



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION IN ELECTION PETITION NO. 158 OF 2025
(EXHIBIT-15)

IN
ELECTION PETITION NO. 03 OF 2025

Arjun Panditrao Khotkar

Age: 62 years, Occu: Social Service and Business,

Resident of: Darshana, Bhagyanagar,

Shanimandir Chowk to Ambad Road Flyover

Old Jalna, District Jalna.

...APPLICANT

(Orig. Respondent No.1)

IN THE MATTER BETWEEN

Kailas Kisanrao Gorantyal

Age: 59 years, Occu: Social Service and Business,

Resident of: House No.77,

Pritisudha Nagar, Mantha Road,

Jalna, District Jalna.

...PETITIONER

(Respondent in Appln.)

VERSUS

- 1] Arjun Panditrao Khotkar
Age: 62 years, Occu: Social Service and Business,
Resident of: Darshana, Bhagyanagar,
Shanimandir Chowk to Ambad Road Flyover
Old Jalna, District Jalna.
- 2] The Election Commission of India
Through Chief Election Commissioner
Nirvachan Sadan, Ashoka Road,
New Delhi.

3] The Returning Officer,
Jalna Assembly Constituency (101),
@ The Sub-Divisional Officer,
Jalna, District Jalna,
Sub-Divisional Office, Old Jalna,
Jalna.

...RESPONDENTS

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Mr. S. B. Deshpande, Senior Advocate i/by Mr. Pratik A. Bhosle,
Advocates for the Applicant/Orig. Respondent No.1.

Mr. Mukul S. Kulkarni and Mr. Aditya N. Sikchi a/w. Mr. G. M.
Jakkalwar, Advocates for the Respondent/orig. Petitioner.

Mr. Alok Sharma, Advocate for the Respondent No. 2 and 3/Election
Commission.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 13th FEBRUARY 2026.

PRONOUNCED ON : 30th MARCH 2026.

J U D G M E N T :-

1. Heard Mr. S. B. Deshpande, the learned Senior Advocate for Applicant, Mr. Kulkarni, the learned Advocate for the Respondent/Orig. petitioner, and Mr. Sharma, the learned Standing Counsel for the Election Commission. The parties are referred to as per their original status in Election Petition for the purpose of convenience.

2. The present Application (Exhibit-15) is under Order VII Rule 11 of the Code of Civil Procedure, 1908 (*hereinafter referred to as “Code of 1908”*), at the instance of respondent No.1 in Election Petition No.03 of 2025, a returned candidate, seeking dismissal of the Election Petition.

3. The facts in short giving rise to filing of the Election Petition are as under:

Election programme of the General Elections to the Legislative Assembly for Constituency-101 Jalna declared for a term of 2024-2029 by the Election Commission was as under:-

SCHEDULE	DATE
Date of issue of Gazette Notification	22.10.2024
Last date of filing nominations	29.10.2024
Date of Scrutiny of nominations	30.10.2024
Last Date for the withdrawal of candidatures	04.11.2024
Date of Polling	20.11.2024
Date of Counting	23.11.2024
Date of Result	23.11.2024

. In the said election, the petitioner Mr. Kailas Gorantyal was set up as a candidate of Indian National Congress (INC). The respondent No.1

Mr. Arjun Khotkar was set up as a candidate by Shivsena (Eknath Shinde). In the election, respondent No.1 came to be declared elected.

4. The petitioner on his defeat approached this Court challenging election of the respondent mainly on the following grounds:

- (i) the Respondent No.1 was holding an office of profit on the date of his nomination and the election, as he was the Chief Administrator of the Agriculture Produce Market Committee Jalna (*hereinafter referred to as "APMC"*);
- (ii) the nomination Form of respondent No.1 is improperly and wrongly accepted;
- (iii) the election is materially affected as the election is conducted in non-compliance of the provision of Representation of Peoples Act, 1951 (*hereinafter referred to as "R.P Act"*) and Conduct of Election Rules, 1961 (*hereinafter referred to as "Election Rules"*).

5. It is stated that the the respondent no.1 made an application to appoint himself as an Administrator on Jalna APMC by removing earlier Administrator. The Chief Minister passed an order dated 22.05.2023

removing the earlier Administrator and appointed Board of Administrator for Jalna APMC. The respondent No.1 was appointed as Chief Administrator of the Board of Administrators. The term of Administrator is until further orders. The term of the body came to be extended till 05-12-2024 by order dated 10-09-2024. Thus, on the date of election, the Respondent No.1 was holding a post of Chief Administrator.

6. It is alleged that, the office of Administrator is under the supervision and control and at the pleasure of the State Government. The APMC is engaged in profit-making activities, where members of the Board and the Chief Administrator are entitled to receive remuneration and allowances as prescribed by the State Government vide circular dated 10-06-2021 which is on the percentage basis and on the income of the APMC. Thus, the petitioner was not qualified to contest the election, as he was holding an office of profit. It is shown that the respondent No.1 received Rs.5,775/- from Jalna APMC during the period from 26-12-2023 to 03-12-2024, which covers the period of entire election

process. It is contended that though information was solicited from APMC, no complete information was provided by the APMC, and the petitioner, therefore, was required to approach higher authority. It is further alleged that there are 1,05,430 persons associated with Jalna APMC as members and traders who are also the voters in the Legislative Assembly polls. Thus, the respondent No.1 is benefited because of his dominant position as he forced/coerced the voters to vote in his favour.

7. In his nomination papers, the respondent No.1 suppressed the fact that he was holding office of the Chief Administrator of the Jalna APMC, which is an office of profit, and falsely made a statement that, he is not holding any office of profit under the Government while answering Clause-12(2) of [Part-III(A)] of the Nomination Form, he falsely stated that the said clause is not applicable to him.

8. Further allegation is about affidavit in Form-26 stating that, same is not in prescribed format. It does not contain the additions, improvements and amendments carried out by amending Act of 2017 and 2019 and is not as per the instruction of Respondent No.2/Election

Commission. For this reason also, his nomination form was wrongly accepted. There is no statement that he informed his political party about the offences pending against him as per the mandate of Clause 6-A of Form-26. Though objections were raised at the time of scrutiny of nomination papers, the said was turned down by the Returning Officer and the form was accepted. No corrective steps were taken to fill the affidavit in Form-26 and reliance was placed on the already submitted affidavit. Some other candidates had also raised the objections, however, those were also rejected by the Respondent No.3. It is alleged in the election petition that inspite of efforts, no video shooting is supplied to the petitioner. It is only on 18-12-2024 after direction from the Deputy Election Officer, the copies of video were supplied.

