

HARSHADA H. SAWANT
(P.A.)

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

APPLICATION (L) NO.9497 OF 2025
IN
ELECTION PETITION NO.19 OF 2025

Harishchandra Sakham Bhoje and Ors.	Applicant
	.. (Orig. Respondent No.1)
<u>IN THE MATTER OF:</u>	
Sunil (Bhau) Chandrakant Bhusara	.. Petitioner
Versus	
Harishchandra Sakham Bhoje and Ors.	.. Respondents

WITH
APPLICATION NO.6 OF 2025

IN
ELECTION PETITION NO.19 OF 2025

Harishchandra Sakham Bhoje	.. Applicant
Versus	
Sunil (Bhau) Chandrakant Bhusara and Ors.	.. Respondents

WITH
APPLICATION (L) NO.24590 OF 2025
IN
ELECTION PETITION NO.19 OF 2025

Chief Electoral Officer	
General Administrative Department	.. Applicant
In the matter between	
Mr. Sunil Chandrakant Bhusara	.. Petitioner
Versus	
Mr. Harishchandra Sakham Bhoje	.. Respondents

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- Ms. Neeta P. Karnik, Senior Advocate a/w. Mr. Jimmy Gonsalves, Mr. Shrirang P. Katneshwarkar, Mr. Anthony Floriyan Foss, Mr. Kallis Albert Alphanso, Advocates for Petitioner in Election Petition No.19 of 2025.
- Mr. Niteen Pradhan a/w. Ms. Shubhada Khot, Ms. Amita Kuttikrishnan and Ms. Sonal Dabholkar, Advocates for Respondent No.1.
- Mr. Abhijit P. Kulkarni a/w Ms. Shweta Shah, Mr. Abhishek Roy, Advocates for Applicant in Application (L) No.24590 of 2025.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 30, 2026.

JUDGMENT:

1. Heard Ms. Karnik, learned Senior Advocate for Petitioner, Mr. Pradhan, learned Advocate for Respondent No.1 in Election Petition and Mr. Kulkarni, learned Advocate for Applicant in Application (L) No.24590 of 2025.

2. Application (L) No.9497 of 2025 is filed by Mr. Harishachandra Sakham Bhoje – Applicant / Orig. Respondent No.1 and Returned candidate seeking dismissal of Election Petition under Order VII Rule 11 of the Civil Procedure Code, 1908, (for short “CPC”). Respondent No. 1 is the returned candidate in the Election under challenge. Affidavit-in-reply dated 10.07.2025 is filed by Petitioner to oppose this Application.

3. Election Petition No.19 of 2025 is filed by Mr. Sunil (Bhau) Chandrakant Bhusara on 07.01.2025 for the following reliefs :-

“(a) the election of the Respondent No.1 to the General Election 2024 to the State Assembly from 129- Vikramgad (S.T.) Assembly Constituency, be declared to be void and it be further declared that the Petitioner, who has secured second highest votes/majority of votes in the said election, has been elected.”

4. Application No.6 of 2025 is filed by Mr. Harishachandra Sakham Bhoje – Respondent No.1 seeking direction to Petitioner to furnish the copy of the Election Petition No.37 of 2025 along with its

Annexures. However, vide order dated 06.11.2025 passed by this Court Election Petition No.37 of 2025 has been disposed of as withdrawn for the reason that Petitioner had filed identical Petition through another Advocate in this Court for the same cause of action.

5. Application (L) No.24590 of 2025 is an Intervention Application filed by Chief Electoral Officer, General Administration Department to intervene in Election Petition No.19 of 2025 and seeks following reliefs :-

“a) That this Hon’ble Court be pleased to declare that the EVM’s consisting of Ballot Units 358 and Control Units 358 which are kept in custody of the District Election Officer are not necessary for the adjudication or determining the dispute in the above Election Petition.

b) That this Hon’ble Court be pleased to release 358 Ballot Units and 358 Control Units which are kept in the custody of the District Election Officer.”

6. Respondent No. 1 has filed Application (L) No. 9497 of 2025 under Order VII Rule 11 seeking dismissal of the Election Petition on the grounds of violation of mandatory provision of Sections 83(1)(a), 100, 123(4) of RP Act read with Articles 173 and 191 of the Constitution of India and sought its dismissal. Pleadings in this Application are complete. By consent of parties Application (L) No. 9497 of 2025 is taken up for hearing and disposal.

7. Brief facts relevant for deciding the above application are as follows:-

7.1. Election Commission announced schedule for General Election 2024 to the Legislative Assembly of the State of Maharashtra as under:-

Poll Events	Maharashtra (All 288 Assembly Constituencies)
Date of issue of Gazette Notification	22.10.2024 (Tuesday)
Last Date of making nominations	29.10.2024 (Tuesday)
Date of Scrutiny of nominations	30.10.2024 (Wednesday)
Last Date for the withdrawal of candidatures	04.11.2024 (Monday)
Date of Poll	20.11.2024 (Wednesday)
Date of counting	23.11.2024 (Saturday)
Date before which election shall be completed	25.11.2024 (Monday)

7.2. Total 11 candidates were in the fray for Election from 129 – Vikramgad Constituency, which included, *inter alia*, Petitioner from National Congress Party and Respondent No.1 from Bharatiya Janata Party. Voting in pursuance to Election to the said Constituency was held on 20.11.2024. Counting of votes was conducted on 23.11.2024 and the final result was declared. Petitioner secured 73,106 votes (second highest votes) whereas Respondent No.1 with 1,14,514 votes was declared as the Returned Candidate.

8. Petitioner filed present Election Petition challenging election of Respondent No.1 on three (3) main grounds:-

- (i) Improper acceptance of Nomination Form of the Respondent No.1 by Returning Officer;

- (ii) Failure to reproduce Note-1 to Note-5 below Verification under Affidavit in Form-26; and
- (iii) Violation of Sections 100(1)(b), 100(1)(d)(i), 100(1)(d)(iv) or 123(4) of the RP Act.

9. Mr. Pradhan, learned Advocate appearing for Respondent No.1 – the returned candidate has drawn my attention to the Application filed under Order VII Rule 11 and while pressing the same has made the following submissions :-

9.1. He would submit that Election Petition is liable to be rejected under Order VII Rule 11 as it does not contain the concise statement of material facts as mandated under Section 83(1)(a) of the RP Act. He would submit that it does not disclose any cause of action as contemplated under Article 173 and Article 191 of the Constitution of India (for short “COI”) read with Section 123(4) and Section 100 of the RP Act. He would submit that for setting aside the Election of Returned candidate, it is incumbent upon Petitioner to specifically plead non-compliance either with the provisions of the COI, the RP Act or Rules or Orders made thereunder. He would submit that present Election Petition is replete with vague allegations, founded on mere presumptions and assumptions without any cogent pleadings or documentary evidence appended in support thereof.

