Section 123, I find that there is no averment in the entire memo of the Election Petition that the marriage between Petitioner and Smt. Rupali Gavit has never taken place. Respondent has disclosed that Smt. Rupali Gavit is his second wife in the Affidavit. By relying on provisions of the Hindu Marriage Act, 1955 the Petitioner has drawn an inference that the marriage between Respondent and Smt. Rupali Gavit would be void. Thus, it is not a case of the Petitioner that Respondent has never married Smt. Rupali Gavit. On the contrary, he has specifically pleaded in para-10(d) of the petition that :-

The Petitioner submits that in the present case the Respondent has already married and abovenamed "Rupali Gavit" is second wife of the Respondent.

41) Thus, the Petitioner has infact admitted the factum of marriage between Respondent and Smt. Rupali Gavit and in that sense, the Petitioner has contradicted himself while accusing Respondent of falsehood by claiming relationship with Smt. Rupali Gavit as his spouse. In my view, therefore there is no material averment in the memo of Election Petition to demonstrate falsity in the declaration made by the Respondent in the Affidavit about his relationship with Smt. Rupali Gavit. The contention raised by the Petitioner about impermissibility to contract

second marriage during subsistence of first marriage is purely inferential and does not constitute making of false statement by the returned candidate in the nomination form for attracting provisions of Section 123(4) of the Act.

42) I am not impressed by the submission of Ms. Karnik that prohibition under the provisions of the Hindu Marriage Act, 1955 on contracting second marriage would automatically render disclosure of relationship by Respondent and Smt. Rupali Gavit to be false. In order to make out a ground of making false statement in the nomination form, it was necessary for the Petitioner to aver in the petition that marriage between Respondent and Smt. Rupali Gavit has never occurred. Far from making such averment in the petition, the Petitioner infact admits the fact in para-10(d) of the Election Petition that Smt. Rupali Gavit is the second wife of the Respondent.

43) Petitioner has also pleaded in para-8 of the Election Petition that the declaration of second wife-Smt. Rupali Gavit is deliberately made by the Respondent in the Affidavit with a view to exert undue influence over the voters by securing vote of the local tribals as Smt. Rupali Gavit belongs to local Tribal community. The relevant pleadings in para-8 of the Election Petition are as under:-

8. The Petitioner states that as stated in the preceding paragraphs Nos. 6 and 7, the Respondent altered and modified the abovesaid Form 26 and put name of his second wife "Rupali Gavit" on his own intentionally and deliberately and for getting undue influence as the said second wife of the Respondent "Rupali Gavit" is from Local Tribal and the Respondent hailing from Nandurbar and, therefore, in order to exert undue influence over the voters and to get votes of the said Local Tribal on account of his second wife belongs to Local Tribal and, thus, has committed corrupt practice as contemplated under Section 123(2) of the said Act.

44) Ms. Karnik has accordingly submitted that provisions of sub-section (2) of Section 123 are also attracted in the present case, under which undue influence becomes a corrupt practice for setting aside election under Section 100(1)(b) of the Act. It must be observed at the very outset that there is no specific pleading by the Petitioner that any of the actions of the Respondent constitutes corrupt practice within the meaning of Section 123(2) of the Act. However, even if some leeway is to be granted to the Petitioner by ignoring the aspect of failure to quote Section 123(2) of the Act, I am of the view that the pleadings raised in the petition would not constitute concise statement of material particulars within the meaning of Section 83 of the Act. Under Clause (b) of Section 83(1) of the Act, it is necessary to plead full particulars of the corrupt practice that the Petitioner alleges including the details of persons committing corrupt practice and date and place of commission of each of such corrupt practice. As against the requirement of pleading full particulars under Clauses (a) and (b) of Section 83(1) of the Act, the Petitioner has merely made a suggestion that disclosure of name of second wife-Smt. Rupali Gavit was intentional and deliberately aimed at exerting undue influence over the voters. There is no pleading in the entire petition that disclosure of name of Smt. Rupali Gavit as Spouse No.2 had any direct or indirect interference on free exercise of the electoral right. This is the third occasion on which the Respondent has accordingly been elected from the same Constituency. In the light of this position, it was all the more necessary for the Petitioner to give full particular of the alleged influence on voters on account of disclosure of name of Smt. Rupali Gavit in the declaration affidavit. The Petitioner has not pleaded that the Respondent had not disclosed the name of Smt. Rupali Gavit while filing Affidavits during previous elections and that he made such a declaration for the first time in the Affidavit in Form 26 with the sole intention of influencing the tribal voters. In my view, therefore there are no pleadings in the Election Petition for establishing the ground under Section 100(1)(b) of the Act.

