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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPLICATION NO. 2 OF 2024

IN

ELECTION PETITION NO. 4 OF 2024

Shrirang Appa Chandu Barne

R/at: House No. 163,

‘Shree’ Bungalow, Near Padmji

Paper Mill, Thergaon, Pune-33

No. 3

....Applicant

IN THE MATTER BETWEEN

Adv Raju Patil

Adult, Indian Inhabitant

R/a- S. No. 176, Chaudhary Park

Wakad, Pune – 411057

....Petitioner

Vs.

1. The Election Commission of India

Its having his office at Nirvachan Sadan

Ashoka Road, New Delhi – 110001

2. The Returning Officer,

33, Maval Parliamentary Constituency

7th Floor, PMRDA Administrative Building,

Near Akurdi Railway Station, Akurdi,

Pune – 411044

3. Shrirang Appa Chandu Barne

R/at- House No. 163, ‘Shree’ Bungalow,

Near Padmji Paper Mill, Thergaon,

Pune – 33

4. District Collector & Election Officer Pune,
Collector Office Compound, Camp,
Pune- 411001

5. The Commissioner of Police, Pimpri
Chinchwad City,
Premlok Park, Chinchwad, Pune-411033

6. Rajaram Narayan Patil
At Post Chinchoti, Tal. Alibag, Dist. Raigad
Currently: A 1097, Kegaon Kharkhand
in front of Sai Baba Mandir, Kegaon Ranvad,
Tal. Uran. Dist. Raigad

7. Sanjog Bhiku Waghare Patil
Gauesh Krupa, Near PDCC Bank,
Pimpri Waghare, Pune – 411017

8. Adv. Jyotishwar Vishnu Bhosale
3306, 17G1, Indiabulls Greens
Marigold CHSL, Sector 4, Kon,
Panvel, Raigad – 410221

9. Tushar Digambar Londhe
Londhe Chawl, Tanaji Nagar,
Chinchwad, Tal. Haveli,
Dist. Pune – 411 033

10. Pankaj Prabhakar Ozarkar
Plot No. 2 Sudarshan Residency;
Spine Road, Sharad Nagar,
Chikhali Pradhikaran Chinchwad
Tal Haveli, Dist. Pune – 19

11. Prashant Ramkrishna Bhagat
R/at – 8-504, AksharIstonia,
Drongiri Nod, Uran

12. Mahesh Thakur
R/at-D/65,

Vijay Apartment-2 CHS
Ghodbander Road, Waghbil,
Opp. Vijay Nagar Annex Club
House, Thane (W) – 400 615

13. Madhavitai Naresh Joshi

R/at – 109, Marathi Shala,
At Ambivali Post, Mangaon,
Neral, Mangaon Tarf Varedi
Raigarh

14. Yashwant Vitthal Pawar

R/at- Mudre Khurd,
Karjat, Raigad.
Maharashtra 410201

15. Rafique Rashid Qureshi

R/at-Flat No.-5, Third floor,
Satyam Apartment, In front
of Srvaminathan Hospital,
Pimpri, Pune – 19

16. Rahim Mainuddin Sayyad

R/at- Vithalnagar, I-16, Near
Vitthal Temple, Nehru Nagar,
Pimpri, Pune-18

17. Shivaji Kisan Jadhav

R/at-F.1 Prakash Housing
Society Survey. No. 8, Kalewadi
Phata, Thergaon, Pune – 411033

18. Santosh Ubale

R/at Sanjay Gandhi Nagar
Opp to Akash Ganga Society,
Pimpri, Pune City,
Dist. Pune- 411017

19. Ajay Hanumant Londhe

R/at – Kailas Nagar

Pimpri Pune – 411017

20. Adhalge Laxman Sadashiv

R/at – P 6/15/2004,
Sector-15, Shantivan CHSL,
Near Panvel Railway Station
New Panvel (East),
Navi Mumbai, Maharashtra -
410246

21. Iqbal Ibrahim Narvdekar

R/at-House No. 320, Pada
Mohalla, In front Panvel
Municipal Corporation Panvel,
Tal. Panvel, Dist. Raigad- 410206

22. Indrajeet D. Gond

R/at – Sai Manas Flat No. 504,
Plot No. 20, Chinchrvali Shekin,
Khopoli, Raigad, Maharashtra – 410203

23. Umakant Rameshwar Mishra

R/at : Chaurainagar, Sornatane
Phata, Mumbai Pune National Highway
Somatane, Dist. Pune.