9. Further allegations are in respect of not keeping proper records of account of votes in Form 17-C at every polling booth at the closing of the polling. There were no entries made of conducting mock polling in 321 booths. It is alleged that, no mock polls were conducted. Some Electronic Voting Machines (for short "*E.V.M.*") though were not used for

voting, those were taken for counting the votes, which could not have been done. There are infractions in Form 17-C as per records supplied by the Election Commission. The objections were not entertained even on that ground. The total 2,24,038 votes were tendered. The respondent No.1 secured 1,04,665 votes and Petitioner secured 73,014 votes. These votes are in favour of the person whose nomination is wrongly accepted and thus the result of the election is materially affected. Application filed for recounting was rejected though a case was made out to go for recounting. It is on these grounds, it is prayed that the election of respondent No.1 be quashed and set aside.

10. In the petition, the respondent No.1/returned candidate appeared and filed this application (Exh.15). It is the case of the respondent No.1 that in the pleadings of the petition, there is no disclosure that there is any office of Chief Administrator to APMC or Board of Administrator as such. The Board of Administrators is only temporary and stop-gap arrangement under the provisions of Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963. There is no

statement that the said office is under the State Government. It is not contended that the office is not covered under the provisions of the Maharashtra Legislature Members (Removal of Disqualification) Act, 1956. Such material facts are not pleaded and therefore, the petition deserves to be dismissed. Petition be dismissed for non-compliance of Section 81(1)(a) of the R. P. Act.

11. The application is on the following grounds:

- (i) The office held by the petitioner was not an office of profit under the Government.
- (ii) The petition suffers from defects, as the affidavit in Form-26 submitted by the petitioner is defective and in violation of the provisions of the R. P. Act, Rules and the guidelines.
- (iii) The petition does not disclose any cause of action, as no triable issue is involved.

12. Mr. Deshpande, the learned Senior Advocate for the respondent No.1 vehemently argued that in support of Annexure-ZL, there is no document to substantiate the averment in the para 30 of the petition.

Schedule-II only shows difference at serial Nos.6 and 45. The difference is only of one vote which hardly can be said that it had materially affected the outcome of the petition. In the petition, No sufficient particulars are given as to how the election is actually affected materially. There is no cause of action to file a petition. The application made for recounting was rightly rejected as no discrepancies were found by the officers, and therefore, recounting was refused by the officer. No actual number of votes are given to show that those were actually influenced. The petition is filed only on suspicion. In the postal ballot, the petitioner secured more votes than the respondent. The postal ballots were only 1557 and that would not show that the election is materially affected. No triable issue is made out. At every stage, the polling agents are given opportunity, however, no objections were raised at appropriate stage. The objections are now taken only after the election is over. He points out that the election petition was filed on 03.01.2025. Though, the defects were pointed out by the Registry of this Court, the objections (ii) and (v) are not removed. For about 10 months, no care is taken to remove defects. The petitioner is thus not

prosecuting the petition seriously. Some of the pages are not found in the copy supplied to Respondent No.1 and are missing. No case of violation of specific provision is made out. He invited attention to Rule 9 of the Bombay High Court Original Side Rules, providing time line to remove office objection. In fact, the petition ought to have been kept for dismissal by the office itself before placing it before the Court. On that ground also, in his submission, the petition deserves to be dismissed.

13. He argued mainly on the point of office of profit. He submits that in Article 191 of the Constitution of India, a word “local authority” is absent unlike in Articles 58 (2) and 66(4). He submits that when the legislature has consciously not used the word “local authority” in Article 191, it cannot be inferred that the petitioner was disqualified for holding the post assuming any office of profit of the local authority. The APMC is established under the Act of the State and it is local authority and not authority under the State. No such bar is attracted to person holding any post in APMC as the said office cannot be said to be an office of profit under the Government. He points out Sections 40 and 41 of the APMC

Act to show that the Government only has a supervisory control. There is no salary attached to the said post. The payment is only towards attending the meetings and daily allowances. The respondent No.1 is not getting any monetary benefits. He took this Court through constituent assembly debates to show that deliberately the word “local authority” is omitted from Article 191. Thus, the intention of the Constitution is clear that local authority is not there in Article 191. It is only in Articles 58(2) and 66(4) of the Constitution of India i.e. for the election of President and Vice President. No contrary interpretation can be given. The appointment to the post was only a stop-gap arrangement.

14. So far as Form-26, he submits that the allegation is only about the changed form. However, that would not materially affect election as it has nothing to do with the effect of the result of the election. The form is, in fact, as per the provisions under the R. P Act that would not attract the case under Section 100(1)(c) and 100(1)(d),(i),(ii) and (iv). He submits that it is perfectly as per Conduct of Election Rules, 1961. He took this Court to the requirement of correct nomination. In Rule 4(A),

there is no mention of Rule 33(A) and no consequences are provided for violation of section 33(A). It is only a right given to a person to get a relevant information. Thus, the objection as regards Form 26, in his submissions, is trivial and technical. No case is made out by that the votes are mislead thereby. As far as Rule 49-A and 56 (2)(c) of counting of vote is concerned, he submits that everything is done in the presence of the parties, the polling agents and the Presiding Officer etc. It is only after the counting of voting is completed, Part-II is filled by taking proper care. No any objection was raised at that time. The objections were raised by the another candidates and not by the petitioner and thus the petitioner cannot rely upon the objections taken by other persons. The petitioner is thus not coming with clean hands. Rule 49 (MA) is to be complied in case of a complaint. By relying on Form 17-C, nothing can be shown that no mock polls were conducted. The petitioner himself annexed annexure (page-755) which shows that the officers have scrupulously followed the entire process. There is no material placed on record to show that there were discrepancies in number of votes polled and votes counted. There is nothing to show that no any objection was

raised at the relevant time by the polling agent of the petitioner. The allegation was only on suspicion and lacks in particulars. Thus, there is no triable issue raised on this aspect as well. The discrepancies at the most is in respect of 21 booths. No tampering with EVM is shown. Taking both the allegations as it is, at the most the alleged mis-matched number 5745 cannot be set to have affected the result materially.

15. The allegation of non-disclosing the information about the crime is concerned, it is submitted that in the petition no such particulars are given of the crime or the offences which are allegedly suppressed. In Form-26, in fact, the details of two cases are given, and about that, there is no dispute. There is no averment in the petition to show that the disclosure is false and incorrect. There is no statement that there are any other offences pending against the petitioner than disclosed in the form. The details are given in form which are at serial No.7. By relying on Section 36(4) of the R. P. Act. he submits that the defects should be of substantial character. In the present case, the objections are of trivial nature.