45) Ms. Karnik has relied on several judgements for seeking dismissal of the application preferred by the Respondent. It would be necessary to deal with the judgments relied upon by her:

- (I) The judgment of the Apex Court in *Liverpool & London S.P. & I Association Ltd.* (supra) is relied on in support of her contention that the plaint needs to be read in entirety and the Court cannot dissect the pleadings into parts for considering whether each one of them discloses a cause of action. There can be no dispute about the above proposition of law. However, as held above, the Election Petition is not a common law remedy like a suit or a remedy in equity. It is well established position that election petition is a statutory remedy and that therefore strict compliance with the provisions of the Act is mandatory requirement for exercising statutory remedy under the Act. I have considered the pleadings in the memo of Election Petition as a whole and I am unable to trace a concise statement of material particulars as required under Section 83(1)(a) or full particulars of corrupt practice as required under Section 83(1)(b) of the Act for making out the grounds under Section 100(1)(b), 100(1)(d)(i), (d)(ii) and (d)(iv) and Section 123 of the Act. The judgment therefore does not assist the case of the Election Petitioner.
- (II) The judgment of the Apex Court in *Sardar Harcharan Singh Brar* (supra) is relied on in support of contention that if pleadings can sustain an action, the Court must allow the Election Petition to be taken to trial. Again, there cannot be any dispute about the said proposition. I have already discussed various pleadings raised by the Petitioner in the memo of Election Petition and I am of the view that the said pleadings do not formulate a

complete cause of action. Therefore, reliance by Ms. Karnik on the judgment of the Apex Court in *Sardar Harcharan Singh Brar* does not assist the case of the Petitioner.

(III) The judgment of the Apex Court in *Virender Nath Gautam* (supra) is relied on in support of the proposition that there is a difference between ‘*material facts*’ and ‘*material particulars*’. It is contended that material facts have been pleaded by the Petitioner in support of his claim and the same is sufficient to maintain the present petition and to take the same to trial. However, on a detailed analysis of the averments in the memo of Election Petition as a whole, I am of the view that the pleadings therein do not constitute complete cause of action for seeking cancellation of election of the Respondent under Section 100(1)(b), 100(1)(d)(i) or 100(1)(d)(iv) of the Act.

(IV) The judgment of the Apex Court in *Ashraf Kokkur* (supra) is again relied upon to demonstrate the difference between ‘*material facts*’ and ‘*material particulars*’ and it is contended that what is required under Section 83(1)(a) of the Act is only a concise statement of material facts and not material particulars. However, the said principle applies only if the Election Petition is filed on grounds other than corrupt practices. In the present case, the ground of corrupt practice is also raised which would attract the provisions of Section 100(1)(b) of the Act. Even qua the grounds of Section 100(1)(i) and (iv), there is no concise statement of material facts in the memo of petition demonstrating as to how the claim of Respondent about his marriage with Smt. Rupali Gavit is false thereby constituting the ground of improper acceptance of nomination or violation of provisions of the Election Rules. As observed above, since Election Petitioner

himself admits existence of the second marriage, there is neither any false claim nor honest disclosure of information about the second marriage by adding a column in the Form 26 Affidavit which would constitute defect in the nomination form or violation of Rule 4A of the Election Rules.

- (V) The judgment of the Apex Court in *Kisan Shankar Kathore* (supra) lays down the ratio that when the case involves non-disclosure or where the Affidavit is false or does not contain complete information leading to suppression, the nomination can be held to be improperly accepted. However, in the present case there is no pleading to demonstrate that the Respondent either made any false statement or suppressed any fact in the Affidavit filed alongwith the nomination. Therefore, the pleadings do not make out a case of improper acceptance of nomination order.
- (VI) In *Madiraju Venkata Ramana Raju* (supra), the Apex Court has ruled that once improper acceptance of nomination is established, mere absence of averment in the Election Petition about election of the returned candidate being materially affected becomes irrelevant. It has held that candidate whose nomination is non-acceptable, but is elected, the said fact by itself materially affects the election result. The judgment is cited in order to escape the consequences of failure to demonstrate election being materially affected through pleadings in the Election Petition. In the present case, the election is also challenged on the ground enumerated in Section 100(1)(d)(iv) of the Act for which pleading demonstrating election being materially affected is *sine qua non*. Therefore, even though absence of pleading of election being materially affected may be irrelevant for the ground under Section 100(1)(d)(i) of the Act, the same would be mandatory for

establishing the ground under Section 100(1)(d)(iv). As observed above, there is absence of concise statement of material facts establishing improper acceptance of nomination of the Respondent. Therefore, the judgment in *Madiraju Venkata Ramana Raju* does not assist the case of the Petitioner.

(VII) The judgment in *Union of India Versus. Association for Democratic Reforms* (supra) has also been relied upon by Mr. Gangal and has been discussed in preceding paragraphs. The judgment highlights the importance of disclosure of all material information to the voters. The judgment, far from assisting the case of the Petitioner, actually militates against him, as the Petitioner is questioning disclosure of information relating to second spouse of the Respondent in Form 26 Affidavit, which objection actually goes against the spirit of the judgment in *Association for Democratic Reforms*.

