

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

APPLICATION NO. 3 OF 2025
IN
ELECTION PETITION NO. 10 OF 2024

Prakash Rajaram Surve

....Applicant/
Respondent No.1

In the matter of :

Udesh Shantaram Patekar

....Petitioner

: Versus :

1. Prakash Rajaram Surve
2. Rakesh Shantaram Patekar
3. Deepak Shivaji Hanwate
4. Rajesh Ramkisan Mallah
5. Shrihari Tukaram Bagal
6. Nayan Pradeep Kadam
7. Gopal Ishwarilal Jhaveri

....Respondents

WITH
ELECTION PETITION NO. 10 OF 2024

Udesh Shantaram Patekar

....Petitioner

: Versus :

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6. Nayan Pradeep Kadam
7. Gopal Ishwarilal Jhaveri

....Respondents

Mr. Harshad Bhadbhade with Ms. Shagufta Patel, Mr. Atharva Gidaye, Ms. Swati Panjwani and Ms. Padma Chinta, for the Applicant in AEP-3 of 2025 and for Respondent No.1.

Mr. Vijay Nair with Mr. Prashant P. Kulkarni and Ms. Rachna Mamnani and Ms. Ritika R, for the Petitioner.

Mr. Mahesh B. Gupta, for Respondent No.2.

Mr. Satyajeet A. Rajeshirke with Mr. Gautam R. Kulkarni, for Respondent No.3.

Mr. S.M. Seegarla, for Respondent No.4.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 22 July 2025.

Pronounced On : 1 August 2025.

JUDGMENT :-

1) The Applicant, who is the returned candidate in elections to Maharashtra Legislative Assembly from 154 Magathane-Mumbai Assembly constituency, has filed the present Application seeking rejection of the Election Petition under Order VII Rule 11 of the Code of Civil Procedure, 1908 (**the Code**) alleging non-compliance with provisions of Sections 81 and 83 of the Representation of the Peoples Act, 1951.

A. FACTS

2) The elections to the Maharashtra Legislative Assembly were held on 20 November 2024. Petitioner and Respondents

contested the election from 154-Magathane Assembly Constituency. The Petitioner was a candidate nominated from Shiv Sena (*Uddhav Balasaheb Thackeray fraction*) political party, whereas Respondent No.1 was a candidate nominated by Shiv Sena political party (*Eknath Shinde fraction*) and supported by Bhartiya Janata Party.

3) Respondent Nos. 2 to 7 also contested the elections from the said constituency. The results of the election were declared on 23 November 2024. Respondent No.1 polled total number of 1,05,527 votes and was declared elected. Petitioner polled second highest number of votes with total of 47,363 votes. This is how Respondent No.1 is a returned candidate from 154-Magathane Assembly Constituency. Petitioner alleges that Respondent No.1 has committed corrupt practices, as well as violated the provisions of the Constitution of India, Act and the Rules which has materially affected the elections. Petitioner has accordingly filed the present Election Petition seeking a declaration that election of Respondent No. 1 be set aside on grounds enumerated under Sections 100 and 101 of the Representation of the Peoples Act, 1951 **(RP Act)**.

4) After issuance of summons, Respondent No.1 has appeared in the petition and filed his Written Statement. Similarly, Respondent Nos.2 and 4 have also filed their respective Written Statements. The rest of the Respondents, though served, have chosen not to file Written Statements.

5) In addition to filing of Written Statement, Respondent No.1 has filed Application in Election Petition No.3/2025 seeking rejection of the petition under the provisions of Order VII Rule 11 of

the Code. Petitioner has filed Affidavit-in-Reply opposing the said application. Respondent No.1 has filed Rejoinder dealing with the contents of the Affidavit-in-Reply filed by the Petitioner. Application No.3/2025 is called out for hearing.

B. SUBMISSIONS

**B.1 SUBMISSIONS ON BEHALF OF APPLICANT /RESPONDENT NO.1-
RETURNED CANDIDATE**

6) Mr. Bhadbhade, the learned counsel appearing for the Applicant/Respondent No.1 submits that the averments in the Election Petition do not make out any of the prescribed grounds for setting aside the election of Respondent No.1. That though Petitioner has invoked provisions of Section 100(1)(b) and (d)(ii) read with Section 123 of the RP Act, he has failed to set forth full particulars of corrupt practices in the averments raised in the petition. That various allegations raised in the Petition do not connect Respondent No.1 with the said allegations. That the petition is based on bald and vague statements. That the Election Petition thus fails to disclose any cause of action warranting its rejection under Order VII Rule 11 of the Code. That the petition is liable to be rejected on account of failure on the part of the Petitioner to serve on to Respondent No.1, Exhibits C-1 to C-4, which form integral part of the Election Petition. That Respondent No.1 is served only with the photograph of pendrive at Exhibit C-1 which cannot be construed as correct and proper service. That though pages-40 to 43 of the Election Petition contain verification of Exhibits C-1 to C-4, the same are neither produced separately nor are served on Respondent No.1. That even if the

pendrive is held to be served, there is no identification of the exhibits copies together on one pen drive, which amounts to non-service which is a fit ground for rejection of the election petition.

7) Mr. Bhadbhade would further submit that the Election Petition is liable to be rejected as the same does not contain concise statement of material facts as required under Section 83(1)(a) of the Act. That there is difference between the concepts '*material fact*' and '*material particulars*'. Similarly, no grounds are pleaded for setting aside the election of democratically elected candidate under Section 100(1)(d)(ii) or (iv) of the Act. That there is no pleading of violation of a particular provision of the Constitution, the Act, Rules or orders made therein. That election petition not being an action in common law or equity, in absence of pleadings about contravention of exact provision the election petition is liable to be rejected. That there are no pleadings demonstrating that the result of the election is materially affected. That omission of even a single material fact leads to incomplete cause of action warranting rejection of election petition under Order VII Rule 11 of the Code.

8) So far as the allegations of corrupt practices are concerned, Mr. Bhadbhade would submit that the allegation of offer of gratification of Rs.1 crore for construction of community hall on 13 November 2024 is vague and in case does not amount to corrupt practices within the meaning of Section 100(1)(b), 100(1)(d)(ii) or Section 123(2) of the Act. That Respondent No.1 has not been served with Exhibits C-1 and C-2 which is an integral part of the Election Petition. That the Election Petition does not identify each of the four files allegedly contained in the pendrive and therefore service

of such exhibits forming integral part of Petition is impermissible. That there are no pleadings as to whether any vote actually got converted on account of offer of construction of community hall by incurring the expenditure of Rs.1 crore.

9) That the allegations in respect of the violation of Model Code of Conduct in respect of the meeting on the night of 2 November 2024 are again vague not disclosing any cause of action. That Exhibit C-3 has not been served on Respondent No.1. In any case, mere violation of Model Code of Conduct does not constitute a ground for setting aside election of democratically elected candidate. That the allegation relating to distribution of pamphlet bearing the name of Respondent No.2 are not only vague but there is total absence of pleading to connect Respondent No.1 with Respondent No.2. That the nomination form allegedly filed by Mr. Rakesh Patekar has not been produced alongwith the Election Petition which again forms integral part of the Election Petition. There is no pleading that the alleged pamphlet is attributable to Respondent No.1. That the allegation of creation of thought in the mind of the voters about request made by the Respondent No.2 to vote for Respondent No.1 is vague and is not backed by necessary pleadings. There are also no pleadings about Respondent No.1 knowing Shri. Vijay Bansode or to connect the act of distribution of pamphlets to the Respondent No.1. That the last allegation of distribution of cash is again totally vague as there are no pleadings to connect Respondent No.1 with Yogesh Ganesh Jadhav.

10) That bare reflection of the word 'consent' in the election petition is not sufficient and Petitioner ought to have raised necessary pleadings to establish any relation between the Petitioner and

Respondent No.2. That 'conspiracy' and 'consent' are two different concepts and while Petitioner has sought to raise pleadings about conspiracy, there are no particulars about consent pleaded in the Election Petition. That mere use of the word 'consent' does not constitute disclosure of material facts. The material fact must be such that, if not disputed, would render the election void. That pleadings must connect Respondent No.1 with the third person who has allegedly indulged in corrupt practices. That general pleadings of 'conspiracy' and 'consent' are not sufficient as Section 123 of the RP Act also amounts to criminal offence and therefore the burden of raising necessary pleadings of Election Petitioner is of higher degree. That para-9 of the Election Petition does not contain any pleading of election getting materially affected. That it is impermissible to read averments of one paragraph to connect the allegations raised in another paragraph. That therefore it is mandatory to make an averment of election getting materially affected on account of a specific ground pleaded in a particular paragraph. Mr. Bhadbhade would submit that there are no pleadings that Petitioner would have won in election, but for any act committed by Respondent No.1. That the allegations of corrupt practice are made against persons not having any connection with Respondent No.1. Mr. Bhadbhade would therefore pray that the Election Petition deserves to be rejected on account of absence of any cause of action not being made throughout the averments made therein.

11) In support of his contentions, Mr. Bhadbhade would rely on the following judgments :-

- (i) *M. Karunanidhi Versus. Dr. H.V. Hande and others*¹.
- (ii) *U.S. Sasidharan Versus. K. Karunakaran and another*².
- (iii) *Kanimozhi Karunanidhi Versus. A. Santhana Kumar and others*³
- (iv) *Senthilbalaji V. Versus. A.P. Geetha and others*⁴.
- (v) *Ravindra Dattaram Waikar Versus. Amol Gajanan Kirthikar & Ors.*⁵
- (vi) *Anil Yeshwant Desai Versus. Mahendra Tulshiram Bhingardive*⁶
- (vii) *Dr. Gaikwad Varsha Eknath Versus. Adv. Asif Ali Siddiquie*⁷
- (viii) *Madhya Pradesh Jan Vikash Party Versus. Election Commission of India*⁸
- (ix) *Ram Dial Versus. Sant Lal and others*⁹
- (x) *Manubhai Nandlal Amorsey Versus. Popatlal Manilal Joshi and Others*¹⁰
- (xi) *Hardwari Lal Versus. Kanwal Singh*¹¹
- (xii) *Sri Harasingh Charan Mohanty Versus. Sh. Surendra Mohanty*¹²
- (xiii) *Laxmi Narayan Nayak Versus. Ramratan Chaturvedi and others*¹³
- (xiv) *Haji C.H. Mohammad Koya Versus. T.K.S.M.A. Muthukoya*¹⁴
- (xv) *Charan Lal Sahu Versus. Giani Zail Singh and another*¹⁵
- (xvi) *Daulat Ram Chauhan Versus. Anand Sharma*¹⁶
- (xvii) *Azhar Hussain Versus. Rajiv Gandhi*¹⁷

