



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION IN ELECTION PETITION NO. 34 OF 2024

[EXHIBIT-13]

IN

ELECTION PETITION NO. 01 OF 2024

Nilesh Dnyandev Lanke,

...APPLICANT

Age. Major, Occ. Politician,
Address : At & Post Hanga, Tal. Parner,
Dist. Ahmednagar.

IN THE MATTER BETWEEN:

Dr. Sujay Radhakrishna Vikhe-Patil,

...PETITIONER

Age. 42 years, Occ. Politician/Medical Professional,
Address : At & Post Loni Bk., Taluka – Rahata,
Dist. Ahmednagar Pin : 413 736.

VERSUS

Nilesh Dnyandev Lanke,

...RESPONDENT

Age. Major, Occ. Politician,
Address : At & Post Hanga, Tal. Parner,
Dist. Ahmednagar.

Mr. Pramod Patil h/f. Mr. Rahul B. Temak a/w. Shamsundar Solanke,
Advocate for Applicant.

Mr. S. V. Kanetkar h/f. Mr. A. V. Hon a/w. Mr. A. S. Kanetkar, Mr. A. R.
Purohit, Mr. A. A. Randhir, Mr. A. Pardhe and Mr. Shubham S. Kote
Advocate for the Respondent/orig. petitioner.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 9th JANUARY 2026.

PRONOUNCED ON : 8th APRIL 2026.

J U D G M E N T :-

1. Heard Mr. Patil, the learned Advocate for the Applicant and Mr. Kanetkar, the learned Advocate for respondent/original petitioner.

2. This application under Order VII Rule 11 of the Civil Procedure Code, 1908, is filed by the original respondent in the Election Petition seeking rejection of the Election Petition on the grounds as follows:

- (i) the petition does not disclose any cause of action;
- (ii) the petition is lacking in sufficient particulars;
- (iii) copy given to the respondent is not a true copy;
- (iv) the petition is not within limitation as the petition was not complete in all respect when it was presented and the defects were not cured within the period of limitation;
- (v) defective pleadings of corrupt practices;
- (vi) failure to annex mandatory documents;
- (vii) Material facts not stated;
- (viii) not depositing security deposit.

3. For the purpose of deciding this application, the parties are referred to as per their original status in the Election Petition. Facts in short necessary for deciding present application are as below :-

. The petitioner and the respondent contested the election to Parliament from Constituency No.37, Ahmednagar. The petitioner was set up as a candidate from Bharatiya Janata Party. The respondent was set up as a candidate from Nationalist Congress Party (Sharad Pawar). The elections were held and polling took place on 13.05.2024. The respondent is declared elected on 04.06.2024.

4. It is the allegation in the petition that the respondent, during the conduct of the election and campaigning, has adopted corrupt practices and therefore, the election result deserves to be quashed and set aside. This petition is mainly filed alleging violation of Sections 123(4), 123(6) and 100(1)(b)(d)(iii) & (iv) of the Representation of People's Act, 1951 (for short "the Act"). It is alleged that during the course of campaigning, allegations were made against the petitioner by publishing false statements of facts concerning personal character and

conduct of the petitioner. The statements were known to be false or incorrect and still were made. The respondent exceeded the election expenses of Rs.95 lakhs permissible under law and proper return is not filed. Some expenses were not disclosed. So far as improper receipt of votes, it is alleged that there was bogus voting by way of duplicate voting. The voters, who were not residing in the constituency, were also shown to be voters of other places and this materially affected the election. The Returning Officer did not allow the application for verification of Electronic Voting Machines (*for short "EVM"*). It is, thus, alleged that on all these grounds, the election result needs to be declared as void.

5. Instances of corrupt practices stated in the petition are as follows:

(a) In a public meeting dated 19.04.2024 Mr. Sharad Pawar, leader of a party, said that he was contacted by one industrialist on behalf of father of the petitioner and requested to set up any other person as a candidate in place of respondent.

(b) In a public meeting dated 10.05.2024, it is alleged that the respondent made a statement that he was told by

some of the volunteers that the opponent Vikhe Family is distributing envelopes (money) to the voters whereas his voters give him notes and votes both. The statements were made to assassinate personal character of the petitioner amounting to corrupt practice.

(c) Statements in the meetings are made viral.

(d) Bogus and duplicate voting took place in election whereby the election is materially affected.

(e) The respondent spent more amount by exceeding permissible limit of Rs.95 lakhs.

6. This petition is filed on 18.07.2024. The respondent appeared and has filed this application for dismissal of the petition. It is case of the respondent that there are no specific allegations made as regards corrupt practice under Sections 123(4) and 123(6) of the Act. There is nothing to show as to result of election is materially affected. In view of Sections 81 and 116 of the Act, this petition is not within limitation. Petition is liable to be dismissed under Section 86 of the Act. Petition is also liable to be dismissed for non-disclosure of cause of action. This petition is defective and is not complete in all respects. It is, thus, prayed that the Election Petition deserves to be dismissed at the

threshold.