24. Kamble Maruti Aparai

R/at 101 Swami Kunj,
Ganesh Nagar, Pimple Nilakh
Pune- 411027

25. Govind Gangaram Herode

R/at Shrivasti Bungalow,
Plot No. Janata 10- Opp.
Kristoriya, School, Sector No. 27

26. Chimaji Dhondiba Shinde

R/at -Flat No. 402/5B, Mansarovar
Complex, Plot No. 1,2,4,5,19 to 26,
Sector 34, Kamothe, Tal. Panvel,

Dist. Raigad – 410209

27. Dadarao Kisan Kamble

R/at – 10, Kisan Provision Stores,
West Side to 313 Anandnagar
Slum Area, Ward No. 36,
Chinchwad, Tal.-Haveli,
Dist.-Pune – 411019

28. Praful Pandit Bhosale

R/at- Kartikya Park
Building No. 2, Wing A,
Flat No. 202, Shillotar
Raichur, Gut No. 12A Panvel,
Raigad – 410206

29. Madhukar Damodar Thorat

R/at – Sirvi Heritage
Flat No. C Wing 301
Plot No. 153/B,
Sector – 4 Karanjade Tal. Panvel
Dist. Raigad 410206

30. Manoj Bhaskar Garbade

R/at- Ashirvad Building 2 Floor,
Flat No. 4 Station Road,
Pimpri Pune – 411018

31. Mukesh Manohar Agarwal

R/at – Kamshet, Pawana Nagar
Road, Rajendra Nagar, Kamshet,
Tal-Maval, Dist.-Pune

32. Raju Maruti Kate

R/at – Pratik Niwas,
Abasaheb Pawar Nagar,
Old Sangvi, Pune – 411027

33. Rahul Nivruti Madane

R/at – Sr. No. 24/6,

Sairaj Nivas, Walhekar Wadi
Road, Behind Ranjai Hotel,
Chinchwad, Pune – 411033

34. Suhas Manohr Rane

R/at Room No. 9, A-Wing
Third Floor, Rachana Garden
Near Manas Hospital,
Bhangarwadi, Lonavala
Pune – 410401

35. Sanjog Patil

R/at-House No. 29, At-Sarade
Post-Vasheni, Tal.-Uran,
Dist-Raigad 410206

36. Hajrat Imamsab Patel

R/at-A-99/2015, B/2
Shanti Colony Near Alphonso
School Vijaynagar, Kalewadi,
Pune – 411017

....Respondents

Mr. Anil Y. Sakhare, Senior Advocate i/b Mr. Rohan Mirpur, Mr. Chirag Shah, Ms. Savita Suryawanshi, Ms. Kavita Dhanuka, Ms. Bhavya Shah for the applicant in AEP 1/2024 and AEP 2/2024 and for respondent no. 3 in EP 4/2024

Mr. Shrikrishna Ganbavale a/w Mr. Shantanu Patil i/b Ms. Pooja Kalate for the petitioner in EP 4/2024

Mr. Abhijit Kulkarni a/w Mr. Krushna Jaybhoy and Mr. Abhishek roy for respondent nos. 1, 2 and 4

Mr. Simit Shah for respondent no. 20 (On VC)

CORAM : GAURI GODSE, J.