(VIII) Ms. Karnik has also relied upon judgment of the Apex Court in *People's Union for Civil Liberties* (supra) which is also relied upon by Mr. Gangal. The ratio of the judgment has already been discussed in the preceding paragraphs and the judgment again highlights the importance of disclosure of all necessary information by the candidates and the Apex Court has held Section 33B limiting the information to the one provided for in the Act and Rules, to be illegal, null and void. In fact, the objections raised by the Petitioner about Respondent disclosing information about his second marriage with Smt. Rupali Gavit is against the spirit of ratio of the judgment in *People's Union for Civil Liberties*. This judgment again does not assist the Petitioner and actually militates against him.

- (IX) The judgment in *Bhim Rao Baswanth Rao Patil* (supra) again highlights the importance of voters' right to know about full background of the candidate. This judgment again militates against the Petitioner as he is objecting to the Respondent disclosing information relating to Spouse No.2 as contrary to the format of Form 26 provided for in Rule 4A of the Election Rules.
- (X) Reliance by the Petitioner on judgment of the Apex Court in *S. P. Chengalvaraya Naidu* (supra) is inapposite in view of the fact that no allegation of fraud is made out in the pleadings raised in the Election Petition.
- (XI) The judgment in *Mairemban Prithviraj alias Prithviraj Singh* (supra) again highlights the importance of right of the voters to know about educational qualifications of the candidates contesting the election and the judgment goes against the objection of the Petitioner about Respondent disclosing his second marriage with Smt. Rupali Gavit.
- (XII) The judgment in *Arjun Panditrao Khotkar* (supra) reiterates the ratio of the judgment in *Madiraju Venkata Ramana Raju* that once the acceptance of nomination is found to be improper, pleading and proof of the result of election being materially affected gets dispensed with. In the instant case, the pleadings do not establish improper acceptance of nomination of the Respondent and therefore the question of dispensation with the requirement of pleading and proof about election of the Respondent being materially affected does not arise. Also, the election is challenged on the ground under Section 100(1)(d)(iv) of the Act which

undoubtedly requires pleading and proof of result of the election being materially affected.

(XIII) Lastly, Ms. Karnik has relied on judgment in *Karikho Kri* (supra) which is also relied upon by Mr. Gangal and ratio thereof has been discussed in the previous paragraphs. The judgment in my view actually assists the case of Respondent in which it is held that every non-disclosure does not attract the ground for setting aside election of the returned candidate. It is held that non-disclosure of each and every asset of a candidate would not amount to a defect much less the defect of substantial character. The judgment in fact reiterates the position that for attracting the ground under Section 100(1)(b)(iv) of the Act, the Election Petitioner has to show that the result of the election was materially affected on account of violation of provisions of Constitution/Act/Rules/Orders. This judgment again, far from assisting the case of the Petitioner goes against his case.

46) After considering the overall conspectus of the case, I am of the view that the Election Petition lacks concise statement of material facts as required under Section 83(1)(a) of the Act for establishing grounds under Section 100(1)(d)(i) and 100(1)(d)(iv) of the Act. So far as the ground of corrupt practice under Section 100(1)(b) read with Section 123(2) and (4) of the Act is concerned, the memo of Election Petition does not set forth full particulars of corrupt practice. There are no pleadings to establish that any statement made by the Respondent in his Affidavit in Form 26 is false. There are no pleadings to establish undue influence on voters with their free exercise of electoral right on account of Respondent disclosing his second marriage with Smt. Rupali Gavit. On the contrary, Respondent has candidly and honestly disclosed information relating to his

second marriage with Smt. Rupali Gavit. In my view, therefore Petitioner has failed to disclose real cause of action for challenging the election of the Respondent by making out either of the grounds under Section 100(1)(b) or 100(1)(d)(i) or 100(1)(d)(iv) of the Act. As held by the Apex Court in *Kanimozhi Karunanidhi* and *Karim Uddin Barbhuiya* (supra) even a singular omission of a statutory requirement must entail dismissal of the Election Petition by having recourse to the provisions of Order VII Rule 11 of the Code. In my view therefore, the Election Petition is liable to be rejected by taking recourse to the provisions of Order VII Rule 11 of the Code.

47) I accordingly proceed to pass the following order:

- a) Application (L) No.5808/2025 filed by the Respondent is allowed and the Election Petition is accordingly rejected under the provisions of Order VII Rule 11 of the Code.
- b) Election Petition No.3/2025 shall accordingly stand dismissed.

NEETA
SHAILESH
SAWANT

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signed by
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[SANDEEP V. MARNE, J.]