7. Learned Advocate Mr. Pramod Patil argued the application with following submissions:-

. This petition is presented on 18.07.2024. On the date of filing of the petition, it was not complete in all respects. Office had raised certain objections. It was necessary to remove all the office objections and to complete the petition in all respect. Since no defects were cured within period of limitation, the petition deserves to be dismissed in view of Section 81 of the Act. In view of proviso to Section 83, there is non-fulfillment by the petitioner. It was necessary for the petitioner, in view of Section 100 sub-Section 1(i)(iii) & (iv), to show how the result of the election is materially affected. There are no specific instances given of the corrupt practice. All the three instances given of corrupt practice are not stated with sufficient particulars. The corrupt practice can be alleged only as regards character or conduct reasonably calculated to approach the voters is not sufficiently stated, as required under Section 123(4) of the Act. The petitioner has failed to disclose as to exactly in what

manner the amount spent is exceeding the limit. The verification to petition is not in Form No.25 as per Rule 94-A of the Conduct of Election Rules. The candidature of respondent was declared on 26.04.2024. Thus, on the date on which alleged statements were made in public gathering, the respondent was not a candidate as he filled in his nomination on 23.04.2024. He submits that the mischief does not fall under Section 100 of the Act. There is independent remedy provided to approach the Election Commissioner if election expenses are more than permissible limit. Said ground is not available in the Election Petition. Section 123(6) remedy is not available now in view of Section 10-A and thus no cause of action has arisen. No cause of action is stated in the petition.

. So far as factual aspects are concerned, he submits that the copy of the petition was obtained on 23.07.2024. Copy of one document is inserted without leave of the Court and there is allegation of interpolation against the petitioner. The petition is filed in a casual manner. Some of the objections are still there in the petition. He thus

prays for dismissal of the petition.

8. Learned Advocate Mr. Patil relied upon following judgments in support of his submission:

- i) *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency & Ors.*, (1952)1 SCC 94;
- ii) *Shri Banwari Dass Vs. Shri Sumer Chand and Ors.*, (1974) 4 SCC 817;
- iii) *Jyoti Basu and Ors. Vs. Debi Ghosal & Ors.*, (1982) 1 SCC 691;
- iv) *Senthilbalaji V. Vs. A.P. Geetha and Ors.*, (2023) 16 SCC 279.
- v) *Satya Narain Vs. Dhuja Ram and Ors.* (1974) 4 SCC 237.
- vi) *Jagannath Shindu Rahane Vs. Manisha Manohar Nimkar* [1996 SCC OnLine Bom 160].
- vii) *Pankajkumar Bachubhai Velani (Jain) Vs. Election Commission of India* (2025: GUJHC:10087).
- viii) *Shaikh Fateh Mohammed Raza Vs. Kamlesh Somnath Yadav and Ors.* [2010(5)Mh.L.J. 342].
- ix) *Om Prakash Shrivastava Vs. Union of India and Anr.* [(2006) 6 SCC 207].
- x) *Subhash Desai Vs. Sharad J. Rao and Ors.*[1994 Supp (2) SCC 446].
- xi) *L. R. Shivaramagowda and Ors. Vs. T. M. Chandrashekar (dead) by LRs. & Ors.* (1999) 1 SCC 666.
- xii) *R. P. Moidutty Vs. P. T. Kunju Mohammad and Anr.*

- [(2000) 1 SCC 481].*
- xiii) *V. Narayanswamy Vs. C. P. Thirunavukkarasu [(2000) 2 SCC 294].*
- xiv) *Ravinder Singh Vs. Janmeja Singh and Ors. [(2000) 8 SCC 191].*
- xv) *Ram Sukh Vs. Dinesh Aggrawal [(2009) 10 SCC 541].*
- xvi) *Azhar Hussain Vs. Rajiv Gandhi [1986 (supp) SCC 315].*
- xvii) *Kanimози Karunanidhi Vs. A. Santhana Kumar and Ors. [2023 SCC OnLine SC 573].*
- xviii) *Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and Ors. [2024 SCC OnLine SC 509].*
- xix) *Kamalnath Vs. Sudesh Verma [(2002) 2 SCC 410].*
- xx) *Mohan Rawale Vs. Damodar Tatyaba alias Dadasaheb and Ors. [(1994) 2 SCC 392].*

9. This application is vehemently opposed by the petitioner. Mr. Kanetkar, the learned Advocate for the petitioner submits that the petition was very much filed within limitation. In view of Bombay High Court Original Side (Election Petition) Rules, the defects are removed within time and thus there is no delay in filing the petition. Removal of office objection cannot be said to be affecting the limitation for filing of the petition. There is no statement in the application as to which of the defects/objections are not removed. Section 81 does not contemplate

removal of office objection. To distinguish judgments relied upon by the respondent, he submits that though the respondent appeared on 22.04.2025, only adjournment was sought on that day. There was no objection about non-supply of copies and that copies are illegible. This application is filed on 15.11.2024 only to prolong the hearing of the petition. Defects are pointed out in the list of document. List of document cannot be said to be a part of annexure. The question of limitation is a mixed question of law and facts. It necessarily requires trial by this Court.

10. The allegation of corrupt practices are specific. It is submitted that non-disclosure of cause of action is different than not having cause of action. Present case, at the most, can be said to be a case of non-disclosure of cause of action. On this ground, petition cannot be dismissed. So far as defects are concerned, he submits that when defects are curable, those can be cured. The petition cannot be dismissed on that ground alone. Affidavit of the petitioner cannot be said to be an integral part of the petition and therefore petition cannot be said to be

defective. There is sufficient compliance of all the provisions. Section 83(2) of the Act only requires verification and not an affidavit. Every document along with petition is duly verified. No ground is made out for rejection or dismissal of the petition under Section 86 of the Act. Full particulars as far as possible are given. Order II Rule 2 of the CPC does not define material facts. At this stage, no evidence is required to be produced. The facts are to be proved during the course of trial. Order VII Rule 11 of the CPC talks of rejection whereas Section 86 of the Act talks of dismissal. In the present matter, a case is made out requiring trial. The petition cannot be dismissed at this stage without giving opportunity to the petitioner to prove his case. He also referred to the averments in the petition to show that those are sufficient to entertain the petition. The candidature is to be considered in wider sense under Section 79 and not under Section 33 of the Act. This is not a stage to call upon the petitioner to prove the facts in the petition about corrupt practice, date of meeting, place of meeting etc. Every speech made in presence of candidate would make the candidate liable for action as every word is spoken in his election campaign by his consent. So far as

election expenses are concerned, he submits that this is not a stage to show that the limit of election expenses is exceeded. The objections are frivolous. Already more than one year's time is over from the date of election whereas Election Petition requires to be decided within six months. He thus submits that the application deserves to be dismissed.

