

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

APPLICATION NO. 23 OF 2025
IN
ELECTION PETITION NO. 35 OF 2025

Sidharth s/o Padmakar Shirole

....Applicant/Respondent

In the matter of:

Datta Rangnath Bahirat

....Petitioner

: Versus :

Sidharth s/o Padmakar Shirole

....Respondent

WITH

ELECTION PETITION NO. 35 OF 2025

Datta Rangnath Bahirat

....Petitioner

: Versus :

Sidharth s/o Padmakar Shirole

....Respondent

Mr. Nitin Deshpande i/b Ms. Rachana Harpale for Petitioner and for Respondent in AEP. 23 of 2025.

Mr. Anurag Mishra with Mr. Rohan Nahar i/b Mr. Suraj Naik for Original Respondent and for Applicant in AEP. 23 of 2025.

CORAM : SANDEEP V. MARNE, J.

Reserved On: 10 November 2025.

Pronounced On: 17 November 2025.

JUDGMENT:

1) The Respondent has filed the present Application seeking rejection of Election Petition under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (**the Code**) read

with Section 86(1) of the Representation of the Peoples Act, 1951 (RP Act). Respondent is the returned candidate having being elected from 209, Shivajinagar Assembly Constituency, Pune as the Member of Legislative Assembly. Petitioner also contested the said election as official candidate of the Indian National Congress. Respondent No.1 contested the election as the official candidate of the Bharatiya Janata Party. Having lost the election of Maharashtra Legislative Assembly for the constituency of 209, Shivajinagar, Pune, Petitioner has filed the present Election Petition seeking a declaration that the election of Respondent is void. Petitioner has not sought a declaration in respect of his own election. Accordingly, the other candidates, who contested the election, have not been impleaded as party Respondents to the Election Petition in accordance with provisions of Section 82 of the RP Act.

2) Respondent has filed Written Statement opposing the Election Petition. In addition to filing of Written Statement, Respondent has also filed the present Application seeking rejection of the Election Petition under the provisions of Order VII Rule 11 of the Code read with Section 86(1) of the RP Act. Petitioner has filed Affidavit-in-Reply opposing the Application. Since the pleadings in the Application are complete, the same is taken up for hearing and disposal.

3) Mr. Mishra, the learned counsel appearing for the Respondent would submit that the Election Petition does not make out even a single ground for challenging the election of Respondent as enumerated under Section 100 of the RP Act. That the Election Petition does not disclose cause of action and that therefore casually

filed Election Petition deserves rejection by having recourse to the provisions of Order VII Rule 11 of the Code read with Section 86(1) of the RP Act. He would submit that strict compliance with provisions of RP Act is necessary for maintaining an Election Petition. The Apex Court and this Court have repeatedly harped upon the requirement of strict compliance with the provisions of RP Act. That Election Petition being a statutory remedy, even a single omission to plead required fact/material would entail rejection/dismissal of the Election Petition. He would submit that in the following three judgments of this Court, the entire law on the subject has been discussed while holding that failure to plead the required facts/material would results in rejection/dismissal of Election Petition:

- (i) *Amol Gajanan Kirtikar and Others. Versus. Ravindra Dattaram Waikar*¹
- (ii) *Sudhir Brijendra Jain Versus. Rajendra Dhedya Gavit*²
- (iii) *Udesh Shantaram Patekar Versus. Prakash Rajaram Surve and Others.*³

4) Mr. Mishra would thereafter take me through various pleadings in the Election Petition to make out a case of failure on the part of Petitioner to plead the required facts/material and also to demonstrate failure on the part of the Petitioner to make out any of the enumerated grounds of challenge under Section 100 of the RP Act. So far as the first ground of non-issuance of Notification under Section 61-A of the RP Act is concerned, Mr. Mishra would submit that the Petitioner himself has produced copy of the Press Note dated

¹ Application(L) No. 29930 of 2024 in EP 6 OF 2024 decided on 19 December 2024

² Application(L) No. 5808 of 2025 in EP 3 of 2025 decided on 26 June 2025

³ Application No. 3 of 2025 EP 10 of 2024 decided on 1 August 2025

15 October 2024 issued by the Election Commission of India envisaging holding of elections by use of Electronic Voting machines (EVM). He would rely upon judgment of this Court in Anil Subhash Sawant Versus. Samadhan Mahadeo Autade⁴ in support of his contention that issuance of Press Note dated 15 October 2024 is held as sufficient compliance with provisions of Section 61-A of the RP Act. That there is no pleading as to how result of the election is materially affected on account of alleged failure to issue Notification under Section 61-A of the RP Act.

5) So far as the second ground of alleged irregularity in the electoral roll and voters list raised in the Election Petition is concerned, Mr. Mishra would submit that the Petition does not contain any pleading as to which of the grounds under Section 100 is sought to be invoked while raising vague allegation of alleged irregularity in electoral roll and voters list. That the allegations lack material particulars required to be pleaded under Section 83 of the RP Act.

6) The third allegation of corrupt practice under Section 123(7) of the RP Act is met with by Mr. Mishra contending that the same is premised on alleged failure on the part of the authorities to provide information to the Petitioner under Right to Information Act, 2005 (RTI Act) after declaration of results of the election. That there is no pleading as to how mere act of non-supply of information under the RTI Act would even remotely constitute corrupt practice under Section 123(7) of the RP Act. That there are absolutely no pleadings in the Election Petition demonstrating as to how any of the

⁴ Application (L) No. 12835 of 2025 EP 10 of 2025 decided on 21 July 2025

actions of the officers have furthered prospects of the Respondent in the election. Petitioner has merely reproduced the language of Section 123(7) of the RP Act without setting out any particular of corrupt practice as required under Section 83 of the RP Act. Mr. Mishra would submit that there is statutory bar under Rule 93 of the Conduct of Election Rules, 1961 to provide information demanded by the Petitioner and therefore failure to supply such information would not constitute a ground for challenge in the Election Petition.

7) The fourth allegation of alleged EVM tampering is dealt with by Mr. Mishra by contending that the allegations are generic in nature without pleading of any material particulars. Again, no specific ground for challenging election as enumerated under Section 100 of the RP Act is raised while vaguely alleging EVM tampering. Mr. Mishra would further submit that the allegation of failure to submit election expenditure is raised only in synopsis without any pleading in the main body of the Election Petition. The same also figures only in the list of information sought under the RTI Act. That therefore there are absolutely no pleadings qua the allegation of failure to submit election expenditure.

8) Mr. Mishra would submit that the Election Petition has thus been filed in most casual and cavalier manner which requires not only dismissal/rejection, but also imposition of exemplary cost under Section 119 of the RP Act. On above broad submissions, Mr. Mishra has sought for rejection/dismissal of the Election Petition.