¹ (1983) 2 SCC 473

² (1989) 4 SCC 482

³ 2023 SCC OnLine SC 573

⁴ (2023) 16 SCC 279

⁵ Application in EP (L.) No. 29930 of 2024 decided on 19 December 2024. (OS)

⁶ Application (L) No. 29382/2024 decided on 15 October 2024. (OS)

⁷ Application (L.) No. 34191 of 2024 decided on 5 February 2025 (OS)

⁸ 2022 SCC OnLine SC 2271

⁹ AIR 1959 SCC 855

¹⁰ (1969) 1 SCC 372

¹¹ (1972) 1 SCC 214

¹² (1974) 3 SCC 680

¹³ (1990) 2 SCC 173

¹⁴ (1979) 2 SCC 8

¹⁵ (1984) 1 SCC 390

¹⁶ (1984) 2 SCC 64

¹⁷ 1986 (Supp) SCC 315

- (xviii) *Anil Vasudev Salgaonkar Versus. Naresh Kushali Shigaonkar*¹⁸
- (xix) *Karum Uddin Barbhuiya Versus. Aminul Haque Laskar and others*¹⁹

B.2 SUBMISSIONS ON BEHALF OF PETITIONER IN ELECTION PETITION

12) The application is opposed by Mr. Nair, the learned counsel appearing for the Election Petitioner. He would submit that the petition contains necessary averments for taking the same to trial. That four separate malpractices are alleged in the petition. That this is not an application for striking off the pleadings and that upon holistic reading of the entire averments in the election petition a clear cause of action for setting aside the election of Respondent No.1 is made out. That Exhibits C-1 to C-4 are recordings in one Pendrive which is supplied to Respondent No.1. That every single person involved in corrupt practices is named in the Election Petition. That even if corrupt practices are committed by any person with the consent of the returned candidate, the same becomes a valid ground for setting aside his election. That there is no averment in the entire application that any particular Exhibit, allegedly not received by Respondent No.1, forms integral part of the petition. That Election Petition is not an adversarial action but is a remedy to ensure purity in the election process. That once cause of action is disclosed from the pleadings, the Election Petition must be taken to trial. That once consent is pleaded, it is not necessary to give further particulars of such consent which can be proven by leading evidence. That there can be also an implied consent for which every aspect need not be

¹⁸ (2009) 9 SCC 310

¹⁹ 2024 SCC OnLine SC 509

pleaded. That sufficient evidence is produced by the Petitioner to pass the muster of taking the petition to trial. Since threshold consideration is made out, the petition cannot be rejected under Order VII Rule 11 of the Code.

13) That most of the arguments raised by Mr. Bhadbhade are not pleaded in Application No.3/2025. That there has been offer of bribe of Rs.1 crore which fully fits into the definition of the term 'bribe' under Section 123(1)(a) of the RP Act. That the said promise is made by the candidate himself during election campaign. That Padmakar Suryavanshi is the Personal Assistant of Respondent No.1 which fact would be proved by leading evidence during the course of trial. That thus there is a direct connection between the Respondent No.1 and persons distributing the pamphlets.

14) Mr. Nair would submit that non-compliance of provisions of Section 83 of the RP Act is not recognised as a ground for rejection of election petition under Section 86. He would rely upon the provisions of sub-section (5) of Section 86 in support of his contention that the election petitioner can always supplement the necessary particulars of corrupt practice by seeking amendment to the election petition. That Section 100 of the Act uses the expression '*if the High Court is of the opinion*' meaning thereby that the opinion can be formed only after trial of the Election Petition. That therefore it is impermissible to reject the Election Petition without letting High Court form an opinion based on evidence in the election trial. In support of his contentions, Mr. Nair would rely upon the following judgments :-

- (i) *Ajay Arjun Singh Versus. Sharadendu Tiwari and Others*²⁰
- (ii) *Ponnala Lakshmaiah Versus. Kommuri Pratap Reddy and others*²¹
- (iii) *Madiraju Venkata Ramana Raju Versus. Peddireddigari Ramachandra Reddy and others*²²
- (iv) *Dr. Vijay Laxmi Sadho Versus. Jagdish*²³
- (v) *Narayan Srinivas Fugro Versus. Samjibhai Bhika Solanki*²⁴
- (vi) *Mahendra Pal Versus. Ram Dass Malanger & Ors.*²⁵
- (vii) *C.P. Joshi Versus. Kalyan Singh Chouhan & Anr.*²⁶
- (viii) *Sathi Vijay Kumar Versus. Tota Singh and others*²⁷
- (ix) *Dr. Kirit Jayantilal Somaiya Versus. Sanjay Dina Patil & Ors.*²⁸
- (x) *Somchand Manubhai Solanki Versus. Karsondas Ukabhai Parmer and another*²⁹
- (xi) *Shivajirao B. Patil Kawekar Versus. Vilasrao D. Deshmukh*³⁰

B.3 SUBMISSIONS ON BEHALF OF RESPONDENT NO.3

15) Mr. Rajeshirke, the learned counsel appearing for Respondent No.3 has also opposed the application preferred by Respondent No.1 contending that all necessary particulars are pleaded in the election petition. He would rely upon judgment of the Supreme Court in *Samant N. Balkrishna and others Versus. George Fernandez and others*³¹.

²⁰ (2016) 15 SCC 219

²¹ (2012) 7 SCC 788

²² (2018) 14 SCC 1

²³ AIR 2001 SC 600

²⁴ AIR 1981 Goa, Daman & Dui 49

²⁵ 1999 (9) Supreme 265

²⁶ 2010 SCC OnLine Raj 495

²⁷ (2006) 13 SCC 353

²⁸ 2010(3) ALL MR 756

²⁹ 1968 SCC OnLine SC 412

³⁰ (2000) 1 SCC 398

³¹ (1969) 3 SCC 238

C. REASONS AND ANALYSIS

16) Respondent No.1 seeks rejection of the Election Petition under the provisions of Order VII Rule 11 of the Code on the ground that the pleadings thereof do not disclose cause of action in respect of any of the grounds enumerated under Section 100 of the Act. Reliance is placed by Respondent No.1 on provisions of Section 83 of the Act stating that the Election Petition does not contain either concise statement of material facts or full particulars of corrupt practice which is a mandatory requirement for maintaining a valid Election Petition. On the other hand, it is contended by the Petitioner that the Election Petition cannot be dismissed for failure to meet the requirements under Section 83 of the Act. Mr. Nair has contended during the course of his submissions that an Election Petition cannot be rejected under the provisions of Order VII Rule 11 of the Code for failure to comply with the provisions of Section 83 of the Act. He has placed reliance on provisions of Section 86 of the Act, sub-section (1) whereof provides for dismissal of an election petition, which does not comply with the provisions of Sections 81, 82 or 117 of the Act. According to Mr. Nair, Section 83 has been consciously excluded by the Legislature from the purview of Section 86 and that even if the Election Petition does not contain concise statement of material facts or full particulars of the corrupt practice, the Election Petition must be permitted to be taken to trial and cannot be rejected under the provisions of Order VII Rule 11 of the Code.

C.1 WHETHER ELECTION PETITION CAN BE REJECTED FOR NON-COMPLIANCE WITH REQUIREMENTS UNDER SECTION 83 OF THE ACT

17) To examine the issue, it would be necessary to make a reference to the provisions of Sections 83 and 86 of the Act, which provide thus :-

83. Contents of petition.—

(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

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.

18) Thus, under the provisions of Section 86(1) of the Act, the Court must dismiss an Election Petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. The issue for consideration is whether the Court can reject Election Petition if the same does not comply with the provisions of Section 83 of the Act since Section 86(1) does not provide for dismissal of the petition for non-compliance with the provisions of Section 83.

19) In my view, dismissal of an Election Petition under Section 86(1) of the Act and its rejection under Order VII Rule 11 of the Code are two different concepts. The explanation to sub-section (1) of Section 86 provides that an order of the High Court dismissing an Election Petition under sub-section (1) is deemed to be an order made under Clause (a) of Section 98. Section 98 of the Act provides thus :-

98. Decision of the High Court.—

At the conclusion of the trial of an election petition the High Court shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

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20) Thus, dismissal of an Election Petition for non-compliance with the provisions of Sections 81, 82 or 117 is on par with dismissal of an Election Petition after conclusion of trial. This would mean that once Election Petition is dismissed under Section 86(1) of the Act, the Election Petitioner is not permitted to file fresh Election Petition on the same cause of action.

21) As contradistinct from the scheme of Section 86(1) of the Act, rejection of Election Petition under the provisions of Order VII Rule 11 does not debar filing of a fresh Election Petition in view of provisions of Order VII Rule 13 of the Code. Provisions of Rule 13 of Order VII read thus :-

13. Where rejection of plaint does not preclude presentation of fresh plaint.—

The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

22) Thus, if an Election Petition is rejected under the provisions of Order VII Rule 11, the Election Petitioner can present a fresh Election Petition under the provisions of Order VII Rule 13. This is however subject to condition of filing of fresh Election Petition within the prescribed period of limitation. This position is borne out from the observations of the Apex Court in *Azhar Hussain* (supra). In para-40 of the judgment, the Supreme Court has drawn distinction between ‘dismissal’ and ‘rejection’ of Election Petition. It was contended before the Supreme Court that the High Court had erred in dismissing the Election Petition in exercise of powers under Order VII Rule 11 when infact the same could only be rejected. Though the Apex Court has considered it unnecessary to go into the distinction between the words ‘rejected’ and ‘dismissed’ in the facts of that case, the findings in para-40 of the judgment do indicate that if the Election Petition is rejected under Order VII Rule 11, a fresh Election Petition can be presented with the necessary material facts and in conformity with the requirements of law by disclosure of cause of action within the period of limitation. Para-40 of the judgment reads thus :-

40. Counsel for the appellant has taken exception to the fact that the High Court has dismissed the election petition in exercise of powers under Order 7 Rule 11 of the Code of Civil Procedure notwithstanding the fact that under the said provision if the petition does not disclose a cause of action it can only be rejected (and not dismissed). The contention urged by the learned counsel would have had some significance if the impugned order was passed before the expiry of the period of limitation for instituting

the election petition. In the present case the election petition was filed on the last day on which the election petition could have been presented having regard to the rigid period of limitation prescribed by Section 81 of the Act. It could not have been presented even on the next day. Such being the admitted position, it would make little difference whether the High Court used the expression “rejected” or “dismissed”. It would have had some significance if the petition was “rejected” instead of being “dismissed” before the expiry of the limitation inasmuch as a fresh petition which contained material facts and was in conformity with the requirements of law and which disclosed a cause of action could have been presented “*within*” the period of limitation. In this backdrop the High Court was perfectly justified in dismissing the petition. And it makes no difference whether the expression employed is “dismissed” or “rejected” for nothing turns on whether the former expression is employed or the latter. There is thus no valid ground to interfere with the order passed by the High Court, and the appeal must accordingly fail.

