

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

APPLICATION NO.14 OF 2025
IN
ELECTION PETITION NO. 5 OF 2025

Narendra Lalachan Mehta
Age - 52 years, Occupation - Business
Residing at D/6, Shagun Bungalow,
Old Golden Nest, Phase -3, Near Blue
Moon Club, Mira Bhayandar Road,
Mira Road East, Thane - 401107
...Applicant
(Original
Respondent)

IN THE MATTER BETWEEN :

Nayana Manoj Vasani
Age - 56 years, Occupation - Doctor
Residing at 02, Mithun Building, Srishti Complex,
Near Bhakti Vedant Hospital, Sector No. 2,
Mira Bhayander, Thane Maharashtra - 401107
...Petitioner

Versus

Narendra Lalachan Mehta
Age - 52 years, Occupation - Business
Residing at D/6, Shagun Bungalow,
Old Golden Nest, Phase -3, Near Blue Moon Club,
Mira Bhayandar Road,
Mira Road East, Thane – 401107
... Respondent

WITH
ELECTION PETITION NO. 5 OF 2025

Nayana Manoj Vasani
Age - 56 years, Occupation - Doctor
Residing at 02, Mithun Building, Srishti Complex,
Near Bhakti Vedant Hospital, Sector No. 2,
Mira Bhayander, Thane Maharashtra - 401107
...Petitioner

Versus

Narendra Lalachan Mehta
Age - 52 years, Occupation - Business
Residing at D/6, Shagun Bungalow,
Old Golden Nest, Phase -3, Near Blue Moon Club,
Mira Bhayandar Road,
Mira Road East, Thane – 401107

... Respondent

*Mr. Amogh Singh a/w Mr. Sarvesh Dixit, Mr. Tarun Sharma, Mr. Mahesh Patil and Mr. Ravindra Jadhav i/b Mr. Ritesh Tiwari for the Applicant/
Original Respondent*

*Mr. Balkrishna Joshi a/w Mr. Virendra Pethe and Mr. Dilip H. Shukla for
the Respondent / Original Petitioner*

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : FEBRUARY 18, 2026

PRONOUNCED ON : MARCH 24, 2026

JUDGMENT :

1. The present Application under Order VII, Rule 11(a) and (d) of Code of Civil Procedure, 1908 [for short, "**CPC**"] seeking dismissal of Election Petition is at the instance of the returned candidate, whose election is called in question by the present Election Petition.
2. By the Election Petition, the Election of the returned candidate from Maharashtra Legislative Assembly Constituency No 145, Mira Bhayander Constituency declared on 23rd November, 2024 is questioned under Section 36(2), Section 100(1)(b), Section 100(1)(d)(i)

and Section 100(1)(d)(iv) of The Representation of People Act, 1951 (for short "**R.P. Act**"). The allegation in Election Petition is that there is improper acceptance of the Applicant's nomination as there is suppression of criminal cases pending against the Applicant, the pendency of government dues, non disclosure of details of assets in the Affidavit filed under Rule 4A of the The Conduct of Election Rules, 1961 (for short "**Rules of 1961**") which constitutes corrupt practice under Section 123(2) of R.P. Act.

3. The Application is contested by the Election Petitioner contending that non disclosure of criminal antecedents by candidate in entirety and in full detail amounts to corrupt practice of undue influence. There is suppression of criminal offences and non disclosure of description of offences against the Applicant in the Affidavit filed under Rule 4A of Rules of 1961.

SUBMISSIONS:

4. Mr. Singh, learned counsel appearing for the Applicant submits that the election petition has been filed on allegation of non-disclosure of FIRs and details of the Applicant's shares. He submits that Section 33A of the RP Act mandates disclosure of criminal offences in which charge has been framed by a court of competent jurisdiction or where there is conviction. He further submits that in so far as FIR No. 44 of 2020 is concerned, A-summary report has been filed; and insofar as CR

No. 387 of 2022 is concerned, no cognizance has been taken and no charge has been framed.