9) The Application is opposed by Mr. Deshpande, the learned counsel appearing for the Election Petitioner. He would

submit that the Election Petition contains the necessary pleadings required for taking the Petition to trial. That Petitioner is not expected to plead every material particular at this stage and must be provided an opportunity to lead evidence in respect of the material particulars. He would rely upon judgment of the Apex Court in Raj Narain Versus. Smt. Indira Nehru Gandhi⁵ in support of his contention that pleading of every material is not necessary. He would also rely upon judgment of the Apex Court in K.K. Ramachandran Master Versus. M.V. Sreyamakumar and others.⁶ in support of his contention that there is a distinction between supporting material to the facts and facts which are required to be proved by a party. He would submit that Section 83 of the RP Act uses the expression 'as possible' while providing for requirement to set forth full particulars of corrupt practice. That the expression 'as possible' has been interpreted by the Apex Court in State of UP Versus Shambhu Nath Singh and Others.⁷ to mean that some play at the joints is provided by the legislature. That therefore Election Petition cannot be dismissed at the threshold by adopting hyper technical approach of expecting the Petitioner to plead every material particular, which otherwise can be supplemented by leading evidence. He would also rely upon following judgments in support of his contention.

- (i) U.S. Sasidharan Versus. K. Karunakaran and Another.⁸
- (ii) Amar Prasad Satpathy Versus. Sitakanta Mohapatra And Others.⁹
- (iii) L.R. Shivaramagowda And Others. Versus. T.M. Chandrashekar And Others.¹⁰

⁵ (1972) 3 SCC 850

⁶ (2010) 7 SCC 428

⁷ (2001) 4 SCC 667

⁸ (1989) 4 SCC 482

⁹ AIR 1997 Orissa 9

¹⁰ (1999) 1 SCC 666

- (iv) Sardar Harcharan Singh Brar Versus. Sukh Darshan Singh And Others.¹¹
- (v) Ramesh Rout Versus. Rabindra Nath Rout.¹²
- (vi) Ponnala Lakshmaiah Versus. Kommuri Pratap Reddy And Others.¹³
- (vii) Ajay Maken Versus. Adesh Kumar Gupta And Another.¹⁴
- (viii) Bhupendra Narain Mandal Versus. Ek Narain Lal Das And Others.¹⁵

10) Mr. Deshpande would accordingly submit that the Petitioner be provided an opportunity to lead evidence instead of rejecting the Petition at the threshold. He would pray for rejection of the Application filed by the Respondent.

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

12) Petitioner has lost election to the Respondent from 209, Shivajinagar Assembly Constituency, Pune. While challenging the election of Respondent, Petitioner has not sought declaration of his own election. He is praying for only setting aside the election of Respondent. This is the reason why other candidates who had contested the election from the concerned constituency have not been impleaded as party Respondents to the Election Petition in accordance with provisions of Section 82 of the RP Act.

13) Respondent, who is the returned candidate, has sought rejection of Election Petition for failure to disclose cause of action under Order VII Rule 11 of the Code and also its dismissal for failure

¹¹ (2004) 11 SCC 196

¹² (2012) 1 SCC 762

¹³ (2012) 7 SCC 788

¹⁴ (2013) 3 SCC 489

¹⁵ AIR 1965 Patna 332

to contain necessary pleadings as provided under Section 83 of the RP Act. By now it is well settled position that an Election Petition is a statutory remedy created under the RP Act and it is not a remedy in common law or equity. Being a statutory remedy, strict compliance with the provisions of the RP Act is necessary for maintaining a valid Election Petition. Election Petition is aimed at setting aside election of the democratically elected candidate. The Election Petition therefore cannot be filed casually and warrants strict compliance with the provisions of the RP Act. RP Act lays down elaborate requirements for maintaining a valid challenge to the election. Section 86(1) provides for dismissal of the Election Petition which does not comply with provisions of Sections 81, 82 or 117. Section 83 of the RP Act provides for requirement of pleadings and it is repeatedly held that an Election Petition can be rejected if it does not disclose cause of action through mandatory pleadings required under Section 83 by having recourse to provisions of Order VII Rule 11 of the Code. An Election Petition can be summarily dismissed on omission of a single material fact leading to incomplete cause of action.

14) While I could have discussed the statutory framework of RP Act with reference to maintaining a valid challenge to election of a returned candidate and ratio of various judgments of the Apex Court, there is elaborate discussion of both in judgment of this Court in Udesh Shantaram Patekar (supra) which makes reference to the previous judgment Ravindra Dattaram Waikar Versus. Amol Gajanan Kirthikar and Others.¹⁶ . Instead of making a detailed discussion of statutory scheme of RP Act and ratio of various judgments of the

¹⁶ Application in EP (L.) No. 29930 of 2024 decided on 19 December 2024. (OS)

Apex Court, it would be profitable to refer to the detailed discussion in paras. 29 to 39 of Udesh Shantaram Patekar which read thus:-

29. Coming to the merits of the application filed by the first Respondent seeking rejection of the Election Petition, it would be necessary to quickly examine the statutory scheme of the Act. It needs no reiteration that the Election Petition is not an action at common law or in equity. It is statutory remedy to which neither the common law nor the principles of equity apply and the same is governed strictly in accordance with the provisions of the Act. An Election Petition is a special jurisdiction which needs to be exercised in strict consonance with the statute which has created the same. It has been repeatedly held that the Act is a complete and self-contained code, and any rights claimed in relation to an election or in relation to an election dispute must be found within that code alone. It is impermissible to locate any right outside the Act. Therefore, once the remedy of setting aside Election Petition is availed in accordance with the provisions of the Act, it is necessary that each and every requirement specified therein must be strictly complied with. After all, an Election Petition seeks to unseat a democratically elected returned candidate. The Election Tribunal therefore cannot entertain a petition which is causally filed without complying with the requirements provided for in the Act. Therefore, the statutory scheme is such that failure to meet even a single statutory requirement prescribed under the Act must entail either rejection or dismissal of the Election Petition. It would now be necessary to make a reference to the relevant provisions of the Act for the purpose of deciding the controversy at hand.

30. Section 100 of the Act enumerates the grounds for declaring the election to be void and provides thus :-

100. Grounds for declaring election to be void.-

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

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

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

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

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

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

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

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

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

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

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

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void.

