

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

ELECTION PETITION NO. 10 OF 2025

Anil Subhash Sawant .. Petitioner
Versus
Samadhan Mahadeo Autade & Ors. .. Respondents

WITH
APPLICATION (L) NO. 12835 OF 2025
IN
ELECTION PETITION NO. 10 OF 2025

Samadhan Mahadeo Autade Applicant
.. (Org. Respondent No. 1)

In the Matter Between

Anil Subhash Sawant .. Petitioner
Versus
Samadhan Mahadeo Autade & Ors. .. Respondents

.....

- Mr. Vaibhav Sugdare a/w Ms. Shreenandini Mukhopadhyay & Mr. Sagar Kursina i/by Sanjay S. Gawde, Advocate for Petitioner
- Mr. Aniesh S. Jadhav a/w Mr. Rushikesh S. Kekane, Mr. Shyam Singh, Mr. Sandeep C. Kekane, Advocates for Respondent No. 1 in Election Petition and for Applicant in Application

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 21, 2025

JUDGMENT:

1. Election Petition No. 10 of 2025 is filed in respect of election of Respondent No. 1 in the General Election held to the Legislative Assembly in Constituency 252 Pandharpur on 20.11.2024. Results were declared on 23.11.2024. Election Petition is filed on 06.01.2025 within limitation as stipulated under Section 81 of the

Representation of the People Act, 1951 (for short, "**RP Act**"). Though Petitioner's relief is only for setting aside the election of Respondent No. 1, he has impleaded Respondent Nos. 2 to 23, all contesting candidates in the election. Respondent No. 1 is the returned candidate having secured 1,25,163 votes. Petitioner has secured third highest votes i.e. 10,217 votes.

2. Election programme of the General Elections to the Legislative Assembly for Constituency 252 Pandharpur declared by the Election Commission was as under:-

Schedule	Date
Date of Issue of Gazette Notification	22.10.2024 (Tuesday)
Last Date of making nominations	29.10.2024 (Tuesday)
Date of Scrutiny of nominations	30.10.2024(Wednesday)
Last Date for the withdrawal of candidatures	04.11.2024(Monday)
Date of Poll	20.11.2024 (Wednesday)
Date of Counting	23.11.2024 (Saturday)
Date before which election shall be completed	25.11.2024 (Monday)

3. Grounds for challenge are enumerated in paragraph Nos. 6[A] to 6[I] of the Petition. Most of the grounds overlap each other. Briefly stated, case of Petitioner is that the Returning Officer did not issue the mandatory Notification under Section 61A of the RP Act in

respect of use of electronic voting machines for the said election and hence it is vitiated. Second ground alleged is that despite Petitioner having filed written application under Rule 93 of the Conduct of Election Rules, 1961 (for short "**the Rules**") with Returning Officer, Petitioner was not supplied copies of Form 17C i.e. recording of election result and videography / CCTV footage of conduct of the entire election process on the date of election. Third ground alleged is that all EVM - VVPAT machines used in the election process were not maintained in compliance with mandatory guidelines as their serial numbers were not engraved in the metal for permanent identity. It is alleged that serial numbers were affixed on the machines in the form of detachable stickers which violated the mandatory guidelines prescribed under the RP Act read with its applicable Rules. Fourth ground alleged is that there was a sudden increase in the number of voters in the voters list within a span of four months prior to the election which resulted in manipulation of registration of voters and preparation of electoral roll which constituted act of corrupt practice. Fifth ground alleged is that voters' slips were not distributed in localities belonging to poorer sections and minority populated areas which also constituted as an act of corrupt practice.

4. By order dated 15.01.2025 Respondent Nos. 24 to 26 i.e. the Chief Electoral Officer of Maharashtra, the Returning Officer and

the Election Commission of India who were impleaded as Respondent Nos. 24 to 26 were deleted from the array of parties by Petitioner after seeking permission from this Court.

5. On 22.04.2025 Respondent No. 1 filed Application (L) No. 12835/2025 seeking rejection of Election Petition under Order VII, Rule 11 r/w Section 151 of the Code of Civil Procedure, 1908 (for short "**CPC**") and Section 86 of the RP Act. Petitioner filed his affidavit in reply dated 20.06.2025 thereto.

6. Accordingly Application (L) No.12835/2025, filed for rejection of Election Petition is called out for hearing. For the purpose of hearing this Application reliance is placed by both sides on the Election Petition and annexures thereto as filed.