5. He submits that the Petition alleges non-disclosure of the offences in their entirety and in full detail, claiming the same to be a corrupt practice. He would submit that in so far as incorrect number of FIR No 112 of 2002 is concerned, he points out the Affidavit which sets out the correct FIR number. He submits that, for suppression to constitute a cause of action, there has to be a pleading that cognizance has been taken, which is missing in the present case. He would further submit that, insofar as CR No. 433 of 2023 is concerned, it is alleged that no details have been furnished; however, he points out that the said FIR has been disclosed in the affidavit.

6. He would further submit that, insofar as the Government dues are concerned, the Petition itself pleads in paragraph 14 that the response to the RTI application is that there are no such dues pending. He submits that there are complete details given of the shares owned by the Applicant and points out the details set-out in the affidavit as regards the shares of Seven-Eleven Construction Private Limited and Seven-Eleven Hotels Private Limited. He submits that the concise statement of facts annexed to the petition is not in accordance with law. In support, he relies upon the following decisions:

- (i) Jyoti Basu vs. Debi Ghosal & Ors.¹;**
- (ii) Mangani Lal Mandal vs. Bishnu Deo Bhandari²;**
- (iii) Laxmi Narayan Nayak vs. Ramratan Chaturvedi & Ors.³;**
- (iv) Kanimozhi Karunanidhi vs. Santhana Kumar & Ors.⁴;**
- (v) Karim Uddin Barbhuiya vs. Aminul Haque Laskar & Ors.⁵;**
- (vi) Rajendra Dhedya Gavit vs. Sudhir Brijendra Jain ⁶;**
- (vii)Anil Yashwant Desai vs. Mahendra Tulshiram
Bhingardive⁷;**
- (viii)Sangram Sampatrao Deshmukh vs. Election
Commissioner of India & Ors.⁸;**
- (ix) Satyajeet @ Nana Shivajirao Kadam vs. Rajesh Vinayak
Kshirsagar⁹;**
- (x) Satish Mahadeorao Uke vs. Devendra Gangadhar
Fadnavis¹⁰; and**
- (xi) B. G. Uday vs. H. G. Prashanth¹¹**

1 (1982) 1 SCC 691

2 (2012) 3 SCC 314

3 (1990) 2 SCC 173

4 2023 SCC OnLine SC 573

5 2024 SCC OnLine SC 509

6 2025 SCC OnLine Bom 2447

7 2024 SCC OnLine Bom 3303

8 2025 SCC OnLine Bom 8

9 EP/23/2024 decided on 19.03.2019

10 2016 (2) Mh.L.J. 613

11 CRL.RP.No.1157 of 2023 (397-ER) dated 24.04.2024

7. *Per contra*, Mr. Joshi, learned counsel appearing for the Respondent submits that the Affidavit filed by the Applicant suppresses the criminal offences against the Applicant. He submits that it is the duty of the Respondent to point out the suppression, and it is for the Applicant to furnish the necessary details. He submits that, in respect of FIR No. 387 of 2022, it is stated that A-Summary report has been sent and the Affidavit suppresses that A-summary report was recalled. He submits that the Affidavit to be filed is required to give complete information and by suppressing the fact that A-summary has been recalled, wrong information has been given which has a tendency to mislead the voters. He would further submit that there are no details given of FIR No. 433 of 2023. He submits that the suppression of the source of income constitutes a corrupt practice of undue influence. He would further submit that, insofar as the police dues are concerned, it is not for the Respondent to give details in the petition, and the Applicant has not given any information in the Affidavit about the police dues. In support, he relies upon the following decisions:

(i) Krishnamoorthy vs. Sivakumar & Ors.¹²;

(ii) Lok Prahari Through its General Secretary S. N. Shukla vs. Union of India & Ors.¹³; and

(iii) Arjunadada Dashrath Bhuse vs. Dadaji Dagadu Bhuse¹⁴

¹² (2015) 2 SCC 467

¹³ (2018) 4 SCC 699 : (2018) 2 SCC (Cri.) 590

¹⁴ 2011 (3) Mh.L.J. 873

REASONS & ANALYSIS:

8. For the purpose of adjudicating an application under Order 7 Rule 11 of CPC, it is only the averments in the plaint which are germane and extraneous material cannot be considered. The application seeks dismissal of the Petition on the ground of non disclosure of cause of action and as being barred by law. It is trite that cause of action constitutes the bundle of facts, which would be necessary for Plaintiff to prove, if traversed, to be entitled to the relief claimed.