16. So far as the counting of votes is concerned, he submits that the circular issued by the Election Commission under Rule 49(A) of the Conduct of Election Rule is followed. He relied on the handbook issued by the Election Commission. He submits that the test poll is different than the mock poll. All the forms are on record. There are no positive statements made by the petitioner as regards how the election is materially affected. There is no corrupt practice adopted by the respondent No.1 during the conduct of election. No one is made party by name. The petition is based on the assumption, presumptions and conjunctures. No averment is made to show violation of Section 100(1) (a) and 100(1)(d) of the R. P. Act. The allegations are general in nature. He thus prays for allowing the application. He thus submits that the election petition deserves to be dismissed.

17. In support of his submission, he relied upon the following judgments:

- (i) *Smt. Shobha Dinesh Bacchav Vs. Dr. Shri Subhash Ramrao Bhamre, passed by this court at Aurangabad Bench in Application in E.P./35/2024 in Election Petition No.2 of 2024.*

- (ii) *Ajmera Shyam Vs. Kova Laxmi and Ors. [2025 Scc OnLineSc 1723];*
- (iii) *Shambhu Prasad Sharma Vs. Shri. Charan Das Mahant and Ors. [(2012) 6 SCR 356];*
- (iv) *Kanimozhi Karunanidhi Vs. A. Santhana Kumar and Ors. [2023 SCC OnLine SC 573];*
- (v) *Naresh Ganpat Mhaske Vs. Rajan Baburao Vichare, passed by this Court at Principal Seat in EP(L) No.30947 of 2024 in EP/03/2024.*
- (vi) *Gati Ravanna Subanna Vs. G. S. Kaggeerappa [(1954) 2 SCC 95];*
- (vii) *Abdul Shakur Vs. Rikhab Chand [1957 DGLS (SC) 80];*
- (viii) *D. R. Gurushantappa Vs. Abdul Khuddus Anwar [1969 DGLS (SC) 24];*
- (ix) *S. Umrao Singh Vs. Darbara Singh [1968 DGLS (SC) 164];*
- (x) *Surya Kant Roy Vs. Imamul Hai Khan [AIR 1975 SC 1053];*
- (xi) *Divya Prakash Vs. Kultar Chand Rana and Anr. [(1975) 1 SCC 151];*
- (xii) *Ashok Kumar Bhattacharyya Vs. Ajoy Biswas and Ors. [(1985) 1 SCC 151];*
- (xiii) *Satruchar Lalchandra Sekhar Raju Vs. Vyricherla Pradeep Kumar Dev [1992 DGLS (SC) 562];*
- (xiv) *Som Lal Vs. Vijay Laxmi and Ors. [2008 DGLS (SC) 443];*

- (xv) *U. C. Raman Vs. P. T. A. Rahim and Ors.* [2014 DGLS (SC) 639];
- (xvi) *S. R. Rangappa Vs. Girirajkumar, I.L.R.* [1990 Kar 3256 (Karnataka HC)];
- (xvii) *Ramakrishna Hegde Vs. State of Karnataka ILR* [1992 Kar 3028 (Karnataka HC)];
- (xviii) *Shrikant Vs. Vasantrao* [2006 DGLS (SC) 42];
- (xix) *Michael Vincent Lobo Vs. Joseph Robert Sequeria and Ors.* [2019 DGLS (Bom) 1700 (Bombay HC)].
- (xx) *Association for Democratic Reforms Vs. Election Commission of India and Ors.* [AIR 2024 SC 2203].
- (xxi) *D. K. Sidram Vs. Eshwar Bhimanna Khandre and Ors.* [2022 DGLS (Kar.) 10];
- (xxii) *Satya Narain Vs. Dhuja Ram and Ors.* [AIR 1974 SC 1185];
- (xxiii) *Surendra Budhaji Borkar Vs. Narayan Tatu Rane* [2010 (6) ALLMR 741];
- (xxiv) *C. P. John Vs. Babu M. Palissery* [AIR 2015 SC 16];
- (xxv) *Mithilesh Kumar Pandey Vs. Baidyanath Yadav and Ors.* [AIR 1994 SC 305];
- (xxvi) *U. S. Sasidharan Vs. K. Karunakaran and Ors.* [AIR 1990 SC 924];
- (xxvii) *Public Interest Foundation and Ors. Vs. Union of India and Anr.* delivered by Hon'ble Supreme Court in WP (C)/536/2011.

18. Mr. Kulkarni, the learned Advocate for the Petitioner, vehemently argued that non-removal of office objections is only as regards office objection which are not fatal to the election petition. So far as Clause (A) in Form 26 is concerned, merely stating “not applicable” in the form is not sufficient and is not in compliance with the requirement. Form 26 of the Election Conduct Rules has a sanctity, and therefore, it needs to be filled in properly. When the affidavit is not in format, it cannot be accepted. In the present case, Form 26 is filled-in in old format and not in newly amended format. There is no mock poll conducted, which is clearly in violation of Section 100(1)(d)(iv) of the R. P. Act. So far as Article 191 is concerned, he submits that the State Government is given power to exempt the posts where such disqualification is not attached. The post of Administrator to the APMC is not exempted. In fact, the posts are identified under the Maharashtra Legislative Members (Removal and Disqualification) Act. There is no specific mention about the post of Administrator showing that this post is exempted. In such cases, now it is for the respondent to show that the office of Administrator is exempted. Undisputedly, the appointment of the

respondent is made by the Chief Minister. There is sufficient pleading to show that it is an office of profit. It is also shown that he has received some remuneration. In view of the Maharashtra Legislative Members (Removal and Disqualification) Act, every post is included unless exempted under Schedule-I of the Central or State Act.

19. On the scope of Order VII Rule 11 of CPC, he relied upon the judgment in the case of *Vinod Infra Developers Ltd. Vs. Mahaveer Lunia and Ors.* [MANU/SC/0785/2025] and in the case of *Virendra Nath Gautam Vs. Satpal Singh and Ors.* [MANU/SC/5401/2006]. He relied upon the handbook for Returning Officer 2023 to show as to how the mandatory provisions are not followed by the Election Officer. He asserts that on 321 polling booths, no mock poll was conducted. He invited attention to the mock poll certificates. The mock poll was also conducted against the procedure given in the handbook. There is a wrong tally. He submits that votes from the booths where proper procedure is not followed will have to be discarded. Mere non-raising of objections at the relevant stage will not validate the election. He submits that nothing is

an empty formality in the conduct of Elections and in the procedure of polling. He submits that EVM numbers are given which were not used while polling but were used while counting the votes showing serious violation. He submits that no blank spaces can be left in the nomination form and in such cases, form needs to be rejected. A clear case is made out to go for trial of the petition. He thus submits that the application deserves to be rejected.