11. In support of his submissions, Mr. Kanetkar, relied upon the following judgments:

- i) *Smt. Saroj Sandesh Naik (Bhosale) Vs. Shri Suryakant Venkatrao Mahadik [(1991) 4 Bom CR 488]*
- ii) *Shrikrishna Vasudeo Datye Vs. Bhalchandra Anant Sawant [(1980) 82 Bom LR 142]*
- iii) *Raj Kumar Yadav Vs. Samir Kumar Mahaseth and Ors. [(2005) 3 SCC 601];*
- iv) *Jamal Uddin Ahmad Vs. Abu Saleh Najmuddin and Anr. [(2003) 4 SCC 257];*
- v) *Kailash Vs. Nanhku and Ors. [AIR 2005 SC 2441],*
- vi) *Markio Tado Vs. Takam Sorang [(2013) 7 SCC 524],*
- vii) *M. Y. Ghorpade Vs. Shivaji Rao M. Poal and Ors. [AIR 2002 SC 3105];*

- viii) *National Sugar Industry and Ors. Vs. Narala Venkaiah* [MANU/AP/0339/1994];
- ix) *Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Ors.* [AIR 1964 SC 1545];
- x) *Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar and Ors.* [(2005) 2 SCC 188];
- xi) *K. Babu Vs. M. Swaraj and Ors.* [(2024) 4 SCC 299];
- xii) *Sahodrabai Rai Vs. Ram Singh Aharwar and Ors.* [AIR 1968 SC 1079];
- xiii) *Puran Singh Fartyal Vs. State of Uttarakhand* [MANU/UC/0685/2022];
- xiv) *G. M. Siddeshwar Vs. Prasanna Kumar* [(2013) 4 SCC 776];
- xv) *Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and Ors.* [(2004) 11 SCC 196];
- xvi) *Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and Ors.* [(2021) 9 SCC 99];
- xvii) *Mohan Rawale Vs. Damodar Tatyaba alias Dadasaheb and Ors.,* (1994) 2 SCC 392;
- xviii) *Kumara Nand Vs. Brijmohan Lal Sharma* [AIR 1967 SC 808];
- xix) *Nandiesha Reddy Vs. Kavitha Mahesh* [(2011) 7 SCC 721];
- xx) *Ashok Shankarrao Chavan Vs. Dr. Madhavrao*

Kinhalkar [AIR 2014 SC 3102];

*xxi) Ponnala Lakshamaiah Vs. Kommuri Pratap Reddy
and Ors. [(2012) 7 SCC 788];*

12. In rejoinder learned Advocate Mr. Patil submits that word 'rejection' or 'dismissal' does not make any difference. Unless cause of action is disclosed, this Court will not get jurisdiction to entertain the petition. Reliance on the High Court Rules would not help the petitioner when the statute provides particular period of limitation, the said cannot be extended by any of the Authorities, except parliament. The High Court Rules cannot give any benefit to the petitioner in extending the period of limitation.

13. Following points arise for consideration for the purpose of deciding this application.

- (i) Whether the allegations in the present election petition are made with material particulars disclosing cause of action?
- (ii) Whether the affidavit is in proper format?

- (iii) Whether any case is made out to dismiss the petition at the threshold under Section 86(1) for non-disclosure of the cause of action?
- (iv) Whether the respondent can be said to be a candidate on 10.05.2024 of the alleged statement made in the meeting?
- (v) Whether the allegation of corrupt practices are made with the consent and with the knowledge of the respondent?
- (vi) Whether it is *prima facie* shown that the respondent has exceeded the expenditure?

14. Before considering the averments in the present petition and the application and before dealing with the submissions, this Court finds it necessary to go through legal position as appearing from various pronouncements relied upon by the parties.

15. In the case of *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency & Ors., (supra)*, the Hon'ble Apex Court considered Article 329 of the Constitution. It is held that the election can be challenged only by way of Election Petition. The Representation of Peoples Act is a

complete code in itself. It is only the said statute which provides for the remedy that should be availed. No any other provision can be resorted to, except provided under the Act. The Election Petition, therefore, must comply with and fulfill all the requirements of the Act. Since right to elect is provided by the said Act, it is only remedy under the Act, that needs to be resorted to.

16. In the case of *Shri Banwari Dass Vs. Shri Sumer Chand and Ors., (supra)*, it is held that right to file Election Petition is a creature of statute, not governed by common law. The High Court while deciding the Election Petition, only acts as a Tribunal. It is not permissible for the Court to bridge a gap or supply this apparent omission.

17. In the case of *Jyoti Basu and Ors. Vs. Debi Ghosal & Ors., (supra)*, it is held that right to be elected or the right to dispute, elections are not fundamental rights, nor common law rights. The rights of the parties, therefore, are confined only to the provisions of the Representation of Peoples Act and rules made thereunder. The only

remedy to question the election is by way of filing election under section 81 of the Act.