23) Thus, there is a marked difference between the statutory scheme for dismissal of the Election Petition under Section 86(1) of the Act and rejection of Election Petition under Order VII Rule 11 of the Code. Therefore, mere non-inclusion of provisions of Section 83 in Section 86(1) of the Act does not mean that non-compliance with the requirements of Section 83 would not attract rejection of the Petition under Order VII Rule 11 of the Code. If an Election Petition does not disclose cause of action on account of failure to meet the requirements mandated under Section 83 of the Act, the Court is empowered to reject the Election Petition under Order VII Rule 11 of the Code. Mere non-inclusion of provisions of Section 83 for dismissal of Election Petition under Section 86(1) of the Act does not take away power of the Court to reject an Election Petition which does not disclose cause of action by having recourse to provision of Order VII Rule 11 of the Code.

24) In fact, it is not really necessary to delve any further on the issue of power of the Court to reject the Election Petition under

Order VII Rule 11 of the Code as there are series of judgments which do recognise the principle that the Court is empowered to reject an Election Petition if it fails to conform to the requirements of Section 83 of the Act. In *Azhar Hussain* (supra) the exact issue of permissibility to reject election petition by having recourse to provisions of the Code in the light of non-indication of Section 83 in Section 86(1) of the Act has been dealt with and decided. It is held thus :-

8. The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions, non-compliance with which entails dismissal of the election petition, it follows that non-compliance with the requirements of Section 83(1), even though mandatory, do not have lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of Section 87 of the Act [87. Procedure before the High Court.— (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits: Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings. (2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.] . Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) which read thus:

“Order 6, Rule 16: Striking out pleadings.—The court may at any stage of the proceedings order to be struck out or amend any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious; or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or

(c) which is otherwise an abuse of the process of the court.

Order 7, Rule 11: Rejection of plaint.—The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;....”

9. The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.

10. There is thus no substance in this point which is already concluded against the appellant in *Hardwari Lal v. Kanwal Singh* [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] wherein this Court has in terms negated this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A.N. Ray, J. who spoke for the three-judge Bench: (SCC p. 221, paras 22 and 23)

“The allegations in para 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to what kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action.

Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasized that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed.”

11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in *Samant case* [*Samant N. Balkrishna v. George Fernandez* (1969) 3 SCC 238] has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in *Udhav Singh case* [*Udhav Singh v. Madhav Rao Scindia* (1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party

to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

25) It would also be apposite to refer to the findings recorded by the Apex Court in para-24 of the judgment in *Karim Uddin Barbhuiya* (supra) which reads thus :-

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.

26) In *Kanimozhi Karunanidhi* (supra), the Apex Court has held in para-28(vi) as under :-

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.

It has been further held that if allegations contained in the petition do not set out the ground as contemplated by Section 100 and do not conform to the requirements under sections 81 and 83 of the Act, the Election Petition is liable to be rejected under Order VII Rule 11.

27) Petitioner has relied upon judgment of the Apex Court in *Dr. Vijay Lakshmi Sadho* (supra) in support of his contention that an Election Petition not complying with the provisions of Section 83(1) of the RP Act cannot be dismissed under Section 86 of the Act. There can be no dispute about the proposition that Section 86 cannot be used for rejection of Election Petition for failure to conform to requirements under Section 83. However, as observed above, the Apex Court has recognized the principle that the Election Petition failing to comply with the provisions of Section 83(1) of the RP Act can be rejected by having recourse to the provisions of Order VII Rule 11 of the Code.

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.

C.2 STATUTORY FRAMEWORK OF THE REPRESENTATION OF PEOPLES ACT

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?

(emphasis added)

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*, (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* [AIR 1964 SC 1200 : (1964) 6 SCR 54]; (2) *L.R. Shivaramagowda v. T.M. Chandrashekar* [(1999) 1 SCC 666]; and (3) *Uma Ballav Rath v. Maheshwar Mohanty* [(1999) 3 SCC 357].

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

(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.

(emphasis added)

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

“3. Before dealing with the question whether the learned Judge was right in holding that he could not go into the

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

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

(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* [*Durai Muthuswami v. N. Nachiappan*, (1973) 2 SCC 45] that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of

proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the respondent to prove that result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected.

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

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

- i. Section 83(1)(a) of 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.**

(emphasis and underlining added)

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*⁶ be also made, wherein this Court upon review of the earlier decisions, laid down following principles applicable to election cases involving corrupt practices:—

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

(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93] and *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442].

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

Rao [(1982) 1 SCC 442] and *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93].

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

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

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

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

15. The legal position with regard to the non-compliance of the requirement of Section 83(1)(a) of the 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.

(emphasis added)

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 a *bonafide* dispute about the same. Similar was the observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-

valuation and re-assessment for the purpose of tax assessment. Earlier, in *Sambhu Prasad Sharma v. Charandas Mahant*, this Court observed that the form of the nomination paper is not considered sacrosanct and what is to be seen is whether there is substantial compliance with the requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper.

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.

40) Having set out the broad scheme of the Act and effect of failure to plead necessary averments as set out in Section 83(1) read with Section 100 of the Act, I now proceed to examine whether the Election Petition contains the requisite averments in conformity with the provisions of Sections 83, 100 and 123 of the Act.

C.3 PLEADINGS IN THE ELECTION PETITION

41) The Election Petitioner has sought a declaration of election of the first Respondent as void on following four broad grounds :-

- (i) Offer of bribe of Rs.1 crore to the voters on 13 November 2024 for construction of community hall amounting to corrupt practice under Sections 100(1)(b) and 100(1)(d) (ii).
- (ii) Holding of meeting for campaigning at 11.00 p.m. on 2 November 2024 thereby violating the Model Code of Conduct [*Section 100(1)(d)(iv)*]
- (iii) Distribution of pamphlets by Respondent No.2 (*Rakesh Shantaram Patekar*) with the consent of Respondent No. 1 urging the voters to vote for Respondent No.1 in election [*Sections 100(1)(b) and 100(1)(d)(ii)*]

- (iv) Distribution of cash amongst the voters by named persons with consent of Respondent No.1 [*Section 100(1)(b) and Section 100(1)(d)(ii)*]

42) Thus, three of the grounds relate to corrupt practices under Section 100(1)(b) and 100(1)(d)(ii), whereas the fourth ground relates to violation of Model Code of Conduct attracting ground under Section 100(1)(b)(iv).

43) Before proceeding further, it must be observed that the ground under Section 100(1)(d) cannot be made out unless the Election Petitioner proves that the result of the election, in so far as, it concerns the returned candidate, is materially affected due to the four enumerated acts. Thus, for making out grounds under Section 100(1)(d), the Election Petitioner must prove two things viz. (i) that election of returned candidate is materially affected and (ii) one of the four enumerated acts have taken place.

44) However, when it comes to Section 100(1)(b), it is not necessary to plead or prove that the election of returned candidate is materially affected. Here again, the ground of corrupt practice is included in Section 100(1)(b), as well as Section 100(1)(d)(ii) and there is a minute difference between the two grounds. Under Section 100(1)(b), the corrupt practice must be committed 'by' the returned candidate/his election agent/any other person. As against this, the ground under Section 100(1)(d)(ii) is about commission of corrupt practice 'in the interest of' the returned candidate by an agent other than an election agent. Thus a direct act of commission of corrupt

practice by returned candidate/his election agent/any other person with his consent attracts grounds under Section 100(1)(b) not requiring pleading or proof of result of election getting materially affected. As against this, commission of corrupt practice by an agent of returned candidate (*other than election agent*) in the interest of returned candidate attracts ground under Section 100(1)(d)(ii) which requires pleading and proof that the election of returned candidate is materially affected on account of such corrupt practice.

45) Now I proceed to examine each of the four instances/acts pleaded by the Petitioner for seeking a declaration of election of Respondent No.1 as void.

C.3.1 OFFERING OF BRIBE OF RS. 1 CRORE FOR CONSTRUCTION OF COMMUNITY HALL

46) The relevant pleadings in the Election Petition in this regard are to be found in paras-6 to 8 of the Election Petition which reads thus :-

6. The Respondent No.1 have on 13.11.2024 on or about 12.00 noon onward at Shri Lohar Sutar Community Hall, Dattapada Road, Opp. Raj Hill Tower, Borivali has held a meeting of voters of Lohar Sutar community in which he has openly stated as follows "I know that 4000 to 5000 residents of your community are demanding for a community hall. I request you to vote my symbol i.e. bow and arrow, I will construct a community hall after the elections and I hereby declare the funds of Rupees 1 Crore to your community".

7. The Respondent No. 1 in the said meeting held on 13.11.2024 has offered promise, gratification to a large number of voters of 154 Magathane Assembly Constituency. The appeal to vote by Respondent No. 1 to himself has materially altered the result of the election and has resulted in materially affecting the votes of the Petitioner. The open offer of gratification of 1 crore and construction of community hall has been recorded by various media houses and received by the Petitioner from

party worker named Mr. Umesh Bhikaji Cheulkar. The same also appeared in Lok Shahi channel on 13.11.2024 as flash news / breaking news. The recording taken from Lok Shahi channel is hereto annexed and marked as **EXHIBIT "C-1"** and a copy of the video received from the party worker named Mr. Umesh Bhikaji Cheulkar is also marked and annexed as **EXHIBIT "C-2"**. The same is a true copy of the meeting held on 13.11.2024.

8. The Petitioner has reliably learnt that few of the other candidates have complained, and one of the candidate has lodged the written complaint to the returning officer on 14.11.2024. It is disheartening to note that the Returning Officer 154- Magathane Assembly Constituency has not taken any action inspite of such a clear specific violation of the code of conduct.

47) In the concise statement of material facts appended to the Election Petition, the relevant pleadings are as under:-

I say that the Respondent No.1 have on 13.11.2024 on or about 12.00 noon onward at Shri Lohar Sutar Community Hall, Dattapada Road, Opp. Raj Hill Tower, Borivali has held a meeting of voters of Lohar Sutar community in which he has openly stated as follows "I know that 4000 to 5000 residents of your community are demanding for a community hall. I request you to vote my symbol i.e. bow and arrow, I will construct a community hall after the elections and I hereby declare the funds of Rupees 1 Crore to your community". The Respondent No. 1 in the said meeting held on 13.11.2024 at 12.00 noon onward offered promise, gratification to a large number of voters of 154 Magathane Assembly Constituency. The appeal to vote by Respondent No. 1 to himself has materially altered the result of the election and has been resulted in materially affect the votes of the Petitioner.