20. In support of his submission, Mr. Kulkarni relied upon the following judgments:

- (i) *Vijay Laxmi Sadho Vs. Jagdish* [AIR 2001 SC 600];
- (ii) *K. Babu Vs. M. Swaraj and Ors.* [AIR 2024 SC 1043];
- (iii) *Saritha S. Nair Vs. Hibi Eden* [AIR 2021 SC 483];
- (iv) *F A. Sapa and Ors. Vs. Singora and Ors.* [AIR 1991 SC 1557];
- (v) *Shibu Soren Vs. Dayanand Sahay and Ors.* [AIR 2001 SC 2583];
- (vi) *Gurugobinda Basu Vs. Sankari Prasad Ghosal and Ors.* [AIR 1964 SC 254];
- (vii) *Jaya Bachchan Vs. Union of India and Ors.* [AIR 2006 SC 2119];

- (viii) M. V. Rajashekaran and Ors. Vs. Vatal Nagaraj and Ors. [AIR 2002 SC 742];*
- (ix) Vinod Infra Developers Ltd. Vs. Mahaveer Lunia and Ors. [AIR 2025 SC 2933];*
- (x) Virendra Nath Gautam Vs. Satpal Singh and Ors.[AIR 2007 SC 581]*
- (xi) Sulakshana Raju Dhar Vs. Anna Dadu Bansode and Ors. [2025:BHC:OS:21629];*
- (xii) Ashraf Kokkur Vs. K. V. Abdul Khader [AIR 2015 SC 147];*
- (xiii) Madiraju Venkata Ramana Raju Vs. Peddireddigari Ramachandra Reddy and Ors. [AIR 2018 SC 3012];*
- (xiv) Resurgence India Vs. Election Commission of India and Ors.[AIR 2014 SC 344];*
- (xv) Arun Dattatray Sawant Vs. Kisan Shankar Kathore [MANU/MH/1613/2007];*
- (xvi) Kisan Shankar Kathore Vs. Arun Dattatray Sawant and Ors. [AIR 2014 SC 2069];*
- (xvii) Mairembam Prithviraj and Ors. Vs. Pukhrem Sharatchandra Singh and Ors. [AIR 2016 SC 5087];*
- (xviii) Karikho Kri Vs. Nuney Tayang and Anr. [2024 SCC OnLine SC 519].*
- (xix) Arikala Narasa Reddy Vs. Venkata Ram Reddygai and Ors. [AIR 2014 SC 1290];*
- (xx) Jaspal Singh Vs. O. P. Babbar [149 (2008) DLT 205],*
- (xxi) Debashish Samantaray Vs. Mohammed Moquim [MANU/OR/0196/2024].*

(xxii) *Mangani Lal Mandal Vs. Bishnu Deo Bhandari*; [AIR 2012 (SC) 1094.

(xxiii) *Sangram Sampatrao Deshmukh Vs. Election Commission of India and Ors.* [2025 (2) AIR Bom. R. 209];

21. In rejoinder, Mr. Deshpande, learned Senior Advocate further submits that, Article 191 of the Constitution of India, clearly omits the word “local authority” as against Articles 58(2) and 66(4). Non-mentioning of the post of Administrator in the Maharashtra Legislative Members (Removal and Disqualification) Act, is not relevant. He relied upon the judgments in the case of *Shibu Soren Vs. Dayanand Sahay and Ors.* (*supra*), and in the case of *Public Interest Foundation and Ors.* (*supra*) that the Hon’ble Apex Court has clearly laid down as to what is required to be done by the candidates is only to inform his party. He reiterated that no cause of action is disclosed. The certificate Annexure-26 of the handbook is not a part of the Election Petition. The pleading is also deficient and contrary to record. It was necessary to show that test votes or mock votes have materially affected the petition. He relied upon the judgment *Shambhu Prasad Sharma* (*supra*), *Jaspal Singh Vs. O. P.*

Babbar (supra), and *Naresh Ganpat Mhaske (supra)*.

22. On going through the submissions, followings questions needs to be answered:

(i) whether the office held by the applicant can be said to be an office of profit.

(ii) whether there is sufficient averment to show that the nomination form of the respondent is wrongly accepted

(iii) whether the petition discloses the cause of action making out a case to go for trial.

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

24. In the case of *Smt. Shobha Dinesh Bacchav Vs. Dr. Sushbash R. Bhamre* (supra), in that case, election petition was dismissed for want of sufficient averments. In the said case, in the petitioner did not disclose the source of information as regards the allegation that the ladies wearing burkha and casted vote in particular way. However, the petition

was rejected merely on the ground of jurisdiction.

25. In the case of *Ajmera Shyam Vs. Kova Laxmi and Ors. (supra)*, the Hon'ble Apex Court considered as to whether non-disclosure of the income as shown in the income tax returns for four financial years out of the last five financial years in Form 26 Affidavit of the nomination paper, and acceptance of such nomination, would amount to improper acceptance of the nomination. A further question was as to whether such non-disclosure would amount to a corrupt practice by a returned candidate. The High Court had concluded that the election cannot be declared null and void under Section 100 of the R.P. Act, as such non-disclosure does not constitute a corrupt practice that would have materially affected the outcome of the election. It was found by the High Court that there was no deliberate suppression of information and there was no corrupt practice. The Hon'ble Apex Court, in that view of the matter, held that non-disclosure of income, assets and educational qualifications should not be unreasonably stretched to invalidate an otherwise validly declared election over a minor technical non-

compliance. Thus, by concluding this, the appeal came to be dismissed confirming the judgment of the High Court. In the said judgment, the court also considered the post-election scrutiny. It is held that once the election is concluded and the voters have delivered their verdict, and after the same is made public, a new dimension is introduced and that is people's mandate. It is held that the peoples mandate cannot be overlooked by the Court while examining the legality of the acceptance of the nomination. The Court considered that the mistake in that case was technical, the issue of local authority and triable issues were not involved and that no specific instances were given.

26. In the case of Shambhu Prasad Sharma Vs. Charandas Mahant and Ors. (supra), it was found that there were no sufficient averments made and no material particular facts were disclosed to show that there was 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 was about the form of the affidavit and not the substance of the affidavit. It was held that merely because

there were defects in the format of the affidavit, the same will have to be seen in the light of Section 36(4) of the RP Act, which speaks of defects of a substantial character. The verdict would rather show that no form shall be rejected unless there are defects of a substantial character. Merely because there are defects in the affidavit, unless it is shown that it is of a substantial nature, the election of returning officer shall not refuse to accept the form.