18. In the case of *Senthilbalaji V. Vs. A.P. Geetha and Ors., (supra)*, it is held that it is necessary to plead and prove the corrupt practice. It is a requirement to make concise statement of material facts concerning alleged corrupt practice. Pleading as regards corrupt practice needs to be scrutinized strictly and scrupulously by the Court.

19. The judgment in the case of *Satya Narain Vs. Dhuja Ram and Ors., (supra)*, is about how to ascertain as to whether the provision of the statute is mandatory or directory. It is also on the same lines of the case of *Banwari Dass* [supra] that the right of the parties are subject to the Act.

20. In the case of *Jagannath Shindu Rahane Vs. Manisha Manohar Nimkar, (supra)*, it is concluded that the lacuna and flaws being of vital importance would go to the root of the matter. In such cases, such lacuna and flaws would entail dismissal of the petition. It is held that

compliance of the statutory requirement is mandatory. In the said case, the copy of the petition furnished was not a true copy. It is thus said that production of true copy is mandatory and no exception can be made. It also dealt with the question as to whether the rules of the High Court can extend period of limitation stipulated under the Statute. It was held that such period cannot be extended by way of rules by the High Court and objections cannot be removed after the expiry of limitation period. In that view the petition therein was dismissed. Also in the case of a common judgment by High Court of Gujarat in Election Petition No. 9 of 2023 *Pankajkumar Bachubhai Velani (Jain) Vs. Election Commission of India & Ors.*, the High Court discussed High Court Rules. It is held that removal of office objections after a period of 45 days cannot be regarded as proper presentation since 45 days is the maximum limit prescribed for the presentation of an election petition. It is clear that when a petition is presented, it is expected to be free from any objection. In the case of *Shaikh Fateh Mohammed Mohd. Raza Vs. Kamlesh Somnath Yadav & Ors.*, (*supra*), this Court, in a reference, again considered as to whether amendment or correction including typographical error can be corrected

after period of limitation. After considering earlier judgments, it is held that no correction can be permitted after limitation period is over.

21. In the case of *Om Prakash Shrivastava Vs. Union of India and Anr.*, (*supra*), the High Court considered as to what is cause of action. It was a writ petition under Article 226 of the Constitution of India, filed in the High Court. The question was whether writ jurisdiction can be invoked when cause of action has arisen within territorial jurisdiction of one high Court and where the party resides outside the jurisdiction. It was held that even another High Court also has jurisdiction. The High Court refused to entertain writ petition on the ground that the parties could have approached the High Court as well. It was held that because other High Court also has a jurisdiction is no ground to refuse to exercise of jurisdiction.

22. In the case of *Subhash Desai Vs. Sharad J. Rao and Ors.*, (*supra*), there was allegation of publication of false statement relating to personal character and conduct of a candidate. It was held that burden to prove ingredients of Section 123(4) of the Act is initially on the

election petitioner. It is necessary to state that the statement was made believing it to be false or not true is not heavy and can be discharged by making affidavit to that effect. It is thereafter the onus would shift on the respondent. It is held that a person can be said to be a candidate only after filling nomination.

23. In the case of *L.R. Shivaramagowda and Ors. Vs. T.M. Chandrashekar (dead) by LRs.& Ors., (supra)*, it is held that when election petition suffers from serious defect or failure to set out material facts invalidates the Election Petition. In that case serious defects were noted in the verification under Rule 94-A of the Conduct of Elections Rules, which were not considered by the High Court. It was a case where the allegations about exceeding election expenses were made in the petition. However, in the said judgment, it is also held that mere non-maintaining of true and correct account of election expenditure would not fall under corrupt practice under section 123(6) of the Act.

24. In the case of *R.P. Moidutty Vs. P.T. Kunju Mohammad and Anr., (supra)*, it is held that the person who is elected holds a mandate of

people. In a democratic country, mandate of the people cannot be lightly brushed aside. Preponderance of evidence have no place in such petitions.

25. In the case of *V. Narayanswamy Vs. C.P. Thirunavukkarasu*, (*supra*), Hon'ble Supreme Court considered affidavit and verification in the petition. It was held that both of them were not in tune with the requirement of law. The petition was also found lacking in material facts and particulars. In that view it was held that the petition deserves to be dismissed. Judgment in the case of *Ravinder Singh Vs. Janmeja Singh & Ors.*, (*supra*), is also on the point of requirement of proper affidavit in support of corrupt practice.

26. In the case of *Ram Sukh Vs. Dinesh Aggarwal* (*supra*), the Hon'ble Apex Court held that all material facts must be necessarily stated as required under Section 83(1) of the Act. If the material facts are not stated in the election petition, the same is liable to be dismissed on that ground alone. While considering as to what is material facts, the Court

observed that it is not defined in the Act nor in the Code. The material facts are taken to be a bundle of facts which constitute complete cause of action. What is material facts would depend upon each case and no Rule of universal application can be laid down. The material facts needs to be completed whereas the particulars are detailed in support of the material facts. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn. On discussing all these, the Hon'ble Apex Court confirmed the order passed by the High Court by dismissing the election petition.

27. In the case of *Azhar Hussain Vs. Rajiv Gandhi*, (*supra*) the election petition was summarily dismissed on the threshold in exercise of powers under Order VI and Rule 16 and Order VII and Rule 11 of CPC. It is held that the word 'dismissal' or 'rejection' does not make any difference as ultimately the petition itself is dismissed. It is observed that word 'dismissal' or 'rejection' hardly makes any difference as the effect is the same, the person filing the petition loses the petition and cannot file a petition thereafter. In the case of *Kanimozhi Karunanidhi Vs. A.*

Santhana Kumar & Ors., (supra), it is held that bald and vague allegations without any basis would not constitute material facts. Provisions of section 83(1)(c) of the Act are held to be mandatory. In case of omissions to state even single material fact can be used to summarily dismiss the petition. In the case of *Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and Ors., (supra)*, the Hon'ble Apex Court discussed that the charge of corrupt practice, at the same time, is difficult to prove such charge and it is therefore the pleadings needs to be precise, specific and unambiguous.