48) So far as the allegation of offer of bribe of Rs.1 crore for construction of community hall is concerned, the same is attributed directly to Respondent No.1 as para-6 of the Election Petition alleges that the quoted statement is made by Respondent No.1 himself. The said statement is thus not made by a third person requiring pleading or proof of consent of Respondent No.1.

49) Under the provisions of sub-section (1) of Section 123, the term '*bribery*' has been defined to mean any gift other than promise by a candidate to any person with the object of inducing such person to vote at an election. Similarly, undue influence is also deemed to be corrupt practice, and the term '*undue influence*' is defined to mean any direct or indirect interference or attempt to interfere on the part of the candidate with the free exercise of electoral right. However, in Proviso to sub-section (2) of Section 123 it is clarified that a declaration of public policy or a promise of public action or mere exercise of legal right without intent to interfere with an electoral right does not constitute '*undue influence*'. Therefore, even if the statement attributed to Respondent No.1 on 11 November 2024 is accepted to be correct, the same would constitute promise of public action of providing community hall. It is not an individual inducement to voters. Mere quantification of funds in monetary terms of Rs.1 crore required for construction of community hall would not amount to offer of bribe within the meaning of Section 123(1)(A) of the Act. The promise made is to construct the community hall and the amount of Rs.1 crore is merely quantification of expenditure required for construction of such community hall. The promise does not involve offering of Rs.1 crore to the voters but the promise was only to construct the community hall. There is no averment that Respondent No. 1 offered to pay Rs. 1 crore to the concerned voters or even to a collective body of those voters. In that view of the matter, it is questionable as to whether the pleadings in paras-6, 7 and 8 of the Election Petition make out a ground under Sections 100(1)(b) or 100 (1)(d)(ii) of the Act of corrupt practice. However, this court need not delve any further into this aspect as there is another defect in relation to the incident of

13 November 2024 about Petitioner's reliance on video recordings at Exhibit C-1 to C-4.

C.3.1 PRODUCTION OF MULTIPLE VIDEO RECORDINGS IN A SINGLE PENDRIVE

50) Respondent No. 1 has alleged that there is non-compliance with requirement of provisions of Section 81 on the part of the Election Petitioner. It is clarified here that though the ground of improper production of Exhibits C-1 to C-4 is being discussed while considering the first incident of 13 November 2024, the discussion would apply to all the incidents which have relevance to the said Exhibits and the discussion need not be repeated while discussing those incidents.

51) Exhibits C-1 and C-2 allegedly contain video recordings taken from *Lokshahi* broadcasting TV channel and video recording allegedly received from party worker relating to the incident of 13 November 2024. However, the said two alleged video recordings are copied on a single pen drive, which is treated as Exhibits C-1 and C-2. Additionally, there are two more video recordings unrelated to the incident of 13 November 2024, which are also copied on the same pen drive. Those four video recordings are referred to as Exhibits C-1 to C-4 in the Election Petition. The Election Petition does not give particulars of file names by which Exhibits C-1 to C-4 can be identified.

52) The pen drive filed by the Petitioner alongwith the Election Petition, which allegedly contains video recordings at Exhibits-C-1, C-2, C-3 and C-4, contains total four folders. The first

folder is named 'C1 C2'. Second folder is named C3. Third folder is named C4. The fourth folder is named 'कस्तुरबा दहिसर समता नगर पोलीस स्टेशनच्या आवारातील पत्रक वाटप व्हिडिओ'. There is no Exhibit Number or description in respect of the fourth video file. Also, upon opening the folder named 'C1 C2', it contains two MP4 files names "1" and "WhatsApp Video 2024-11-25 6.30.55 PM". After opening the folder named 'C3' it is seen that the same contains two files (i) MP4 file named 'km_2041202_720p_30f_20241202_091031' and (ii) JPEG file named 'WhatsApp image 2024-12-18 at 9.30.45 AM'. After opening the third folder named 'C4' it is seen that the same contains nine MP4 files (9 videos) as under :-

- (i) WhatsApp Video 2024-11-28 at 9.31.23 AM
- (ii) WhatsApp Video 2024-11-28 at 9.31.24 AM
- (iii) WhatsApp Video 2024-11-28 at 9.31.24 AM
- (iv) WhatsApp Video 2024-11-28 at 9.31.25 AM
- (v) WhatsApp Video 2024-12-01 at 8.51.00 PM
- (vi) WhatsApp Video 2024-12-13 at 10.20.20 AM
- (vii) WhatsApp Video 2024-12-18 at 9.27.33 AM
- (viii) WhatsApp Video 2024-12-18 at 9.34.16 AM
- (ix) WhatsApp Video 2024-12-18 at 6.23.28 PM

In Para 17 of the Election Petition, the Petitioner has averred that *"Hereto annexed and marked as Exhibit-C-4 in the pendrive is the copy of the Video recording of the said incident recorded by party worker."* However, why 9 video files are copied in folder C4 is not explained in any manner in the Election Petition.

53) There is total absence of averments in the Election Petition as to which of the copied files are referable to which Exhibit sought to be produced with the Election Petition. Also, there is no identification provided in respect of multiple files copied on a single pen drive.

54) Provisions of Section 81 (3) requires that every Election Petition must 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. The issue for consideration is whether production of a single copying device containing multiple video files (more than 4 though only four videos are referred to in the body of Election Petition), without any averments identifying each video file by name and connecting them to each incident of bribery would be sufficient compliance with provisions of Section 81 of the Act ? The answer to my mind appears to be in the negative.

55) Section 83 requires every schedule or annexure to the petition to be signed by the Petitioner and verified in the same manner as the petition. Petitioner has produced four different verifications at pages 40 to 43 of the Election Petition in respect of a single pendrive. For the sake of illustration, statement made in the verification in respect of Exhibit C-4 is taken up for consideration. The verification contains a statement that '*this Exhibit C-4 is the Pendrive containing the video recording recorded by party worker which is true to my own knowledge ..*' However as observed above, the folder named 'C4' copied on the pendrive contains 9 different video files, whereas the verification is in respect of a single video recording.

Similar is the position in respect of other Exhibits as well. Thus there is no verification as required under Section 83(2) of the Act.

56) Respondent No.1 has complained that there is improper service of Exhibits C-1 to C-4, which form integral part of the Election Petition. Reliance is placed on the judgment of the Apex Court in *M. Karunanidhi* (supra). In the case before the Apex Court, a photograph was relied on in support of the allegation that the Appellant had set up fancy banner throughout the constituency. It was attempted to be proved that the expenditure for putting up such fancy banners was not disclosed in the amount in the return of the election expenses and accordingly allegation of corrupt practice was raised under Section 123(6) of the RP Act. The Respondent had averred that a photograph of one such banner was filed alongwith the Petition furnished to the Appellant. However, copy of the said photograph was actually not annexed to the Election Petition.

57) In the light of the above factual position, the Apex Court held in paras-41, 42 and 43 as under :-

41. It is obvious that the photograph was a part of the averment contained in para 18(b). In the absence of the photograph the averment contained in para 18(b) would be incomplete. The photograph referred to in para 18(b) was therefore an integral part of the election petition. It follows that there was total non-compliance with the requirements of sub-section (3) of Section 81 of the Act by failure to serve the appellant with a copy of the election petition. In Chapter *Subbarao case* [AIR 1964 SC 1027 : (1964) 6 SCR 213 : 26 ELR 1] the Court held that if there is a total and complete non-compliance with the provisions of sub-section (3) of Section 81, the election petition could not be treated an "election petition presented in accordance with the provisions of this Part" within the meaning of Section 80 of the Act. Merely alleging that the appellant had put up fancy banners would be of no avail unless there was a description of the banner itself together with the slogan.

42. The conclusion is irresistible that the words “copies thereof” in sub-section (3) of Section 81 read in the context of sub-section (2) of Section 83 must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein. That being so, we are constrained to reverse the judgment of the High Court insofar as it holds that the photograph of the fancy banner adverted to in para 18(b) could not be treated to be an integral part of the election petition but was merely a piece of evidence as to the nature and type of fancy banner erected by the appellant and therefore failure to supply a copy of the photograph to the appellant did not amount to a violation of the provisions of sub-section (3) of Section 81 of the Act.

43. For these reasons, all the appeals and special leave petitions except Civil Appeal No. 38(NCE) of 1981 must fail and are dismissed. Civil Appeal No. 38(NCE) of 1981 partly succeeds and is allowed. The judgment of the High Court holding that the amount of Rs 2000 having been deposited to the credit of the Registrar, High Court in the Reserve Bank of India on the strength of pre-receipted challans issued by the Accounts Department on the basis of a lodgment schedule, there was substantial compliance of the requirements of sub-section (1) of Section 117 of the Act, is upheld. But the judgment of the High Court is set aside insofar as it holds that the failure to supply a copy of the photograph of the fancy banner referred to in para 18(b) along with a copy of the election petition to the appellant did not amount to a breach of the provisions contained in sub-section (3) of Section 81 of the Act, and instead we hold that the failure to do so amounted to non-compliance of sub-section (3) of Section 81 inasmuch as the photograph of the fancy banner was an integral part of the election petition and therefore the election petition must be dismissed summarily under sub-section (1) of Section 86 of the Representation of the People Act, 1951. We further direct that the High Court shall permit the appellant to withdraw the recrimination petition filed by him under Section 97 of the Act in terms of the undertaking given by learned counsel for the appellant during the course of the hearing of the appeal.

58) Thus, in *M. Karunanidhi*, the Apex Court held that non-service of material which is integral part of the Election Petition amounts to non-compliance with the requirements of sub-section (3) of Section 81 of the RP Act. In the present case, there can be no dispute to the position that the alleged video recording contained in Exhibits-C-1 to C-4 is an integral part of the Election Petition as the

allegation of making offer of bribe of Rs.1 crore on 13 November 2024 is premised solely on the said video recordings. I am therefore not able to accept the suggestion of Mr. Nair that there is no pleading in the application that the video recordings at Exhibits-C-1 and C-2 are integral part of the Election Petition. The judgment of Rajasthan High Court in *C.P. Joshi* (supra) is relied on by Mr. Nair in support of his contention that the issue about particular document forming integral part of the Election Petition is required to be decided objectively. In the present case, the video recordings at Exhibits-C-1 to C-4 is the main premise on which allegations of commission of corrupt practices and violation of Model Code of Conduct are based and therefore it cannot be contended that the said Exhibits do not form integral part of the Election Petition. Also, in *M. Karunanidhi*, the Apex Court has interpreted the words '*copies whereof*' appearing in sub-section (3) of Section 81 by reading the same in the context of sub-section (2) of Section 83 and has held that every annexure to the Election Petition forms integral part of the Election Petition.