9.2. He would submit that Election of a Returned candidate cannot be challenged on the grounds mentioned in Section 100 of the RP Act without establishing the cause of action which is clearly absent. He would submit that Petitioner has miserably failed to make out any ground for declaring the Election of Respondent No.1 void as per the aforesaid provisions of the COI and RP Act. He would submit that due to failure of Petitioner to establish cause of action against Respondent No.1, substantive relief sought by him in the Petition is not maintainable and hence the Petition be dismissed under Order VII Rule 11.

9.3. He would submit that as per the Schedule announced on 15.10.2024, Election Commission of India vide press Note No.ECI/PN/149/2024 conducted General Election to the Legislative Assembly of Maharashtra. He would submit that a candidate who wished to take part in the Election is required to submit his Nomination Form along with Affidavit in Form-26 and documents in support thereof. He would submit that the Nomination Form and Affidavit in Form-26 is a printed copy supplied by the Election Commission of India and made available by the Returning Officer to the candidates of the relevant constituency. He would submit that all desirous candidates have to purchase the said Nomination Form from the Returning Officer which bear a distinct number of identification. He would submit that in the present case the Nomination Form which

was ultimately submitted was purchased by Respondent No.1 and entry was made in the Register maintained with the Returning Officer which reflects acceptance of the Nomination Form. He would submit that this Nomination Form was duly filled in by Respondent No.1, filed with the Returning Officer, it was scrutinized and thereafter accepted in accordance with law.

9.4. He would submit that format of the Nomination Form is uniform and printed as per provisions under Rule 4 of the Code of Conduct Rules, 1961 (for short “**said Rules**”). He would submit that Election Commissioner prints these forms and supplies them with distinct serial numbers to the Returning Officer for their distribution to the prospective candidates on payment of Rs.100/- which candidates are supposed to receive, fill up and submit back to him without having any say in its statutory format. He would submit that details of purchase of one form on 28.10.2024 and two forms on 29.10.2024 by Respondent No.1 are recorded in the Register for distribution of forms serially numbered as 59, 60 and 61. He would submit that Respondent No.1 submitted the said duly filled forms along with supporting documents and Affidavit. He would submit that entry of acceptance of Form No. 59 was made in the Register by the Returning Officer in the case of Respondent No.1. He would submit that there is therefore no truth in the allegation of Petitioner that Respondent No.1 has manufactured or fabricated the Nomination Form on his own volition.

9.5. He would submit that such submitted forms are further scrutinized by the Returning Officer who prepares a check list reflecting compliances with regard to forms and documents in support thereof. He would submit that on perusal of said check list in the case of Petitioner it would reveal due compliance with the statutory procedure by Respondent No.1. He would submit that Respondent No.1 duly provided certified copies of Nomination Form, Affidavit in Form-26 and all required documents along with the check list for perusal of this Court in his Application.

9.6. He would submit that all prospective candidates including Respondent No.1 and Petitioner were provided with identical forms by the Returning Officer. He would submit that Petitioner has avoided to place on record copy of his Nomination Form for Court's perusal which is absolutely identical and similar to that of Respondent No.1 for obvious reasons. He would hence submit that this ground taken by Petitioner to set aside Election of Respondent No.1 as Returned candidate is untenable in law and cannot give rise to any cause of action under Section 80 of the RP Act.

9.7. He would submit that Affidavit in Form-26 contains Clause-(9) wherein the candidate is required to give details of his profession or occupation of his self and his spouse. He would submit that Respondent No.1 has disclosed the fact therein that he was working as

“Headmaster” in Arvind Prathamik Ashramshala run by Arvind Smruti Trust registered under the Maharashtra Public Trust Act, 1950. He would submit that said Ashramshala is governed by the Ashram Shala Sanhita 2019 (for short “said Sanhita”), published by the Adivasi Vikas Vibhag of the State of Maharashtra and according to Clause 4.3.13 therein it is provided that management and teachers except Class IV employees, temporary teachers and staff may contest Election with prior written permission of the Management.

9.8. He would submit that on 23.10.2024 in accordance with the aforesaid provision Respondent No.1 applied for permission to contest the Election for which he was granted permission on 26.10.2024 on terms and conditions contained therein in accordance with law. He would submit that Respondent No.1 has already disclosed this fact in Clause-(9) of his Affidavit in Form-26 that he was serving as Primary Headmaster in a Private Institution.

9.9. He would submit that Petitioner’s allegation that Respondent No.1 has procured Affidavit in Form-26 from the Internet Website of Election Commission of India by Respondent No.1 and filed the same is incorrect and vague and Petitioner has deliberately not annexed the permission granted to Respondent No.1 to contest the Election in his Election Petition. He would submit that this act on part of Petitioner amounts to suppression of material fact which is *prima facie*

misleading and hence Petitioner is liable to be proceeded against for perjury.

9.10. With regard to ground of non-disclosure of liabilities and disclaimers at the foot of Form-26 of the Affidavit of disclosure, he would submit that Petitioner has failed to advert and place on record any cogent material information or documents in support of this allegation of improper acceptance of Nomination Form by the Returning Officer. He would submit that Handbook for Candidates 2023 issued by Election Commission of India provide guidelines in the light of Election management and Electoral machinery. He would submit that as per Clause 3.25 Returning Officer has to satisfy himself that details furnished by the candidate are same as those in the Electoral roll and he is expected to check whether Affidavit in Form-26 (Annexure – 3) is duly filled up and attached with the Nomination Form and if not so then bring it to the candidate's notice through the check list.

9.11. He would submit that Chapter-4 of the Handbook deals with 'Scrutiny of Nominations' by the Returning Officer; furthermore, Section 36 of the RP Act also governs the same. He would submit that Clause-4.4 of this chapter deals with 'Objections which may be raised' by the candidate and it specifically states that the candidate should not raise any flimsy or technical objection in regard to any Nomination

Form. He would submit that Section 36(4) of the RP Act states that Returning Officer shall not reject any Nomination Form on the ground of any defect which is not of substantial character. In this regard he would submit that since provisions of the RP Act are duly followed in the present case, no illegality can be attributed to the Returning Officer in accepting the Nomination Form of Respondent No.1.

9.12. He would submit that in the present case on 30.10.2024 Scrutiny of Nomination Form was fixed as per schedule for the General Election. He would submit that Clause 3.5.4 of the Handbook states that copies of the Affidavits would be displayed in the premises of a public place within the constituency freely accessible to the general public. Hence, with regard to ground of non-disclosure of liabilities and disclaimers he would submit that since no objection was taken by Petitioner or for that matter by any of the contesting candidates to Respondent No.1's Nomination Form and Affidavit in Form-26, its annexures and contents, the Petitioner cannot now claim that the Election result has been materially affected after he has lost the Election.