27. In the case of *Kanimozhi Karunanidhi Vs. A. Santhana Kumar and Ors. (supra)*, it was held that the mere bald and vague allegations without any basis would not be sufficient compliance with the requirement of stating material facts in the election petition. The positive statement as regards negative facts is also required to be stated, as such facts would be a material facts constituting a cause of action. It was held that Section 83(1)(a) of the Act mandates that the election petition shall contain a concise statement of material facts on which the petitioner relies, and which facts constitute a cause of action. It is only then the petition can be proceeded further.

28. In the case of *Gati Ravanna Subanna Vs. G. S. Kaggeerappa (supra)*, the Hon'ble Apex Court considered the concept of holding an office of profit. The Court further considered Section 2 of the Karnataka Legislature (Prevention of Disqualification) Act. In the said case, the candidate was holding office of chairman of the Government Committee. If such person holds such a position in a purely honorary capacity and no remuneration is attached to the office, then in that case such person would not be regarded as holding an office of profit. The candidate in that case was holding the post of office of chairman of a Taluka Development Committee, wherein he had no executive duties to perform them. He was only required to preside over duties convened by Secretary and was entitled to fee of Rs.6 of each sitting he attended. It was held that the said amount of Rs.6 was not towards fees or remuneration or profit but was a consolidated fees for out-of-pocket expenses. It was thus held that the candidate was not holding an office of profit under the Government at the material time and was thus entitled to be chosen as a Councillor under the Karnatala Town Municipality Act.

29. In the case of *Abdul Shakur Vs. Rikhab Chand (supra)*, the question considered was about the office of profit under the Government of India. The Court noticed the difference in the language between two Articles and held that the holding an office of profit under local authority subject to the control of the Government attracts disqualification in cases of election to the post of President and Vice-President. However it is not so in the cases of members of the legislature. The Hon'ble Court considered Article 102(1)(a) and Article 58 and 66(4) of the Constitution of India.

30. In the case of *D. R. Gurushantappa Vs. Abdul Khuddus Anwar (supra)*, the question again was about wordings of Article 58(2), 66(4) and Article 102(1)(a) and 191(1)(a) of the Constitution of India, and it was held that the office of profit under local authority is not included under Article 191 of the Constitution. In the recent pronouncement of judgment in the case of *Surya Kant Roy Vs. Imamul Hai Khan (supra)*, the Hon'ble Apex Court considered the judgment of *D. R. Gurushantappa (supra)*. It is held that holding of an office of profit

under corporate body like a local authority does not bring disqualification even if that the local authority is under the control of the Government. A mere control of the Government over an authority having the power to appoint, dismiss and control the working of the officer employed by such authority does not disqualify the officer from being a candidate.

31. In the case of *S. Umrao Singh Vs. Darbara Singh (supra)*, the allegation against the elected candidate was that he was holding an office of profit under State Government. The High Court dismissed the election petition and the appeal was thereafter carried to the Hon'ble Apex Court. The candidate therein was the Chairman of Panchayat Samiti. The Court considered Rules 3 and 7 of the Punjab Panchayat Samitis and Zilla Parishads, Non-Official Members (payment of allowances) Rules, 1965. Rule 3 prescribed that a monthly consolidated amount shall be paid at certain rates for performing of official duties and journeys concerning the panchayat samiti or zilla parishad, as the case may be, within the district. Rule 7 prescribed the daily allowances to the

chairman, vice chairman and members at certain rates. On recording evidence and holding the trial, the high Court considered the provisions of State Legislature (Prevention of Disqualification) Act, 1952 which removes the disqualification attached to the office of chairman of the Panchayat Samiti or Zilla Parishad. On recording this finding, it was held that the elected candidate was not holding an office of profit.

32. In the case of *Divya Prakash Vs. Kultar Chand Rana and Anr. (supra)*, the question was about disqualification for holding an office of profit. In that case, the candidate was holding the post of chairman of Board of School Education of Himachal Pradesh in honorary capacity. The Hon'ble Apex Court by considering section 3 of the Himachal Pradesh Board of School Education Act and provisions of Himachal Pradesh Legislative Assembly Members (removal of disqualification) Act, 1971, holding that the candidate was not holding an office of profit.

33. In the case of *Ashok Kumar Bhattacharyya Vs. Ajoy Biswas and Ors. (supra)*, *Satruchar Lalchandra Sekhar Raju Vs. Vyricherla Pradeep*

Kumar Dev (supra), Som Lal Vs. Vijay Laxmi and Ors. (supra), U. C. Raman Vs. P. T. A. Rahim and Ors. (supra), S. R. Rangappa Vs. Girirajkumar, I.L.R. (supra), Ramakrishna Hegde Vs. State of Karnataka ILR (supra), Shrikant Vs. Vasantrao (supra), Michael Vincent Lobo Vs. Joseph Robert Sequeria and Ors. (supra), all these judgments are in respect of holding the post of office of profit, this court finds that it is not necessary to discuss all these judgments here.

34. In the case of *Association for Democratic Reforms (supra)*, it is held that the Court cannot allow the entire process of the general election to be called into question on mere apprehension and speculation of the petitioners. The apprehension in that case was held to be misplaced. In that case, it was recorded that the petition was filed merely on suspicion of infringement of a right, which cannot be considered to be an adequate ground to invoke the writ jurisdiction. A doubt was raised about the efficacy of EVMs. It was held that the issue is conclusively settled.

35. In the case of *Satya Narain Vs. Dhuja Ram and Ors (supra)*, it is about the purity of the elections. The Hon'ble Apex Court held that total non-compliance with Section 81(3) will entail dismissal of the election petition under Section 86 of the RP Act.

36. In the case of *Surendra Budhaji Borkar Vs. Narayan Tatu Rane (supra)*, the petition was found to be defective. It was held that even single material facts is missing, that itself is sufficient to dismiss the election petition. In spite of petition being defective, no effective steps were taken in that regard and on that ground the election petition was dismissed.

37. In the case of *C. P. John Vs. Babu M. Palissery (supra)*, the petition was dismissed as no cause of action was disclosed. In that case, defects were also pointed out in the election petition as well as in the affidavit. The affidavit was found to be deficient not only in form but also in substance. No specific pleading about payment of bribe such as date, time and place at which alleged bribe was stated. The pleading of

corrupt practice was not supported by proper affidavit. It was held that said averment did not satisfy statutory requirement of Section 83(1) of the Act and on that ground the petition was dismissed by the High Court. The said order came to be confirmed by the Hon'ble Apex Court.