59) In *U.S. Sasidharan* (supra), a video cassette was sought to be relied on and the same was produced before the Court in a sealed cover. The returned candidate sought dismissal of the Election Petition on the ground that copy of the video cassette was not supplied to him alongwith the Election Petition. In the light of the above factual position, the Apex Court has held in paras-34 and 35 as under :-

34. In view of the discussion made above, we affirm the judgment of the High Court dismissing the election petition of the appellant on the ground that as the copy of the video cassette was not served on the first respondent along with a copy of the election petition, it was non-compliance with the provision of Section 81(3) of the Act.
35. The appeal is, accordingly, dismissed. There will, however, be no order as to costs.

60) In the light of the above factual position, by relying on its judgment in *M. Karunanidhi* the Apex Court held in *U.S. Sasidharan* that the video cassette formed an integral part of the Election Petition. The Apex Court highlighted the position that the returned candidate must be in a position to know the exact contents of the video cassette. The Apex Court held in paras-28, 30 and 32 as under :-

28. The decision in *Karunanidhi case* [(1983) 2 SCC 473] fully supports the view which we take, namely, the video cassette formed an integral part of the election petition because without a copy of the video cassette the first respondent was not in a position to know whether the video cassette recording the speeches of the two government servants could be said to have been used by the first respondent for the purpose of any assistance in furtherance of the prospects of his election. *Karunanidhi case* [(1983) 2 SCC 473] was referred to and approved in a subsequent decision of this Court in *Mithilesh Kumar Pandey v. Baidyanath Yadav* [(1984) 2 SCC 1 : (1984) 2 SCR 278] .

30. Apart from striking out the whole of the election petition when it does not disclose a cause of action, the court can strike out any statement which is irrelevant, scandalous or has nothing to do with the cause of action under the provision of Order 6 Rule 16 of the Code of Civil Procedure. It is submitted by Mr Poti that if the averments in para 5(xi) of the election petition are irrelevant or do not disclose any cause of action, at the most the said paragraph can be struck out by the court under the provision of Order 6 Rule 16 of the Code of Civil Procedure. We are afraid, we are unable to accept the contention. We are not concerned with whether para 5(xi) can be struck out by the court under the provision of Order 6 Rule 16 of the Code of Civil Procedure as not disclosing any cause of action, but really we are concerned with the question as to whether the copy of the election petition which has been served on the first respondent without a copy of video cassette is a true copy of the election petition or not within the meaning of Section 81(3) of the Act. We have come to the conclusion that the appellant has not served on the first respondent a true copy of the election petition inasmuch as, admittedly, a copy of the video cassette which forms an integral part of the election petition, was not served along with the election petition. There is, therefore, no substance in the contention which is rejected.

32. On the basis of the above observations, it is submitted that if para 5(xi) of the election petition suffers from a deficiency of material particulars, the court has a discretion to allow the appellant to supply the required particulars even after the expiry of limitation. The above observations have been made in a different context and are quite inapplicable to the facts and circumstances of the instant case which, as noticed already, relate to the question as to whether the video cassette is an integral part of the election petition and whether non-furnishing of a copy of the video cassette to the first respondent along with a copy of election petition is non-compliance with the mandatory provision of Section 81(3) and, as such, liable to be dismissed under Section 86(1) of the Act. The question of exercise of discretion by the court in permitting the appellant to supply the particulars does not arise at all.

61) True it is that the case does not involve complete failure to supply the video recordings as was the case in *M. Karunanidhi* and *U.S. Sasidharan*. The objection of Respondent No.1 is about inability to identify the material copied on the pen drive by connecting the same to each allegation of corrupt practice. What is done in the present case is to copy the multiple video recordings in one pendrive though only four video recordings are pleaded in the petition. Also there are no averments about distinct file names of each video recording to connect to each allegation of corrupt practice. Once it is held that Exhibits-C-1 to C-4 form integral part of the Election Petition, it becomes necessary for the Election Petitioner to serve the same on Respondent No.1 with sufficient clarity. What has been done in the present case is to copy multiple video recordings in the pendrive contrary to the pleadings that only four video recordings are produced at Exhibits-C-1 to C-4. Even if the act of copying all four Exhibits on a single pendrive is accepted, Petitioner ought to have averred in the petition that video recording bearing a particular file name is at Exhibits-C-1, C-2, C-3 or C-4. Far from doing so, Petitioner has copied multiple MP4 and JPEG files in the

pendrive, contrary to the pleadings in the petition. Merely copying multiple video recording files in one pendrive without distinctly identifying them in respect of each allegation of corrupt practice in the Election Petition would clearly be fatal.

62) As observed above, Election Petition is not a remedy in common law or action in equity. Being a statutory remedy, strict compliance with the provisions of the Act is mandatory. The allegation of corrupt practice is not only serious but constitutes a punishable offence under the Act. Therefore, levelling of allegation of corrupt practice cannot be done in a casual manner. Exhibits-C-1 and C-2 relate to the incident of 13 November 2024 whereas Exhibits-C-3 and C-4 relate to the incident of distribution of pamphlets. Though petition avers about production of four video recordings to support two allegations of corrupt practices, what is actually produced are multiple files in MP4 and JPEG format by copying them in a single pendrive. This casual approach on the part of the Petitioner does not meet the strict requirement of pleadings under Section 83 and requirement of supplying copies of Annexure to Respondent No.1 under Section 86 of the RP Act. The Petitioner cannot dump multiple material in a copiable electronic device and leave it for the returned candidate to identify the files copied therein. In my view, the Election Petitioner has failed to make correct and necessary averments relating to the video recordings and has also failed to supply to the returned candidate all the Annexures with sufficient material particulars and identity making the Petition liable for rejection.

C.3.3 ALLEGATION OF VIOLATION OF MODEL CODE OF CONDUCT

63) The averments made by the Election Petitioner in support of the ground of violation of Model Code of Conduct are to be found in para-9 of the Petition, which reads thus :-

9. The petitioner submits that the Respondent No.1 in the night of 2nd November 2024 @ 11.00 p.m. (during the prohibited time as per the Model code of conduct) hold meeting for the purpose of campaigning at Sidhnath Mishra Compound, Suhasini Pawaskar Road, Ghartan Pada-1, Dahisar (East). It is pertinent to mention here that no public speech or promotional party meetings or campaigning could be held after 10:00 p.m. under Model code of conduct. The Respondent No.1 conduct of holding meeting at 11:00 p.m. was also a direct violation of the Model Code of Conduct. The same has been broadcast by the Respondent No.1 on Facebook Live from his account. Hereto annexed and marked as **Exhibit C-3** is the copy of the Pendrive containing the said recording of broadcast by the Respondent No.1 on Facebook Live from his account. Hereto annexed and marked as **EXHIBIT "D"** is a true extract taken from Model code of conduct given to the candidate. The Petitioner craves leave to refer and rely upon a model code of conduct of assembly elections.

64) The Election Petitioner is seeking to set aside the election of Respondent No.1 on the ground enumerated in Section 100(1)(d) (iv) of the Act alleging that there is non-compliance with the provisions of the order made under the Act. However, perusal of the averments in para-9 of the Election Petition do not disclose that the Model Code of Conduct, extract of which is produced at Exhibit-D to the petition, is an order made under the provisions of the RP Act. At Exhibit-D, Petitioner has produced copy of Compendium of Instructions of Model Code of Conduct, 2024 issued by the Election Commission of India and has craved leave to refer and rely upon Model Code of Conduct applicable to Assembly Election. This would show that the extract produced by the Election Petitioner at Exhibit-D is not the Model Code of Conduct applicable to the Assembly Elections in question. Again, para-19 of the Extract of Model Code

of Conduct relied upon by the Applicant uses the word '*normally*' for non-compliance of meetings beyond 10 p.m. The Election Petitioner has thus failed to demonstrate existence of any mandatory order issued under the provisions of the Act which prohibited holding of meetings after 10.00 p.m. There is no averment in para-9 of the Election Petition that Respondent No.1 has violated or not complied with the provisions of any particular order made under the RP Act.

65) If allegation of violation of order passed under the RP Act is raised, it was incumbent upon the Petitioner to produce that order alongwith the Election Petition and to supply copy thereof to Respondent No.1.

66) Also, the allegation in para-9 of the Election Petition is fully premised on video recording in Exhibit-C-3 which suffers from same infirmity as is discussed in the earlier part of the judgment.

67) In my view therefore, the averments in the Election Petition do not disclose a cause of action for setting aside election of Respondent No.1 under Section 100(1)(d)(iv) of the Act.

C.3.4 ALLEGATION OF DISTRIBUTION OF PAMPHLETS

68) This is the main ground of challenge of election of Respondent No.1 raised in the Election Petition. The case of the Election Petitioner broadly is that Respondent No. 2 is the proxy candidate set up by Respondent No.1 in order to create confusion in the minds of the voters. That Respondent No.2 had initially filed two nominations in the names of Rakesh Shantaram Patekar and Rakesh

@ Udesb Shantaram Patekar and that his latter nomination was rejected. Despite rejection of his second nomination, Respondent No.2 got printed and distributed pamphlets amongst the voters urging them to vote in favour of candidate of Shiv Sena Party (*Eknath Shinde Group*). The relevant averments in this regard are found in paras-10 to 16 of the Election Petition which reads thus :-

10. The Petitioner further submits that in the early hours of 18.11.2024, one Mr. Amey Devle, a newspaper distributor and a party worker of the Petitioner informed the Petitioner that there were pamphlets in the newspaper which was being distributed pertaining to the petitioner. The wrong statement contained in the pamphlet was that the petitioner was asking the voters in the constituency to vote for Respondent No. 1. This was being done by the Respondent No. 2. The Respondent No. 2's name was Rakesh Shantaram Patekar. It is pertinent to mention here that this Respondent No.2 earlier has filed 2 nominations one namely Rakesh Shantaram Patekar and another nomination was filed stating the name as Rakesh alias Udesb Shantaram Patekar. The second name and nomination was rejected by the Returning Officer at the time of scrutiny on 30.10.2024. In spite of the rejection of the said 2nd Nomination the Respondent No. 2 used the alias name to distribute the pamphlets mentioned and made statements in the said pamphlets to misguide the constituency by publishing the pamphlet purportedly being a statement by the Petitioner. This false fact has materially affected the result of the election and as furthered the prospect of Respondent No. 1. The petitioner submits that even the Nomination form submitted by the Respondent No.2 clearly, categorically and specifically indicate that the various signatories like Meena Dattu Panmand, Vidya Sanjay Potdar, Bhalchandra Sakharan Dagle, Rajesh Manohar kasar, Padmakar Baburao Suryavanshi, Shantaram Gopal Kate, Suryakant Bhiwaji Kadam, Prashant Tanaji Pawar, Daroga Ramji Chaube and Dhananjay Lalji Yadav have signed Nomination who are active party worker of the Respondent No.1 which clearly indicate that he has put up the said Respondent with his consent and for the purpose of only scuttling the petitioner's prospects, and materially affect the result of the elections. The copy of the nomination form filed along with the annexure clearly indicates the same and the petitioner relies on the same.