9.13. He would submit that according to result of Election Respondent No.1 was declared as Returned candidate having secured 1,14,514 votes against Petitioner who secured 73,106 votes with a huge difference of 41,408 votes. He would submit that this difference

in margin proves that the result of Election has not been materially affected because of any of the vague grounds alleged by Petitioner who has failed to make out any case of corrupt practice against Respondent No.1.

9.14. On the point of procuring Nomination Form and Affidavit in Form-26 from the Internet website of Election Commission of India which would be inadmissible document as contemplated under Section 65-B(4) of Indian Evidence Act, he would submit that this contention of Petitioner is on the face of the record unacceptable since he form collected from the Returning Officer was duly filled and submitted for scrutiny. With regard to ground of not reproducing Note Nos. 1 to 5 on disclaimer at the end of the Affidavit in Form-26, he would submit that the same does not amount to a corrupt practice as contemplated under Sections 100(1)(b), 100(1)(d)(i), 100(1)(d)(iv) or 123(4) of the RP Act, neither it can be said to be an incorrect statement of fact nor submission of incomplete Nomination Form along with Affidavit in Form-26 because the Form was provided by the Returning Officer which was duly filled and submitted and most importantly after scrutiny was accepted therefore this cannot affect the result of Election.

9.15. He would submit that ground of non-eligibility due to qualification and violation of provisions of COI and Section 100(a)(i)

of the RP Act to fill the seat is not maintainable for the reasons mentioned in foregoing paragraphs. He would submit that Petitioner has not averred specifically as to in what manner the result of Election has been affected due to Respondent No.1's failure to provide supporting documents. He would submit that as far as employment of Respondent No.1 is concerned, provisions of Civil Services Rules are not applicable to him rather Rule 1(3) states that these Rules are applicable to all persons appointed to Civil Services and posts in connection with the affairs of State of Maharashtra.

9.16. He would submit that Respondent No.1 was appointed as Headmaster in Ashramshala governed by Ashram Shala Sanhita 2019 published by the Adivasi Vikas Department, Maharashtra State, and not under the Civil Services Rules. Hence, he would submit that contention of Petitioner, that in view of the provisions of Rule-5 and definition of "Government Servant" under Section 2(b) of Civil Services Rules, Respondent No.1 ought not to have taken part in any political movement or activity is completely devoid of merits. He would submit that Respondent No.1 on 26.10.2024 duly obtained permission from his employer in accordance with Clause 4.3.13 of the said Sanhita for contesting the Election and submitted the same which is borne out from the record.

9.17. In support of his above submission, he has referred to and relied upon the decision of the Supreme Court in the case of *Subhash Desai Vs. Sharad J. Rao And Others*¹

9.18. Therefore, he would submit that Petitioner has failed to make out any case materially affecting the result of Election on the grounds of (i) Improper acceptance of Nomination Form of the Respondent No.1 by Returning Officer; (ii) Failure to reproduce Note-1 to Note-5 below Verification under Affidavit in Form-26; (iii) Violation of Section 100(1)(b), 100(1)(d)(i), 100(1)(d)(iv) or 123(4) of the RP Act; and therefore Application under Order VII Rule 11 deserves to be allowed and resultantly Election Petition be dismissed.

10. *PER CONTRA*, Ms. Karnik, learned Senior Advocate appearing for Election Petitioner has vehemently opposed the Application under Order VII Rule 11 of CPC and made the following submissions :-

10.1. She would submit that on 28.10.2024, Respondent No.1 filed his Affidavit in Form-26 wherein he did not produce information in terms of Note 1 to Note 5 of said Rules below his Verification which is required to be mandatorily produced as per Rule 4(A) of the Rules. She would submit that Respondent No.1 failed to provide such material information required as per provisions of the RP Act and said

¹ 1994 Supp (2) SCC 446

Rules, and hence due to improper acceptance of such Nomination Form result of Election of declaring him as Returned candidate has been materially affected.

10.2. She would submit that Respondent No.1 submitted incorrect, incomplete and faulty Form-26 which was further accepted by the Returning Officer of 129-Vikramgad (S.T) Assembly Constituency. She would submit that such action on the part of the Returning Officer is thus illegal and against the provisions of law. She would submit that due to improper acceptance of said Nomination Form, the result of Election insofar as it concerned the Returned candidate, has been materially affected.

10.3. She would submit that Respondent No.1 failed to provide information as per format prescribed under Rule 4-A of the said Rules by depicting Note 1 to Note 5 below his Verification. She would submit that due to this suppression / omission the statement of facts provided in Affidavit in Form-26 amounts to corrupt practice on the part of Respondent No.1, as contemplated under Sections 123(4) of the RP Act which in turn has materially affected the result of Election.

10.4. She would submit that considering such failure of Respondent No.1 to furnish information required as per Rules and Regulations provided under the provisions of RP Act, he stood disqualified to be chosen to fill the seat under the COI or under Section

100(a)(i) of the said Act. She would submit that such acceptance of improper Nomination Form of Respondent No.1 by the Returning Officer has materially affected the result of Election as contemplated under Section 100 (1)(d)(i) of the RP Act.

10.5. She would submit that Respondent No.1 is guilty of altogether altering Form-26 on his own. She would submit that original Form-26 under Rule 4-A of the said Rules provide for Note 1 to 5 as disclaimers which Respondent No.1 failed to mention or reproduce in the Form. She would submit that Respondent No.1 deleted Note 1 to Note 5 below his verification and therefore submitted a defective Form and Affidavit. She would submit that acceptance of such incomplete Nomination Form of Respondent No.1 by the Returning Officer is improper and against the provisions of law and has materially affected the result of Election.

10.6. She would submit that submission of incomplete information and publication of statement of fact by way of incorrect Affidavit in Form-26 by Respondent No.1 amounts to non-compliance with provisions of the COI and RP Act and hence amounts to corrupt practice as contemplated under Section 123(4) of the said Act, and therefore, Election of Respondent No.1 is required to be declared as void under Section 100(1)(d)(iv) thereof.

10.7. She would submit that if not for violation of such statutory

omissions on the part of Respondent No.1 and the Returning Officer, Petitioner would have obtained a majority of valid votes as compared to votes obtained by Respondent No.1 by way of corrupt practice to be declared as the Returned candidate. She would submit that therefore the Application under Order VII Rule 11 is not maintainable and deserves to be dismissed.

10.8. She would submit that filing incomplete affidavit by any candidate is considered as violation of the provisions of RP Act and Nomination of such candidate is liable to rejection by Returning Officer at the time of scrutiny. She would submit that Respondent No.1's nomination therefore ought to have been rejected by Returning Officer at the time of scrutiny for reason to furnish incomplete affidavit.