38. In the case of *Mithilesh Kumar Pandey Vs. Baidyanath Yadav and Ors. (supra)*, in that case also it was found that there was a serious error in the petition. It was held that the high court committed a serious error of law in holding that there had been substantial compliance of provisions of Section 81. Consequently, the application under Order VII Rule 11 of CPC was set aside and the election petition was dismissed.

39. In the case of *U. S. Sasidharan Vs. K. Karunakaran and Ors. (supra)*, it was held that Sections 81(3) and 86(1) are mandatory in nature. If there is non-compliance with these mandatory provisions, the court would be bound to dismiss the election petition. The election petition was dismissed by the High Court and the said order was upheld by the Hon'ble Apex Court.

40. So far as judgment relied upon by the election petitioner/Respondent No.1 are discussed are below. In the case of *Vijay Laxmi Sadho Vs. Jagdish (supra)*, the Hon'ble Apex Court considered that though the petition did not comply with provision of Sections 81, 82 and 107 of the Act, it was still not liable to be dismissed *in limine* under Section 86 for non-compliance with the provision of Section 83(1) or its proviso. It is considered that the rules framed by the High Court relating to trial of election petition are only procedural nature and do not constitute into "substantial law". It was on the ground of language of the Supreme Court and the High Courts. In the said case, the High Court had rejected the application under Order VII Rule 11 of CPC. The application was filed seeking rejection of the petition on the ground that the affidavit filed in support of allegations of corrupt practice was not drawn in the manner prescribed under Section 83(1) of the Act r/w Rule 94-A in the prescribed Form 25. The defects was taken to be fatal. However, the said application was rejected and the order of high Court came to be confirmed by the Hon'ble Apex Court.

41. In the case of *K. Babu Vs. M. Swaraj and Ors. (supra)*, a preliminary objection was raised in the election petition for non-compliance with section 81 of the Act. The petition, after removing the defects, was placed before the Court beyond the period of limitation and the required number of copies were not filed. The High Court rejected the application holding that there was no merit in the objection. The order of the high Court was confirmed.

42. In the case of *Saritha S. Nair Vs. Hibi Eden (supra)*, the application was filed for dismissal of the election petition on the grounds that (i) the petition was suffered from defects of lack of proper verification (ii) incomplete prayers and (iii) allegations of serious nature made against the Chief Minister. The second ground was that the punishment imposed upon the petitioner in two criminal cases i.e. imprisonment for a period of not less than two years in each case. In the said case, the high Court held the defects to be incurable and dismissed the petition. The Hon'ble Apex Court considered that the defects were curable and held that an opportunity ought to have been given to the petitioner to cure the defects.

43. In the case of *F. A. Sapa and Ors. Vs. Singora and Ors. (supra)*, the election petition was filed on the ground of corrupt practices. The amendment to the election petition was sought and the amendment was permitted. Certain defects in the verification of the election petition were pointed out. However, it was held that the petition cannot be thrown out solely on the ground of defects in the verification of election petition.

44. In the case of *Shibu Sorein Vs. Dayanand Sahay and Ors. (supra)*, it was a case of disqualification on holding of an office of profit. The Hon'ble apex Court held that the allegation was that the elected candidate was holding the post of Chairman of the Interim Jharkhand Area Autonomous Council (for short 'JAAC'), set up under the Jharkhand Area Autonomous Council Act, 1994 (hereinafter the JAAC Act). The post enjoyed the status of a Minister while functioning as Chairman of the Interim Council. The Hon'ble Court considered Article 102(1)(a) corresponding to Article 191(1)(a) of the Constitution of India. The Hon'ble Court held that mere holding of an office is not material. What

is material is holding an office of profit under the Government, other than an office declared by the competent legislature by law not to disqualify its holder. It is further considered that the pecuniary gain is not a relevant factor in such cases. The Court further considered the provision of the JAAC Act, the power and functions etc. and held that the said office was an office of profit which is not exempted under the Parliament (Prevention of Disqualification) Act, 1959, and therefore the disqualification contained under Article 102(1)(a) was squarely attracted.

45. In the case of *Gurugobinda Basu Vs. Sankari Prasad Ghosal and Ors. (supra)*, it is held that the elected candidate was appointed as Auditor of Government-owned companies. It was held that a person need not be in the service of the Government, and there need not be any relationship of master and servant between them. By considering the case of *Maulana Abdul Shakur vs. Rikhab Chand and Ors. [MANU/SC/0074/1957]*, it was held that a person can still be said to be a person holding an office of profit.

46. In the case of *Jaya Bachchan Vs. Union of India and Ors.* (supra), the petitioner was appointed as Chairperson of U. P. Film Development Council and was entitled to get honorarium of Rs.5,000/- per month and daily allowance, staff car with driver etc. The petitioner was declared disqualified for member of Rajya Sabha. The question as to whether the President was right in holding such a person as disqualified was answered in affirmative, holding that the office was capable of yielding profit or pecuniary gain. It is immaterial whether the person actually received the gain or not.

47. In the case of *M. V. Rajashekaran and Ors. Vs. Vatal Nagaraj and Ors.* (supra), the Hon'ble Apex Court considered the Karnataka Legislature (Prevention of Disqualification) Act, 1956 and concluded that the post of Chairman of the Commission is an office of profit. It was held that the amount given could not be said to be a compensatory allowance within the ambit of Section 2(b) of the said Act and was held to make the holder liable for disqualification as holding an office of profit. On that ground, the nomination of the respondent therein was

rejected. The High Court had set aside the order of rejection of nomination. The Hon'ble Supreme Court set aside the order of the High Court holding that it was indeed an office of profit.

48. In the case of *Vinod Infra Developers Ltd. Vs. Mahaveer Lunia and Ors. (supra)* the High Court had rejected the plaint on only one issue, holding that the other issues merely remained to be academic issue. The said order was set aside. It was held that every cause is a distinct cause of action. The plaint cannot be rejected even if only one ground survives.

49. In the case of *Virendra Nath Gautam Vs. Satpal Singh and Ors. (supra)*, the Court considered a distinction between material facts and particulars. The material facts are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him, either to prove his cause of action or defence. Particulars are held to be details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn, so as to make it full, more clear and more informative. It is held that what is material in the

pleading are the facts and not the particulars. The Court considered *facta probanda* i.e. the facts required to be proved and *facta probantia* i.e. the facts by means of which they are proved. It is held that what is necessarily to be stated are only the material facts and not the particulars.