28. The judgment in the case of *Kamalnath Vs. Sudesh Verma, (supra)*, is in respect of maintainability of election petition on the stand point of material facts. There allegation was about expenses exceeding permissible limit. It was tried to be argued by the respondent/applicant that there is no compliance of section 83(1), as there is no affidavit affirmed as per Form 25. It was held that mere verification cannot be said to be compliance of Form 25.

29. In the case of *Mohan Rawale Vs. Damodar Tatyaba alias Dadasaheb and Ors., (supra)*, a question was as to who is candidate as per Section 79-B of the Act. The allegations were about the period prior to the candidate was called as a candidate. The allegation of corrupt practice committed prior to declaration of candidature of the candidate was thus considered to be outside the scope of election petition.

30. The judgments cited and relied upon by the learned Advocate for the petitioner are discussed below:

31. In the case of *Smt. Saroj Sandesh Naik (Bhosale) Vs. Shri Suryakant Venkatrao Mahadik (supra)*, this Court considered distinction between a criminal trial and an election petition. So far as removal of objection is concerned, it is held that the office objections can be removed even after 45 days, except objections under Sections 81, 82 and 117 of the Representation of People Act, 1951 (“the Act of 1951”), which need to be removed within 45 days to make the presentation of petition as a complete petition. Hyper-technicality be avoided. The Court cannot permit procedural technicalities to play the tyrant to defeat a vital

judicial process. This observation is on the basis of judgment in the case of *Shiv Chand Vs. Ujgar Singh [AIR 1978 SC 1583]*. Merely because reverification is directed would not be taken to mean that the petition is filed after a period of limitation.

32. In the case of *Shrikrishna Vasudeo Datye Vs. Bhalchandra Anant Sawant (supra)*, the petition was lodged on 10.08.1978. The office objections were removed and it is thereafter the petition was entered in the special register, and on 22.08.1978 the petition was accepted. It was held that the date of presentation is the date on which it was duly handed over to the proper officer in the office of Prothonotary and Senior Master. In that case, it was done on 10.08.1978 within office hours. The other stages only arise after presentation of the petition.

33. In the case of *Raj Kumar Yadav Vs. Samir Kumar Mahaseth and Ors. (supra)*, the Hon'ble Apex Court held that it is the statute that would prevail on procedural Rules. The provisions of the statute cannot be curtailed by making the Rules. The petition was presented before the

Designated Election Judge at 04:45 p.m. on the 45 day i.e. last day of the limitation. The Judge had risen from the open Court but was available in the chamber. It was held that the presentation was a valid presentation within a period of limitation. It is observed that it is not stated in the statute that the petition has to be presented only to the Judge in the open Court. The Court considered as to what is the “day” as the same is not defined in the Act. It was held that in such cases, it shall have to be assigned its ordinary meaning as understood in law.

34. In the case of *Jamal Uddin Ahmad Vs. Abu Saleh Najmuddin and Anr. (supra)*, it is held that the presentation of the petition in the office does mean presentation in the Court. The staff and registry also form a part of the Court. It is only judicial functions that are required to be discharged by the Judges themselves, while administrative and ministerial functions can be entrusted by authorization to subordinates when there is no restriction on such authorization. The presentation of the petition is simpliciter a ministerial function which can be performed by the administrative or ministerial staff of the High Court. The Court

considered the case of *State of Punjab Vs. Shamlal Murari [(1976) 1 SCC 719]*, wherein it is held that the procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Thus, it is observed that the irrationality, perversity and hyper-technicality are out of place while interpreting the statutes or testing the vires of legislation.

35. In the case of *Kailash Vs. Nanhku and Ors. (supra)*, the Full Bench of the Hon'ble Apex Court held that when there is a conflict between Rules framed by High Court under the Representation of the Peoples Act and the Rule under Article 225 of the Constitution of India, then in such cases, it is the Rules framed under Representation of Peoples Act that will prevail and not the Rules framed by the High Court.

36. In the case of *K. Babu Vs. M. Swaraj and Ors. (supra)* in the said case, the election petition was presented in the High Court. Rule 212 of the Rules of the High Court of Kerala, 1971 (for brevity "the 1971 Rules") prescribed presentation furnishing of authenticated copies. The argument was that no sufficient number of authenticated copies were furnished under Rule 212 of the 1971 Rules. It is held that the said Rule

prescribed number of copies to be supplied in addition to what is required under Section 81(3) of the 1951 Act. There was also no specific allegation that the copy furnished to the respondent was not attested by the petitioner. The submission was that Rule 212 be imported into and read combined with Rule prescribed under Section 81(3) of the 1951 Act. The said argument was not accepted. It was held that Rule 212 introduces additional requirements prescribed by the High Court, and same cannot be read into and be made part and parcel of Section 81(3) of the 1951 Act. Rule 212 of the said High Court is akin to Rule 6 in the present case.