RESERVED ON : 3rd JANUARY 2025

PRONOUNCED ON: 30th JANUARY 2025

JUDGMENT:

BRIEF FACTS:

1. This application is filed by respondent no. 3 in the election petition. The applicant prays for rejecting the election petition under Rule 11 of Order VII of the Code of Civil Procedure, 1908 ('CPC'). The election petition is filed to challenge the election and the result of the 18th Lok Sabha election in the 33 Maval Lok Sabha constituency. The applicant has been declared as a winning candidate after securing 692832 votes. The petitioner has secured only 670 votes. The second highest candidate is respondent no. 7 in the election petition who has secured 596217 votes.

2. This application for rejection of the election petition is filed on the grounds that there are vague and bald allegations made without any material pleadings and full particulars so as to materially affect the election result. Following are the points raised by the applicant for rejection of the election petition at the threshold on the ground that it is hit by Order VII Rule 11 of CPC:

- (a) There is non-compliance with Sections 82 and 83 of the Representation of the People Act, 1951 ("The RP Act").

- (b) Affidavit in accordance with the proviso to Section 83(1) read with Rule 94-A of the Conduct of Elections Rules 1961 (“said Rules”) and Form 25 not filed in the prescribed format.
- (c) Material facts and full particulars are not pleaded, and the Petition is filed on vague allegations which do not constitute any cause of action.
- (d) The petition is contrary to Section 84 of the RP Act.

SUBMISSIONS ON BEHALF OF THE APPLICANT:

3. Learned senior counsel for the applicant submits that the election petition seeks to challenge the applicant's election on the grounds of alleged breach and violation of the mandatory provisions and allegation of corrupt practice against the applicant. He submits that the petition alleges that the former Chief Minister, Deputy Chief Minister, and the applicant were canvassing votes in the name of Hindu Gods by chanting “*Jai Shree Ram*” in every meeting and during the election rally held on 22nd April 2024, to incite religious sentiments displayed a photo of Ram Temple at Ayodhya with a message saying that “*The Hindu who does not belong to Shri Ram is of no use*”. It is alleged that in the said rally, the then Chief Minister Eknath Shinde and

the then Deputy Chief Minister Ajit Pawar asked for votes in the name of Hindu Gods.

4. Learned senior counsel for the applicant submits that the petition alleges that on 6th May 2024, in the meeting at Pimpri Chinchwad, the then Chief Minister Devendra Fadnavis, during his speech, made slogans in the name of “*Jai Shri Ram*” and sought votes for the applicant by using names of Hindu deities. He submits that another allegation is that on 11th May 2024, during a rally at Dange Chowk, Thergaon, the then Chief Minister said that “*Jo Ram ke nahin vo kisi kaam ke nahin*”.

5. Learned senior counsel for the applicant submits that the petition thus alleges that using religious sentiments amounts to corrupt practices, which has harmed other candidates. He submits that the allegation in the election petition is that a comparison of polled votes and counted votes shows a difference of 573 votes, which is a serious discrepancy. The learned senior counsel for the applicant pointed out the contents of the petition that alleged that (i) the certificate under Rule 66 and Form 22 was issued illegally in favour of the applicant without compliance with the mandatory requirements, (ii) unexplainable discrepancy in votes polled and votes counted and the

EVM cannot be trusted, (iii) the applicant entered the counting hall with some unknown persons, (iv) scrutiny not conducted as per Rule 56-D of the said Rules of 1961, and (v) the Returning Officer has not followed the guidelines issued by the Election Commission of India and, therefore, fairness of the election is questionable. He further pointed out the contents of the petition where the petitioner pleaded about receiving information from some sources that government officials helped the applicant and sought tallying of VVPAT with tallied votes as there was doubt about the fairness of the election.

6. Learned senior counsel submitted that no specific pleadings regarding material facts about the applicant's consent for the alleged boards used in the rally of the applicant are mentioned in the election petition. He submits that all the allegations are made on vague averments. He further submitted that the election of the applicant is sought to be challenged on the grounds of alleged breach of mandatory provisions of the directions issued by the Election Commission of India as well as the commission of alleged corrupt practices by respondent nos. 1 and 2, who are election authorities. However, the petitioner has not made any specific allegations which would affect the election result. Learned senior counsel thus submitted

that the election petition is liable to be dismissed at the threshold on the ground of non-compliance with Section 82 of the said Act.