9. Under the statutory provisions of R.P. Act, an election can be questioned only on the grounds set out in Section 100 of the R.P. Act. Section 100(1)(b) and Section 100(d)(i) provides for declaring the election void where any corrupt practice has been committed by the returned candidate and where the result of the election, insofar as it concerns a returned candidate, has been materially affected by improper acceptance of nomination, respectively. As the election of a democratically elected person is sought to be questioned, it will be relevant to note the observations of the Hon'ble Apex Court in the case of ***Jyoti Basu v. Debi Ghosal*** (supra), in paragraph 8, which reads thus:

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an

election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An Election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the Common Law nor the principles of Equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a straight jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the [Representation of the People Act](#) 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self contained code within which must be found any rights claimed in relation to an election or an election dispute.”

10. The Hon’ble Apex Court has in categorical terms held that out of the statute, there is no right to elect, no right to get elected and no right to dispute the election. The challenge to election thus requires strict compliance with the statutory provisions.

11. As the allegation in the present case is concentrated on the non disclosure/incomplete information furnished by the Applicant in the prescribed Form 26, it would apposite to have a look at the relevant statutory provisions governing the disclosure of information. Section 33 provides for the presentation of nomination papers and the

requirements for a valid nomination. The procedure prescribed under Section 33 is that, on the presentation of the nomination paper, the Returning Officer is required to satisfy himself that the name and electoral roll number of the candidate and his proposer, as entered in the nomination form, are the same as those entered in the electoral roll and Section 33A provides that a candidate, apart from the information which is required to be furnished under the Act or the Rules, shall also furnish information as to:

- (a) whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by a court of competent jurisdiction: and
- (b) whether he has been convicted of an offence, other than an offence referred to in Section 8(1), 8(2), or 8(3), and sentenced to imprisonment for one year or more.

12. Under sub-section (2) of Section 33A, the candidate is required to deliver to the Returning Officer the nomination paper along with an affidavit sworn by the candidate in the prescribed form verifying the information specified in sub-section (1) of Section 33A. Rule 4A of the Conduct of Elections Rules, 1961 provides for the affidavit to be furnished in Form 26. Form 26 prescribes the various details to be disclosed and, insofar as the pending criminal cases are concerned, the same is prescribed in Clause 5 of Form 26. The information about

pending criminal cases is required to be submitted in tabular format setting out various particulars, such as FIR number with the name and address of the police station, the case number with the name of the court, the concerned sections of the relevant Act, a brief description of the offence, whether charges have been framed and, if the answer is yes, the date on which the charges were framed, and whether any application for revision has been filed in the proceedings.

13. A conjoint reading of Section 33A with Rule 4A and prescribed Form No. 26 leaves no manner of doubt that the candidate is required to furnish details of all pending criminal cases. The disclosure is not restricted to the criminal cases in which charge has been framed or there is conviction. Item (e) of Form 26 requiring disclosure of information as to whether charge has been framed or not is an indicator that all pending criminal cases are required to be disclosed. The purpose behind furnishing information of all pending criminal cases irrespective of whether the charges have been framed or not, in the prescribed Form 26 to ensure that the voters take a well informed decision.

14. With this statutory background, the pleadings in the Petition will have to be perused to ascertain whether the same discloses a cause of action or is barred by law. The pleading in paragraph 5 of the Petition is that the election is challenged on the ground of improper

acceptance of nomination form by the Returning Officer and due to non compliance with provisions of Constitution of India, R.P. Act as well as Rules and orders framed under the Act, which would be a challenge under Section 100 (1)(d)(i) and Section 100(1)(d)(iv) of R.P. Act.