37. In the case of *Markio Tado Vs. Takam Sorang (supra)*, the Election Petition was filed on the ground of booth capturing. The respondent, admittedly, could not name any person involved in booth capturing. There was no material evidence placed in support of the allegation. In such cases, the learned Judge called for hand-writing and fingerprint expert and compared the voters' signatures and fingerprints with the help of records in Form 17-A. It was held that the same is

impermissible. It was considered that it was not permissible to reject the Election Petition summarily for want of so much particulars. Another aspect considered in the said case was of binding force of the judgment of the Hon'ble Supreme Court. So far as binding force of Hon'ble Supreme Court's judgment, there is no dispute that the judgments of the Hon'ble Supreme Court are binding upon other Courts.

38. In the case of *M. Y. Ghorpade Vs. Shivaji Rao M. Poal and Ors. (supra)*, it was a case about security deposit of costs of Election Petition. The security deposit of Rs.2000, at the time of presentation of the petition, is held to be mandatory. However, it is not mandatory that the amount must be deposited by the candidate himself. It was held that, on such count, election petition need not be rejected judgment in the case of *National Sugar Industry and Ors. Vs. Narala Venkaiah (supra)*, is relied upon only for the purpose of showing that the payment made by demand draft tantamounts to payment by cash. The demand draft is like a currency note, and as such, nothing more is to be done when demand draft is deposited.

39. In the case of *Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Ors. (supra)*, it is held that the defects in the verification of the election petition can be cured, and such defects are not fatal to the election petition.

40. In the case of *Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar and Ors. (supra)*, it is held that the election petition cannot be dismissed at the threshold for non-compliance of Section 81(3) of the Representation of the People Act. It was the case where the allegation was that a copy of election petition was not a true copy. It was held that the defects shown therein cannot be said to be vital or fatal so as to warrant dismissal of Section 80 at the threshold.

41. In the case of *Sahodrabai Rai Vs. Ram Singh Aharwar and Ors. (supra)*, petition was dismissed on the preliminary ground of not serving proper copy of the petition. In the petition, there was an averment on the basis of some material in the nature of pamphlet. The argument was that the law requires that the evidence must be annexed to the copy of the election petition served on the respondent. The Hon'ble Apex Court

considered Sections 81, 83 and 83(2) of the Representation of People's Act. The court held that it is too strict a reading of the provision, as Section 81(3) speaks only of the election petition. As regards the averment in respect of the pamphlet, it was held that sub-Section (2) of Section 83 has reference not to a document which is produced as evidence of the averments of the election petition. It does not apply to the documents which are merely evidence in the case, but which, for reasons of clarity and to lend force to the petition, are not kept back but produced or filed with the election petitions. Such cannot be said to be an integral part of the averment of the petition and are only evidence of those averments and in proof thereof. In such cases, the pamphlet must be treated as a document and not a part of election petition. On holding this, the Hon'ble Apex Court set aside the order of dismissal by the High Court and remanded the case for trial.

42. In the case of *Puran Singh Fartyal Vs. State of Uttarakhand (supra)*, it was held that merely because some of the papers of the election petition were dim and illegible, it could not have been said that

the copy given to the respondent is not a true copy. The test to be applied is the same as to whether the variation is designed or calculated. It was held that the copy supplied to the respondent was the true copy of the election petition in compliance of Section 81 of the Act.

43. In the case of *G. M. Siddeshwar Vs. Prasanna Kumar (supra)*, it was held that when an affidavit is filed in substantial form then other defects not of substantial character are curable defects and are not fatal to the maintainability of the election petition. It was held that an affidavit required to be filed in support of the pleadings is not a part of verification, but a stand alone document. It is mainly held that there has to be substantial compliance with the provisions of Section 83. It is only in cases where there is total and complete non-compliance with the provisions of Section 83 of the Act that the petition needs to be dismissed at the threshold.

44. In the case of *Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and Ors. (supra)*, it was held that the defects in the verification

and affidavit are curable. It was also held, considering pleadings in that case and the observation of the High Court, that the averment in the said petition were deficient in the material facts was set aside. Those were the defects pointed out in the affidavit filed in support of election petition alleging corrupt practice. It is held that it cannot be lost sight of that failure to comply with the requirement as to filing of the affidavit cannot be a ground for dismissal of election petition *in limine* under Sub-section (1) of Section 86 of the Act. By considering judgment in the case of *Mallikarjunappa Vs. Shamanur Shivashankarappa [(2001) 4 SCC 428]*, the question in the said case was about the deficiency in the affidavit in support of corrupt practice. In the present case, this Court has to consider as to whether averments in the petition are sufficient to go for trial.

45. In the case of *Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and Ors. (supra)*, a well settled principle is reiterated while considering the application under Order VII Rule 11 of CPC that the Court has to consider the plain averments of the plaint. At that stage, no

defence of the defendant is to be seen. The same is also considered in the case of *P. V. Guru Raj Reddy Rep. By GPA Laxmi Narayan Reddy Vs. P. Neeradha Reddy* [AIR 2015 SC 2485] and in the case of *Nanji Sunderji Sejpal Vs. Vithuram Shivilal Lahoti Denagi Trust* [2019(2) Mh.L.J.]. (Sr. No.17 and 18).