7. Learned senior counsel for the applicant submitted that the election petition is a statutory proceeding, an action in equity, and not common law. He, thus, submits that an election can be challenged only by presenting the election petition filed in accordance with part VI of the RP Act. He further submits that the relief sought in the election petition would indicate that the petitioner has not prayed for any further declaration that he or any other candidate should be declared as elected. Thus, he submits that in the absence of such relief, the petition deserves to be rejected on the ground of misjoinder of parties as the election petition impleads all the contesting candidates as party respondents. Learned senior counsel further submits that the petitioner has impleaded the Election Commission of India as well as the Returning Officer, which is contrary to the mandate of section 82 of the RP Act.

8. Learned senior counsel for the applicant further submits that the petition is liable to be rejected at the threshold on the ground of non-compliance with section 83 of the said Act as no material facts and full particulars are pleaded in the election petition. He further submits that

failure to plead material facts amounts to filing the election petition without any cause of action. He thus submits that the petition is liable to be rejected under clause (a) of Rule 11 of Order VII of CPC.

9. Learned senior counsel further submitted that pleading full particulars as mandated under the said Act is the sine qua non to maintain a challenge on the grounds of corrupt practice. He submits that based on bald and vague assertions, allegations regarding alleged corrupt practice cannot be entertained in an election petition in view of the well-settled legal principles by the Hon'ble Apex Court. He further submits that the petitioner has failed to file an affidavit in accordance with the proviso to sub-section (1) of section 83 of the said Act read with Rule 94–A of the said Rules and the Form 25 prescribed thereunder. He submits that the petition is liable to be dismissed at the threshold on the ground that it is contrary to section 83 of the RP Act. He further submits that filing of such a petition based on baseless, frivolous and vexatious allegations amounts to abuse of process of law. He, thus, submits that neither there is any cause of action to maintain the election petition nor any prayers in the petition deserve any interference by this Court as the prayers in the petition are based on vague and baseless allegations without any material facts and

particulars. He, thus, submits that the petition is also liable to be rejected under Rule 11 of Order VII of CPC in view of non-compliance with statutory provisions of the RP Act, read with the said Rules.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

10. Learned counsel appearing for the petitioner relies upon the reply filed on behalf of the petitioner. He submits that the election petition contains all the material facts to support the allegations, including the allegations of corrupt practice. He submits that the necessary verification as contemplated under proviso to clause (c) of section 83 of the RP Act, along with a supporting affidavit in Form 25 under Rule 94-A of the said Rules, is filed by the petitioner. Learned counsel for the petitioner submits that the petition is filed against the applicant for a declaration that the applicant, his leaders, his agents and supporters have canvassed in the name of religion and as such, the election of the applicant as the returning candidate is liable to be declared null and void. He submits that the cause of action to file the election petition is supported by all the relevant particulars and pleadings with reference to the rally conducted on 11th May 2024, at Pimpri Chinchwad, Dange Chowk, Thergaon with the particulars about dialogues of the then Chief Minister has been specifically pleaded in

the election petition. He submits that the conduct of the then Chief Minister in the applicant's rally shows the use of corrupt practices by the applicant through his leaders, agents, and supporters. He submits that the petitioner downloaded the video clip of the rally through social media, i.e. YouTube and thus, the cause of action has arisen based on the specific pleadings regarding the rally conducted on 11th May 2024.