15. The substratum of the Petitioner's case is set out in paragraph 8 of the Petition which is reproduced herein-below:

"8. The Petitioner submits that in the affidavit filed along with the nomination form, the Respondent has not declared full and correct information in respect of criminal cases pending against the Respondent and as a matter of fact, the Respondent has also suppressed detail information and/or description of Criminal Cases pending against him from the Mandatory affidavit filed along with the nomination papers. The Petitioner further submits that the Respondent has also suppressed the dues pending to the Government. The Respondent has also failed to give details of share i.e. number of shares and price of each share headed by the respondent and his spouse. The Petitioner states that though categorical objections were taken by one of the contesting candidate the same was ignored/rejected by the Returning Officer on the flimsy grounds. The Returning Officer accepted Respondent's incomplete affidavit without raising objection. The Petitioner states that the Respondent failed to give short description of the offences, sections of the Act. The true copy of the objection taken by one of the candidate is annexed hereto and marked as Exhibit C. The true copy of the reply given by the

Respondent to the said objection is annexed hereto and marked as Exhibit D. The true copy of the order passed by the Returning Officer, accepting nomination form of the Respondent is annexed hereto and marked Exhibit E. The true and correct English translation of Exhibit E the order passed by the Returning Officer is annexed here too and marked Exhibit E-1."

16. Paragraphs 20 and 21 of the Petition pleads as under:

"20. The petitioner therefore states that the election of the Respondent, from the Maharashtra legislative Assembly No.145 Mira Bhayander- Assembly Constituency is liable to be declared as null and void on the ground of improper acceptance of nomination paper on account of invalid affidavit which affidavit is necessarily integral part of the nomination paper and is liable to be quashed and set aside and therefore the election of the respondent be quashed and set aside in view of provisions of Section 100(1) (d)(i) and 100(1)(d)(iv) of R.P. Act.

21. The Petitioner also submits that the Election of the Respondent, from the Maharashtra legislative Assembly constituency No.145 Mira Bhayander- Assembly Constituency is liable to be declared null and void since the Respondent and his agents have committed corrupt practice as per Section 123(2) of R.P. Act and therefore the election of the Respondent be quashed and set aside in view of the provisions of Representation of peoples Act, 1951."

17. Upon meaningful reading of the Petition, the grounds on which election is questioned are :

Suppression of :

- (i) FIR No 44 of 2020 and FIR No 181 of 2022
- (ii) pending police dues.

Furnishing of incorrect/ incomplete information of:

- (i) details of FIR No 433 of 2023
- (ii) details of CR No 387 of 2022 as A- Summary report stated to have been sent has been recalled.
- (iii) FIR No 112 of 2002 in so far as year of FIR is concerned
- (iv) details and price of shares as total cost of shares is only stated in the Affidavit.

18. The Affidavit filed by the Applicant gives details of the criminal cases pending against the Applicant as under:

(A) Navghar Police Station – FIR No. 117 of 2013/Magistrate Court, Thane 6822/2015, FIR No. 265 of 2014/Magistrate Court Thane 7133/2016, and FIR No. 387 of 2022/ A Final report sent.

(B) Mira Road Police Station – FIR No. 112 of 2002/Sessions Court Thane 11/2004 , FIR No. 255 of 2013, FIR No. 345 of 2021, and FIR No. 107 of 2019.

(C) Kashimira Police Station – RCC No. 1022 of 2017, RCC No. 1023 of 2017, FIR No. 19 of 2011, RCC No. 1671 of 2017, FIR No. 723 of 2021, and FIR No. 529 of 2021/Special Court Thane S R 12/22.

(D) Bhayandar Police Station – FIR No. 83 of 2017/Magistrate Court Thane 4321/2018, FIR No. 145 of 2019, FIR No. 552 of 2020, and FIR No. 433 of 2023, and

(E) Naya Nagar Police Station – FIR No. 23 of 2017.

19. The Affidavit in the column of “Brief description of offence” gives the status of the pending criminal cases such as Court pending, A Summary report sent etc instead of giving the description of the offence with which charged. The pleading in paragraph 10 of the Petition is that the suppression of FIR’s and non disclosure of the offences in entirety and in full detail would amount to corrupt practice of undue influence and the pleading in paragraph 13 is that the same would also result in rejection of nomination form as defect of substantial character.