46. In the case of *Virendra Nath Gautam Vs. Satpal Singh and Ors.* [(2007) 3 SCC 617], it is held that the basic or primary facts necessary to establish cause of action are required to be pleaded whereas the facts of *probantia* refer to the details in support of material facts. In the case of *Mohan Vs. Bhairon Singh Shekhawat (supra)*, it is held that the allegation of corrupt practice is triable issue. The entire petition cannot be rejected under Order VII Rule 11 of CPC. No any part of the petition needs to be struck out under Order VI Rule 16 of the C.P.C.. In the said case, it was seen that the averment in the petition as regards corrupt practice had clearly raised a triable issue. The contents of the annexure were also taken in the petition. On the facts of that case, the Hon'ble Apex Court held that the triable issue was made out. It is well settled

that whether the averments are sufficient or not depends upon the case to case as per facts involved in the case. No straight jacket formula can be applied. In the case of *Kumara Nand Vs. Brijmohan Lal Sharma (supra)*, it is held that the recital of a poem was recited in a public meeting containing the false statement of fact with consent and knowledge of the candidate. In that case, it was held that the responsibility of the public issue is of the candidate. It is further held that firstly, it needs to be stated and *prima facie* shown that the recital or the contents are false to the knowledge of the candidate. It is thereafter the burden would shift on such candidates to prove that it is not with his knowledge or his consent.

47. In the case of *Nandiesha Reddy Vs. Kavitha Mahesh (supra)*, it is held that the candidate is not only a person whose nomination form is accepted or whose name appears in the list after scrutiny, but also a person whose nomination form is rejected is also held to be a candidate.

48. In the case of *Ashok Shankarrao Chavan Vs. Dr. Madhavrao Kinhalkar (supra)*, it is held that the scope of the petition under Section

10-A is related to Sections 77 and 78 of the Act, whereas Section 123(6) is about corrupt practice. Both of them operate in entirely different fields, and there is no conflict between them. Both remedies are to be pursued independently. In the said case, the election petition was dismissed for the reasons that the proceeding under Section 10-A was going on before the Election Commission.

49. In the case of *Ponnala Lakshamaiah Vs. Kommuri Pratap Reddy and Ors. [(2012) 7 SCC 788]*, it is held that the Court has to examine the plaint or the petition to find out whether it discloses a cause of action by assuming the averments to be factually correct. It is also observed that the main object of the successful candidate is to get the petition dismissed on the ground of non-compliance of Sections 81, 82 and 117 and of non-disclosure of cause of action. The other object is to delay the trial to sub-serve the purpose of the successful candidate. The Court is expected to be cautious in dealing with the request of dismissing the petition at the threshold.

50. From the averments in the petition, following grounds mainly are seen:

(i) that the respondent was a candidate set up by the political party for the election. In support of respondent, a meeting was held on 10.05.2024 wherein the respondent made a statement that he got the knowledge from some of the volunteers that a person from Vikhe family had offered money for voting in favour of Vikhe.

(ii) That in a meeting dated 19.04.2024 the party leader of the party made a statement that he was contacted by one industrialist sent by father of the petitioner and requested him to set up any other person as a candidate in place of respondent.

(iii) The respondent had incurred the expenses more than allowed by the Election Commission of India under Rule 90 of the Conduct of Election Rules, 1961.

(iv) The said statement is alleged to assail the character of the petitioner as defined under Section 123(4) of RP Act.

(v) In the election, there is bogus voting done by way of

duplicate voting which materially affected the result of the election. It is alleged that this was at the instance of the agent of the respondent with his consent.

51. The application under Order VII Rule 11 of CPC is filed on the ground that (i) the material particulars are given of the alleged corrupt practice disclosing cause of action; (ii) the petition suffers from defects of substantial nature and defects are not cured inspite of raising objections by the office of this Court; (iii) the affidavit alongwith petition is not as per Rule 94-A in Form 25 of the Conduct of Election Rules; (iv) on the date of alleged statement made by Mr. Sharad Pawar in a meeting dated 19.04.2024, the respondent was not a candidate. The allegation of corrupt practices are not shown to have been made with the consent and knowledge of the respondent.

52. So far as scope of application under order VII Rule 11 of CPC is concerned, the position is well settled that the Court while considering the application as to look into the defences available to the respondent or the defendant. There is no dispute about well settled principle and

therefore this Court has to proceed with by looking only to the pleadings in the petition. To decide the application, in view of the legal position, as is appearing in the judgments, this Court has to consider whether any case is made out to dismiss the petition as it stands from the pleadings in the petition.

53. In view of Judgment in the case of *Ashok Shankarrao Chavan (supra)*, in the present case, there is no substance in the submissions of the respondent that in view of section 10-A of the RP Act the ground of excess expenses cannot be taken. Remedy under Section 10-A does not take away remedy under Section 123(6) of the RP Act.

54. This Court does not find substance in the ground that the copy given to the respondent is not a true copy. The allegation as regards true copy is concerned, this Court finds that there is nothing to show that the copy given to the respondent was not a true or correct copy. In view of judgment in the case of *Puran Singh Fartyal Vs. State of Uttarakhand (supra)*, merely because some pages are illegible will not make copy of petition as not a true copy.

55. So far as reliance by the petitioner in the case of *Nandiesha Reddy* (supra) is concerned, this Court finds that the facts are different. In the said case, the person who filed election petition was a person whose nomination was rejected. The ground was therefore taken that since he had not contested the election and his nomination was rejected, he could not be said to be a candidate. The said argument was turned down by the Hon'ble Apex Court which held that even a person whose nomination form is rejected can be said to be a candidate, whereas in the present case, the judgments in the case of *Mohan Rawale* (supra) and *Subhash Desai Vs. Sharad Rao* (supra) are clearly applicable, as on the date of alleged statement the respondent had not filled the nomination at all.