11. Learned counsel for the petitioner further submits that the persons conducting the rally of the applicant were canvassing votes in the name of Hindu Gods in every meeting as well as during the election campaign rally of 22nd April 2024. He submits that the applicant's supporters and agents acted on the request and directions of the applicant to attract the voters of the Hindu religion and to incite religious sentiments displayed by the photograph of the Ram Temple at Ayodhya on a board printed with the slogan "*The Hindu who does not belong to Shri Ram is of no use*". He, thus, submits that the campaign rally attended by the applicant, his leaders and his other agents amounts to corrupt practice to gain votes. He submits that the election conducted in the name of religion and religious faith deserves to be declared null and void. He, thus, submits that none of the grounds raised on behalf of the applicant would satisfy the parameters

under any of the clauses of Rule 11 of Order VII of CPC.

CONSIDERATION OF THE SUBMISSIONS:

12. A perusal of the petition indicates that general allegations are made against the applicant and leaders of his party. The material facts regarding the corrupt practice are not pleaded, and the persons alleged to have committed the corrupt practice are not named. The allegation of corrupt practice is based on a statement made by the then Deputy Chief Minister at the applicant's rally. It is alleged that the votes were sought to be secured by using the names of Hindu deities by calling slogans such as "*Jai Shri Ram*". The allegation of corrupt practice against the applicant is also based on an alleged statement made by the then Chief Minister at the applicant's rally, saying that "*Aapli Nishani Ramacha Dhanushyaban*" (आपली निशाणी रामाचा धनुष्यबाण) and "*Jo Ram ke nahin vo kisike nahin*" (जो राम के नहीं, वो किसी के नहीं). These allegations are based on the boards allegedly displayed by a nominated person at the petitioner's rally.

13. Another allegation in the election petition pertains to counting the votes, alleging that the difference of 573 votes was due to the conduct of respondent no. 2 (The Returning Officer), who was responsible for

safe custody of the votes. It is further alleged in the petition that respondent no. 2 did not follow any guidelines. It is further alleged that the certificate under Rule 66 in Form 22 was issued illegally in favour of the applicant without complying with the mandatory requirement under the law. The election petition further alleges that the discrepancy in the votes and the votes counted through EVM is not justifiable and remains unexplained. There is another allegation against the applicant that he entered the premises with unknown persons. Thus, the allegation is regarding violation of the rules, illegal and malafide exercise of power and non-compliance by the Returning Officer. The allegations with regard to corrupt practice are also based on canvassing in the name of religion. With these allegations, the election petition is filed by making the following prayers:

“a. It be declared that the Respondent no.3, his leaders, his agents and supporters have canvassed in the name of Religion and religious faiths and as such the election of Respondent no.3 as Returned candidate be declared null and void.

b. The Concerned Police Authorities be directed to register crime against the Respondent no.3 and Mr.

Eknath Sambhaji Shinde, Mr. Devendra Gangadharrao Fadanvis being Leaders of Respondent no. 3 and agents as well as supporters of Respondent no. 3 for committing corrupt practices as per Sec. 123(3) and (3A) of Representation of the People Act, 1951 and section 171 (1) (c) of Indian Penal Code.

c. The Hon'ble Court may kindly be pleased to direct the respondent no. 1 and 2 to explain the difference in polled votes and counted votes.

d. It be declared once the difference of vote is established between polled votes and counted votes it is mandatory on respondent no 2 to refer the matter to respondent no. 1, the election commission.

e. It be declared that till the direction is received from respondent no. 1 to respondent no. 2 in case of difference of vote, the respondent no 2 is not empowered to declare the election result and that respondent no. 2 has to act according to the advice/guidelines, once the matter is referred to respondent no. 1.

f. It be declared that the declaration by respondent no. 2 of election of respondent 3 is without powers for non compliances with the laws, and therefore also declare that the certificate issued to the respondent no.3 in form 22 u/r 66 to be null and void.

g. It be declared that the mandate of Rule 56D of Conduct of Election rules is not followed by the Respondent no.1 and 2 and as such the counting process carried out by them be declared null and void and VVPAT be 100% recounted.”