10.9. Next she would submit that Respondent No.1 was working as Primary Principal of Arvind Ashramshala (School) managed by Arvind Smruti Trust, at Village Dadade, Taluka - Vikramgad, District - Palghar. She would submit that this is a 100% aided Ashram School which receives grant-in-aid from the State Government. She would submit that in view of Rule 5 of the Maharashtra Civil Services (Conduct) Rules, 1979 (for short “ **Civil Services Rules**”), Respondent No.1 being a Government Servant therefore cannot be a member of or be otherwise associated with any political party or any organization which takes part in, or subscribes in aid of, or assists in any other

manner, any political movement or activity.

10.10. She would submit that Respondent No.1 was the Principal of the school and hence belonged to the Management category. She would submit that he cannot be categorized as teacher/employee of the school and hence he could not have stood for Election in violation of the aforesaid Rule. She would submit that No Objection Certificate produced by Respondent No. 1 amounts to a self attested document permitting himself to contest the Election and it is therefore bad in law. She would submit that Respondent No.1 failed to disclose information in respect of any prior permission sought by him from the Competent Authority for contesting the Election while in Government service.

10.11. She would submit that reliance of Respondent No.1 on Clause 4.3.13 of said Sanhita is unacceptable because of definition of management as contemplated under definition Nos.18 and 38 of the said Sanhita. To support her submission she would submit that Clause 4.3.14 of the said Sanhita provides that all correspondence and representation concerning the school is to be made by the Principal. She would submit that provisions of said Sanhita make it clear that the Principal being not only manages day-to-day operations of the school but also all other functions like school finances, grants, mid-day meals, scholarships, supplies and compliance, etc. She would submit that

though the Principal may be a teacher simultaneously, but his main duty is to supervise the academic functions, and hence he works as the *de facto* Secretary i.e. as an intrinsic part of the Management of the school.

10.12. She would submit that Respondent No.1 neither disclosed in his Affidavit nor in his Nomination Form permission or leave obtained by him from any Competent Authority before contesting the Election. She would submit that Rule 5 of the Civil Services Rules do not allow Government Servant to take part in politics and elections. She would submit that according to the Civil Services Rules Respondent No.1 was not eligible to contest the Election and hence Returning Officer committed an error by accepting his nomination. She would submit that improper acceptance of nomination of Respondent No.1 has affected the result of the Election. She would submit that Respondent No.1 thus has obtained majority votes by indulging in corrupt practices and hence Petitioner secured the second highest valid votes in the Election.

10.13. She would submit that Returning Officer should have ensured that the Affidavit filed by candidates were as per Civil Services Rules, and if not, they ought to have been rejected. She would submit that purpose of filing Affidavit along with the Nomination Form serves to effectuate the fundamental right of citizens guaranteed under

Article 19(1)(a) of the COI. She would submit that the Returning Officer has acted in connivance with Respondent No.1 who exerted undue influence on him by accepting his incomplete Affidavit which has materially affected the result of Election insofar as it concerned the Returned candidate. She would submit that ingredients of Section 171 under Chapter IX-A of the Indian Penal Code provide meaning of undue influence which relates to the words 'direct and indirect' used in Section 123(2) of the RP Act.

10.14. She would submit that concept of undue influence is relevant to prior as well as post voting period. She would submit that as per Section 33 of the RP Act candidates are required to deliver complete Nomination Form to the Returning Officer according to the "prescribed" form as defined under Section 2(g) of the RP Act which has admittedly not been done by Respondent No. 1.

10.15. She would submit that Section 169 of the RP Act authorizes Central Government after consulting the Election Commission by Notification in the Government Gazette to make rules for carrying out the purposes of the RP Act according to which contents of the Nomination Form should have been ascertained. In support of her above submission she has referred to and relied upon decision the of Supreme Court in *Khaje Khaanavar Khanderkhan Hussain Khand & Ors. Vs. Siddavanballi Nijalinagappa & Anr.*²

2 1969 AIR 1034.

10.16. She would submit that incomplete publication of statement of fact by Respondent No.1 being the returned candidate is a corrupt practice which has materially affected the result of Election. She would submit that Returning Officer ought to have rejected the Affidavit filed by Respondent No.1 for it not to be as per the prescribed format under Rule 4(A) of the Civil Services Rules. She would therefore pray for dismissal of the Application under Order VII Rule 11.

10.17. She would submit that requirement of concise statement of material facts in case the Election Petition is filed on grounds other than corrupt practices is not mandatory. In support of this submission she has referred to and relied upon the decision of the Supreme Court in *Ashraf Kokkur Vs. K. Vs. Abdul Khader And Others*³;

10.18. Furthermore, in support of Petitioner's case, she has referred to and relied upon the following decisions of the Supreme Court:-

(i) *Liverpool & London S. P. & I Association Ltd. Vs. M. V. Sea Success I and Another*⁴;

(ii) *Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh And Others*⁵;

(iii) *Virender Nath Gautam Vs. Satpal Singh And Others*⁶;

(iv) *Kisan Shankar Kathore Vs. Arun Dattatray Sawant And Others*⁷;

(v) *Madiraju Venkata Ramana Raju Vs. Peddireddigari Ramachandra Reddy And Others*⁸;

3 (2015) 1 SCC 129

4 (2004) 9 SCC 512

5 (2004) 11 SCC 196

6 (2007) 3 SCC 617

7 (2014) 14 SCC 162

8 (2018) 14 SCC 1

- (vi) *Bhim Rao Baswanth Rao Patil Vs. K. Madan Mohan Rao And Others*⁹;
- (vii) *S. P. Chengalvaraya Naidu (Dead) By LRS. Vs. Jagannath (Dead) By LRS. And Others*¹⁰;
- (viii) *Mairembam Prithviraj Alias Prithviraj Singh Vs. Pukhrem Sharatchandra Singh*¹¹;
- (ix) *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal And Others*¹²;
- (x) *Kuldeep Singh Pathania Vs. Bikram Singh Jaryal*¹³;
- (xi) *Suryakant Sheshrao Panchal Vs. Vasantrao Naik Vimukta Jati, Bhatakya Jamati Aadarsh Prasarak Mandal and Others*¹⁴;

11. I have heard Mr. Pradhan, learned Advocate for Respondent No.1 and Ms. Karnik, learned Senior Advocate for Petitioner and with their able assistance perused the Election Petition and Annexures appended thereto. Submissions of both parties in the Application under Order VII Rule 11 of CPC have received due consideration of the Court.