20. Section 83 of R.P. Act deals with ‘Contents of Election Petition’, and reads thus:-

“83. Contents of petition.—

- (1) An election petition—
 - (a) shall contain a concise statement of the material facts on which the petitioner relies;
 - (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
 - (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

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

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

21. Section 83 provides for the Election Petition to contain a concise statement of material facts and higher threshold is required to be met where the challenge is on the ground of corrupt practice. In case of allegation of corrupt practice, sub-section (2) of Section 83 mandates giving of full particulars of the corrupt practice including the names of the person, date and place of commission of each such practice. The relevant sub-section(2) of Section 123 of R.P. Act, 1951 dealing with the acts deemed to constitute corrupt practice, reads thus:

"123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

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

Provided that—

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

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

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

with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

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

22. The allegation of providing incomplete information in the Affidavit by leaving out description of criminal offences is an allegation founded on defect in the nomination and constitutes the ground of improper acceptance of the nomination form under Section 100(1)(d)(i) of R.P. Act. In contradiction, allegation of suppression of criminal cases by the candidate would constitute corrupt practice of undue influence under Section 123(2) and constitute ground under Section 100(1)(b) of R.P. Act. In the decision of **Krishnamoorthy vs Sivakumar & Others** (supra), the question posed before the Hon’ble Apex Court was whether a candidate who does not disclose the criminal cases in respect of heinous or serious offences or moral turpitude or corruption pending against him would amount to undue influence and as a fallout to corrupt practice. In that case, the returned candidate had filed declaration and affidavit only mentioning Crime No 10 of 2001, whereas the Election Petition pleaded that during investigation of Crime No 10 of 2001, the police placed eight different charge sheets of which cognizance was taken. The returned candidate failed to mention the details of the charge sheets filed against him which were pending

trial. In the backdrop of this factual scenario, the Hon'ble Apex Court answered the question posed and summarised its findings in paragraph 94 as under:

"94. In view of the above, we would like to sum up our conclusions:

94.1. Disclosure of criminal antecedents of a candidate, especially pertaining to he heinous or serious offence, or offences relating to corruption, or moral turpitude at the time of filing of nomination paper, as mandated by law is a categorical imperative.

94.2. When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

94.3. Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference, or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken, or charges have been framed, and there is non-disclosure on his part, it would amount to undue influence and therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of 1951 Act.

94.5. The question whether it materially affect the election or not will not arise in the case of this nature.”

23. The Hon’ble Apex Court considered the decision of **Resurgence India vs Election Commission of India**¹⁵ which explained the rationale behind the opinion expressed in **People’s Union for Civil Liberties vs Union of India**¹⁶, which had opined, that the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary inquiry at the time of scrutiny of the nominations cannot be justified and the Returning Officer could reject a nomination paper on account of filing the affidavit with particulars left blank. The Hon’ble Apex Court clarified in paragraph 79 that the controversy involved in **Krishnamoorthy** (supra) was pertaining to non disclosure of information while filing of Affidavit pertaining to criminal cases. The Hon’ble Apex Court has held non disclosure of criminal cases as constituting corrupt practice of undue influence.

24. In the present case, the election is questioned on two limbs: (a) suppression of criminal cases and (b) furnishing of incomplete information in the Affidavit. The allegation of suppression of criminal cases under Section 100(1)(b), would require satisfaction of Section

¹⁵(2014) 14 SCC 189

¹⁶ (2003) 4 SCC 399

83(1)(b) of furnishing full particulars of the corrupt practice. Whereas furnishing of incomplete information in the Affidavit is relatable to non compliance of Section 33/Section 33A of R.P. Act read with Rule 4A of Rules of 1961 which would tantamount to improper acceptance of nomination within the meaning of Section 100 (1)(d) (i) and Section 100 (1)(d)(iv) of R.P. Act requiring pleading of material facts to show that by reason of improper acceptance of nomination form, the result of the election, insofar as it concerns the returned candidate, was materially affected.