50. In *Sulakshana Raju Dhar Vs. Anna Dadu Bansode and Ors. (supra)*, the question was of material facts and material particulars. It was held that it is the material facts which are required to be pleaded. In the case of *Ashraf Kokkur Vs. K. V. Abdul Khader (supra)*, the court considered as to what is the cause of action. In the said case, the High Court rejected the election petition holding that it did not clearly contain the pleading that the respondent held an office of profit under the State Government and dismissed the petition. It was held that the election petition was containing the cause of action. In that case, the respondent was the Chairperson of the Kerala State Wakf Board when he contested the election to the Kerala Assembly. It was held under that Act that it was an office of profit.

51. In the case of *Madiraju Venkata Ramana Raju Vs. Peddireddigari Ramachandra Reddy and Ors.* (supra), it was also considered in this judgment that when the nomination papers itself is accepted improperly, then it is immaterial as to whether it has affected the election materially.

52. In the case of *Resurgence India Vs. Election Commission of India and Ors* (supra), there was suppression and non-disclosure regarding the purchase and ownership of substantial property. If the facts had been disclosed, the voters would have come to know that the property was purchased from undisclosed source of income, which would certainly have materially affected the election.

53. In the case of *Arun Dattatray Sawant Vs. Kisan Shankar Kathore* (supra), the question was about improper acceptance of the nomination papers by the Returning Officer. It was found that the nomination paper was suffering from the defects and it was held to be a case of improper acceptance of the nomination papers. It was further held that since the nomination paper itself was improperly accepted, that certainly affected

the outcome of the election. In the said case, a landed property of 15 Acres and 84 Acres that was purchased under registered sale-deed was suppressed. This was held to be a deliberate suppression. Even vehicles owned by the spouse and about the loan from the District Central Co-operative Bank was also suppressed. Certainly, one can come to the conclusion that there is suppression of material facts which, in case of disclosure, would have changed the mind of people. It was held that in such cases, the acceptance was improper, and therefore, it was not required to prove as to how that materially affected the election. The election was set aside. The same was carried to the Hon'ble Apex Court. The Hon'ble Apex Court confirmed the order passed by the High Court in the judgment reported in [AIR 2014 SC 2069] in the case of *Kisan Shankar Kathore Vs. Arun Dattatray Sawant*.

54. In the case of *Mairembam Prithviraj and Ors. Vs. Pukhrem Sharatchandra Singh and Ors. (supra)*, the nomination of the candidate was objected to on the ground of false declaration relating to educational qualifications. The Returning Officer directed the candidate

to furnish proof of his educational qualifications. However, the declaration was given in Form 26 without producing any supporting documents and the Returning Officer accepted the said nomination. It is thereafter the said candidate came to be elected. The election was challenged under Section 125(1) and 127 of the Act. The allegation was also of corrupt practices. The defeated candidate filed election petition seeking declaration that the election of the returned candidate was null and void and further declaration was sought that the petitioner therein is duly elected as there were only two candidates in the fray. After trial, the election petition was allowed and thus the elected candidate approached to the Hon'ble Apex Court. The Hon'ble Apex Court held that mere finding that there was improper acceptance of nomination is not sufficient for declaration that the election is void under Section 100(1)(d) of the RP Act. It is also held that there has to be further pleading and proof that the result of the election of the returned candidate is materially affected. The order of the High Court was confirmed by the Hon'ble Apex Court.

55. In the *Arikala Narasa Reddy Vs. Venkata Ram Reddygai and Ors. (supra)*, the Hon'ble Apex Court held that the instructions contained in the handbook for Returning Officers are binding on the Returning Officer. It was held by considering the judgment in the case of *Ram Sukh Vs. Dinesh Aggrawal [(2009) 10 SCC 541]* and in the case of *Uttamraom Shivdas Jankar Vs. Ranjitsinh Mohte Patil [AIR 2009 SC 2975]*.

56. In the case of *Debashish Samantaray Vs. Mohammed Moquim (supra)*, in the said case, the nomination papers were not in prescribed form. The returning officer had accepted the nomination papers by violating mandate of section 33 of the Act read with Rule 4 of the 1961 Rules. In the said case, the elected candidate had not made proper and full declaration of 13 criminal cases pending against him in the affidavit filed in Form 26. The allegation was, therefore, made that the election was materially affected. The election petition was allowed, holding that the election of the elected candidate was void. In the present case, however no cases are shown to be pending against the respondent which

are allegedly not disclosed by the candidate.

57. In the case of *Mangani Lal Mandal Vs. Bishnu Deo Bhandari* (supra), it is held that, it is material to make averment showing that the election is materially affected under Section 100(1)(d)(iv) of the RP Act. The pleadings and the proof is *sine qua non* for invalidating the election under the Section. Thus, there has been relation between which of the Rules and law which has affected the result of the petition and if such defects was not there, the result would have been changed.

58. In the case of *Sangram Sampatrao Deshmukh Vs. Election Commission of India and Ors.* (supra), in the said case, there were allegations that some of the names were repeated. It was held that only because the said names nothing was placed on record. It was not in such proof it would affect the result of the election. About improper reception of the nomination, it was held that the allegation cannot be assumed to be true unless *prima facie* material is placed on record. It was found that the allegation as regards Section 100(1)(d)(iii) of the RP Act were vague

and insufficient to proceed the petition and on that ground, the application under Order VII Rule 11 of CPC was allowed.

59. In the present case, following points arise for consideration:-

. It is clear that a person must hold an office of profit under the Government, either of India or of a State. It is for the State Government to declare that holding such an office shall not disqualify its holder. In the present case, it is an admitted position that the respondent No.1 is holding the office as Chief Administrator of APMC, which is not under the Government either of India or of the State. There is no dispute that the office is of the “local authority” under such circumstances, it cannot be held to be an office of profit attracting disqualification.

60. Section 3 of the Parliament (Prevention of Disqualification) Act, 1959, excludes certain offices of profit holding of which are not to disqualify, as given in the Section which includes offices held by a Minister of the State or Deputy Minister for the Union or for any State, and other offices given in clauses (a) to (h). The State has also passed an

enactment. Section 2 of the Maharashtra Legislature Members (Removal of Disqualification) Act, removes the disqualification in certain cases, which are mentioned in the Schedule-I of the Act. In Schedule-I, Item 9A states various offices which do not attract disqualification. In the present case, the respondent No.1 is appointed as Chief Administrator and is entitled to receive remuneration, which is not in the nature of compensatory allowance. This Court needs to consider this submission in detail.