31. Section 101 of the Act enumerates the grounds on which a candidate, other than a returned candidate, can be declared to have been elected and provides thus :-

101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.-

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion-

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt [***] practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the High Court shall, after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

32. Thus, election of a returned candidate can be declared to be void by the High Court only on the four grounds enumerated under Clauses (a) to (d) of sub-section (1) of Section 100. In the present case, election of Respondent No. 1 is sought to be declared void on the ground of corrupt practices under Section 100(1)(b) as well as Section 100(1)(d)(ii). The election is also sought to be declared void on the ground of non-compliance with the provisions of the Constitution/the Act/Rules/Orders under Section 100(1)(d)(iv) of the Act. There is also a reference to corrupt practices under the provisions of Section 101 of the Act, which enumerates the ground on which a candidate other than a returned candidate can be declared to have been elected. Since one of the grounds for declaration of election of Respondent No. 1 to be void is commission of alleged corrupt practices, it would be necessary to reproduce the provisions of Section 123 of the Act, which deals with corrupt practices. Section 123 provides thus :-

123. Corrupt practices.-

The following shall be deemed to be corrupt practices for the purposes of this Act:-

(1)"Bribery" that is to say-

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing-

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to-

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward-

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.-For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that-

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who-

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of

divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate: Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

(3-A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(3-B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation.-For the purposes of this clause, 'sati' and 'glorification' in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).

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

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.-In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorising of expenditure in contravention of section 77.

(7) The obtaining or procuring or a betting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person whether or not in the service of the Government and belonging to any of the following classes, namely:-

(a) gazetted officers;

(b) stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

(f) revenue officers other than village revenue officers known as lambardars malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

(g) such other class of persons in the service of the Government as may be prescribed;

(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.

(8) Booth capturing by a candidate or his agent or other person. Explanation.-(1) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent [***] of that candidate.

(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof-

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service such person ceased to be in such service with effect from the said date.

(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135A.

33. Provisions of Section 83 of the Act have already been extracted in the preceding paras. Section 83 of the Act deals with contents of Election Petition and provides that the same must contain a concise statement of material facts on which Petitioner relies and set forth full particulars of any corrupt practice that the Petitioner alleges. The exact difference between requirement of Clauses (a) and (b) of Section 81(1) is being discussed in the latter part of the judgment. At this juncture, it is suffice to observe that the provisions of Section 83 of the RP Act mandates the Election Petitioner to make a concise statement of material facts on which he relies and also to give full particulars of corrupt practice which is alleged. I have already held above that Election Petition which does not conform to the requirements of Section 83 of the RP Act and can be rejected by having recourse to the provisions of Order VII Rule 11 of the Code.

34. Section 81 of the RP Act deals with presentation of Election Petition and provides thus :-

81. Presentation of petitions.-

(1) 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 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation.-In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition [***] and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

35. Section 86 of the RP Act deals with trial of Election Petitions and provides thus :-

86. Trial of election petitions.- (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation. - An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause(a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation. - For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

Thus, under Section 86(1) of the Act, an election petition not complying with provisions of Sections 81, 82 or 117 needs to be dismissed. The difference in jurisdictions for 'dismissal' of petition under Section 86(1) and 'rejection' of petition under Order VII Rule 11 of the Code has already been discussed supra.

What is however pertinent to note in Section 86 is that sub-section (5) thereof allows amendment of election petition for the purpose of modification or amplification of particulars of corrupt practices already pleaded in the election petition. The provision enabling an amendment of election petition is subject to a caveat that particulars of corrupt practice not already alleged in the Petition cannot be incorporated or amplified by way of amendment.

36. Thus an Election Petition not complying with provisions of Section 81 can be dismissed under Section 86(1) and if it does not comply with the provisions of Section 83, the same can be rejected by having recourse to Order VII Rule 11 of the Code.

37. A conjunctive reading of the provisions of Sections 83 and 100 of the Act would indicate that the Election Petition must contain a concise statement of material facts relating to the enumerated grounds under Section 100, on which election is sought to be declared void. If election is challenged on the ground of disqualification under section 100(1)(a), the petition must contain concise statement of material facts making out as to how such candidate was not qualified or was disqualified to be chosen as per the provisions of the Constitution or the Act. Similarly, if the grounds of improper rejection of nomination [Section 100(1)(c)], improper acceptance of nomination [Section 100(1)(d)(i)], improper acceptance refusal/rejection of vote [Section 100 (1)(d) (iii)] or non-compliance with the provisions of Statute/Act/Rules/Orders [Section 100(1)(d) (iv)] are raised, the Election Petition must contain concise statement of material facts to make out those grounds. When it comes to setting aside the election due to corrupt practices, additional requirement of setting forth full particulars of corrupt practices is mandatory under section 83(1)(b) of the Act. Thus, an Election Petition which does not contain 'concise statement of material facts' making out the grounds under section 100(1)(a),(c),(d) (i),d(iii),d(iv) or which does not contain 'full particulars of corrupt practices' under section 100(1)(b) or 100(1) (d)(ii) entails rejection under Order VII Rule 11 of the Code. The difference between the two requirements is discussed infra.

38. In *Ravindra Dattaram Waikar* (supra), this Court has recently dealt with the broad statutory scheme of RP Act and consequences of non-compliance with the provisions of Section 83 of the Act by referring to various judgments of the Apex Court. Many of the judgments relied on by Mr. Bhadbhade have been discussed in *Ravindra Dattaram Waikar*. Instead of once again discussing ratio of those judgments of the Apex Court, it would be apposite to extract the discussion in paras-26 to 33 of the judgment in *Ravindra Dattaram Waikar* as under :-

26. Before proceeding ahead with the examination as to whether the Election Petition filed by the Petitioner discloses concise statement of material facts demonstrating grounds under Section 100(1)(d)(iii) and (iv) of the RP Act, it would be necessary to take stock of few judgments dealing with the necessity for pleading of material facts for maintenance of an Election Petition. By now it is well settled position of law that Election Petition is a statutory remedy and not an action in equity or a remedy in common law. It is also equally well settled position that RP Act is a complete and self-contained Code. Therefore, strict compliance with the provisions of the RP Act is mandatory requirement for exercising the statutory remedy under the RP Act. 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 Versus. Babli Sahu*, the Apex Court has reiterated the position that where a right or a liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by the statute must be availed of in accordance with the statute and that if a statute provides for doing a thing in a particular manner it has to be done in that manner alone and in no other manner. The Apex Court has held in paragraph 17 as under:

17. There is hardly any need to reiterate the trite position of law that when it comes to the interpretation of statutory provisions relating to election law, jurisprudence on the subject mandates strict construction of the provisions [Laxmi Singh v. Rekha Singh, MANU/SC/0493/2020 : 2020 INSC 440 : (2020) 6 SCC 812]. Election contest is not an action at law or a suit in

equity but purely a statutory proceeding, provision for which has to be strictly construed. The petitioner having failed to make any application in writing for re-counting of votes as required under Section 80 of the Nirvachan Niyam, 1995, and having failed to seek relief of declarations as required under Rule 6 of the 1995 Rules, the election petition filed by the petitioner before the Sub-Divisional Officer (R) seeking relief of re-counting of votes alone was not maintainable.