12. *Prima facie*, it is seen that the twenty four separate grounds stated in paragraph no.9 of the Election Petition, can be effectively compartmentalized into three main grounds only, viz. clubbing clauses (a) to (m), clauses (o), (p), (q) and clauses (s), (v), (w) pertain to principal ground that Respondent No.1 (Returned candidate) has committed corrupt practice alleged on the basis of him filing an incorrect Nomination Form-26 and the Returning Officer having

9 (2023) 18 SCC 231

10 (1994) 1 SCC 1

11 (2017) 2 SCC 487

12 (2020) 75 SCC 1

13 (2017) 5 SCC 345; (2017) 3 SCC (Civ)147; (2017) 5 SCC 59

14 2002 SCC OnLine Bom 386; (2002) 3 Mah LJ 659 (FB)

accepted the same without raising any objection. This is the principal ground of challenge. The second ground of challenge is contained in clause (r) alleging that Respondent No.1 has exerted undue influence on the Returning Officer thereby requiring him to accept his improper Nomination Form and has therefore committed corrupt practice affecting result of the Election materially. The third and final ground is contained in clause (n) wherein it is alleged by Petitioner that Respondent No.1 being a Government Servant was prohibited from taking part in the Election in violation of Rule (5) of the MCS (Conduct) Rules, 1979. Apart from the aforesaid three grounds there are no other grounds stated in the Election Petition. The Petitioner has alleged that the aforesaid three grounds amount to commission of corrupt practices by Respondent No.1.

13. It is seen that while describing and narrating the above grounds no material particulars whatsoever as to how Respondent No.1 committed corrupt practices before or during the Election program have been narrated or stated by the Petitioner. Insofar as the principal ground is concerned the allegation is that From-26 under Rule 4(A) did not contain disclaimer Note-1 to Note-5 below the Verification paragraph. Hence, it is alleged that this omission would amount to corrupt practice which materially affected the Election result. This issue can be squarely and *prima facie* answered on the ground that non-reproduction of disclaimer Note-1 to Note-5 in the

Nomination Form-26 cannot be attributable to the Respondent No.1. This is for the simple reason that the format of Affidavit in Form-26 was issued by the Returning Officer to the Respondent No.1 on his application which was duly filled in and submitted for scrutiny and acceptance to the Returning Officer in accordance with law. What is significant is that this Affidavit / Form is not downloaded from the ECI website and / or prepared by the candidates who submit the same. It is a statutory Form identified by distinct identification number disbursed by the Returning Officer himself to each candidate on behalf of the Election Commission of India when applied for. Hence, there is no case made out whatsoever to allege that non-reproduction of Note-1 to Note-5 as disclaimer in the Form is attributable to the candidate i.e. Respondent No.1 and it relates to adoption of corrupt practice by the him or for that matter the Petitioner or any other candidate who contested the said Election as all candidates submitted similar / identical duly filled pre – printed forms. Thus, merely alleging that filing of the Affidavit in Form-26 without disclaimer Note-1 to Note-5 amounted to corrupt practice as contemplated under section 100(1)(b), 100(1)(d) (i), 100(1)(d)(iv) or 123(4) of the RP Act is not sustainable to be equated as commission of corrupt practice materially affecting the Election result without any material facts being pleaded in that context. This ground is repeated and reiterated by the Petitioner without giving any material particulars or statement of facts leading to

commission of such corrupt practice by Respondent No.1 thereby materially affecting the Election result. Hence, case of the Petitioner on this ground *prima facie* fails and cannot be countenanced on the face of record. Once there is absence of such concise statement of material facts there can be no cause of action for maintainability of the Election Petition.

14. The second ground pertaining to exerting undue influence as stated in clause (r) is as vague, insufficient and bereft of material particulars to prove that undue influence was exercised by Respondent No.1 on the Returning Officer. It cannot be sustained at all as stated in the Petition since it lacks material particulars altogether.

15. The third ground namely that Respondent No.1 was a Government Servant and therefore ineligible to contest the Election is also not sustainable on the face of record since employment of Respondent No.1 was admittedly governed by the Ashram Shala Sanhita 2019 published by the Adivasi Vikas Vibhag of State of Maharashtra. It is borne out from the record that in accordance with clause 4.3.13 of the said Sanhita Respondent No.1 applied for seeking permission to contest the Election on 23.10.2024 and the Trust accordingly granted permission to contest the Election on 26.10.2024. Further from the affidavit filed in Form-26 appended to the Petition of Respondent No.1 it is seen that he had duly filled in the necessary

information relating to above clause (a) and also enclosed the written permission granted by the Trust and duly submitted the same for scrutiny to the Returning Officer. It is seen that Election Petition filed by Petitioner suppresses this permission altogether despite the same being otherwise uploaded and available on the website of the Election Commission of India. Therefore, *prima facie* on the face of record Petitioner has failed to make out any case for application of Section 84 of the RP Act and thus this ground also fails comprehensively.

16. On reading of the Election Petition it is observed that it comprises of vague and generic pleadings and there is complete absence of material facts. Rather at the outset, I wish to make a note that Ms. Karnik, learned Senior Advocate has fairly argued that whatever is stated in the Election Petition is bare enough for the Petitioner to lay the foundation for challenging the Election of Respondent No. 1 and the detail material facts can be pleaded by him in evidence at Trial. I do not subscribe to or accept the above submission of Ms. Karnik, since if the Election Petition has to be sustained on maintainability under Section 100(1)(d)(iv) or under Section 101 of the RP Act, then the entire cause of action in the form of specific material facts or concise statement of material facts along with full disclosure of names, dates, place, incidents, role etc. of such parties involved needs to be stated specifically in the Election Petition itself to prove commission of corrupt practices which is not the case

seen herein. That is the sine qua non of an Election Petition. In this regard attention is drawn to the statutory provisions of Section 83 of the RP Act which read 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.”

17. Applying the above statutory provisions, it is mandatory under Section 83(1)(a) of the RP Act that Election Petition must contain a concise statement of the material facts with full particulars of corrupt practices with all details on which Petitioner relies. When provisions of Section 83(1)(a) are read in conjunction with provisions of Section 100(1)(d)(iii) and (iv) of the RP Act what emerges is that the Election Petition must contain a concise statement of material facts to demonstrate the ground of improper reception, refusal or rejection of any vote or reception of any vote which is void or a concise

statement of material facts to demonstrate non-compliance with provisions of the Constitution or of the said Act or Rules or orders made thereunder.

18. The present Election Petition as it appear suffers from the vice of nondisclosure of material facts as stipulated in Section 83(1)(a) of RP Act on the face of record. Case of Petitioner is confined to alleged violation of Section 100(1)(d) (iv) as argued by Ms. Karnik. For the sake of reference, Section 100 is reproduced below:

“100. Grounds for declaring election to be void.—

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

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

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

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

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

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

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

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

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

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

but the High Court is satisfied—

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

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

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

Then the High Court may decide that the election of the returned candidate is not void.”

19. From the above, it is seen that for invoking ground under Section 100(1)(d)(iv) of the RP Act, it is incumbent for Election Petitioner to plead in the Election Petition that result of Election of the Returned candidate has been materially affected by non-compliance with provisions of the Constitution or provisions of the RP Act or of any Rules or orders made thereunder by furnishing precise details and not by merely making bald allegations. Meaning of concise material facts mean all such relevant details for calling an Election. It needs to be therefore clarified that Petitioner cannot be allowed to improve his case in evidence subsequently by pleading facts not pleaded in the Election Petition which is the settled law.

