

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

APPLICATION IN ELECTION PETITION (ST.) NO. 36815 OF 2024
IN
ELECTION PETITION NO. 07 OF 2024
WITH
ELECTION PETITION NO. 07 OF 2024

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Narayan Tatu Rane

... Applicant

In the matter of

Vinayak Bhaurao Raut

... Org. Petitioner

Vs.

Election Commission of India & Ors.

... Respondents

.....

Mr. Satish Maneshinde, Senior Advocate a/w Saket Mone, Srushti Thorat, Yuvraj Dhole i/b Vidhii Partners for the Applicant in AEP(L) 36815/2024 and for Respondent No.5.

Mr. Asim Sarode (through VC) a/w Shriya Aawale, Saken Mujawar, Tushar Sonule, Prabuddha Borgaonkar for the Petitioner in E.P. No. 7/2024

.....

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 31.08.2026.

PRONOUNCED ON : 29.09.2026.

P. C. :

. Heard both sides.

2. The applicant (respondent no.5) – return candidate of Lok Sabha Election of 2024 from 46 Ratnagiri - Sindudurg Constituency, has pressed into service Order VII Rule 11 of the Civil Procedure Code seeking rejection of the Election Petition. It is contended in the application that

there is non-compliance of Section 83(1) of the Representation of the Peoples Act, 1951 (hereinafter referred to as “Act” for the sake of brevity and convenience). There is no cause of action. The allegations stated in paragraph nos. 5(l) to 5(n) are vague. There is want of material facts and particulars. The verification submitted by respondent no.1 is defective and does not conform to Form 25 of Rule 94A. There is violation of Section 83 of the Act read with Order VI Rule 15 of the Code. The translation of the documents annexed to the petition are defective and incomplete.

3. The application is contested by the respondent no.1, who is the Election Petitioner by filing reply. It is contended that the necessary particulars are provided in paragraph no.5(a) to 5(o) of the petition, which would be read with the exhibits mentioned therein and the documents annexed along with the petition. It is further contended that no recourse can be taken to Order VII Rule 11 for the rejection of the election petition. The full fledged trial is necessary to assess the pleadings and the documents produced by the respondent no.1. The allegations regarding supporting affidavit and the translation are curable defects. The election petition and the document produced along with it are in accordance with the Act and the Rules and the application is liable to be rejected.

4. Both sides have placed on record written submissions and the judgments. I have heard them extensively.

5. The petitioner and the respondent no.5 were contesting candidates for Lok Sabha Election of 2024 for 46th - Ratnagiri Sindhudurg Constituency. As per model code of conduct, the campaign in the election was over on 05.05.2024. The polling took place on 07.05.2024. The results were declared on 04.06.2024. The applicant secured 4,48,514 votes. The respondent no.1 secured 4,00,656 votes. The Election Petition is filed on 09.07.2024. The applicant has filed present application on 05.04.2024. The respondent no.1 filed his say and filed affidavit on 15.01.2025. The whole controversy for deciding present application revolves around the averments made in paragraph nos. 5(l) to 5(n) of the petition.

6. Learned Senior Counsel for the applicant Mr. Satish Maneshinde has made the submissions which are summarized as follows:-

(i) The Election Petition lacks the material facts and particulars in respect of the corrupt practices alleged in paragraph nos. 5(l), 5(m) and 5(n) of the Election Petition, as is mandated by Section 83(1)(a)(b) of the Act, and it is liable to be rejected.

(ii) The cause of action has not been made out from the averments of

paragraph nos. 5(l) to 5(n) read with Section 100(1)(b) or under Section 100(1)(d)(2) of the Act.

(iii) The affidavit subsequently submitted by respondent no.1 is not in conformity with Form No.25 prescribed under Rule 94A of the Conduct of Election Rules, 1961.

(iv) There is incurable defect in respect of manner of verification of the Election Petition, which is not in consonance with Order VI Rule 15 of the Code.

(v) The deficiency in the Election Petition cannot be cured by any amendment or subsequently filed affidavits.

(vi) The translation of the annexures is incomplete and those are not by official translator which is also fatal.

7. Reliance is placed on following judgments :-

- (i) Adam Narsayya Narayan Vs. Praniti Shinde (2017) SCC OnLine Bom 268.
- (ii) Kanimozhi Karunanidhi Vs. A. Santhana Kumar & Ors. (2023) 4 SCR 798.
- (iii) Karim Uddin Barbhuiya Vs. Aminul Haque Laskar & Ors. (2024) 4 SCR 523.
- (iv) Amol Gajanan Kirtikar & Ors. Vs. Ravindra Dattaram Waikar & Ors. (2024) SCC OnLine Bom 3828.
- (v) Sangram Sampatrao Deshmukh Vs. The Election Commissioner of India and Ors. (2025) SCC OnLine Bom 8.

- (vi) Santosh S/o Tulshiram Chavan Vs. Nitin Jairam Gadkari (2025) SCC OnLine Bom 644.
- (vii) Udesb Shantaram Patekar Vs. Prakash Rajaram Surve, Election Petition No. 10 of 2024.
- (viii) Anil Subhash Sawant Vs. Samadhan Mahadeo Autade & Ors. Election Petition No. 10 of 2025.
- (ix) L.R. Shivaramagowda Vs. T.M. Chandrashekar (1999) 1 SCC 666.