(emphasis added)

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

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

11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned

candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in : (1) Jabar Singh v. Genda Lal; (2) L.R. Shivaramagowdav. T.M. Chandrashekar; and (3) Uma Ballav Rath v. Maheshwar Mohanty.

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

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

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

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

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

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

22. The facts, in brief, of *Durai Muthuswami* 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*

"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 .

(b)-(c) * * *

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

(i) by the improper acceptance of any nomination, or (ii)-(iii) * * *

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

the election being materially affected by the acceptance of the improper nomination. Materially affected is not a formula that has got to be specified but it is an essential requirement that is contemplated in this section. Law does not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a ground. The petitioner had stated the ground on which the 1st respondent's election should be declared to be void. He had also given the material facts as required under Section 83(1)(a). We are, therefore, of opinion that the learned Judge erred in holding that it was not competent for him to go into the question whether the 1st respondent's nomination had been improperly accepted.

(emphasis supplied)

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

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

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

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on

which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

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

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

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

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

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

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

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

14. A beneficial reference of the decision in case of Laxmi Narayan Nayak v. Ramratan Chaturvedi 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 and Kona Prabhakara Rao v. M. Seshagiri Rao.

(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, Kona Prabhakara Rao v. M. Seshagiri Rao and Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi.

(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 and Rahim Khan v. Khurshid Ahmed.

(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.

(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, M. Narayana Rao v. G. Venkata Reddy, Lakshmi Raman Acharya v. Chandan Singh and Ramji Prasad Singh v. Ram Bilas Jha.

(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, Mohan Singh v. Bhanwarlal and Ramji Prasad Singh v. Ram Bilas Jha.

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

x x x

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

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

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

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

41. The decision of this Court in Kisan Shankar Kathore (supra), also demonstrates this principle, as this Court undertook examination of several individual defects in the nomination of the returned candidate and found that some of them were actually insubstantial in character. This Court noted that two facets required consideration - Whether there is substantial compliance in disclosing requisite information in the affidavits

filed along with the nomination and whether non-disclosure of information on identified aspects materially affected the result of the election. This Court observed, on facts, that non-disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was abona fide 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.

39. Thus, as held in *Ravindra Dattaram Waikar*, for maintaining a valid election petition and to take it to the stage of trial, there must be strict compliance with the provisions of Section 83 of the Act. The election of returned candidate in *Ravindra Dattaram Waikar*, did not involve allegation of corrupt practice and therefore this Court has considered the requirement of strict compliance with the provisions of only Clause (a) of Section 83(1). In that judgment, this Court has taken note of the propositions summed up by the Apex Court in *Kanimozhi Karunanidhi* (supra) in which it is held that omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad. It has further been held that the material facts would include positive statement of facts as also positive averment of negative fact. That material fact means the entire bundle of facts which would constitute a complete cause of action. The Apex Court held that an Election Petition must be summarily dismissed on omission of a single material fact leading to 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 powers under Clause (a) of Order VII Rule 11 read with mandatory requirements of Section 83 of the Act. In *Ravindra Dattaram Waikar*, this Court has also referred to the judgment of the Apex Court in *Karim Uddin Barbhuiya* (supra) in which it is held that in an Election Petition, pleadings have to be precise, specific and unambiguous. If Election Petition does not disclose a cause of action, it is liable to be dismissed in limine.

15) Before proceeding further, it must also be observed that one of the issues decided by this Court in *Udesh Shantaram Patekar* is whether Election Petition can be rejected for non-compliance with the provisions of Section 83 of the RP Act in the light of absence of provision in Section 86(1) of the RP Act for dismissal of Election Petition for failure to comply with provisions of Section 83. This

court has held that Election Petition can be rejected by having recourse to provisions of Order VII Rule 11, even though provisions of Section 86(1) of the RP Act do not provide for dismissal of the Petition due to non-compliance with the provisions of Section 83(1). This Court has concluded in para-28 as under:

28. The law thus appears to be fairly well settled that the Election Petition can be rejected by having recourse to the provisions of Order VII Rule 11 of the Code even though provisions of Section 86(1) of the RP Act do not provide for dismissal of the Petition on account of non-compliance with provisions of Section 83(1). Accordingly, the objection raised by Mr. Nair about maintainability of the application for rejection of Election Petition under Order VII Rule 11 of the Code for failure to meet the requirement under Section 83 of the RP Act is repelled.

16) Now I proceed to consider the pleadings of the Election Petition to examine whether the Petitioner has made out a cause of action for making out the grounds of challenge enumerated under Section 100 of the RP Act.

17) The first ground of challenge raised by the Petitioner is alleged failure on the part of Election Commission of India to issue Notification under Section 61-A of the RP Act envisaging use of Electronic Voting Machines in the election. The pleadings in support of this ground are to be found in the paras 6,16,17 and 18 of the Election Petition, which read thus:-

06. The Petitioner most respectfully submits that Sec.61A of the Representation of People Act, 1951 is relevant. This provision opens with non-obstante clause and lays down that notwithstanding anything contained in this Act or the Rules made there under, the giving and recording of votes by Voting Machine, in such manner, as may be prescribed, may be adopted in such Constituency or Constituencies as the Election Commission may, having regard to the circumstances of each case, specify. The explanation to this provision explains what is meant 'Voting Machine (hereinafter referred to as EVM). Thus, it is incumbent on the Election Commission i.e. Respondent No.2 to take decision to

utilise EVM on the basis of the reasons to be recorded. It has to issue a notification to that effect.

16. The Petitioner submits that notification u/s 61A of the Representation of the People Act, 1951 is a public document, the same can be said about any other official documents that rendered the Respondent No.2 to resort to utilization of EVMs. Despite the best efforts, he could not get these documents.