20. In the decision of this Court passed in the case of ***Ravindra Dattaram Waikar Vs. Amol Gajanan Kirtikar and Ors.***¹⁵ (Coram : Mr. Sandeep V. Marne, J.) this Court after referring to and relying upon several decisions of the Supreme Court has reiterated the above settled

¹⁵ 11 Application (L) No. 29930 of 2024 with Application (L) No. 29880 of 2024 in Election Petition No.6 of 2024 decided on 19.12.2024.

position of law under the RP Act dealing with the necessity of pleading of material facts i.e. concise statement of facts for maintainability of an Election Petition. Paragraph Nos. 26 to 33 in the above decision refer to the well settled authoritative pronouncements of the Supreme Court in similarly placed cases. What is held by this Court in the above paragraph Nos. 26 to 33 is directly relevant and applicable to the facts of the present case in hand and the discussion and submissions noted herein above. Paras 26 to 33 are reproduced herein below for reference:-

"26) Before proceeding ahead with the examination as to whether the Election Petition filed by the Petitioner discloses concise statement of material facts demonstrating grounds under Section 100(1)(d)(iii) and (iv) of the RP Act, it would be necessary to take stock of few judgments dealing with the necessity for pleading of material facts for maintenance of an Election Petition. By now it is well settled position of law that Election Petition is a statutory remedy and not an action in equity or a remedy in common law. It is also equally well settled position that said Act is a complete and self-contained Code. Therefore, strict compliance with the provisions of the said Act is mandatory requirement for exercising the statutory remedy under the RP Act. Reference in this regard can be made to the judgment of the Apex Court in Jyoti Basu (supra) wherein the Apex Court has held in paragraph 8 as under:-

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court

has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say? ”

27) In ***Dharmin Bai Kashyap Vs. Babli Sahu and others***¹⁶ , the Apex Court has reiterated the position that where a right or a liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by the statute must be availed of in accordance with the statute and that if a statute provides for doing a thing in a particular manner it has to be done in that matter alone and in no other manner. The Supreme Court has held in paragraph 17 as under:-

“17. There is hardly any need to reiterate the trite position of law that when it comes to the interpretation of statutory provisions relating to election law, jurisprudence on the subject mandates strict construction of the provisions [Laxmi Singh v. Rekha Singh, (2020) 6 SCC 812]. Election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which has to be strictly construed. The petitioner having failed to make any application in writing for re-counting of votes as required under Section 80 of the Nirvachan Niyam, 1995, and having failed to seek relief of declarations as required under Rule 6 of the 1995 Rules, the election petition filed by the petitioner before the SubDivisional Officer (R) seeking relief of re-counting of votes alone was not maintainable.”

28) Having held that strict compliance with provisions of RP Act is mandatory requirement for exercise of statutory remedy, it

16 (2023) 10 SCC 461

would be appropriate to discuss the relevant case law on the subject dealing with the nature of pleadings that are required for maintainability of a valid Election Petition. In *Mangani Lal Mandal* (5th supra), the Apex Court held that the *sine qua non* for declaring an election of returned candidate to be void under Section 100(1)(d)(iv) of the RP Act is further proof of the fact that such breach or nonobservance results in materially affecting the result of returned candidate. It is further held that mere violation or breach or non-observance of the provisions of Constitution, the Act, Rules or orders made thereunder would not *ipso facto* render the election of returned candidate void. The Supreme Court held in paragraphs 10, 11 and 12 as under:-

“10. A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of noncompliance 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 nonobservance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1) (d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in: (1) *Jabar Singh v. Genda Lal* [AIR 1964 SC 1200 : (1964) 6 SCR 54] ; (2) *L.R. Shivaramagowda v. T.M.*

Chandrashekar [(1999) 1 SCC 666]; and (3) Uma Ballav Rath v. Maheshwar Mohanty [(1999) 3 SCC 357] .

12. Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellant's first wife and the dependent children born from that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election petition there is no pleading at all that the suppression of the information by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and nondisclosure 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."

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

"15. Suffice it to say that the case pleaded by the appellant was not one of complete failure of the requirement of filing an affidavit in terms of the judgment of this Court and the instructions given by the Election Commission but a case where even according to the appellant the affidavits were not in the required format. What is significant is that the election petition did not make any averment leave alone disclose material facts in that regard suggesting that there were indeed any outstanding dues payable to any financial institution or the Government by the returned candidate or any other candidate whose nomination papers were accepted. The objection raised by the appellant was thus in the nature of an objection to form rather than substance of the affidavit, especially because it was not disputed that the affidavits filed by the candidates showed the outstanding to be nil. 16. to 17. xxxxx

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

19. xxxxx

20. Coming to the allegation that other candidates had also

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

30) In *Mairembam Prithviraj alias Prithviraj Singh* (supra), the Apex Court has relied upon its judgment in *Durai Muthuswami Versus. N Nachiappan*¹⁷, and held in paragraphs 22 and 23 as under:-

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

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

17 (1973) 2 SCC 45

Court is of opinion—

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

*(b)-(c) ****

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

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

*(ii)-(iii) ****

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

been cast in favour of the defeated candidate whose nomination had been improperly accepted if it had not been accepted. In that case it would be necessary for the person challenging the election not merely to allege but also to prove that the result of the election had been materially affected by the improper acceptance of the nomination of the other defeated candidate. Unless he succeeds in proving that if the votes cast in favour of the candidate whose nomination had been improperly accepted would have gone in the petitioner's favour and he would have got a majority he cannot succeed in his election petition. Section 100(1)(d)(i) deals with such a contingency. It is not intended to provide a convenient technical plea in a case like this where there can be no dispute at all about the election being materially affected by the acceptance of the improper nomination. "Materially affected" is not a formula that has got to be specified but it is an essential requirement that is contemplated in this section. Law does not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a ground. The petitioner had stated the ground on which the 1st respondent's election should be declared to be void. He had also given the material facts as required under Section 83(1) (a). We are, therefore, of opinion that the learned Judge erred in holding that it was not competent for him to go into the question whether the 1st respondent's nomination had been improperly accepted."

23. It is clear from the above judgment in *Durai Muthuswami* [*Durai Muthuswami v. N. Nachiappan*, (1973) 2 SCC 45] that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the respondent to prove that result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the appellant's nomination is declared to have been improperly accepted, his election would have to be set

aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected.”

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

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

i. Section 83(1)(a) of said 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 said Act, the Election petitioner must aver that on account of noncompliance 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 pusaiose.

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 said Act.”

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

“13. It hardly needs to be reiterated that in an Election Petition, 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 said Act. As held in Bhagwati Prasad Dixit in Dharti Pakar Madan Lal ‘Ghorewala’ v. Rajeev Gandhi and Agarwal v. 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 v. Ramratan Chaturvedi be also made, wherein this Court upon review of the earlier decisions, laid down following principles applicable to election cases involving corrupt practices:—

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

(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide Dharti Pakar 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 Dharti Pakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93].