61. So far as office of profit is concerned, Article 191(1)(a) which is material for the present person reads as under:

Article-191. Disqualifications for Membership. sub-section- (1) a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of the State-

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation.—*For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.*

62. There is no words “local authority” in Article 191 and it is conspicuously absent, unlike Article 58(2) and 66(4). This needs to be considered in the light of provisions of Parliament (Prevention of Disqualification) Act, 1959. The said Act shows that it is an Act to declare that certain offices of profit under the Government shall not disqualify the holder thereof for being chosen as a member. The Maharashtra Legislature Members (Removal of Disqualification) Act, 1956, is also enacted with the object and removing disqualification in the cases where the offices are under the Government. Both these Acts are not in respect of removal of disqualification for persons holding offices in the local authorities. It is natural that these Acts are enacted because every office under the State or the Central Government attracts disqualification and it is for this reason, it is necessary to provide for removal of such disqualification. Since the office of local authority does

not attract disqualification, there is no question of mentioning any office of local authority in Schedule-I. The provisions of both these Acts, therefore, need not be considered. This Court finds the submission of Mr. Deshpande, the learned Senior Advocate that under Article 191, a person holding the office under local authority is not covered, and therefore, it will not attract disqualification, to be acceptable.

63. So far as defect in Form 26 is concerned, this Court finds force in the argument of respondent No.1 that, in substance, the form is correct. There is no suppression of material fact as such which can be said to be in the nature of making the acceptance of that form as illegal. The offences pending against the candidate were made known to the party that set up the respondent as a candidate. No any other offence is pointed out by the petitioner to show that it is not disclosed by the respondent. In view of Section 36(4), the nomination paper is to be rejected on account of defects of a substantial character. This Court thus finds that the submission of learned Advocate for the respondent, supported by the judgment in the case of *Jaspal Singh Vs. O. P. Babbar*

(supra), is correct. This submission is also fortified by judgments in the cases of *Shambhu Prasad Sharma (supra)*, *Naresh Ganpat Mhaske (supra)* and *Ajmera Shyam (supra)*.

64. So far as mock poll is concerned, the reliance is placed on Form No. 17-C of all the 325 booths. It is pointed out that mock poll is different than test vote under Rule 49(m)(a)(iv). The mock poll is conducted under Rule 49(e), and information about mock poll is given in Annexure 27 which is at page No.331 of the handbook for Returning Officer of 2023. No such certificates are annexed by the petitioner. This Court also finds substance in the submission of respondent No.1 that the so-called mismatch between mock poll, booth and votes recorded is based only on inference. It was necessary to show material facts as to how the election is materially affected by the same. It is also shown that the margin of votes is 31,651. So even by reducing the votes in the alleged 64 booths, where the votes do not tally, the total is not 5797. In those booths, the petitioner received 73,014 votes. Respondent received 1,04,665 votes and the number of votes in those booths is only

5797. This Court thus finds force in the submission that even if those votes are added to the votes of the petitioner, it would not make any difference in the result of the election.

65. It is now well settled that mandate of people cannot be set aside in casual manner. It is also now well settled that the election petition is a special remedy under the special statute and not under common law, and therefore, the petition needs to be in the form given under the Act and in no other manner. So far as Form 26 is concerned, the allegations are that it is not as per the new format but is in the old format, where certain columns are not like those in the new format. However, considering that aspect as well, it needs to be shown that the election thereby is materially affected. There is nothing to show that the nomination of the respondent No.1 was wrongly or improperly accepted by the respondent No.3. It was necessary to show that the respondent No.1 has adopted corrupt practice or that the nomination form is improperly accepted. When no case is made out, this court has to consider as to whether the result of the election is materially affected.

66. Election Petition is mainly filed on the grounds that the respondent No.1 was holding an office of profit. Second ground is that the nomination form of the respondent No.1 was wrongly accepted. This Court has already held both the issues in favour of respondent No.1. Consequently, this Court holds that no cause of action is disclosed to go for trial. The judgment in the case of *Jaya Bachchan Vs. Union of India and Ors. (supra)*, is not applicable in the case of office of profit under the Government. In the present case, it is the local authority and not covered under Article 191 of Constitution of India.

67. In the present case, this Court finds that there is nothing to show that the election is materially affected. Taken the admitted fact as it is that the respondent No.1 happens to be the Chief Administrator of the Market Committee will not lead to the inference that all the persons associated with the said Market Committee will be influenced by the respondent. Non-disclosure of holding of such a post, therefore, will not make any difference. About the criminal cases also, when the respondent No.1 has stated in his nomination that he has informed the pending

cases to the political party that was sufficient compliance. This Court finds force in the argument on this point of the learned Advocate for respondent No.1. So far as suppression is concerned, it is also submitted that the objection, though was taken, it was by the other candidates and not by the petitioner. The respondent No.1, during the course of argument, has shown to this Court the Constituent Assembly debates, whereby after discussion, the word “local authority” is not used in Article 191. No contrary interpretation now can be given. No case is made out under Section 100(c), 100(d)(i)(ii)(iv) of the R. P. Act. There is no violation of Rule 4(1) of Conduct of Election Rules and Sections 33 and 33(A). Consequently, this Court records that no case is made out to proceed with the trial.

68. It is rightly pointed out that for not disclosing certain facts, no consequence under Section 33(A) is provided, but it only gives a right of information to the voters. The objections are of a trivial and technical nature. Nothing is shown to indicate that the voters were misled by such alleged suppression or non-disclosure of facts. From the Forms under

Section 17-C which are signed by polling agents, it was necessary to make specific averment as regards material to show that the discrepancy of votes has affected the election materially. There is no material to show that any objection was raised by the petitioner at the time of mock poll that it being not conducted. This Court thus finds that this allegation is based only on suspicion. When it was alleged that the offences are not disclosed, it was necessary to show as to which offences were not disclosed. Both the parties have taken this Court to the election handbook to show some procedural aspects. However, this Court does not find it necessary to discuss all those aspects since the main allegations are about non-disclosure of material fact that the respondent No.1 is holding an office of profit in the APMC.

69. Considering above, this Court finds that since it is not a material fact, the suppression also cannot be said to have materially affected the election result. In any case, it cannot be said that the respondent No.1 was holding an office of profit attracting disqualification under Article 191 of Constitution of India. For all these reasons, the Court is

convinced that the petition deserves to be dismissed. Hence, the following order:

ORDER

(i) Application No.158 of 2025 (Exhibit-15) filed under Order VII Rule 11 of CPC in Election Petition No.03 of 2025, stands allowed and consequently, Election Petition No.03 of 2025 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.Ethape PA.