7. Mr. Jadhav, learned Advocate for Applicant - Respondent No. 1 in Election Petition in support of Application under Order VII Rule 11 seeking dismissal of the Election Petition has made the following submissions:-

- (i) That Petition is liable to be dismissed on the ground of non-compliance of Section 81 of the RP Act. He would submit that Section 81 specifically provides that an Election Petition can only be filed on grounds stated in Section 100 (1) and Section 101

and these statutory provisions have not been complied with by Petitioner;

- (ii) That the entire set of allegations in the Petition revolve around the use of Electronic Voting Machines in the election overlooking the amended provisions of Section 61A of the RP Act and decision of the Supreme Court in the case of *Association for Democratic Reforms v. Election Commission of India & Anr.*¹;
- (iii) That there is no whisper of any allegation in respect of corrupt practices in the Petition so as to indict the Respondent No. 1. That grounds in Petition even otherwise do not show that Respondent No. 1 has committed any corrupt practice as per Section 100(1)(d)(iii) or Section 100(1)(d)(iv) of the RP Act;
- (iv) That relief sought and array of parties in the Petition is clearly contrary to the provisions of Section 82 of the RP Act as Petitioner has fatally impleaded all contesting candidates as Respondents

1 2024 (0) INSC 341

to the Petition when he is not seeking any declaration in respect of his own election;

- (v) That Petitioner has failed to plead concise statement of material facts with full particulars of alleged corrupt practice committed by Respondent No.1. That for challenging election on the ground of Section 100(1)(d)(iii) or 100(1)(d)(iv) Petitioner has failed to show how Respondent No. 1 has committed corrupt practices which is not borne out on bare reading of the grounds;
- (vi) That Petition does not fulfill the mandatory requirement of Section 83 of the RP Act. That omission of 'material facts' lead to non-existence/non-disclosure of cause of action thus rendering the Petition liable for dismissal;
- (vii) That combined reading of Sections 83 and 100 mandate Petitioner to give details of corrupt practices committed by Respondent No.1, if any, with full particulars and names of parties alleged to have committed such corrupt practices alongwith

date and place of commission of each of such practices which have not been stated;

(viii) That allegation of Petitioner that election officials/authorities have not discharged their duties as per prescribed rules and regulations is not only vague and incomprehensible but also insufficient and overlooks the provisions of Section 61A of the RP Act which provide for election by use of Voting Machines thus not complying with provisions of Section 100 of the RP Act;

(ix) That Petition lacks the *sine qua non* for maintenance of an Election Petition i.e. concise statement of material facts and pleadings to demonstrate that result of election is materially affected due to such grounds and hence Election Petition is not maintainable;

(x) That Petition neither contains any concise statement of material facts nor has Petitioner placed full particulars of any corrupt practices that he alleges including as full a statement as possible of the names of the parties as alleged to have

committed such corrupt practices. The Petition does not disclose any cause of action. That pleadings in the petition are vague and general and averments fail to make out any case that Respondent No. 1 has not complied with the provisions of the Constitution, the RP Act, Rules or orders passed under the said Act;

(xi) That Section 83 of the RP Act provides contents of Election Petition. That contents of Election Petition should be a concise statement of material facts, stating full particulars of any corrupt practices including all details, names of parties alleged to have committed corrupt practices. That apart in order to invoke provisions of Section 100(1)(d)(ii), 100(1)(d)(iii) and 100(1)(d)(iv) Petitioner would require to plead material facts with full particulars of corrupt practices committed by the returned candidate i.e. Respondent No. 1 which has not been done in the Petition;

(xii) That ground under Section 100 (1) (d) (iii) can be invoked only if a case is made out that votes were improperly received, improperly refused or

improperly rejected or void votes were received. That from combined reading of Sections 83 and 100 requirement of law is that for invoking Section 100(1)(d)(iii) Petitioner is bound to give details of any corrupt practices committed by returned candidate with full particulars alongwith names of the parties alleged to have committed such corrupt practices alongwith date and place of commission of each such practice which is not given;

(xiii) That grievances made in the Petition are general and vague without giving any material particulars. That Petitioner is required to establish in the Election Petition *prima facie* all details of improper reception of votes, improper refusal or rejection of any vote or reception of illegal vote by the returned candidate which he has failed to bring out in the Petition;

(xiv) That Petitioner has not spelt out or pleaded the precise role of Respondent No.1 in seeking improper reception, refusal of vote, reception or rejection of void vote and hence pleadings in the Petition do not satisfactorily establish grounds

provided under Section 100(1)(d)(iii) of the RP Act.