11. The Respondent No. 2 on 18.11.2024 in the early hours has distributed a pamphlet which contains false facts stating inter alia "that the petitioner was supporting the Respondent No.1's candidature and to vote for the Respondent No.1". The same was

done by the Respondent No. 2 with the consent and connivance of Respondent No. 1 as the said pamphlet contains a fake statement would further advance the Respondent No.1's prospect in the election as the false statement, publication and circulation containing a false statement that the petitioner was supporting the Respondent No. 1 has been made. The publication of the said statement which the Respondent No. 1 and 2 believed to be false, and does not believe the same to be true. The Petitioner submits that the petitioner has never given any instructions to print said pamphlet and the same had been done by the Respondent No. 2 with the consent of the Respondent No.1 to further the prospect of the Election of the Respondent No. 1 and this Publication & distribution of the statement in pamphlet set out herein has materially affect the Result of the Elections.

12. Respondent No. 2 on the said date 18.11.2024 stated distribution of pamphlets to the entire constituency also through various party workers, and the Petitioner party workers, when coming to know about the distribution of the pamphlets by Respondent No. 2 and the workers of Respondent No.1 in Sant Dnyaneshwar Nagar, Sambhaji Nagar, Hanuman Tekdi, Devipada and Singh Estate Samta Nagar. The party workers of the Petitioner one Mr. Chetan Parab Advocate and Mrs. Shubdha Shinde and Mr. Vitthal Nalawde approached respective police station and complained about the same.

13. The petitioner further states that the Dahisar Police Station have recorded the statements of Mr. Chetan Parab as well as the main newspaper distributor Mr. Prakash Magan Patil, Mr. Amey Devle and also of the officers of the Election Commissioner. The police has also recorded the statements of the persons who were distributing pamphlets. The Petitioner submits that the statement made is in which the said Mr. Prakash Magan Patil has stated that "Party worker of the Respondent No.1 Mr. Padmakar Suryavanshi asked him to distribute pamphlets and after this work done Mr. Padmakar Suryavanshi the party worker of the Respondent No.1 assured that he will be paid therefore he was doing distribution". Hereto annexed and marked as **EXHIBIT- "E"** is the copy of the Statement of Mr. Prakash Magan Patil recorded by the Dahisar Police Station. and its English translation is marked as **EXHIBIT "E-1"**.

14. The statement in the Publication by pamphlets was that Petitioner is purportedly supporting the Respondent No.1, and the same pertained to the personal conduct of the Petitioner that he was supporting the Respondent No.1, the said statement made by Publication & circulation was reasonably calculated to prejudice the prospects of the Petitioner in the Election, this statement by Publication was done by the Respondent No. 2 with the consent of the Respondent No. 1 and has furthered his prospects in the

Election. The Petitioner submits that to the personal knowledge of the petitioner, he was also informed by one of his party worker Mr. Amey Devle that the Respondent No. 2 in collusion and consent with the Respondent No.1 was distributing pamphlets to all the voters of 154 Magathane Assembly constituency and various persons in addition to his party workers, he was also informed that the Respondent No. 2 after rejection of his duplicate nomination was doing so and at the behest & consent of Respondent No.1 and printed pamphlets to misguide and mislead the voters. The Pamphlets wrongly projected that the petitioner was supporting the Respondent No.1, and the pamphlet's also purportedly indicate that Udesb Shantaram Patekar (Petitioner) is an author of the pamphlet and requested voters to refrain from voting for the petitioner and Vote for the Respondent No.1. This corrupt practice has been indulged by the Respondent No.2 with the consent and connivance of the Respondent No.1 to further prospect of election of Respondent No.1 and has materially affected the Election Results of 154 Magathane Assembly Constituency. The Printing, distribution & Circulation of the Pamphlets as stated herein have resulted in the general voters thinking that the Petitioner is requesting them to vote for the Respondent No. 1 and has materially affected the Election results.

15.The Petitioner submits that on 18th November 2024 pamphlets/brochures in the name of Petitioner were being circulated by various persons at the instance of Respondent No. 1 and Respondent No.2's representative Mr. Vipul Doshi and Mr. Brijesh Gupta. The said pamphlets/brochures was printed by the Respondent No. 2 herein i.e., Rakesh Patekar and published by one Mr. Vijay Bansode of Mauli Enterprises, this Corrupt practice has been indulged into by them for furthering the prospect of the Respondent no 1 and to materially affect the prospect of the votes and the Petitioner result. They have circulated these pamphlets in entire 154-Magathane Assembly area and as such they the Respondent No. 1 and 2 have committed corrupt practice and the same has materially affected the Election result. It is pertinent to state that a material fact of this incident is also that the Nodal officers of the Maharashtra Legislative Election, 154 Magathane, one Mr. Sadashiv Sakharam Kumbhar lodged a complaint with Dahisar police station, Mr. Manish Kailash Ingle lodged complaint Kasturba Police Station and Mr. Mayur Mahendra Shinde lodged complaint with the Samata Nagar under the provisions of Section 174, 175 of the Bharatiya Nyaya Sanhita and Section 127 C of Representation of People Act against the various persons mentioned in said N.C. The Nodal officers in charge of the said constituency has also filed a complaints with the respective local Police stations for Undue influence & personation and have made many of the workers of the Respondent No 1 & 2's as party accused as stated hereinafter. Hereto annexed and marked as **Exhibit "F-1 to F-3"** are the copies of Non Cognizable Offence

Information Report recorded by Dahisar Police Station being N.C. No 3630/2024 dated 18/11/2024, Kasturaba Police Station being N.C. No.1509/2024 dated 18/11/2024 and Samta Nagar Police Station being N.C. No.3380/2024 dated 18/11/2024. Thus, this is a clear, categoric & specific corrupt practice indulged into by the Respondent No. 2 with the consent of Respondent No.1 which has materially affected Election result & has furthered the prospects of the Respondent No.1, the returned candidate. This corrupt practice has been done by the Respondent No. 2 with the consent of the Respondent No. 1 and has furthered the prospects of the Respondent No. 1 and materially altered the result of the Election. and its English translation is marked as **EXHIBIT "F-4 to F-6"**.

16. The above pamphlet was published by one Vijay Bansode through Mauli enterprises and around 3 lakh copies were printed and published and circulated by Respondent No. 2 with the consent of Respondent No.1. Hereto annexed and marked as **EXHIBIT "G"** is a copy of the pamphlet and its English translation is marked as **EXHIBIT "G-1"**. The Petitioner submits that the purported pamphlets are circulated and published on behalf of Respondent No. 1 and 2 and done in the name of Petitioner would amounts to corrupt practice under the provisions of Section 123 (2) & (4) of Representation of Peoples Act. These statements & publications has materially affected the result of the Election and but due to such acts by the Respondent no. 1 & his Election Agent this Petitioner would have attained the highest number of votes.

69) It would also be relevant to reproduce the pamphlet allegedly published and distributed by Respondent No.2 which is produced at Exhibit-G to the Election Petition and which reads thus :-

हिंदूहृदय सम्राट मा. बाळासाहेब ठाकरे यांचे स्वप्न साकार करण्यासाठी राकेश उर्फ
उदेश शांताराम पाटेकर यांचे शिवसेना मुख्य नेते
मुख्यमंत्री श्री. एकनाथ शिंदे साहेब यांना जाहिर समर्थन !

प्रिय मतदार बंधू-भगिनी

सस्नेह जय महाराष्ट्र

नमस्कार । मी राकेश उर्फ उदेश शांताराम पाटेकर बरेच दिवस माझ्या मनात
एक सल बोचत होती. आपण सर्व मायबाप जनतेशी बोलून, मन मोकळे करायचे
होते. म्हणून हा पत्रप्रपंच.

मी गेली वर्षे आपणा सोबत राहून सामाजिक कार्यात सक्रिय आहे. माझ्या कार्यात आपणा सर्वांची साथ व सहकार्य नेहमीच लाभले आहे. होत असलेली विधानसभेची निवडणूक मी मागाठाणे मतदारसंघातून लढवीत आहे. परंतू माझे अंतर्जन सतत मला साद घालते आहे की, ही मागाठाणे विधानसभेची निवडणूक लढवून मी काही चूक तर करीत नाही ना.... असा विचार मनात येतो, या मागे काही तर्कशुद्ध कारण आहे. आपण सर्व मतदारांनी मला प्रचंड प्रेम दिलत, कायम सहकार्य केले. आपल्या याच प्रेम व सहकार्यने मी कदाचित आमदार म्हणून निवडून ही येईन. पण पुढे काय ?

मी तुमच्या अपेक्षांवर खरा उत्तरू शकतो? तुम्हांला दिलेला शब्द, वचन मी पूर्ण करू शकेन ? आपल्या विभागाचा पायाभूत विकास करण्यासाठी आवश्यक निधी व शासकीय योजना राबवू शकेन? असा प्रश्न मी स्वतः ला विचारतो. तेव्हा अंतर्मनातून उत्तर येते ... नाही ? कारण कोणत्याही परिस्थितीत माझी सत्ता येणार नाही.

सखोल आत्मचिंतन व माझ्या राजकीय गुरुच्या संमतीने महाराष्ट्राची अस्मिता व स्वाभिमान जपण्यासाठी आणि शिवसेना प्रमुख मा. बाळासाहेब ठाकरे याचे स्वप्न साकार करण्यासाठी मी राकेश उर्फ उदेश शांताराम पाटेकर जाहीर करतो की बुधवार दि. 20 नोव्हेंबर 2024 रोजी होणाऱ्या विधानसभा निवडणुकीत मी व माझे सर्व सहकारी हिंदुहृदयसम्राट बाळासाहेब ठाकरे यांच्या विचारावर चालणारे शिवसेना मुख्य नेते, मुख्यमंत्री श्री. एकनाथ शिंदे साहेब यांना जाहिर समर्थन करून पाठींबा देतो. मी सर्व मतदार बंधू व भगिनींना निवेदन करतो की धनुष्यबाणा समोरील बटन दाबून शिवसेनेच्या उमेदवारांना विजयी करावे ही नम्र विनंती. हीच मा. बाळासाहेब ठाकरे यांना खरी भावपूर्ण श्रद्धांजली ठरेल.

धन्यवाद !