17. That the Petitioner is not aware of any notification having been issued by the Election Commission of India under section 61A of the Representation of the People Act, 1951 in order to hold the elections by the use of Electronic Voting Machines. It is submitted that Section 61A of the Representation of the People Act, 1951 mandates that the circumstances specific to the 209, Shivajinagar Constituency which had been taken into consideration by the Election Commission of India were to be necessarily stated in such a notification which compelled the Election Commission of India to conduct the elections by the use of Electronic Voting Machines. It is submitted that in the absence of such a notification, and the facts witnessed by the Petitioner during the course of the election process, show that the conduct of voting by the use of Electronic Voting Machines in 209, Shivajinagar Constituency was in violation of the provisions of Section 59 and 61A of the Representation of the Peoples Act, 1951. It is submitted that the election of the Respondent No. 1 ought to be declared void under the provisions of Section 100 (1) (d) (iv) of the Representation of the Peoples Act, 1951, on account of non-compliance with the provisions of Section 59 of the Representation of the People Act, 1951, which mandates that polling must be taken by ballot, and hence the result of the election, insofar as it concerns the Respondent No. 1, was materially affected by the use of Electronic Voting Machines. Further, the election of the Respondent No. 1 ought to be declared void under the provisions of Section 100 (1) (d) (iv) of the Representation of the Peoples Act, 1951, on account of the fact that the Election Commission of India did not comply with Section 61A, of the said act, inasmuch as it failed to mention the special circumstances of 209, Shivajinagar Constituency taken into account by the Election Commission of India while directing votes to be recorded by voting machines, which has materially affected the result of the election insofar as it concerns the Respondent No. 1. The facts narrated in the present petition demonstrate that the polling personnel were ill equipped, logistically, technically, in terms of expertise and familiarity with the machine and with the mandatory procedures, to be able to conduct elections by use of EVM-VVPAT machines, and the Election Commission of India hence could not have directed the use of Electron Voting Machines in the elections.

18. That the mandatory provisions to ensure the adherence to Section 61A as prescribed in the various rules, manuals, handbooks, letters, instructions, etc. were not followed, thereby vitiating the entire election process to the advantage of Respondent No. 1.

18) Under the provisions of Section 61-A of the RP Act, the Election Commission may specify that the giving and recording of votes by voting machines can be adopted in the specified constituencies. Section 61-A provides thus:-

61-A. Voting machines at elections.—Notwithstanding anything contained in this Act or the rules made thereunder, the giving and recording of votes by voting machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as the Election Commission may, having regard to the circumstances of each case, specify.

Explanation.—For the purpose of this section, “voting machine” means any machine or apparatus whether operated electronically or otherwise used for giving or recording of votes and any reference to a ballot box or ballot paper in this Act or the rules made thereunder shall, save as otherwise provided, be construed as including a reference to such voting machine wherever such voting machine is used at any election.

19) After going through the pleadings in paras- 6,16,17 and 18 of the Election Petition, there is no allegation that the Election Commission did not ‘specify’ that giving and recording of votes in Shivajinagar constituency would be by voting machines. On the contrary, what is pleaded in the above quoted paragraphs is that Election Commission did not ‘issue notification’ required under Section 61-A of the RP Act. Firstly, Section 61-A of the RP Act does not contemplate issuance of any notification. What it contemplates is mere ‘specification’ that giving and recording of votes in a particular constituency shall be by voting machines. Far from pleading that the Election Commission did not specify use of voting machines for Shivajinagar Assembly constituency, Petitioner has produced at Exhibit-A to the Election Petition Press Note dated 15 October 2024 which clearly envisaged use of Voting Machines for giving and recording of votes.

20) Furthermore, this court in Anil Subhash Sawant has held that issuance of Press Note dated 15 October 2024 is sufficient compliance with the provisions of Section 61-A. This Court has held in paras. 24 and 25 of the Judgment as under :-

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.

21) Petitioner has invoked ground enumerated under Section 100(1)(d)(iv) of the RP Act in connection with the allegation of failure to issue notification under Section 61-A. However, in respect of the grounds (i) to (iv) in Clause-(d) of Section 100(1), it is necessary for the Petitioner to plead and prove that the result of election has been materially affected. Thus, mere non-compliance with the provisions of Constitution of India, RP Act or Rules or Orders made under the Act is not sufficient and it is necessary for the Election Petitioner to also plead as to how result of the election is

materially affected. There is no pleading in the Election Petition as to how result of the election is materially affected on account of alleged failure to issue notification under Section 61-A of the RP Act.

22) Thus, there are no sufficient pleadings exhibiting cause of action in support on the ground of non-compliance with the provisions of Section 61-A for challenging election of Respondent under Section 100(1)(d)(iv) of the RP Act.

23) The second ground of challenge to the election of Respondent is about alleged irregularities in the Electoral rolls and voters list. The relevant pleadings in support of this ground are to be found in paras. 29 to 34 of the Election Petition which read thus :-

29. The Petitioner states that the total number of voters in this Constituency as on 01.01.2019 for Legislative Assembly Elections was 305587 and for 2024 Lok Sabha Elections were 273092. Thus, the number of voters was reduced by 32495. During the 2024 Legislative Assembly Elections it became 295117. There is an increase by 22025. The lead of the Respondent No.1 in this election is 36702. Thus, this fluctuation in the votes has materially affected the election. Apprehending foul play, the Petitioner's Agent had made an application under RTI Act, 2005 on 08.02.2024 seeking particulars about this fluctuation in number of voters. Hereto annexed with this Election petition and marked as EXHIBIT I is the true copy of the Application made by b Petitioner's Agent under RTI Act, 2005 on 08.02.2024. This Application was shown a waste paper box and was not replied at all. Thereafter, such particulars were called for by an application under RTI Act by application dated 26.12.2024, true copy of which is annexed with this Election petition and marked as EXHIBIT 'J'. Again this application was not replied. This shows that the Officers named above have been assisting the Respondent no.1.

30. The Petitioner submits that names of many of the voters above the age of 80 were deleted without intimating them.

31. When the Petitioner's nomination form was accepted as an official candidate of Indian National Congress, he was given a voters list as per the procedure. The Petitioner was shocked and surprised to file a Supplementary Voters list, which was not provided to him. This means, though the voters list which was published on 29.10.2024, it must have been published after the last date of nomination. Thus, the votes of the voters in the supplementary list were improperly accepted and the votes of those, whose names were wrongly rejected were improperly rejected. Thus, resulting in corrupt practice u/s 100(1) (d) (iii) of the Representation of the People Act, 1951.

32. The Petitioner submits that on 29/11/2024 Shri. Nana Patole and others had made a representation to the Respondent No.2 Election of Commission of India regarding serious issues/concerns identified in the voters data for the Maharashtra legislative Assembly Elections, 2024. True Copy of the representation dated 29/11/2024 made by Shri. Nana Patole and others to the Respondent No 2 Election of Commission of India is annexed with this Election petition and marked as EXHIBIT 'K'. The Election Commission of India has not given a specific answer to the issue raised by Shri. Patole by its reply dated 24/12/2024, copy of which is annexed with this Election petition and marked as EXHIBIT 'L'.