(xv) That as per Section 100(1)(d)(iv) of the said Act election of a returned candidate cannot be declared void for non compliance of provisions of Constitution of India or the said Act or the Rules. That as per Rule 4A of the Conduct of Elections Rules, 1961 every candidate is required to file Affidavit at the time of delivering nomination paper. He would submit that Respondent No.1 has filed his statutory Affidavit at the time of submission of his nomination form/paper and duly complied with Rule 4A and has given true and correct information in the statutory Affidavit as per the Election Rules which have been scrutinized and accepted by the Returning Officer. Hence allegations made in the election Petition *qua* non compliance of provisions of Section 100(1)(d)(iv) are vague, misleading, false and there is no cause of action accrued to the Petitioner whatsoever to file present Petition. Hence present Election Petition is liable to be dismissed

under Order VII Rule 11 of CPC for want of cause of action;

(xvi) That the *sine qua non* for maintenance of Election Petition and to take the same to trial is demonstration through pleading as to how the allegations, if taken to be true, would materially affect the election of the returned candidate. That if there are no pleadings demonstrating that result of election is materially affected, then Court must reject the Election Petition by exercising jurisdiction under Order VII Rule 11 of CPC.

(xvii) In support of this contention, he would rely upon judgments of the Supreme Court in the case of *Mangani Lal Mandal Vs. Bishnu Deo Bhandari*², *Shambhu Prasad Sharma Vs. Charandas Mahant and others*³ and *Mairembam Prithviraj alias Prithviraj Singh Vs. Pukhrem Sharatchandra Singh*⁴. He would rely upon the judgment of the Supreme Court in *Kanimozhi Karunanidhi Vs. A. Santhana Kumar and others*⁵ to demonstrate the principles

2 (2012) 3 SCC 314

3 (2012) 11 SCC 390

4 (2017) 2 SCC 487

5 2023 SCC OnLine SC 573

summarized for maintenance of a valid Election Petition in support of his contention that even omission of a single material fact leads to incomplete cause of action and the Election Petition in such case must be dismissed under Order VII Rule 11 of the CPC. He would submit that the said principles have been reiterated by the Supreme Court in the case of *Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and others* ⁶. He would also rely upon the judgments of the Supreme Court in *Karikho Kri Vs. Nuney Tayang and another* ⁷ and *Mahendra Tulshiram Bhingardive Versus. Anil Yeshwant Desai and others* ⁸ in support of his contention that a small irregularity does not affect the election of a democratically elected candidate in absence of pleadings that irregularities have materially affected the election of the returned candidate. He would accordingly pray for rejection of the Election Petition under provisions of Order VII Rule 11 of CPC.

6 2024 SCC OnLine SC 509

7 2024 SCC OnLine SC 519

8 Application (L) No. 29382 of 2024 in Election Petition No.1 of 2024 decided on 15.10.2024.

7.1. Mr. Jadhav has referred to and relied upon the following decisions of the Supreme Court and this Court in support of his aforesaid submissions seeking dismissal of the Election Petition:-

- (i) *Azar Hussain v. Rajiv Gandhi*⁹;
- (ii) *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*¹⁰;
- (iii) *Sangram Sampatrao Deshmukh v. Election Commission of India & Ors.*¹¹;
- (iv) *Jyoti Basu & Ors. v. Debi Ghosal & Ors.*¹²;
- (v) *B. Sundara Rami Reddy v. Election Commission of India & Ors.*¹³;
- (vi) *Comrade Kallappa Laxman Malabade v. Prakash Kallappa Awade*¹⁴;
- (vii) *Michael B. Fernandes v. C.K. Jaffer Sharief & Ors.*¹⁵;

8. *PER CONTRA*, Mr. Sugdare, learned Advocate for Election Petitioner in reply to the aforesaid submissions and the Application under Order VII Rule 11 of CP has made the following submissions:-

- (i) That the Application moved for rejection of Election Petition primarily based on the assumption that there are no further and better particulars set out in the Petition so as to understand the charges

9 AIR 1986 SC 1253

10 AIR 1987 SC 1157

11 2025 SCC Online Bom 8

12 1982(1) SCC 691

13 1991 Supp (2) SCC 624

14 AIR 1995 Bombay 5

15 (2002) 3 SCC 521

against the returned candidate. According to him Petitioner has set out the grounds summarized in paragraph 6(A) to 6(I) which even as per Respondent No.1's understanding are *prima facie* material facts that disclose a challenge to the election of the Respondent No. 1. Hence the Election Petition is not liable to be dismissed in limine under Section 86 of the RP Act and Petitioner must be allowed to prove the said allegations and contentions averred in the Election Petition by leading appropriate evidence in a trial;