(3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible

conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide Jumuna Prasad Mukhariya v. Lachhi Ram [(1954) 2 SCC 306 : (1955) 1 SCR 608 : AIR 1954 SC 686] and Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660].

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

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

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

15. The legal position with regard to the noncompliance of the requirement of Section 83(1)(a) of the said Act and the rejection of Election Petition under Order VII Rule 11, CPC has also been regurgitated recently by this Court in case of *Kanimozhi Karunanidhi v. A. Santhana Kumar (supra)*:—

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

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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 said Act.”

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

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

41. The decision of this Court in Kisan Shankar Kathore (supra), also demonstrates this principle, as this Court undertook examination of several individual defects in the nomination of the returned candidate and found that some of them were actually insubstantial in character. This Court noted that two facets required consideration - Whether there is substantial compliance in disclosing requisite information in the affidavits filed along with the nomination and whether non-disclosure of information on identified aspects materially affected the result of the election. This Court observed, on facts, that non-disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was a bonafide dispute about the same. Similar was the observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-valuation and reassessment for the pusaidose of tax assessment. Earlier, in Sambhu Prasad Sharma v. Charandas Mahant, this Court observed that the form of the nomination paper is not considered sacrosanct and what is to be seen is

whether there is substantial compliance with the requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper.”

21. Applying the above yardstick and authoritative pronouncements of the Supreme Court to the facts in the present case, it is seen that there is absolute non-compliance of the provisions of Section 83 of the RP Act which contemplate that an Election Petition has to mandatorily contain a concise statement of material facts to begin with on which the Petitioner relies and full particulars of corrupt practices that he alleges including as full statement as possible of names of parties alleged to have committed such corrupt practices and the date and place of commission of each such corrupt practice be made.

22. The material facts stated in the present Election Petition *prima facie* do not conform to the provision of Section 83(1)(a) of RP Act. As enunciated and settled by the Supreme Court, the material facts must be such facts as would afford a basis for the allegation made out in the Petition and would constitute the cause of action. The Supreme Court has categorically, repeatedly held and reiterated that omission of even a single material fact would lead to incomplete cause of action and statement of Plaint would be bad. The Supreme Court held that what constitutes material facts are the entire bundle of facts which will have to be pleaded as positive statement of facts or positive averment of negative facts. In the instant case, no such facts rather no

material facts leading to cause of action whether positive or negative averments of facts are pleaded and however at the time of argument Court is informed that such material facts will be brought on record in evidence during the Trial. The Supreme Court has held that non pleading of material facts amount to non disclosure of cause of action and incomplete cause of action or omission to contain such statement of material facts not disclosing cause of action would lead to dismissal of Election Petition in limine. Once there is a failure of Election Petitioner to raise necessary pleadings to make out a case from existence of any ground under Section 100(1)(d) of RP Act, it would necessarily result in dismissal of the Election Petition under Order VII Rule 11 of the CPC. Thus it is summarized that pleading in present Election Petition are not precise and clearly containing all necessary details of material facts. The three principle grounds of challenge are mere allegations which are vague, general in nature, clearly lack material which cannot *prima facie* raise any triable issue on reading of Election Petition. The Petitioner cannot be permitted to enhance, escalate and improve his case at trial or in evidence. *Prima facie* there is not an iota of evidence adduced in support of the pleading in the present case which can lead to an irresistible conclusion that the allegations made have been committed by the Election Petitioner or the Returning Officer rendering the Election void. Further alleging that result of Election is materially affected merely by accepting the

Nomination Form of Respondent No.1 is not good enough as it is completely devoid of cogent, credible and satisfactory pleadings. In fact, the principle ground of challenge i.e. non – disclosure of disclaimer Note-1 to Note-5 cannot be in my view be termed to be part of such character to render its acceptance improper in the facts of the present case. That apart the Nomination Form has stood the test of Section 36(4) of RP Act after scrutiny. Infact non-disclosure of disclaimer Notes cannot be considered as departure from the prescribed Form and ground for rejection or challenge since it is a statutory Form distributed by the Returning Officer himself.

23. In the present case, it is concluded on reading of the Election Petition that Petitioner has merely alleged general and vague violations by Respondent No. 1 without specifying and supplying any material details whatsoever. It is observed on perusal of the Petition that there is no concise statement of material facts alleging violation under Section 83 of the RP Act is stated. All that Petitioner has pleaded are grounds (j) and (k) which read thus :-

“(j) The petitioner further submits that submissions of incomplete and incorrect Affidavit in Form 26 by the Respondent No.1 amounts to noncompliance with the provisions of the Constitution and Representation of the People Act and on this ground also the present election of the Respondent No. 1 is required to be declared as void, as contemplated under Section 100(1)(d)(iv) of the Representation of the People Act, 1951;

(k) The Petitioner submits that as aforesaid, Respondent No.1 has failed to submit the proper Affidavit and, therefore, accepting the nomination of the Respondent No.1 by the Returning Officer is illegal and against the provisions of law and

due to improper acceptance of said nomination the result of the election, insofar as it concerns a returned candidate, has been materially affected and that but for the votes obtained by the Respondent No.1 / returned candidate by corrupt practices, the Petitioner would have obtained a majority of the valid votes and, therefore, it is just and necessary to declare that the election of the Respondent No.1 to be void and to declare the Petitioner has been elected in the said election, under the provisions of Section 101 of the Representation of the People Act, 1951;"

24. From the above pleadings it is seen that the said grounds are *prima facie* inadequate and does not contain details of any particulars of any corrupt practices allegedly indulged by Respondent No. 1 in the Election. The grounds which are stated in paragraph Nos. (j) and (k) in the Petition are *prima facie* not in consonance with the violation alleged under Section 83 read with Section 100(1)(d)(iv) of RP Act since no particulars are given by the Petitioner therein.

25. In the present case, Petitioner has challenged Election of Respondent No.1 on the ground that result of the Election, insofar as it concerned Respondent No.1 was materially affected by non-compliance with Rule 4(A) of the said Rules read with Section 33 of the RP Act. Section 33 of the RP Act pertains to presentation of Nomination Form and the requirement for a valid nomination. Section 36 pertains to scrutiny of nomination by the Returning Officer. Subsection (2) of Section 36 empowers the Returning Officer either on objections made to any nomination or on his own motion to reject any nomination on the grounds mentioned therein. One of the ground to

reject a nomination is if there is failure to comply with any of the provisions of Section 33. Sub-section (4) of Section 36 states that Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

26. Part-II of the Conduct of Election Rules, 1961 deals with General Provisions. Rule 4 and Rule 4(A) pertain to submission of Nomination Form and Affidavit in Form-26 to be filed at the time of delivering nomination paper which are reproduced below for reference:-

***“4. Nomination paper-** Every nomination paper presented under sub-section (i) of section 33 shall be completed in such one of the Forms 2A to 2E as may be appropriate: Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.*

***4A. Form of affidavit to be filed at the time of delivering nomination paper-** The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.”*

27. In the present case, Respondent No.1's nomination has been duly scrutinized under Section 36 and no objection is sustained by the Returning Officer and his nomination is accepted as valid. Thus once such scrutiny attains finality, then election can only be set aside under Section 100 if it is shown that the result of such an election has been materially affected by non-compliance with the provisions of the

Constitution or the RP Act. Hence the principal ground of challenge in the Election Petition is unsustainable. The pleadings in the Petition however do not disclose how the alleged omissions have had a material bearing on the result of the Election.

