



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT NAGPUR  
CIVIL APPELLATE JURISDICTION  
ELECTION PETITION NO.17 OF 2025  
WTIH  
CIVIL APPLICATION NO.823 OF 2025**

Dr. Rajendra S/o Bhaskarrao Shingne  
Age -64 years, Occupation - Business,  
R/o- C/o Bhaskarrao Shingane,  
Chikhli Road, Muktai Nagar,  
District-Buldhana – 443001

.....Petitioner

Vs.

Manoj S/o Devanand Kayande  
Age, 35 years, Occupation - Member of  
Legislative Assembly of Maharashtra.  
R/o Umbarkhed, Post -Umbarkhed,  
Tehsil Deolgoan Raja  
District Buldhana -443204  
(Maharashtra)

.....Respondent

Mr. Akash Balwant Moon, for the Petitioner.  
Mr. Atharv S. Manohar, for the Respondent.

**CORAM : MRS. VRUSHALI V. JOSHI, J.  
(Through Video Conferencing  
from Kolhapur Circuit Bench  
In Chamber.)**

**DATED : 13<sup>th</sup> FEBRUARY 2026**

**PC.:-**

1. In this Petition, respondent No.1 seeks dismissal of the Election Petition under Section 86(1) of the Representation of the People Act, 1951 (for short “the said Act”) on the ground of non-compliance with Section 81(1) of the said Act.

2. The petitioner has challenged the election of respondent No.1 from 24 – Sindkhed Raja Assembly Constituency in the General Election 2024, the results of which were declared on 23.11.2024.

3. It is not in dispute that the petitioner swore an affidavit before the Registrar (Judicial) on 04.01.2025. The petition was presented on 06.01.2025. Admittedly, the petitioner was not personally present at the time of presentation on 06.01.2025.

4. The contention of respondent No.1 is that Section 81(1) mandates that the petition must be presented by the petitioner himself and presentation through an Advocate is not permissible. Hence, the petition is liable to be dismissed under Section 86(1). In support of his argument, the counsel for respondent No.1 has relied on the following judgments-

(i) In **G.V. Sreerama Reddy & Anr. v. Returning Officer & Ors.**,<sup>1</sup> the Hon'ble Supreme Court authoritatively interpreted Section 81(1) and held that the expression "presented by" must receive strict construction and that presentation through an Advocate in the absence of the petitioner does not satisfy the statutory requirement.

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1 (2009) 8 SCC 736.

(ii) In **Ramanlal Premy v. Shiv Pratap Singh & Anr.**,<sup>2</sup> it was held that where the statute prescribes a specific mode of presentation, compliance with that mode is mandatory and deviation renders the petition invalid.

(iii) In **Jyoti Basu & Ors. v. Debi Ghosal & Ors.**,<sup>3</sup> the Hon'ble Supreme Court held that an election petition is not an action at common law but a statutory proceeding and that courts possess no power beyond what the statute confers. Concepts of equity or substantial compliance cannot be imported into election law.

5. *Per contra*, the petitioner submits that since he had personally appeared on 04.01.2025, sworn the affidavit and completed necessary formalities, the requirement of Section 81(1) stands fully complied with. In support of his contention, Learned counsel for the petitioner has relied on the following judgments-

(i) In the case of **Jamal Uddin Ahmad v. Abu Saleh Najmuddin & Anr.**,<sup>4</sup> the controversy pertained to presentation before the proper officer within the Court establishment. The issue was procedural routing within the registry and not absence of the

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<sup>2</sup> ILR 1978 MP 569.

<sup>3</sup> (1982) 1 SCC 691.

<sup>4</sup> AIR 2003 SC 1917.

petitioner at the time of presentation.

(ii) In the case of *Raj Kumar Yadav v. Samir Kumar Mahaseth*,<sup>5</sup> the question was whether presentation before the Judge in chambers on the last date of limitation was valid. The Supreme Court upheld validity considering the peculiar facts, including the petitioner's presence.

6. In view of the rival submissions, the question that arises for determination is whether swearing of an affidavit on 04.01.2025 amounts to valid "presentation" within the meaning of Section 81(1) of the said Act.

7. Section 81(1) provides that an election petition may be presented to the High Court by a candidate or elector within forty-five days from the date of election of the returned candidate. Section 86(1) mandates dismissal of a petition which does not comply with the requirements as prescribed under Section 81 of the Representation of The People Act, 1951.

8. It is well settled that an election petition is not an action at common law but a statutory proceeding. The Representation of the

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<sup>5</sup> (2005) 3 SCC 601.

People Act constitutes a complete and self-contained code and its provisions must receive strict construction.

9. The Hon'ble Supreme Court in *G.V. Sreerama Reddy v. Returning Officer, (supra)* has held that the expression "presented by" in Section 81(1) must be strictly construed and that presentation through an Advocate in the absence of the petitioner does not satisfy the statutory requirement.

10. It is significant to note that earlier Section 81(2) permitted presentation through an authorized agent. However, the said provision was omitted with effect from 14.12.1966. The legislative deletion of the enabling provision for authorized presentation clearly indicates that personal presentation is now mandatory.

11. The submission of the petitioner that swearing of affidavit amounts to presentation cannot be accepted. Swearing of affidavit pertains to verification under Section 83 of the Act. Presentation of the petition is a distinct statutory act which brings the proceeding into existence before the Court.

12. In the present case, the official record unequivocally demonstrates that the petition was presented on 06.01.2025 by the

Advocate and not by the petitioner personally. The petitioner's prior presence for swearing of affidavit on 04.01.2025 cannot be equated with statutory presentation.

13. The reliance placed on the Bombay High Court Rules does not advance the petitioner's case. In the event of inconsistency, the provisions of the Act, being primary legislation, prevail over procedural rules.

14. This Court in *Narendra Lalchandji Mehta- Applicant in the matter of Gilbert John Mendoca v. Narendra Lalchandji Mehta & Ors.*<sup>6</sup> has held that presentation through an Advocate amounts to non-compliance with Section 81(1) and attracts dismissal under Section 86(1).

15. The challenge to an election is a matter of serious consequence as it questions the validity of a democratic mandate. The statutory safeguards embodied in Section 81 are intended to ensure authenticity of the challenge and to prevent frivolous or speculative litigation. The requirement of personal presentation is not a mere technicality but a legislative assurance of genuineness.

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<sup>6</sup> (2019) 1 Mh. J. J. 792.

16. When the statute expressly prescribes the manner in which a petition must be presented, the Court cannot dilute or expand that mandate by invoking considerations of substantial compliance. The Court does not possess any dispensing power in matters where the statute makes compliance mandatory.

17. In the admitted factual background of the present case, the petition having been presented by the Advocate in absence of the petitioner, there is clear non-compliance with Section 81(1). Once such non-compliance is established, dismissal under Section 86(1) follows as a statutory consequence.

18. Hence, the following order:

### **ORDER**

- (i) The Civil Application No.823 of 2025 is allowed and Election Petition No.17 of 2025 filed by the Petitioner is hereby rejected in view of Section 86(1) of the Representation of the People Act, 1951 for non-compliance of Section 81 (1) of the said Act.
- (ii) There shall be no order as to costs.

**(MRS. VRUSHALI V. JOSHI, J.)**