- (ii) That as stipulated under Section 59 read with Section 61A of the RP Act, statutory notification is not issued under Section 61A as regards 252 Pandharpur Constituency and hence voting in the said election could not have been conducted by EVM VVPAT machines by the Election Commission of India and therefore the entire election is vitiated;
- (iii) He would submit that there is violation of Rule 49B of the Conduct of Election Rules, 1961, whereby the EVM VVPAT machine has not been prepared for

identification by the Returning Officer with permanently engraved seal for identification thereon;

- (iv) That during the election process polling personnel were ill-equipped logistically, technically in terms of expertise and familiarity with the machine and with the mandatory procedure to be able to conduct elections by use of EVM VVPAT;
- (v) That EVM VVPAT machines were without serial numbers engraved onto the cabinet or on a metal plate riveted to the cabinet and hence lacked unique identification marks and permanent serial numbers as necessitated which was in violation of the rules and handbook of election manual on EVM and VVPAT and more particularly Regulation 9.2 of Chapter 9 which talks about metal plate label inscribed on the machine;
- (vi) That Petitioner requested the Returning Officer to provide him copy of Form 17C by filing Application under Rule 93 which was not given to him by the Returning Officer. That Petitioner specifically

raised charge of non-supply of information as required under Form 17C which is required to be given to the contesting candidate under Section 49S and 56C(2) of the RP Act and withholding of such information pertaining to Election Result would materially affect the result of the returned candidate and it vitiated the entire election process;

(vii) That Petitioner made specific charge of corrupt practices in regard to manipulation in the process of voter registration and preparation of electoral roll contrary to the mandate prescribed in the manual on electoral rolls which require the following steps to be taken:-

(a) Election Registration Officer (ERO) being custodian of the electoral roll is duty bound to give publicity; and

(b) Booth Level Officer (BLO) assigned with preparation and revision of electoral roll are mandated to conduct field visit, identify gaps in the electoral roll and focus on enrollment of youth in the age group of 18 to 19 years and women.

According to him these steps were not taken by the Election Officials before the Election. Thus deliberately keeping new voters out of the electoral roll so as to benefit the electoral prospect of the returned candidate. That from declaration of results stated in the Petition and the thin margin by which the returned candidate Respondent No.1 has been declared successful over his rival candidate of another political party assumes significance in the backdrop of charges of deprivation of rights of minority voters, women voters and voters residing in poorer localities where voter slips were not distributed and this has materially affected the result of the election;

- (viii) That the EROs miserably failed to enroll all potential voters in the 252 Pandharpur Assembly Constituency;
- (ix) That BLOs violated their duty to distribute voters slip in the poorer localities and where minority residents were concentrated in order to further the electoral prospect of the returned candidate i.e. Respondent No.1;

- (x) Hence he would submit that Application below Order VII, Rule 11 be rejected and Petitioner be given the opportunity to step into the witness box and prove his case for setting aside of the election.

8.1. In support of his submissions, Mr. Sugdare has referred to and relied upon the following decisions:-

- (i) *Balwant Singh v. Lakshmi Narain & Ors*¹⁶;
- (ii) *Raj Narain v. Indira Nehru Gandhi & Anr.*¹⁷;
- (iii) *Virendra Nath Gautam v. Satpal Singh & Anr.*¹⁸;
- (iv) *G.M. Siddeshwar v. Prasanna Kumar*¹⁹;
- (v) *Ashraf Kokkur v. K.V. Abdul Khader & Ors.*²⁰;
- (vi) *Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy & Ors.*²¹;
- (vii) *Mahendra Pal v. Ram Dass*²²;
- (viii) *B.Y. Yadiyurappa v. Mahalingappa & Ors.*²³;
- (ix) *Shivaji Laxman Sahane v. Election Commissioner & Ors.*²⁴;
- (x) *Chaugule v. Bhagwat*²⁵;
- (xi) *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.*²⁶.

16 1960 SC 770

17 (1972) 3 SCC 850

18 (2007) 3 SCC 617

19 (2013) 4 SCC 776

20 (2015) 1 SCC 129

21 (2018) 14 SCC 1

22 2001 SCC 261

23 (2002) 1 SCC 301

24 2013 (5) Mh.L.J. 422

25 (2012) 5 SCC 127

26 (1978) 1 SCC 405

9. I have heard the submissions advanced by Mr. Jadhav, learned Advocate for the Applicant / Respondent No.1 – returned candidate and Mr. Sugdhare, learned Advocate for the Election Petitioner and perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

10. Challenge to the Election of the Respondent No.1 is primarily based on grounds as stated in paragraph No.6A to 6I on page Nos.10 to 16 of the Election Petition. They are dealt with in seriatim hereinunder in consonance with the Application under O. VII, R. 11 of the CPC r/w Section 86 of the RP Act.