LEGAL PRINCIPLES:

14. In support of his submissions that the election petition is liable to be rejected at the threshold, the learned senior counsel for the applicant relies upon the legal principles settled by the Hon’ble Apex Court in the following decisions;

- (i) ***Ram Sukh v. Dinesh Agarwal***,¹. **Proposition:** - For the purpose of Section 100(1)(d)(iv), the election petitioner must aver specifically in what manner the result of the election in so far as it

¹ (2009) 10 SCC 541

concerned the elected candidate was materially affected due to the alleged omission on the part of the Returning Officer. In the absence of material facts, as contemplated in Section 83(1)(a) of the RP Act, to constitute a complete cause of action, the petition is liable to be rejected at the threshold on that ground.

(j) *Hari Shanker Jain v. Sonia Gandhi*,². **Proposition:-** “Material facts” required to be stated are those facts that can be considered as materials supporting the allegations made, that would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action.

(k) *Karim Uddin Barbhuiya v. Aminul Haque Laskar and Ors*,³. **Proposition:-** Pleadings in an election petition 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. Section 83(1)(b) mandates that when the allegation of ‘corrupt practice’ is made, the petition shall set forth full particulars of the

² (2001) 8 SCC 233

³ 2024 SCC Online SC 509

corrupt practice, including a statement of the names of the parties alleged to have committed such corrupt practice and the date and place of committing such corrupt practice. 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 under Sections 81 and 83 of the Act, the petition is liable to be rejected under Order VII Rule 11, read with Sections 83 and 87 of the RP Act.

(l) ***Kanimozhi Karunanidhi v. A. Santhana Kumar***,⁴. **Proposition:-**

Section 83(1)(a) of the 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 under Clause (a) of Rule 11 of Order VII of CPC.

(m) ***C. P. John v. Babu M. Palissery & Ors***⁵. **Proposition:-** Rule

94-A of the said Rules stipulates that the format of the affidavit as prescribed in Form 25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of

⁴ 2023 SCC Online SC 573

⁵ (2014) 10 SCC 547

facts is contained and also other paragraphs where material particulars relating to such corrupt practices are alleged. The prescribed format also mentions as to which of those statements of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made are based on the information gained by the election petitioner. Unless the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the election petition cannot be entertained and will have to be rejected at the threshold.

(n) *Chandrakanta Goval v. Sohan Singh Jodh Singh Kohli*⁶.

Proposition:- The candidate is held to be bound by the acts of his agent because of the authority given by the candidate to perform the act on his behalf. There is no such relationship between the candidate and the leader in the abstract merely because he is a leader of that party. The consent of the candidate or his election agent is, therefore, to be pleaded and proved if the election of the candidate is to be declared void

⁶ (1996) 1 SCC 378

under section 100(1)(b) for the corrupt practice committed by the leader.

(o) *Ravindra Waikar Vs Amol Kirtikar*⁷. **Proposition:-** The election petition that does not disclose the material facts demonstrating grounds under Section 100 of the RP Act will have to be rejected by invoking powers under Order VII Rule 11 of CPC.

ANALYSIS:

15. In the present case, the contents of the petition and the prayers are general in nature. Except for prayer clause (a), all other prayers are contrary to Section 84 of the RP Act. In the absence of any prayer for any declaration that the petitioner or any other candidate should be declared as elected, the petitioner has added all the contesting candidates as party respondents. The petitioner has impleaded the Election Commission of India as well as the Returning Officer. Thus, the petition is contrary to the mandate of Section 82 of the said Act.

16. The allegations of breach of mandatory provisions of the directions issued by the Election Commission of India are not supported by any material particulars. No particulars are pleaded to support the prayers regarding declaration that the Form 22 under Rule

⁷ 2024 SCC Online Bom 3828

66 of the said Rules is null and void and for alleged non-compliance with the mandate of the said Rules. Vague allegations of corrupt practices are made against respondents nos. 1 and 2, who are the election authorities. The petitioner has not pleaded any material facts or particulars regarding any specific allegations that would affect the election result.