56. So far as pleading as regards corrupt practice is concerned, it is alleged that the respondent in the public meeting dated 10.05.2024 at Bhatkudgaon, Taluka Shevgaon Dist. Ahmednagar, made a statement that he had received a phone call from his volunteer that Vikhe Family from the opposite side is distributing envelopes containing money. This

statement, according to the respondent, does not make out any case giving cause of action. A vague statement is made that the packet was sent by Vikhe Family without stating that it was from family of the candidate. Whether averment is sufficient to go for trial?. Whether the statement shows that the elected candidate has indulged into corrupt practice of giving bribe to the voters. The said statement was also published on various social platforms like websites, Whats-App and “X” and also the said speech was made viral, which assassinated the character of the petitioner. A complaint was filed by one Dr. Abhijit Diwate, the election agent of the petitioner, on the basis of Instagram page namely “Aaple-Nagar-Dakshin-16” which is a social media platform. By looking to the statement as it is, it does not give the meaning that the money offered from the Vikhe Family was the family of the petitioner and that it was with the knowledge and consent of the candidate.

57. So far as allegation that the President of NCP (Sharad Pawar Group), Mr. Sharad Pawar also held meeting on 19.04.2024 at Gandhi Maidan and made an imputing statement about father of the petitioner

which became viral on the you-tube channel. The allegation was that he sent a big industrialist to Sharad Pawar and requested him to set up any other candidate than the applicant. It is alleged that such an allegation has materially affected the election. Even if the allegation is taken at its face value, the allegation is against the father of the petitioner and not against the petitioner himself. There is nothing to show that the father of the petitioner had sent the industrialist with the knowledge and consent of the petitioner.

58. So far as the statement of the returned candidate that his volunteer told that money was being distributed among public on behalf of the petitioner is concerned, this Court finds that this allegation also lacks in material particulars. Though the name of the volunteer is given, there is nothing to show that any particular, person on behalf of the petitioner, was distributing the amount as per the allegation. This Court finds that no case is made out under Section 123(4) of the Representation of Peoples Act. This allegations also would not give any cause of action.

59. So far as non-compliance of provisions or violation of Rules is concerned, the figure of voters is as 27,651. Though it is alleged that this materially affected the petitioner, no particulars are given. It is seen that the margin of votes is 28,929. True that it can be said that these many number of votes could have affected the result of the election, the same is not properly shown in the petition.

60. So far as averment regarding EVM verification is concerned, this Court finds that unless the cause of action is shown and unless it is specifically shown that the result of the election is materially affected, this Court need not go into such allegation. Even if the EVMs are verified in the election petition, it is not stated as to how that would lead to any conclusion so far as reception of alleged invalid or bogus votes is concerned. This Court would not be able to appreciate the evidence for want of sufficient averment in the petition. It was necessary for the petitioner to make out a case in the pleading itself showing number of votes affected by the respondent.

61. So far as non-deposit of the amount towards cost of election petition is concerned, much is being argued by the applicant that the amount ought to have been deposited in cash. In the present case, the allegation that the depositing of the amount of expenses is by demand draft. In view of judgment in the case of National Sugar Industry (supra), this court hardly finds any substance in this allegation. Depositing of the amount by demand draft will have to be taken as proper deposit of the costs.

62. So far as allegations that the petition was not proper on the date of presentation is concerned, this Court finds that, in the present case, it is demonstrated that certain office objections were raised by the office in the election petition. The argument by the petitioner that the High Court Original Side Rules permit the petitioner to remove the office objections after its presentation within time stipulated cannot be accepted, as the Rules of the High Court cannot override the provisions of substantive Act. The High Court by its Rules cannot extend the period of limitation than what is provided under the Act. However, the

objection in the present petition are not under Section 81, 82 or 117 of the RP Act. This submission of the respondent cannot be therefore accepted. This is in view of the judgment in the case of Saroj Naik (supra) and *Shrikrishna Vasudeo Datye* (supra).

63. So far as allegation under Section 100(1)(d)(iii) is concerned, this Court finds that the allegations are that the bogus voting was made. There was audio clip in which it was directed as to how to do duplicate voting indicating the deliberate attempt in organized manner to manipulate the electoral roll. Looking to the requirement of Section 100(1)(d)(ii), it is necessary to show that such acceptance of improper votes have materially affected the result of the election by giving number.. However, no such number is given even by approximation. This Court thus finds that, though in normal course this would require a trial as the viral audio clip is required to be heard and to be proved, however, it was necessary, at least, to give particulars as regards the number of votes given because of such audio clip or such campaign. It is not stated on which booth bogus or duplicate voting has taken place, the judgment

in the case of *Mariko Tado Vs. Takam Sorang* (supra) is not applicable as in the said case, the allegation were made of booth capturing were made by giving the names of the booths. A mere allegation that some bogus voting has taken place, or that voters were influenced, would not be sufficient. Specific incidents are also not quoted in the petition. This Court thus finds that the allegations are vague and non-specific. By holding a trial, this Court is not expected in election petition to find out whether bogus voting took place in absence of clear and specific pleadings.

64. So far as mandatory affidavit in Form 25 under Rule 94-A is concerned, this Court finds that affidavit alongwith the petition is not in a proper form. No specific corrupt practices are mentioned in the affidavit as required as held in the case of *L. R. Shivaramagowda and Ors. Vs. T. M. Chandrashekar* (supra).

65. Considering all above things, this Court finds that the petition deserves to be dismissed as no cause of action is disclosed. Hence, following order:

ORDER

(i) Application No.34 of 2024 (Exhibit-13) filed under Order VII Rule 11 of CPC in Election Petition No.01 of 2024, stands allowed and consequently, Election Petition No.01 of 2024 stands dismissed. No order as to costs.

(ii) In view of dismissal of Election Petition, pending applications, if any, do not survive and accordingly stand disposed off.

[KISHORE C. SANT, J.]

D.A.ETHPAE (PA)