11. At the outset the Election Petition is opposed on the ground of noncompliance of Section 82 of the RP Act. Section 82 of the RP Act read thus:-

“82. Parties to the Petition. - A Petitioner shall join as respondents to his Petition -

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

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

12. It is seen that the language and content of Section 82 is clear and does not call for any interpretation. Section 82 provides that

where further declaration of own or other's election is claimed all contesting candidates must be made parties to an election dispute, but where no further declaration is claimed only the returned candidate has to be impleaded as party. If the prayer clause i.e. paragraph No. 21 of the Election Petition is seen, the Petitioner has not sought further declaration either in respect of his own election or election of another candidate. Petitioner could not have sought further declaration of his own election considering the number of votes polled by him. In that view of the matter *prima facie* there is violation of Section 82 of the RP Act in as much as Petitioner has impleaded all contesting candidates in the present Petition.

13. The scheme and interpretation of the RP Act as envisaged does not permit joinder of parties other than those specifically permitted under Section 82 read with Section 86 of the RP Act. It is seen that the Code of Civil Procedure, 1908 applies only as nearly as may be and subject to the provisions of the RP Act and joinder of additional parties would therefore clearly amount to breach of the provisions of Sections 82 and 86(1) of the RP Act. Reliance in this regard is placed on the decision of the Supreme Court in the case of Jyoti Basu (12th Supra) and Michael B. *Fernandes* (15th Supra).

14. In paragraph No.6C of the Petition, Petitioner has contended that after observing and looking at the results he has found

out that the Election Commission of India while conducting the said Election has completely bypassed the statutory procedure prescribed by the RP Act. This ground is as vague as possible and without any specifics. It is seen that mere non-compliance of any procedure by itself does not invalidate the Election under Section 100(1)(d)(iv) without the said non-compliance or breach going to the root of the matter. Such non-compliance or breach or irregularity needs to be precisely stated by stating material pleadings as to how it materially affected the result of the returned candidate. *Prima facie* when paragraph Nos.6A to 6I are read no specifics are stated, rather what is stated therein is in generality. Hence merely stating that there was improper procedure adopted does not disclose any cause of action unless it is materially shown based on facts that such facts or action affected the result of the returned candidate. Thus in the absence of any precise and material pleadings about irregularities having materially affected the Election such an allegation cannot withstand and be taken cognizance of. In this regard reliance is placed on the decisions of the Supreme Court in the case of ***Mangani Lal Mandal (2nd supra)*** and ***Shambhu Prasad Sharma (3rd supra)***.

15. It is seen that the entire Election Petition comprises of vague and generic pleadings and there is complete absence of material facts. Mr. Sugdare has argued that whatever is stated in paragraph

Nos.6A to 6I is enough for the Petitioner to lay the foundation for challenging the Election of Respondent No. 1 and the Petitioner be called upon to prove the same in evidence. He has fairly argued that though what the Petitioner will prove in evidence is not specifically stated in the Election Petition but whatever minimal pleadings stated should be allowed to be proved by the Petitioner in the trial. I do not subscribe to or accept the submissions made by Mr. Sugdare, since if the Petition has to be maintained under Section 100(1)(d) or under Section 101 of the RP Act then cause of action in the form of specific material facts or concise statement of material facts along with full disclosure of names, dates, place, incidents, role etc. of such parties needs to be stated in the Petition. In this regard attention is drawn to the provisions of section 83 of the RP Act:-

“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.”

16. Thus, it is mandatory under provisions of Section 83(1) (a) of the said RP Act that an Election Petition must contain a concise statement of the material facts with full particulars of corrupt practice with all details on which the Petitioner relies. When provisions of Section 83(1)(a) of the RP Act are read in conjunction with provisions of Section 100(1)(d)(iii) and (iv) of the RP Act, what emerges is that the Election Petition must contain a concise statement of material facts to demonstrate the ground of improper reception, refusal or rejection of any vote or reception of any vote which is void or a concise statement of material fact to demonstrate non-compliance with provisions of the Constitution or of the Act or Rules or orders made thereunder.