17. In paragraph 5 of the petition, a general allegation is made that the leaders of the applicant's party, election agent and supporters indulged in corrupt practice on the grounds of religion to vote for the applicant and against other candidates. A general allegation is made of chanting religious slogans in every meeting and rally held on 22nd April 2024. The particulars of slogans are mentioned, but no particulars are pleaded about who did it. It is vaguely pleaded that the applicant and party leaders asked for votes in the name of religion. There are vague allegations of corrupt practices, such as naming the leaders and the dates of the meetings and rallies. A general allegation of bias is made against government officials; however, nothing is pleaded as to how it would amount to corrupt practice. There are pleadings about obtaining CCTV footage and video linkage on YouTube channel; however, no material particulars are pleaded against the applicant or his consent to

any act that would constitute any corrupt practice as contemplated under sub-section (3) or 3-A of Section 123 of the RP Act.

18. The allegations are made without disclosing any basis for making averments regarding alleged corrupt practice. The allegation regarding corrupt practices is based on vague averments about the speech given by the party leaders and that the applicant's supporters in the campaign rally, to attract people of Hindu religion and incite religious sentiments, displayed photos of Ram Temple at Ayodhya and shouted religious slogans. However, these allegations are not supported by any material particulars which would require any trial. It is a well-established legal principle that a candidate can be held to be bound by the acts of his agent because of the authority given by the candidate to perform the act on his behalf; however, there is no such relationship between the candidate and the leader in the abstract merely because a person is a leader of that party. As held by the Hon'ble Apex Court in the decision of *Chandrakanta Goval*, the consent of the candidate or his election agent is, therefore, to be pleaded and proved if the election of the candidate is to be declared void under section 100(1)(b) for the corrupt practice committed by the leader.

19. Thus, in the present case, the bald and baseless allegations made in the petition do not satisfy the requirements of pleading material facts within the meaning of Section 82(1)(a) of the RP Act that could constitute any corrupt practice contemplated under Section 123 of the RP Act. Section 123 of the RP Act elaborately defines the acts that shall be deemed to be corrupt practices for the purposes of the RP Act. Thus, for maintaining an election petition to challenge an election on the grounds of corrupt practice, the petition must contain material facts within the meaning of Section 123 of the RP Act. The material pleadings and particulars must be sufficient, which would require a trial. Thus, in the absence of material particulars regarding allegations of corrupt practice as contemplated under Section 123 of the RP Act that would warrant a trial, the petition would be liable to be rejected at the threshold.

20. The allegations regarding the certificate under Rule 66 and Form 22, discrepancy in votes polled and votes counted, the applicant entering the counting hall with some unknown persons, scrutiny as per the said Rules of 1961, and the Returning Officer not following the guidelines issued by the Election Commission of India, are without any material particulars. The allegations are innocuous. Nothing is pleaded

to indicate any breach of the statutory provisions or constitute any corrupt practice under Section 123(3) or 3-A of the RP Act.

21. The petition contains a verification clause that says that whatever is stated in the petition in paragraphs 1 to 29 is true and correct to the best of the petitioner's knowledge and based on information. The petitioner has filed an affidavit stated to have been filed in Form 25, under Rule 94-A of the said Rules. However, the contents of the affidavit are not in accordance with the prescribed Form 25. The affidavit contains a heading stating that it is filed in Form 25, under Rule 94-A of the said Rules; however, the contents are not in accordance with the prescribed form. The particulars of the paragraphs containing statements about the commission of the corrupt practice and the particulars of the schedule containing the allegations, based on personal knowledge and based on information, are not stated in the affidavit claimed to have been filed under the prescribed Form 25. As per Rule 94-A of the said Rules, the affidavit referred to in the proviso to sub-section (1) of Section 83 must be filed in the prescribed Form 25. Section 83(1), read with the proviso, mandates that the election petition shall contain a concise statement of material facts on which the petitioner relies by setting forth full particulars of any

corrupt practice alleged.