28. I am of the considered view that while disclosure in Form-26 is mandatory, non-disclosure or partial disclosure constitutes an irregularity attracting Section 125A of the Act, and it cannot be a ground for setting aside the Election under Section 100(1)(d)(iv). In the present case the alleged omissions do not amount to non-compliance with provisions of Section 33 or Rule 4(A) so as to constitute a defect of substantial character under Section 36(4) of the RP Act. In any event, Respondent No.1 cannot be held liable for such non – disclosure of disclaimer on the Statutory Form disbursed by the Returning Officer.

29. It is also significant to note that Affidavit in Form-26 along with nomination papers is required to be furnished by the candidate as per Rule 4(A) of the Rules read with Section 33 of RP Act. It is seen that the Returning Officer is empowered, either on objections made to any nomination or on his own motion, to reject any nomination on grounds mentioned in Section 36(2), including the ground that there has been a failure to comply with any of the provisions of Section 33 of the Act. However in the case of Respondent No.1, at the time of

scrutiny of his nomination paper and his Affidavit in Form No.26 neither any objection is raised nor Returning Officer has found any lapse or non-compliance of Section 33 or Rule 4(A) of Rules. Petitioner has exercised his right to question the Affidavit by filing the present Election Petition under Section 100(1)(d)(iv) of the RP Act. However, there are no material facts stated in the Petition constituting cause of action to maintain challenge on this ground under Section 100(1)(d)(iv) of the RP Act.

30. Insofar as the issue of non-disclosure is concerned, case of Petitioner is that in Form-26, appended below Exhibit 'C' at page No.69 of the Petition, Respondent No.1 has not disclosed information in respect of any prior permission sought from the Competent Authority for contesting the said Election while in Government Service. Mr. Pradhan has vehemently argued that Respondent No.1 on 26.10.2024 had duly obtained permission in accordance with Clause 4.3.13 of the said Sanhita from Arvind Smruti Trust for contesting the Election by following the prescribed procedure and the same was submitted and uploaded on the website of the Election Commission of India. Copy of the same is appended to the Application of Respondent No.1 at Page No.136.

31. It is seen that on scrutiny, the Returning Officer has not found any ambiguity or mistake much less, non-disclosure or falsehood

which can be deemed as suppression. It is in this context that when Election Petitioner approaches the Court he has to make a concise material statement of facts with all details in the Petition itself at the threshold. Once the nomination of Respondent No.1 is held to be valid, it is deemed to be accepted as per Section 33 of RP Act and it can only be rejected at the time of scrutiny under Section 36(2) of the RP Act. In this regard provisions of Section 36(3) and (4) are therefore extremely crucial and apply to Respondent No.1's case. The said provisions read as under:-

“36. Scrutiny of nominations.—

(1) xxxxxx

(2) xxxxxx

(3) Nothing contained in clause (b) or clause (c)] of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.”

32. Thus once scrutiny is held by the Returning Officer and he endorses each nomination paper, his decision of accepting the same and the list of validly nominated candidates is prepared i.e. to say that candidates whose nominations have been found valid. It is a statutory process envisaged under Sections 30, 33 and 34 of the RP Act. Therefore I am not inclined to accept the submissions advanced by Ms. Karnik in the present case regarding suppression and nondisclosure which are adequately dealt with herein above. In fact the Petitioner

has made an incorrect statement about non – disclosure of permission which clearly reflects in item No.9 of the Affidavit and copy of which is enclosed thereto.

33. Hence, in the absence of specific and necessary pleadings and reliance placed on aforesaid findings and observations including the citations discussed, in my opinion on a holistic consideration of the pleadings stated the grounds of the Petition, the present Election Petition is liable to be rejected under Order VII Rule 11 of the CPC.

34. Further, considering the winning margin and the averments made in the Election Petition, Petitioner's case is vague and thoroughly inadequate. Petitioner has miserably failed to raise appropriate pleadings to disclose cause of action for setting aside the Election of Respondent No.1 under any of the grounds enumerated in Section 100 of the said Act. Mere narration of figures without any backup data cannot be considered as a concise statement of material facts. Hence, in the absence of necessary pleadings and the above observations and findings, the Election Petition is liable to be rejected under Order VII Rule 11 of CPC on consideration of the pleadings in Petition. In view of the above, I am inclined to agree with the submissions and arguments advanced by Mr. Pradhan in Application filed below Order VII Rule 11 of the CPC seeking dismissal of the Election Petition.

35. I am of the view that Petitioner has failed to ensure strict compliance with the statutory provisions of the RP Act namely Section 83(1)(a) of the RP Act. Therefore following the mandate under various judgments of the Supreme Court, particularly in the case of *Kanimozhi Karunanidhi Vs. A. Santhana Kumar and others*¹⁸ and *Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and others*¹⁹ that even a singular omission of statutory requirement must entail dismissal of the Election Petition by having recourse to provisions of Order VII Rule 11 of CPC, in my view, the present Election Petition fails as it does not disclose any cause of action for making out any of the grounds stated under Sections 100(1)(d)(i) and 100(1)(d)(iv) read with Section 83 of the RP Act. Hence Application under Order VII Rule 11 of CPC filed by Respondent No.1 is allowed and made absolute in terms of prayer clause (a). In view thereof, the Election Petition is liable to be rejected by having recourse to the provisions of Order VII Rule 11 of CPC. Resultantly, the Election Petition fails and stands dismissed.

36. In view of the above, Application (L) No.9497 of 2025 is allowed. Resultantly, Election Petition No.19 of 2025 is rejected.

37. Election Petition No.19 of 2025 is accordingly dismissed. No costs.

38. Application No.6 of 2025 is disposed of as infructuous since

¹⁸ 2023 SCC Online SC 573

¹⁹ 2024 SCC Online SC 509

vide order dated 06.11.2025 Election Petition No.37 of 2025 has been disposed of as withdrawn and present Election Petition No.19 of 2025 is dismissed.

39. Application (L) No.24590 of 2025 is allowed in terms of prayer clause (a) and (b). District Election Officer is directed to release the 358 Ballot Units and 358 Control Units which are kept in his custody within two (2) weeks from the date of uploading of this order and accordingly it is also disposed in the above terms.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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