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

18. In this regard Section 100 of the RP Act which provides for grounds for declaring the election to be void reads 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.”

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

20. In the decision of this Court passed in the case of *Ravindra Dattaram Waikar Vs. Amol Gajanan Kirtikar and Ors.*²⁷ (Coram : Mr. Sandeep V. Marne, J.) this Court has reiterated the settled position of law under the RP Act dealing with the necessity of pleading of material facts for maintainability of the Election Petition in paragraph Nos. 26 to 33 thereof which refer to the well settled authoritative pronouncements of the Supreme Court in similarly placed cases. Paragraph Nos. 26 to 33 are directly relevant to the present case and discussion held herein above and are reproduced

²⁷ Application (L) No. 29930 of 2024 with Application (L) No. 29880 of 2024 in Election Petition No.6 of 2024 decided on 19.12.2024.

herein below for immediate reference:-

*"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 said Act is a complete and self-contained Code. Therefore, strict compliance with the provisions of the said Act is mandatory requirement for exercising the statutory remedy under the RP Act. Reference in this regard can be made to the judgment of the Apex Court in **Jyoti Basu** (supra) wherein the Apex Court has held in paragraph 8 as under:-*

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a

complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say? ”

"27) *In **Dharmin Bai Kashyap Vs. Babli Sahu and others**²⁸, the Apex Court has reiterated the position that where a right or a liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by the statute must be availed of in accordance with the statute and that if a statute provides for doing a thing in a particular manner it has to be done in that matter alone and in no other manner. The Supreme Court has held in paragraph 17 as under:-*

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

"28) *Having held that strict compliance with provisions of RP Act is mandatory requirement for exercise of statutory remedy, it would be appropriate to discuss the relevant case law on the subject dealing with the nature of pleadings that are required for maintainability of a valid Election Petition. In **Mangani Lal Mandal** (5th supra), the Apex Court held that the sine qua non for declaring an election of returned candidate to be void under Section 100(1)(d)(iv) of the RP Act is further proof of the fact that such breach or non-observance results in materially affecting the result of returned candidate. It is further held that mere violation or breach or non-observance of the provisions of Constitution, the Act, Rules or orders made thereunder would not ipso facto render the election of returned candidate void. The Supreme Court held in paragraphs 10, 11 and 12 as under:-*

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

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

12. Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellant's first wife and the dependent children born from that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election

petition there is no pleading at all that the suppression of the information by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and non-disclosure of their assets and liabilities has materially affected the result of the election. There is no issue framed in this regard nor is there any evidence let in by the election petitioner. The High Court has also not formed any opinion on this aspect.”

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

“15. Suffice it to say that the case pleaded by the appellant was not one of complete failure of the requirement of filing an affidavit in terms of the judgment of this Court and the instructions given by the Election Commission but a case where even according to the appellant the affidavits were not in the required format. What is significant is that the election petition did not make any averment leave alone disclose material facts in that regard suggesting that there were indeed any outstanding dues payable to any financial institution or the Government by the returned candidate or any other candidate whose nomination papers were accepted. The objection raised by the appellant was thus in the nature of an objection to form rather than substance of the affidavit, especially because it was not disputed that the affidavits filed by the candidates showed the outstanding to be nil.

16. to 17. xxxxx

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

19. xxxxx

20. Coming to the allegation that other candidates had also not submitted affidavits in proper format, rendering the acceptance of their nomination papers improper, we need to point out that the appellant was required to not only allege material facts relevant to such improper acceptance, but further assert that the election of the returned candidate had been materially affected by such acceptance. There is no such assertion in the election

petition. Mere improper acceptance assuming that any such improper acceptance was supported by assertion of material facts by the appellant-petitioner, would not disclose a cause of action to call for trial of the election petition on merit unless the same is alleged to have materially affected the result of the returned candidate."

"30) In *Mairembam Prithviraj alias Prithviraj Singh* (supra), the Apex Court has relied upon its judgment in *Durai Muthuswami Versus. N Nachiappan*²⁹, and held in paragraphs 22 and 23 as under:-

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

"3. Before dealing with the question whether the learned Judge was right in holding that he could not go into the question whether the 1st respondent's nomination has been improperly accepted because there was no allegation in the election petition that the election had been materially affected as a result of such improper acceptance, we may look into the relevant provisions of law. Under Section 81 of the Representation of the People Act, 1951 an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. It is not necessary to refer to the rest of the section. Under Section 83(1)(a), insofar as it is necessary for the purpose of this case, an election petition shall contain a concise statement of the material facts on which the petitioner relies. Under Section 100(1) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act....