22. The election petition is bereft of any pleading that the alleged corrupt practice has materially affected the election result. Thus, the legal principles settled by the Hon'ble Apex Court in the decision of *C. P. John*, on the mandate of filing an affidavit in the prescribed Form 25, is squarely applicable in the present case. Thus, in the present case, as the election petition does not contain a definite plea of corrupt practice supported by legally acceptable material evidence without any doubt to such an allegation, the election petition cannot be entertained and will have to be rejected at the threshold.

23. The Hon'ble Apex Court, in the decision of *Hari Shanker Jain*, held that it is the duty of the court to examine the petition and reject the petition if it does not disclose a cause of action. I have perused the contents of the petition. There are no material facts pleaded that can support the allegations that could constitute the cause of action to challenge the election in accordance with the provisions of the RP Act.

24. Learned counsel for the petitioner relied upon the averments in the petition to support the allegation of corrupt practice. Except for the averments regarding the conduct of the applicant, his supporters and

party leaders in the applicant's rally, the learned counsel for the petitioner could not show any pleadings about the particulars of facts that would constitute corrupt practice. The petitioner relied upon the averments regarding the downloaded video clip of the rally through social media, i.e. YouTube. However, material particulars about the facts and a concise statement about the allegations concerning the video clip or a particular event are not pleaded as contemplated in Section 83(1), and the accompanying affidavit is not in the prescribed Form 25. Thus, as held by the Hon'ble Apex Court in the decision of ***Ram Sukh***, in the absence of material facts, as contemplated in Section 83(1)(a) of the RP Act, to constitute a complete cause of action, the petition is liable to be rejected at the threshold on that ground.

25. The Hon'ble Apex Court, in the decision of ***Kanimozhi Karunanidhi***, elaborately discussed all the earlier decisions and held that Section 83(1)(a) of the RP 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. It is further held that such facts would include positive statements of facts as also positive averment of negative facts. It is also held that omitting

a singular fact would lead to an incomplete cause of action. It is, thus, held that 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 VII of the CPC.

26. The Hon'ble Apex Court, in the decision of *Karim Uddin Barbhuiya*, held that the pleadings with regard to the corrupt practice, as stated in Section 123 of the RP Act, have to be precise, specific and unambiguous. It is held that if it is a corrupt practice in the nature of undue influence, the pleadings must state the full particulars with regard to the direct or indirect interference or attempt to interfere by the candidate with the free exercise of any electoral right as stated in Section 123 (2) of the RP Act. It thus held that if the allegations in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement under Sections 81 and 83 of the RP Act, the petition is liable to be rejected under Order VII Rule 11 (a), read with Section 83 of the RP Act.

27. In the present case, the allegations in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement under Sections 81 and 83 of the RP Act. Thus, in view of the legal principles settled by the Hon'ble Apex Court in the decision

of *Kanimozhi Karunanidhi* and the decision of *Karim Uddin Barbhuiya*, the petition is liable to be rejected under Order VII Rule 11 (a), read with Section 83 of the RP Act.

28. In the present case, there is non-compliance with Sections 82 and 83 of the RP Act. There is no affidavit in accordance with the proviso to Section 83(1) read with Rule 94-A of the Conduct of Election Rules 1961 and Form 25, and material facts and full particulars are not pleaded. The Petition is filed on vague allegations that would not constitute any cause of action warranting any trial. The Hon'ble Apex Court in the decision of *Karim Barbhuiya* held that a charge of corrupt practice is in the nature of a 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 result of such allegation can be drastic. Election petition can oust a popularly elected representative of the people. Hence, full and complete particulars of the allegation of corrupt practice must be pleaded, that is sufficient to constitute a cause of action. Therefore, failure to plead material and full particulars must result in dismissal of the election petition at the threshold. Thus, the election petition is liable to be rejected at the threshold on the ground that it is hit by Order VII Rule

11(a) of CPC, read with Sections 82 and 83 of the RP Act.

29. Hence, Application No. 2 of 2024 is allowed, and the Election Petition No. 4 of 2024 is rejected.

[GAURI GODSE, J.]

IRESH
MASHAL

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