आपला

राकेश उर्फ उदेश शांताराम पाटेकर

70) It is the case of the Election Petitioner that the act of printing, publishing and circulating the pamphlets by Respondent No.2 was done with the consent of Respondent No.1. It is submitted by Mr. Nair that since Respondent No.2, as well as various persons named in the Election Petition are not election agents of Respondent No.1, it is necessary to plead and establish consent of Respondent No.1 in respect of the corrupt practices committed by the said persons. Under the provisions of Section 100(1)(b) of the Act, corrupt practice can be committed by three persons; (i) by returned candidate himself, (ii) by election agent of returned candidate or (iii) by any other person with the consent of the returned candidate or his

election agent. Even under the provisions of Section 123, consent of returned candidate or of his election agent becomes necessary for constitution of an act as bribery or undue influence. It is for this reason that the Election Petitioner has averred at multiple places at paras-10 to 16 that the act of printing, publishing and circulating the pamphlets was done by Respondent No.2 and by various named persons with the consent of Respondent No.1.

71) The issue that arises for consideration is whether mere bald pleading of consent meets the requirements of Section 83 of the Act. Careful perusal of provisions of Section 83 of the Act would indicate conscious use of different words governing various grounds enumerated under Section 100 of the Act. When the election of a returned candidate is sought to be set aside on the grounds other than corrupt practices, the Election Petition needs to contain only a concise statement of material facts. However, when allegation of corrupt practice is involved, things get serious and what needs to be pleaded is (i) concise statement of material facts and (ii) full particulars of corrupt practices. Thus, a ground involving corrupt practice would require setting forth 'full particulars' of such corrupt practice. The Legislature has consciously made this distinction about requirement of pleadings by classifying the grounds enumerated under Section 100 into (i) grounds relating to corrupt practice and (ii) other grounds. For other grounds, the requirement is not so strict and making of a concise statement of material facts meets the requirements of Section 83(1)(a). However, if election is sought to be set aside on the ground of corrupt practices, in addition to making a concise statement of material facts, the Election Petitioner must set forth 'full particulars' of the corrupt practices. The Legislature has

thus consciously used the words '*concise statement*' in clause (a) as against '*full particulars*' in clause (b) of sub-section (1) of Section 83.

72) Going further, it is also seen that clause (b) of Section 83(1) enumerates some of the particulars which a Petitioner must set forth in the election petition such as (i) full statement of the names of the parties alleged to have committed corrupt practice, (ii) date and place of commission of each such corrupt practice. However, the list of such particulars is not exhaustive which is clear from use of the word '*including*'. Thus, the two particulars indicated in clause-(b) of sub-section (1) of Section 83 are only indicative in nature and it is not an exhaustive list of particulars. Since consent of the returned candidate or of his election agent is required to be established if corrupt practice is committed by '*any other person*', it is necessary to set forth full particulars of such consent as well. Mere bald averment of consent is not sufficient. It is incumbent for the Election Petitioner to make averments as to how the returned candidate or his election agent gave the consent to the person who committed the corrupt practice.

73) In the instant case, since the allegation of Election Petitioner is that Respondent No.2 and the named persons committed corrupt practice of printing, publishing and circulating the pamphlet with the consent of Respondent No.1, it was necessary for the Petitioner to plead as to how Respondent No.1 knows them and how, when and where he directed or instructed or requested those persons to print, publish or circulate the pamphlet in question. What is pleaded in the Election Petition is only that the persons named in para-10 who signed the nomination form of Respondent No.2 are

active party workers of Respondent No.1. This is the only averment made to establish consent of Respondent No.1 to the acts of Respondent No.2. Even if it is assumed that the said persons are workers of the party on whose ticket Respondent No. 1 contested the election, the same does not *ipso facto* mean that Respondent No. 1 consented to every act committed by those persons. Further, it is averred that statements of persons who were distributing the pamphlets have been recorded by the police and that those statements disclosed that party worker of Respondent No.1, Padmakar Suryavanshi had asked the said persons to distribute the pamphlets. It is further averred in para-16 that the pamphlet is published by Mr. Vijay Bansode through Mauli Enterprises and 3 lakhs copies thereof were printed, published and circulated by Respondent No.2 with the consent of Respondent No.1. Thus beyond the allegation that the act of printing, publishing and circulating the pamphlets by or at the instructions of Shiv Sena party workers, there is no averment in the Election Petition as to how Respondent No.1 consented for commission of such acts. These are the only averments made by the Petitioner in the Election Petition to connect the act of printing, publishing and circulating the pamphlets with Respondent No.1. Though it is sought to be suggested by Mr. Nair during the course of his oral submissions that Mr. Padmakar Suryavanshi is the Personal Assistant of Respondent No.1, he fairly admits that there is no pleading to that effect in the Election Petition. He however submits that the Petitioner would prove the said fact by leading evidence. In absence of basic pleading to connect Respondent No. 1 to the named persons, the Election Petition cannot be allowed to be taken to trial for leading of evidence by Petitioner. In my view, the Election Petition lacks '*full particulars*' of consent allegedly given by

Respondent No.1 for commission of acts by Respondent No.2 and the named persons as alleged in the petition.

74) It is sought to be contended on behalf of Election Petitioner that the consent can also be implied and that therefore opportunity of leading evidence must be given. However, there is no averment in the Election Petition that Respondent No.1 gave implied consent to the acts of printing, publishing or circulating the pamphlets. In absence of the underlying pleadings, the Election Tribunal cannot be expected to imply such consent and allow him to fill in the lacuna by leading evidence.

75) In *Azhar Hussain* (supra) the Apex Court has discussed the need for pleading particulars in respect of allegation of distribution of pamphlets. It is held thus :-

34. On a scrutiny of the averments made in the election petition it is evident that it is not pleaded as to who has distributed the pamphlets, when they were distributed, where they were distributed and to whom they were distributed, in whose presence they were distributed etc., etc. Pleading is ominously silent on these aspects. It has not even been pleaded that any particular person with the consent of the respondent or his election agent distributed the said pamphlets (in fact it has been stated by the learned counsel for the respondent that no election agent had been appointed by the respondent during the entire elections).

35. The pleading therefore does not spell out the cause of action. So also on account of the failure to mention the material facts, the court could not have permitted the election petitioner to adduce evidence on this point. It would therefore attract the doctrine laid down in *Nihal Singh* case [(1970) 3 SCC 239] and there would be nothing for the respondent to answer.

Thus, pleading of full particulars of allegation of distribution of pamphlets is a mandatory requirement, in absence of which the Election Petition is liable to be rejected.

76) The importance of pleading of full material particulars in also discussed in judgment of the Apex Court in *Sumant N. Balkrishna* (supra). Though the judgment is relied upon by Mr. Rajeshirke, the learned counsel appearing for Respondent No.3, who is supporting the Election Petitioner, the judgment, far from assisting the case of Election Petitioner, actually militates against him. In para-29, the Apex Court has held as under :-

29. Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of the Peoples Act. Here we have to consider Sections 81, 83 and 84 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. That as we have shown above creates the substantive right. Section 83 then provides that the election-petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. **The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars.** What is the difference between material facts and particulars? The word “material” shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. **There may be some overlapping between material facts and particulars but the two are quite distinct.** Thus material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In

stating the material facts it will not do merely to quote the words of the section because then the efficiency of the words “material facts” will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be co-related to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information.

(emphasis and underlining added)

Thus, as held in *Sumant N. Balkrishna*, fullest possible particulars of corrupt practice must be pleaded in the Election Petition.

77) So far as the averments in para-10 of the Election Petition are concerned, the Petitioner has failed to produce with the Election Petition and supply to Respondent No.1 copy of the nomination form of Respondent No.2 which is allegedly signed by the named persons who are alleged party workers of the first Respondent. The nomination form of Respondent No.2 is an integral part of the Election Petition *qua* the allegation in para-10. Non-supply of copy thereof amounts to non-compliance with the provisions of Section 81 of the Act warranting dismissal of the Election Petition under Section 86(1) of the Act.

78) In my view therefore the Petitioner has failed to set forth full particulars of alleged corrupt practices committed by Respondent No.2 with the consent of Respondent No.1 and therefore there is non-compliance with the provisions of Section 83(1)(b) of the Act warranting rejection of the Election Petition under Order VII Rule 11 of the Code.

C.3.5 ALLEGATION OF DISTRIBUTION OF MONEY

79) This again is a serious allegation levelled by the Petitioner for setting aside election of Respondent No.1. The relevant averments in support of this ground are found in para-17 of the Election Petition which read thus :-

17. The Petitioner states that he was also informed by his party workers Shashikant Zore, Sachin More and Yogesh Desai that one Vinod Bahiru Ghane, aged 35 years Magistrate flying squad No. 2 of 154 Magathane Assembly Constituency has filed complaint with the Kasturba Police Station and reported that on 19.11.2024 at approximately 10.00 p.m. that he received information that certain individuals were distributing cash in white envelopes to the residents of Devipada area which falls in 154, Magathane Constituency. The said Magistrate along with his team reached the location at Royal Western Mens Wear Shop No.15, Ariana Residency, Devipada East, Mumbai and has also conducted video recording and he enquired with employees of the shop namely Soham Sachin Naik and Prashant Shivaji Morde and the shop owner was one Yogesh Jadhav and there were other witnesses who were present namely Samarth Prakash Salvi and Rohit Ramchandra Bagwe who informed that the shop owner Yogesh Jadhav was calling all the people/voters from Devipada area (154 Magathane Assembly Constituency) to the shop and distributing money and asking the people/voters to vote for the Respondent No. 1. The shop employees also confirmed this to the flying squad Magistrate overseeing the Elections. The video recording and panchnama was done by the Magistrate of flying squad No.2 (154, Magathane Constituent Assembly) wherein the Magistrate Flying Squad recovered 20 envelopes containing 2000/- each and 5 envelopes containing Rs. 3000 each from the said Shop. The witness present outside the shop also handed the Magistrate a bag containing Rupees 21,500/- in cash in total of 11 envelopes and two saffron mufflers, one of which was of the Shivsena (Shinde fraction) name along with cash was found. The shop owner Yogesh Ganesh Jadhav clearly, categorically and specifically stated that he was a worker of Shivsena (Shinde fraction) and he was distributing money to secure votes for Shivsena (Shinde fraction) candidate the Respondent No.1 with the consent of Respondent No.1. The non-cognizable complaint No.1517 of 2024 under section 173, 174 of IPC and read with 123(1) (A) of The Representation of People's Act, 1951 was on 20/11/2024 registered with Kasturba Police Station Borivali (East). Hereto annexed and marked as **EXHIBIT**

"H" a copy of NC No.1517/2024 dated 20th November 2024 and English true Translation of the said N.C. is annexed as EXHIBIT "H-1". Hereto annexed and marked as Exhibit C-4 in the pendrive is the copy of the Video recording of the said incident recorded by party worker.