29 (1973) 2 SCC 45

(b)-(c)

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

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

(ii)-(iii) ***

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

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

23. It is clear from the above judgment in Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the respondent to prove that result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only

two candidates contesting the election and if the appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected."

*"31) The conspectus of the above discussion is that for maintaining an Election Petition and for taking it to the stage of trial, it is necessary that there is strict compliance with the provisions of Section 83(1)(a) of the RP Act. The concise statement of material facts must constitute a complete cause of action. Failure on the part of the Election Petitioner to raise necessary pleadings to make out a case of existence of ground under Section 100(1)(d)(iii) or (iv) of the RP Act would necessarily result in dismissal of Election Petition by invoking powers under Order VII Rule 11 of the Code. The Apex Court has summed up the legal position in this regard after taking stock of various judgments rendered in the past in **Kanimozhi Karunanidhi** (supra) in paragraph 28 as under:-*

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

i. Section 83(1)(a) of said 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 said 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 pusaidose.

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 said Act.”

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

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

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

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

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

SCC 442].

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

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

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

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

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

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

XXXXX

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

XXXXX

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

"33) The Apex Court in **Karikho Kri** (supra) held in paragraph Nos.40 and 41 as under:-

40. Having considered the issue, we are of the firm view that every defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts, insofar as that aspect is concerned. The case law on the subject also manifests that this Court has always drawn a distinction between non-disclosure of substantial issues as opposed to insubstantial issues, which may not impact one's candidature or the result of an election. The very fact that Section 36(4) of the Act of 1951 speaks of the Returning Officer not rejecting a nomination unless he is of the opinion that the defect is of a substantial nature demonstrates that this distinction must always be kept in mind and there is no absolute mandate that every non-disclosure, irrespective of its gravity and impact, would automatically amount to a defect of substantial nature, thereby materially affecting

the result of the election or amounting to 'undue influence' so as to qualify as a corrupt practice.

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

21. In the present case, it is seen that there is non-compliance of Section 82 of the RP Act in the first instance and therefore the Petition deserves to be dismissed on that ground itself. Thereafter it is seen that there is absolute non-compliance of the provisions of Section 83 of the RP Act which contemplates that an Election Petition has to mandatorily contain a concise statement of material facts to begin with on which the Petitioner relies and full particulars of any corrupt practice that he alleges (*underline emphasised*) including as full a statement as possible of the names of the parties alleged to have

committed such corrupt practices and the date and place of the commission of each such practice.

22. The aforesaid are the *sine qua non* and specific requirements to be stated in the Election Petition for its maintainability.

23. In the present case, Petitioner has alleged general and vague violations by the Election Commission and the Respondent No. 1 without specifying any details whatsoever. No concise statement of material facts alleging violation under Section 83 of the RP Act is stated. Hence, the five grounds stated in paragraph Nos. 6A to 6E in the Petition are not in consonance with violation alleged under Section 83 read with Sections 100(1)(d)(iii) and 100(1)(d)(iv) of the RP Act since no particulars are given and Petitioner himself has during the course of arguments to oppose the O. VII, R. 11 Application argued that he should be given an opportunity to do so in the trial.

24. Next in paragraph No.6E allegation is raised by the Petitioner in respect of functioning of EVMs and seeking a return to the paper ballot system. In this regard, Petitioner has not considered the provisions of Section 61A of the RP Act and the grievances expressed in respect of EVMs are merely based on conjectures and apprehensions. The said grievances are so vague that it is not clear as

to how and in which manner it has resulted in an incorrect practice or an irregularity materially affecting the election of Respondent No. 1. Decision of the Supreme Court in the case of *Association for Democratic Reforms (1st supra)* has held that EVMs have stood the test of time, increased voter confidence / participation and their credibility cannot be overridden by imagination. The Supreme Court further holds that introducing ballot papers will be a regressive step undoing electoral reforms and any attempt to undermine the EVM system ought to be nipped in the bud. Thus the issue in respect to use of EVM stands comprehensively concluded and settled and case of the Petitioner in the absence of any specific cannot be countenanced.