33. That the election of Respondent No.1 was heavily affected by manipulation in the process of voter registration and in the electoral rolls. The Manual on Electoral Rolls, March 2023, Document 10- Edition 2, issued by the Election Commission of India, categorically directs that the Electoral Registration Officer (ERO), appointed under Section 13B of the Representation of the Peoples Act, 1950, is the custodian of the electoral roll, and the complete revision of the roll, and planning and procurement of resources and appointment of officers for such purpose is also the responsibility of the ERO. The ERO is duty bound to give publicity to the revision programme, and to review and monitor closely the quality of work of the Assistant ERO, Supervisors, Booth Level Officers etc. The Booth Level Officer (BLO) appointed by the ERO plays an important role in preparation and revision of electoral roll of the part to which he is assigned, and is bound to conduct frequent field visits, to identify gaps in electoral roll with special focus on enrolment of youths in 18-19 age group and women and to take necessary corrective measures, to liaison with RWAS in urban areas for registration, distribution of photo voters slip as per schedule prepared by the Returning Officer and maintaining record thereof, etc. However, in 209 Shivajinagar Constituency, none of these mandatory directions were followed by the ERO and the BLOs, to deliberately keep new voters out of the electoral rolls so as to benefit the electoral prospects of Respondent No.1. The guidelines issued by the Election Commission of India also provides for monitoring and evaluation of performance of Booth Level Officers at several levels, and for spelling out accountability factor to the BLOs to the effect that their job is crucial for fidelity of electoral rolls and that their performance will be closely monitored. Despite such clear directions and mandate, the EROs and officers appointed by and under the EROs failed miserably in ensuring full and complete enrolment of all potential voters, especially those in the 18-19 years old category, and women, in the 209 Shivajinagar Assembly Constituency. Apart from the above, the BLOs further violated their duty to distribute voter slips to the poorer localities and to the localities where minority residents were concentrated, again in order to further the electoral prospects of Respondent No. 1. These circumstances materially affected the election of Respondent No. 1-Returned Candidate, rendering his election liable to be set aside under the provisions of Section 100 (1) (d) (iv) of the Representation of the People Act, 1951.

34. The Petitioner submits that for the reasons explained above, the election results are materially affected. Therefore, they are liable to be set aside.

24) Thus, with regard to the allegation of irregularities in electoral rolls and voters list, the grounds enumerated under Section 100(1)(d)(iv) of the RP Act is sought to be invoked. The said ground relates to non-compliance with the provisions of Constitution Of India, RP Act or rules or orders made under the Act. However, there is no pleading in the Election Petition as to which of the provision of Constitution Of India, RP Act or rules or orders made under the Act are not complied with. The allegations are also vague and do not disclose any cause of action under Section 100(1)(d)(iv) of the RP Act. Though there is statement in para-34 that the election results are materially affected, there are no pleadings as to how the result of the election is affected. Thus, in respect of grounds of irregularity in preparation of electoral rolls, the pleadings are vague and do not make out any cause of action for maintaining the Election Petition, qua the ground enumerated under Section 100(1)(d)(iv) of the RP Act.

25) The third ground alleged in the Election Petition is corrupt practice under Section 123(7) of the RP Act. The pleadings in this regard are to be found in paras. 12, 13 and 15 of the Petition which read thus :-

12. The Petitioner submits that under the RTI Act, 2005, particularly sec.4 thereof every public authority is under an obligation to maintain all its records duly catalogue on index in the manner laid down therein. Further, once a request is made for a particular information u/s 6 of the said Act, there is an obligation to provide the information sought. Sec.8 of the said Act lays down the exemptions from disclosure of information. The provisions of Sec.8(1) lay down 10 categories of information, which are exempted from disclosure. The Information sought by the Petitioner does not fall in any of the categories. It is further submitted that there is no question of infringement of copyright as contemplated u/s 9 of the said Act. If the information pertained to some other office, the Information Officer ought to have forwarded the Petitioner application to the relevant office. That was purposely HOW RAH not done. While it is no doubt, true that the provisions of Sec. 19 of the Act provides for appeal, i this

particular case, the Information Officer ought not to have rejected the Petitioner's applications in this manner, because, he wanted the information for the purpose of approaching this Hon'ble Court by way of Election petition, by invoking the provisions of Sec.80 of the said Act. In this regard, it is pertinent to note that the provisions of representation of People Act do not provide for condonation of delay if the election petition is belatedly filed. Thus, it can be seen that, the Government machinery has sided with the Respondent No.1 and such conduct on the part of the said machinery violates the provisions of Sec.123 (7) of the Representation of People Act, 1951. The Petitioner submits that this is how the District Election Officer i.e. the then Collector Shri. Suhas Divse, Returning Officer i.e. Shri.Dadasaheb Gite (Dy. Collector) and the Information Officer- Ms.Sayali Dhas (Election Nayab Tahsildar) have sided with the Respondent No.1 and the Respondent No.1 and the above-mentioned officers have committed corrupt practice as defined u/s 123(7) of the said Act. This corrupt practice was committed between 29.10.2024 to 23.11.2024 and thereafter upto 8.12.2024.

13. The Petitioner submits that provisions of Sec.123(7) prohibits assistance for in furtherance of a proposal of a candidate election with the consent or his election agent. The Petitioner submits that his election agent Mohd. Azhar Sahabbir Sayyad had gone with the application under RTI Act, 2005. At that time, it was not inwarded for a long period of time. The concerned Clerk went inside had discussions with the concerned Officer particularly those referred to in this paragraph and then the RAT letter was inwarded. If this is done, then it is corrupt practice. The fact that the requisite information is not provided on frivolous grounds, thereby driving the Petitioner to adopt the Appellate remedies in such a manner that his election petition is time-barred is nothing short of assistance by the above mentioned Officers to the Respondent No.1. When particular information is not provided under the RTI Act, 2005, and reject the application on the ground unknown to RTI Act, 2005 shows that the Information Officer Ms. Sayali Dhas rendered assistance to the Respondent No.1. The information cannot be withheld unless the Collector Shri. Suhas Divse, the Returning Officer Mr.Dadasaheb Gite and Dy. District Collector Ms.Minal Kalaskar has instructed the said Ms.Sayali Dhas to withheld the information. Thus, the Respondent No.1 and the said Officers have committed corrupt practice with consent of the Respondent No.1 and his agents.

15. The Petitioner submits that the Conduct of Election Rules is a delegated legislation and the same cannot have an overriding effect over the RTI Act, 2005. which is a central legislation. Under the provisions of the said Act, the Authorities are bound to give information asked for unless it is prohibited. It is submitted that the Information Officer acted under the dictates of Collector Mr.Suhas Divse , Mr.Dadasaheb Gite, District Deputy Collector Ms.Minal Kalaskar and withheld the said information. Shri.Suhas Divse has refused to provide information taking advantage of Rule 91(1) knowing well that the Petitioner is under obligation to state material facts and material particulars regarding corrupt practices during the election. By withholding this information, these officers have sided with the Respondent No.1 for the simple reason that he is a candidate for the ruling party both at the State as well as the Central level. That apart, the conduct of election rules do not lay down, which the competent Court under sec. Rule 93. Such an attitude, which drove the Petitioner to lengthy court process is the conduct prohibited by Sec.123(7) of the Representation of the People Act, 1951.