80) The Election Petition thus alleges that a shop owner Yogesh Jadhav was calling voters from Devipada area to his shop and distributing money to the voters for casting votes in favour of Respondent No.1. It is averred that the distribution of money was with the consent of Respondent No.1. Beyond this, there are no particulars as to when how and in what manner, Respondent No.1 had consented for distribution of money by Yogesh Ganesh Jadhav. There is no averment that Respondent No.1 even knows Shri. Yogesh Jadhav. For the reasons discussed in the preceding paragraphs, for want of full particulars indicating consent of Respondent No.1 to the act of money distribution by Yogesh Jadhav, there is non-compliance with the provisions of Section 83(1)(b) of the Act. So far as video recording at Exhibit C-3 is concerned, the same attracts the folly of non-identification of the video file copied in the pen drive or an averment to link a particular file to the allegation of money distribution.

81) Thus, even *qua* allegation of distribution of money Petitioner has failed to set forth full particulars of consent of Respondent No. 1 to the alleged act of money distribution by the named persons.

C. 4 PETITIONER'S CONTENTION THAT OPPORTUNITY MUST BE EXTENDED FOR LEADING OF EVIDENCE IN SUPPORT OF CORRUPT PRACTICES ALLEGED.

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.

(emphasis added)

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.

C. 5 JUDGMENTS RELIED ON BY ELECTION PETITIONER

86) Mr. Nair has relied upon judgment of the Apex Court in *Sathi Vijay Kumar* (supra) in support of his contention that pleading of consent is sufficient and it is not necessary to plead any further particulars, which can always be proved by leading evidence. In paras- 48, 49 and 50 of the judgment, the Apex Court has held as under :-

48. We are unable to appreciate the approach of the High Court. The allegations in the election petition are clear that the first respondent was guilty of corrupt practice of obtaining assistance of a gazetted officer, namely, Jaspal Singh Jassi who was a Returning Officer as well as Electoral Registration Officer. It was also alleged that the first respondent got names of several electors (586) in Schedule 'A' wrongly deleted. The said fact came to light only when the electors had gone to exercise their right to vote but could not exercise it in view of deletion of their names. It was also averred in the petition that orders were passed subsequently and were ante-dated and the said action was taken by Mr Jassi with a view to furtherance of the prospects of the election of Respondent 1. In our view, therefore, material facts and full particulars as required by Section 83 read with Section 123(7) had been set out in the election petition and the High Court was wrong in deleting Para 13(a) of the election petition.

49. The High Court observed that it was not alleged by the petitioner that Electoral Registration Officer had acted *with the consent of the first respondent* for the furtherance of the prospects of the first respondent.

50. With respect, the High Court was wrong in interpreting and applying the ambit and scope of sub-section (7) of Section 123 of

the Act. The provision has been reproduced in the earlier part of the judgment. It enacts that it would be deemed to be a corrupt practice if assistance is sought from a gazetted officer in certain cases. Such assistance may be sought either by (i) a candidate; or (ii) his agent; or (iii) any person with the consent of a candidate or his election agent for the furtherance of the prospects of the candidate's election. Thus, **consent of the candidate is required only in those cases where such assistance is sought by “any other person” i.e. other than the candidate himself (or his election agent).** And it is obvious because where the candidate himself (or his election agent) is seeking assistance of a gazetted officer, the question of *consent* does not arise. In the case on hand, the allegation of the election petitioner is that the first respondent *himself* has obtained assistance of a gazetted officer (Mr Jassi) “for furtherance of prospects of his election”. The High Court was, therefore, legally wrong in ordering deletion of Para 13(a) on the basis of construction of Section 123(7) of the Act.

(emphasis added)

87) In my view, the judgment in *Sathi Vijay Kumar*, has no application to the present case as the issue involved before the Apex Court was whether proof of consent was necessary if the corrupt practice is committed by the candidate himself or by his election agent. The Apex Court held that consent of the candidate is required only in cases where the assistance under Section 123(7) is sought by ‘any other person’. The judgment is therefore not an authority on the issue of requirement to plead particulars of consent.

88) Reliance is placed on judgment of this Court in *Dr. Kirit Jayantilal Somaiya* (supra) in support of his contention that full particulars of material facts relating to corrupt practice need not be pleaded and can always be proved by leading evidence. In paras-14, 21 and 22 of the judgment, this Court held as under :-

14. On careful consideration of the rival submissions, I find it difficult to accept the arguments advanced on behalf of the respondent No. 1 that the full particulars of material facts relating to corrupt practice of bribery have not been pleaded in the election

petition. The petitioner has alleged in sub-para (k) and (l) of para 8 of the petition that on 30-4-2009 at about 12.50 a.m., three NCP workers were found distributing cash seeking votes in favour of respondent No. 1 at a particular place in the constituency in question. Even the exact location where the money was allegedly distributed to the voters is set out in the petition. The petitioner has alleged that Mr. Anil Thakur, Mumbai BJP Secretary has witnessed the distribution of cash to the voters by the said three persons. The petitioner has alleged that on a complaint made by Mr. Anil Thakur, the above three persons have been arrested by the police from the spot set out in the petition and the vehicle used by the arrested persons as well as cash amounting to Rs. 2,47,450/- has been seized from the said three persons. The petitioner has alleged that in the panchanama it is recorded that the three persons arrested by the police were seeking vote in favour of respondent No. 1. Admittedly, F.I.R. No. 1481 of 2009 has been registered against the aforesaid three NCP workers and further investigations are in progress. The allegation that the three arrested persons were NCP workers and that the said three persons were allegedly distributing money to the voters is also reported in the Times of India and Urdu Times dated 1-5-2009.

21. Having heard the rival submissions, in my view, the allegation of undue influence set out in para 9 of the election petition cannot be said to be bereft of material facts. The material facts set out in the election petition are that on the election day thousands of pamphlets in the name of two local BJP MLA's were distributed in the constituency in question by inserting the said pamphlets in the newspapers. As per the pamphlets two local BJP MLAs were appealing to the voters to vote in favour of the respondent No. 1 who was the NCP candidate. The two BJP MLA's whose names appear on the pamphlets have denied to have printed and distributed such pamphlets. The petitioner has further stated in the petition that at the instance of the BJP activists, the police have seized thousands of pamphlets and have also arrested four persons. The petitioner has alleged that the false and misleading pamphlets which are seized by the police were being distributed by the respondent No. 1/his agent/other persons with the consent of respondent No. 1/his agent and distribution of such pamphlets has affected the electoral prospects of the petitioner.

22. It is true that in the election petition, the petitioner has not disclosed the names of the persons who were unduly influenced by the alleged pamphlets, when and how the respondent No. 1/his agent have given their consent, how the alleged pamphlets directly and/or indirectly unduly influenced the voters/electors and the basis on which the petitioner has arrived at the conclusion that the pamphlets in question were distributed with the consent of the respondent No. 1 and/or his agents and/or any other persons with the consent of respondent No. 1/his agent. In my view, all these

particulars are not material facts but are particulars which are required to establish the material facts by leading cogent evidence during the trial. Therefore, in the present case, all the material facts relating to the allegation of undue influence have been set out in the petition and failure to disclose particulars/evidences which go to prove the allegation cannot be a ground to hold that material facts have not been disclosed. Accordingly, in my view, the allegation of undue influence set out in para 9 of the petition cannot be said to be bereft of material facts. Consequently, the question of dismissing the election petition or striking off para 9 of the election petition does not arise at all.

(emphasis and underlining added)

89) Though the judgment of this Court in *Dr. Kirit Jayantilal Somaiya* may, in the first blush, appear to resolve the issue of need to plead full particulars of consent, it actually does not. It was contended in that case that the ‘basis’ for concluding that the act of distribution of pamphlets had consent of the returned candidate was not pleaded. The Court held that such basis can be proved by leading evidence. In the present case, this Court is not expecting the Election Petitioner to plead the basis on which consent is sought to be established. However what ought to have been pleaded is atleast some particulars about Respondent No.1 knowing the named persons, issuance of instructions by Respondent No.1 to print/distribute pamphlets or to distribute money. The judgment rendered in the peculiar facts of that case, cannot be cited in support of an abstract proposition that mere pleading of consent, sans any particulars, is sufficient to maintain an election petition.

90) Reliance by Petitioner on judgment of the Apex Court in *Somchand Manubhai Solanki* (supra) is of no assistance as it is rendered after conclusion of the trial in the Election Petition. The judgment does not deal with the issue of necessity of making averments in the Election Petition under Section 83 of the RP Act.

Similar is the position about the judgment in *Shivajirao B. Patil Kawekar* (supra) where again trial was already over.

91) Reliance by Mr. Nair on the judgment of the Apex Court in *Ajay Arjun Singh* (supra) is misplaced as the same is in connection with the provisions of striking off pleadings under Order VI Rule 16 of the Code.

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.

93) The judgment in *Narayan Srinivas Fugro* (supra) is again of little assistance to the case of the Petitioner as this Court is not expecting reproduction of the exact words of Section 123(4) of the Act by the Election Petitioner. On the contrary this Court is of the view that mere reproduction of the words 'with the consent of Respondent No. 1' in the petition is not sufficient and that the Petitioner ought to plead 'full particulars' of such consent.

D. CONCLUSIONS

94) The conspectus of the above discussion is that there is non-compliance on the part of the Election Petitioner of provisions of Sections 81 and 83 of the RP Act. Petitioner has failed to furnish to the returned candidate exhibits forming integral part of the Election Petition with sufficient particulars to identity for linking the same to each ground pleaded in the petition. He has also failed to produce and supply to Respondent No.1 the nomination form of Respondent No.2 and the exact order issued under RP Act, which is alleged to be violated. More particularly, the Petitioner has failed to set forth not just the concise statement of material facts, but also full particulars of the consent allegedly given by Respondent No.1 to Respondent No.2 and to the named persons for commission of the alleged corrupt practices. In view of non-compliance with the provisions of Sections 81 and 83 of the RP Act, Election Petition warrants rejection by having recourse to the provisions of Order VII Rule 11 of the Code.

E. ORDER

95) Respondent No.1/Applicant has made out a case for rejection and dismissal of the Election Petition under Order VII Rule 11 of the Code and under Section 86(1) of the RP Act on account of Election Petition being non-compliant with the provisions of Sections 81 and 83 of the RP Act. I accordingly proceed to pass the following order :-

- (i) Application No. 3 of 2025 filed in Election Petition No.3/2025 is allowed.

- (ii) Election Petition No.10/2025 is consequently rejected under the provisions of Order VII Rule 11 of the Code read with provisions of Section 86(1) of the RP Act.

96) Application No. 3 of 2025 as well as Election Petition No.3/2025 are accordingly disposed of. Considering the facts and circumstances of the case, there shall be no order as to costs.

[SANDEEP V. MARNE, J.]

NEETA
SHAILESH
SAWANT

Digitally signed by
NEETA SHAILESH
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