25. Mr. Jadhav has placed on record a detailed Press Note dated 15.10.2024 published by the Election Commission of India in exercise of the authority and powers conferred under Article 324 read with Article 171 (1) of the Constitution of India and Section 15 of the RP Act with regard to the General Election to Legislative Assemblies of Maharashtra, 2024. In the list of Assembly Constituencies of Maharashtra at Sr. No.252 is the constituency of Pandharpur. Clause 36 of the said Press Note pertains to EVMs and VVPATs. EVM stands for Electronic Voting Machines and VVPAT stands for Voter Verifiable Paper Audit Trail. The detailed exercise is stated therein for the use of the above including randomization of the said system apart from GPS

tracking of the movement of EVM and VVPAT, their storage, procedure for counting etc. The details are so exhaustive that the alleged allegations in the grounds of the Election Petition are nowhere near it neither any specificity or material fact is alleged. This Press Note was published in two local newspapers, once in English and once in Marathi for wide circulation and intimation of the general public in Pandharpur Constituency. Contrary to this what is argued is that the Notification needs to be published in the official gazette. As compared to the official gazette, the Press Note has the widest publicity so as to reach every voter in the constituency and that has been done thus achieving the essential purport of the substantive provisions of the RP Act.

26. Next ground alleged is that of corrupt practice. Once again the pleading so vague and generic that there is complete absence of material facts. Once there is absence of a concise statement of material facts with full particulars of any alleged corrupt practice then it is fatal to the Election Petition. It is however held by the Supreme Court that rather omission of even a single material fact would lead to an incomplete cause of action and the Court will be duty bound to reject the Petition *in limine*. For maintainability of an Election Petition pleadings have to be precise and specific. What is observed in the entirety of paragraph on grounds namely paragraph

No.6(A) to 6(I) that mere vague and unsubstantiated allegations are stated therein in a general manner which cannot be held to be sufficient compliance of the provisions of Section 81 and 83 read with Section 100(1)(d) of the RP Act. Attention in that regard is drawn to the decision of this Court in the case of ***Sangram Sampatrao Deshmukh (11th supra)*** which has considered the Election law on the basis of citations in its entirety for determining application under Order VII Rule 11 of the CPC in somewhat similar circumstances. For brevity the same is not reproduced therein as the decision of this Court in the case of *Ravindra Dattaram Waikar (supra)* fully discusses the same.

27. It is stated that mere general and vague pleadings cannot further the cause of action of the Election Petitioner before me. All charges with respect to corrupt practices or violation regarding non-distribution of voters' slip in the poorer localities or in localities where minority residents are concentrated on preparation of electoral rolls are unsubstantiated save and except the statements made in the Petition. Such allegations to prove corrupt practices cannot be countenanced unless they are in consonance with the statutory provisions discussed herein above.

28. Though Mr. Sugdare has vehemently argued that Section 100 of the RP Act will have to be envisaged not only as a matter of

textual interpretation but on a much broader scale as covering the whole basket of grievances of the candidate and that the scheme of Section 100 has been designedly drafted to embrace all conceivable infirmities which may be urged, however in so far as the present election petition is concerned I am not inclined to accept such a broad proposition of Section 100 considering the averments made in paragraph No. 6(A) to 6(I) of the present Election Petition.

29. Hence in the absence of specific and necessary pleadings and reliance placed on the aforesaid findings and observations including the citations discussed, in my opinion on a holistic consideration of the pleadings stated in paragraph Nos.6(A) to 6(I) of the Petition the present election petition is liable to be rejected under Order VII Rule 11 of the CPC.

30. In view of the above, I am inclined to agree with the propositions and submissions advanced by Mr. Jadhav in the Application filed below Order VII Rule 11 of the CPC seeking dismissal of the Election Petition.

31. I am of the view that Petitioner has failed to ensure strict compliance with the statutory provisions of the said act namely Section 83(1)(a) of the RP Act. Therefore following the mandate under various judgments of the Supreme Court, particularly in the

case of *Kanimozhi Karunanidhi (5th supra)* and *Karim Uddin Barbhuiya (6th supra)* that even a singular omission of statutory requirement must entail dismissal of the Election Petition by having recourse to provisions of Order VII Rule 11 of the CPC, in my view, the Election Petition does not disclose any cause of action for making out any of the ground under Sections 100(1)(d)(iii) or 100(1)(d)(iv) r/w Section 83 of the RP Act and therefore the present Election Petition cannot be taken to trial and is liable to be rejected by having recourse to the provisions of Order VII Rule 11 of CPC. Resultantly the Election Petition fails.

32. In view of the above, Application (L) No.12835 of 2025 is allowed and accordingly Election Petition No.10 of 2025 is rejected under Order VII Rule 11 of CPC.

33. Election Petition No.10 of 2025 is accordingly dismissed.
No costs.

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2025.07.21
17:23:57 +0530