25. The pleading of suppression is in respect of two FIR's No 44 of 2020 and FIR No 181 of 2022. In so far as FIR No 44 of 2020 is concerned, the Petition pleads about the registration of the crime and withdrawal of the quashing Petition by the Applicant. The Petition however falls short of the specific pleading in order to constitute cause of action for corrupt practice. Section 83(1)(b) demands furnishing of full particulars of corrupt practice. As to what would constitute material facts in case of corrupt practice would depend on facts of each case and in present case considering that Form 26 prescribed furnishing of details of pending criminal cases, it was necessary to plead about the status of the two FIR's and to produce material to demonstrate the pendency of the two FIR's on the date of filing of Affidavit. The Petition does not even contain a bare assertion that the

two FIR's are pending against the Applicant leave aside setting out the status of the FIR's to show pendency.

26. The allegation about incorrect number of FIR No 112 of 2002 being given, can be quickly discharged as the Affidavit which was filed in Marathi language contains the correct FIR year and the discrepancy is in the english translation provided by the Petitioner.

27. The allegations about incomplete information about C.R. No 387 of 2022, suppression of details of C.R No 433 of 2023, suppression of pending security dues, details of shares, and blank left in the Affidavit respect of one of the immovable property constitute ground under Section 100(d)(i) of R.P. Act. The Petition in such case must plead the necessary facts to show as to how the result of election has been materially affected by the improper acceptance of the nomination. The only pleading in that respect can be found in paragraph 16, which contains a bald assertion as under:

"16) The Petitioner states that by such improper acceptance of the nomination Form of the respondent, the result of the election has been materially affected..."

28. In *Karim Uddin Barbhuiya v. Aminul Haq Laskar* (supra), the Apex Court has held in Paragraph Nos.13, 14 , 22, 24 as under:-

"13. It hardly needs to be reiterated that in an Election Petition, pleadings have to be precise, specific and unambiguous, and if the Election Petition does not disclose a cause of action, it is liable to be dismissed in limine. It may also

be noted that the cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the RP Act. As held in *Bhagwati Prasad Dixit 'Ghorewala' vs. Rajeev Gandhi* and in *Dhartipakar Madan Lal Agarwal vs. Rajiv Gandhi*, if the allegations contained in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the pleadings are liable to be struck off and the Election Petition is liable to be rejected under Order VII, Rule 11 CPC.

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

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

- (1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93] and *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442].
- (2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh v. Surinder Singh* [(1973) 2 SCC 599; (1974) 1 SCR 52], *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442] and *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93].
- (3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide *Jumuna Prasad Mukhariya v. Lachhi Ram* [(1954) 2 SCC 306; (1955) 1 SCR 608 : AIR 1954 SC 686] and *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660].
- (4) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh* [(1984) 4 SCC 649].
- (5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some

surer circumstances or unimpeachable documents vide *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660], *M. Narayana Rao v. G. Venkata Reddy* [(1977) 1 SCC 771: (1977) 1 SCR 490], *Lakshmi Raman Acharya v. Chandan Singh* [(1977) 1 SCC 423 : (1977) 2 SCR 412] and *Ramji Prasad Singh v. Ram Bilas Jha* [(1977) 1 SCC 260].

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

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

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

29. As to what constitute material facts was considered by Apex Court in ***Udhav Singh vs Madhav Rao Scindia***¹⁷, where the Apex Court held as under:

¹⁷ (1977) 1 SCC 511.

"All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded and failure to plead even a single material fact amounts to disobedience of the mandate of sec. 83(1) (a)."

30. In the case of *Mangani Lal Mandal v. Bishnu Deo Bhandari*¹⁸, the

Apex Court has held in Paragraph Nos. 10, 11 and 12 as under:-

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

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

18 (2012) 3 SCC 314.

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

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

31. In light of above enunciation of law, if the pleadings in the Petition are perused, the Petition is bereft of any material pleadings to demonstrate as to how the improper acceptance of nomination form has materially affected the result of the election in so far as it concerns the returned candidate. Despite the absence of material pleadings, if the allegations are considered, insofar as the suppression of pending security dues are concerned, it is the petitioner's own case that he had applied under the RTI Act for information, in response to which it was

stated that no such information was available. The averment itself is the answer to the case of suppression of government dues by the Applicant.