26) Thus, refusal on the part of the named officials to provide information sought under the RTI Act is sought to be pitched as corrupt practice under Section 123(7). Section 123(7) of the RP Act reads thus :-

(7) The obtaining or procuring or a betting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person whether or not in the service of the Government and belonging to any of the following classes, namely:—

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;
- (f) revenue officers other than village revenue officers known as lambardars malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and
- (g) such other class of persons in the service of the Government as may be prescribed;
- (h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.

27) Thus, for invoking ground of corrupt practice under Section 123(7), it becomes necessary for the Petitioner to plead as to how the returned candidate procured or obtained any assistance of any officer for furtherance of his prospects in the election. The information under the RTI Act is sought for by the Petitioner well after declaration of result of the election. Refusal on the part of the said officer in supplying demanded information cannot amount to

furtherance of prospects of the returned candidate in the election. Even otherwise, there is no pleading as to how Respondent has obtained or procured any assistance from the named officials. Mere failure to supply information under the RTI Act by the said officers would not constitute corrupt practice under Section 123(7) of the RP Act. Thus, the Petition lacks concise statement of material facts as well as material particulars of corrupt practice under Section 83 of the RP Act *qua* the ground under Section 123(7) of the RP Act.

28) The fourth ground of EVM tampering and unreliability of EVMs is raised in a generic manner through following pleadings in paras. 21 to 27 of the Election Petition which read thus :-

21. The Petitioner humbly submits that the EVMs are not tamper proof at all. In order to avoid tampering, the Respondent No.2 has issued detailed guidelines to check the veracity of the machine at different stages during the election process. In fact, there is no method of checking/verifying that internally the components of the machine are properly working and/or the same are not manipulated and/or tampered with. The internal testing of the machine is done by an employee of the manufacturing Company. Therefore, if one is able to exert some influence on the said employee, then at that stage itself the scope of manipulation can be inserted. It is significant to note that subsequent to this stage, there is no check on the internal components of the machine that is as to whether the same are proper or not, or if they are manipulated.

22. That the non-observance of the Rules and orders by the Respondent No.3 Returning Officer has materially affected the validity of the concerned elections, which has been rendered liable to be set aside. There are several other defects/defaults committed by or at the instance of the Respondent No.1, which also rendered the entire election as bad in law and consequently, liable to be interfered with. The Petitioner humbly submits that he has been in public life for more than one decade.

23. That in the aforesaid backdrop, the Petitioner when could get the result of the election, it left him and his supporters completely stunned and shocked in as much as the Petitioner received low percentage of votes. The Petitioner submits that, the votes polled by him were very low and that even the strongest of his rivals would never imaging, such a negligible figure of the Petitioner. He has received much less than expected votes even in his strong holds, which is next to impossible. At the same time, the Respondent No.1 who is the returned candidate has polled exceptionally high votes even in areas where there had been a strong movement against him right from the grass root level. Thus, all in one,

the result of the election was extremely surprising and shocking. The disparity in the votes polled was even more shocking.

24. That, in the aforesaid backdrop, it is further submitted that the Petitioner had received information about the unreliability of the EVMs used at the elections. The Petitioner has strong apprehension about the possibility of tampering with the EVMs. During the election process, prior to the date of voting, the EVMs were not properly kept by the Respondent No.3/Returning Officer giving huge scope for manipulation and tampering of EVM.

25. After the votes were polled and before the counting were held, during the intersession, the EVMs were not kept in strong rooms as required by law. Even after the elections were declared on 15/10/2024 prescription of law as regards the safety and security, of the EVMs has not been followed by the Respondent No.3. The Moc Polls was a farce, because the agents of the Petitioner were not allowed to enter inside. This shows that the government machinery was siding with the Respondent No.1. There are several other surrounding circumstances, which supports these submissions of the Petitioner.

26. The Petitioner submits that the EVM machines can be rigged and/or manipulated and/or tampered with and if it is done by the skilful, this can be done. The safeguards in this regard were not followed.

27. That the Petitioner humbly points out that even in the United States of America, which has much more advanced, educated and sophisticated population than ours, there is a move against use of EVMS without safeguards 'paper trade'.

29) Here again, the allegations relating to EVM tampering in the Election Petition are vague and lack in material particulars. There is no pleading as to how any particular EVM was tampered or by which person. There is no pleading as to why particular EVM is not found to be unreliable. Election of a democratically elected candidate cannot be challenged by raising vague allegations such as '*The Petitioner has strong apprehension about the possibility of tampering with the EVMs*'. Therefore, vague allegations raising the issue of reliability of EVM and allegations of EVM tampering would not constitute a cause of action for maintaining a valid Election Petition under Section 100 of the RP Act.

30) In the main body of the Election Petition, there are no allegations of failure to file election expenditure which is sought to be

vaguely raised in the synopsis. Since the said ground is not specifically raised in the Election Petition, it is not necessary to deal with the same.

31) After considering all the pleadings in the Election Petition, it is difficult to hold that the Election Petitioner has pleaded concise statement of material facts or set forth material particulars of corrupt practice as required under Section 83 of the RP Act. The Election Petition is filed in a casual manner without pleading the necessary facts and particulars. Faced with this difficulty, Mr. Deshpande has contended that all particulars of corrupt practice and the ground of challenge to the election need not be pleaded and can always be supplemented in the form of evidence. He has placed reliance on judgment of the Apex Court in Raj Narain (supra). However, in Raj Narain, the Apex Court ultimately found that the necessary particulars were not pleaded by the Election Petitioner, who had merely quoted the relevant provisions of law. The Election Petitioner therein had failed to state material facts to bring out the charge sought to be leveled. Therefore, reliance by the Petitioner on the judgment in Raj Narain is not of much assistance.

32) Mr. Deshpande has placed reliance on judgment of the Apex Court in K.K. Ramachandran Master (supra) which seeks to highlight distinction between the need for supporting material facts and the means by which such facts are proved by party alleging the same. In my view, the said distinction is irrelevant for the purpose of deciding the present Application. If material facts are pleaded, the same can be proved by leading evidence. However, if there is lack of pleadings disclosing the cause of action for raising challenge to the

election, such Election Petition must be nipped in its bud. Reliance is placed by Mr. Deshpande on judgment of Orissa High Court in Amar Prasad Satpathy (supra) in which the Court found that material facts were pleaded in the Election Petition and the particulars with regard to the dates, places, time and other details would constitute material particulars. However, Section 83 mandates setting forth material particulars of corrupt practice in absence of which the Election Petition becomes liable to be rejected.

33) The judgment of the Apex Court in L.R. Shivaramagowda and Ramesh Rout is relied upon to draw distinction between material facts and material particulars. However, as observed above, Section 83 of the RP Act mandates incorporation of statement of material facts when election is challenged on grounds other than corrupt practice. When election is challenged also on the ground of corrupt practice, in addition to concise statement of material facts, the Election Petition must also set forth full particulars of the corrupt practice. Petitioner has challenged the election of Respondent alleging corrupt practice as well as raising other grounds. Therefore, it is necessary that he pleads concise statement of material facts and also sets forth full material particulars of corrupt practice.

34) The ratio of the judgment in Ponnala Lakshmaiah (supra) has been considered in Udesh Shantaram Patekar in which it is held in para-92 as under:-

92. The judgment in Ponnala Lakshmaiah (supra) again does not provide any assistance to the case of the Petitioner as the Apex Court has made observations about tendency on the part of the returned candidates charged with the commission of corrupt practices or illegalities or irregularities to seek dismissal of the Election Petition in limine. In a case like present one where the

Petition is bereft of the mandatory pleadings under Section 83 and which fails to comply with the provisions of Section 81, the Court would be justified in rejecting or dismissing the election petition at the threshold. The general tendency of returned candidates to seek rejection/dismissal of the Election Petitions would not provide a succor to the present Election Petitioner when his petition otherwise deserves rejection.

35) As a matter of fact, one of the issues for consideration before this Court in Udesh Shantaram Patekar was whether an opportunity can be extended to the Election Petitioner to lead evidence in support of corrupt practices in absence of pleadings of material particulars. This Court held in para-82 to 85 as under:-

82. It is contended by Mr. Nair that the pleading in the Petition are sufficient for taking the Petition for trial and that a microscopic enquiry need not be conducted into the allegations of corrupt practices at this stage for virtually deciding the merits of the allegations. This Court is not going into the merits of the allegations of corrupt practices. All that is being examined at this stage is whether the election petition sets forth full particulars of the corrupt practices, which is the mandatory requirement of Section 83(1)(b) of the Act. Once the Court is satisfied that the petition is sans the full particulars of corrupt practices, recourse can be had to the provisions of Order VII Rule 11 of the Code for rejection of the Petition.

83. As has been observed above, filing of Election Petition seeking setting aside election of a democratically elected candidate is a special remedy created by the Statute and that all requirements stipulated therein must be scrupulously met with. The Apex Court has repeatedly held that even a single omission to plead the mandatory information would lead to rejection of election petition by having recourse to the provisions of Order VII Rule 11 of the Code. The objective is to nip in the bud casually filed election petitions, which are not worthy of trial. In Azhar Hussain (supra) the Apex Court has held that no amount of evidence can cure the basic defect in the pleadings. It is held thus :-

22. The principle laid down is that the pleading in regard to matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of a meeting of which dates and particulars are not given would tantamount to failure to incorporate the essential particulars and that inasmuch as there was a possibility that witnesses could be procured in the context of a meeting at a place or date convenient for adducing evidence, the High Court should not even have permitted evidence on that point. In other words, no amount of evidence could cure the basic defect in the pleading and the pleading as it stood must be construed as one disclosing no cause of action. In the light of the aforesaid principle laid down by the Supreme Court which has held the field for more than 15 years, the High Court was perfectly justified in reaching the conclusion called into question by the appellant.

Therefore, the Petition cannot be taken to trial under a hope that the Petitioner would lead evidence to fill in the gaps in the pleadings. The defect in pleadings cannot be cured by leading evidence. If there are no pleadings about Respondent No. 1 knowing the named person or giving them instructions for commission of alleged acts or about Respondent No. 1 having atleast the knowledge that the alleged acts were being committed by the named person for his benefit, it is incomprehensible as to how Petitioner would lead evidence in absence of pleadings.

84. I am also not impressed by the submission of Mr. Nair that use of the expression 'if High Court is of opinion' in Section 100(1) of the RP Act means that the opinion can be formed only at end of the trial. To pass the initial threshold of maintaining a valid election petition, the requisite pleadings must be raised in the Petition. If the Court finds, on meaningful reading of the election petition, that the same is manifestly vexatious and does not disclose right to sue, it is Court's duty to bring to an instant end such baseless litigation rather than subjecting the democratically elected candidate to the rigmarole of a lengthy trial.

85. In the present case, clever drafting has created only an illusion of cause of action, when in fact there is none. Mere repeated use of word 'consent' in the election petition by way of clever drafting without disclosing any particulars of such consent would not bring the challenge to election of Respondent No. 1 within the ambit of requirement of Section 83 of the Act. In my view therefore the Petitioner has failed to cross the threshold for taking the election petition for trial, warranting its rejection under Order VII Rule 11 of the Code.

36) Considering the overall conspectus of the case, I am of the view that the Petitioner has failed to disclose cause of action for making out any of the enumerated grounds for challenging election of the Respondent under Section 100 of the RP Act. In absence of sufficient pleadings, the Election Petition cannot be permitted to be taken to trial. There is no point in keeping the sword of the Election Petition hanging on the Respondent when there is no possibility of Petitioner succeeding in the same due to absence of necessary pleadings. Once it is found that the cause of action to make out ground under Section 100 of the Act is not made out, it is the duty of the Court to reject the Election Petition, rather than keeping the same pending and making the democratically elected candidate to undergo the rigmarole of lengthy trial in the Election Petition.

37) The Election Petition is filed in the most perfunctory manner without pleading necessary particulars. The Petition contains vague allegations without necessary particulars. The averments in the Petition do not disclose cause of action for setting aside Respondent's election. Such Petition deserves to be rejected at the inception.

38) Mr. Mishra has strenuously prayed for imposition of exemplary costs while rejecting the Election Petition. Reliance is placed on the provisions of Section 119 of the RP Act. However, under proviso to Section 119 costs can be awarded to returned candidate only if the Petition is dismissed under Clause (a) of Section 98. Since the Election Petition is not taken to trial and the same is rejected at the outset, I am not inclined to award costs in favour of the Respondent.

39) The Application accordingly succeeds, and I proceed to pass the following order:

- (i) Application No. 23 of 2025 is **allowed**.
- (ii) The Election Petition is rejected under the provisions of Order VII Rule 11 of the Code.
- (iii) Consequently, the Election Petition is **dismissed**.

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[SANDEEP V, MARNE, J.]