32. In so far as the non furnishing of details and price of shares and Column No 7(b) being kept blank is concerned, Note 3 of Clause 7 of Form 26 dealing with details of movable assets prescribes that in case of value of bonds/share debentures to give details of current market value in stock exchange in respect of listed companies and as per books in case of non listed companies. The column containing the particulars of “description” has to be read in consonance with Note 3 of Clause 7 and when so read, the Affidavit correctly sets out the value of the shares. In so far as blank column of immovable asset is concerned, the Affidavit gives the valuation of Rajasthan House, Desuri as well as the Applicant’s share of 50% which is compliance with the details as prescribed. There is no quarrel with the proposition of law laid down in **Lok Prahari vs Union of India** (supra) following **Krishnamoorthy vs Sivakumar & Others** (supra), that non disclosure of assets and sources of income would constitute corrupt practice. In the present case the allegation is not about non disclosure of assets but failure to provide the details of shares and prices of shares. The details are provided as per the prescribed format and there is no suppression of asset to constitute corrupt practice.

33. The inclusion of C.R. No 387 of 2022 in the Affidavit of Applicant demonstrates the disclosure of pendency of the said FIR against the Applicant. The Affidavit does not state that the A Final report has been accepted by the Court and correctly mentions that the report has been sent to the Court. The Petition while pleading about the recall of A Final report by the Magistrate does not plead about the order of recall being to the knowledge of the Applicant, which is a material fact to be pleaded. The Affidavit shows that the Applicant has disclosed all criminal cases pending against him.

34. It is also no answer to say that the Petitioner is only required to point out the suppression and the Applicant is required to furnish the necessary details. The burden is necessarily on the party who approaches the Court seeking the relief that the election be declared void. There is no right to challenge the election outside the statute and there has to be strict compliance of the statutory provisions. Absence of material facts to substantiate the suppression would constitute non compliance of Section 83(1)(b) of R.P. Act. Non-disclosure of a cause of action would entail rejection of the petition under Order VII Rule 11 of the Code of Civil Procedure, 1908.

35. The importance of setting out the material fact to constitute a complete cause of action was summed up by Apex Court in ***Kanimozhi***

Karunanidhi v. A. Santhana Kumar (supra) in Paragraph No.28 as under:-

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

- i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.
- ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.
- iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.
- iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.
- v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.
- vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.”

36. The omission to state single material fact leading to incomplete cause of action can lead to summary dismissal of the Election Petition. The Hon'ble Apex Court has held that the Election Petition can be summarily dismissed on the omission of single material fact pleading to an incomplete cause of action. In light of the settled principles, in so far the allegation of improper acceptance of nomination form is concerned, the Petition is completely silent as to how the improper acceptance of nomination has materially affected the result of election and does not disclose a cause of action. The relief sought under Section 100(1) (b) on allegation of corrupt practice by suppression of two FIR's lacks full particulars as mandated by Section 83(1)(b) so as to disclose a cause of action.

37. The decision of **Arunadada vs Dadaji** (supra), is a judgment after trial. The decision does not lay down any proposition that the incomplete information as to the description of criminal offence constitutes corrupt practice of undue influence. On the contrary, the argument canvassed was that the returned candidate become disqualified upon non disclosure under Section 100 (1)(a) of R.P. Act. In present case, it is not the case of the Election Petitioner of disqualification under Section 100(1)(a) of R.P. Act. The Learned Single Judge answered the issue of disqualification in the affirmative. The decision is of no assistance to the Election Petitioner.

38. Considering that in the Election Petition, the pleadings have to be specific, precise and unambiguous as provided by Section 83 of the R. P. Act, where the Election Petition even upon holistic reading of the entire plaint does not disclose cause of action, the same is liable to be dismissed. Upon so reading of the plaint, the pleadings does not disclose any cause of action under sub-section (1) of Section 100 to maintain the Election Petition and is thus, liable to be rejected under Order VII, Rule 11 of CPC and is accordingly, rejected.

39. In light of the above discussion, the Application is allowed. Election Petition stands dismissed under Order VII, Rule 11(a) of CPC.

[Sharmila U. Deshmukh, J.]