8. *Per contra*, learned counsel Mr. Asim Sarode appearing for petitioner has canvassed following submissions :-

- (i) The sufficient grounds are made out for corrupt practice and the influence exerted by the respondent no.1 and his supporters.
- (ii) The pleadings in paragraph no.5(l) need to be examined by considering the newspaper items, video clips and the supportive affidavits. Similarly, the contents of paragraph no.5(m) need to be considered by reading complaint dated 16.05.2024. The averments of paragraph no.5(m) are required to be considered by video clip and supportive documents. There is sufficient compliance of Section 83(1)(a) and (b) of the Act and the application is liable to be rejected.
- (iii) The petitioner has made out cause of action in the Election Petition, supportive documents and the affidavits. The Election Petition cannot be decided in a summary manner and full fledged trial is required.

- (iv) All the annexures have been verified. The synopsis, statement of facts, memorandum of registered address, and list of documents are not defective and conform to the due process of law.
- (v) The allegations regarding the translation is curable and that would not be fatal to proceed with Election Petition.
- (vi) The non-compliance of Sections 81, 82 and 117 of the Act can be gone into by trial. It cannot be dismissed by resorting to Order VII Rule 11 for non-compliance of Section 83(1) of the Act.
- (vii) The microscopic inquiry is not permissible at this stage of the proceedings and there is sufficient material to indicate the grounds under Sections 100(1)(b)(e)(ii) and (iv) of the Act.

9. Following judgments are relied on :-

- (i) Bhim Rao Baswanth Rao Patil Vs. K. Madan Mohan Rao, (2023) SCC OnLine SC 871.
- (ii) D. Ramchandran Vs. R.V. Jankiraman & Ors. AIR 1999 SC 1128.
- (iii) G.M. Siddeshwar Vs. Prasanna Kumar (2013) 4 SCC 776.
- (iv) Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy, (2012) 7 SCC 788.
- (v) Umesh Challiyill Vs. K.P. Rajendran (2008) 11 SCC 740.
- (vi) Amol Dhondiba Khatal Vs. Vijay Alias Balasaheb Bhausahab Thorat, 2026 SCC OnLine Bom 2293.
- (vii) Federation of Retail Traders Welfare Association Vs. State of Maharashtra (2022) SCC OnLine Bom 388.

(viii) T.M. Jacob Vs. C. Poullose (1999) 4 SCC 274.

10. The respondent no.1 has challenged the election process and the result of 46th Constituency, Ratnagiri – Sindhudurg for Lok Sabha 2024 Election by making allegations under Sections 100(1)(b)(d)(ii)(iv) of the Act. In the present application, the following averments are castigated to be non-compliant with the statutory provisions, which are stated to be fatal and which would result in rejection of the Election Petition.

“5. (l). The Petitioner alleged that, the Bhartiya Janata Party (BJP) karyakartas were conducting campaign on 06/05/2024 even though the allowed campaign time-period was concluded at 5:00pm in the evening on 05/05/2024. **(The Video footage of the above mentioned instance along with the 65B Certificate dated 30/06/2024 and some News reports published are collectively annexed as Exhibit-F-colly).**

(m). The Petitioner Mr. Vinayak Bhaurao Raut had filed a m. The complaint to the R-3 on 16/05/2024 mentioning that, the corrupt practices by bribing and intimidating the voters was violation of the Model Code of Conduct and hence, action may be taken against the BJP candidate R-5 and its party workers. It was also mentioned that, as per Sections 123 and 171 of the Representation of the People Act 1951 read with Section 171 of IPC the candidature of BJP candidate of R-5 may be declared invalid on the ground of engagement in illegal activity during the election, soliciting votes in exchange of cash and various attempts to purchase votes. It is pertinent to note that, a video which was available on social media in which it can be seen that R-5's campaign workers were seen distributing money was submitted on a pen-drive to the R-3. Unfortunately, no legal action was taken against R-5 Mr. Narayan Tatu Rane. **(The copy of the said complaint dated 16/05/2024 is annexed herewith as Exhibit-G)**

(n). The Petitioner submits that, another angle to the above-mentioned incident of bribing for votes is that, even though the campaigning period was lapsed, on the 6th May 2024, the BJP worker, Mr. Jadhav was openly bribing the voters and asking them to cast vote in favor of the BJP candidate Mr. Narayan Rane. They also demonstrated to the voters, the EVM and asked to choose the symbol of lotus (flower) i.e. BJP's election symbol thereby asking them to vote for BJP. This is completely illegal and constitutes as influencing voters along with disturbing their thinking process just before the day of voting. **(The Video footage of the above mentioned instance is annexed herewith as Exhibit-H).**”

11. For the inquiry under Order VII Rule 11, the averments in the petition and the documents annexed along with it can be taken into account. The respondent no.1 has verified the pleadings and filed subsequent affidavit on 15.01.2025. It is necessary to disclose that in order to corroborate the averments of paragraph nos. 5(l) and 5(n), pen drives are produced on record along with certificate under Section 65 of the Evidence Act. The contents of video recording of the pen drive have not been transcribed by the respondent no.1. The news paper items, averments of the petition and the documents along with it, would not disclose the actual contents of the pen drive.

12. The legal position is that Order VII Rule 11 can be invoked seeking rejection of the Election Petition as provisions of Civil Procedure Code are made applicable by Section 87 of the Act. If the petition does not contain full particulars of any corrupt practice including full statement so

as to disclose names of the parties, date and place of the commission of each practice, it is liable to be rejected. It is permissible to examine as to whether the verification has been done as per Code as well as whether the affidavit is in prescribed form or not. It is relevant to quote Section 83, which reads as follows :-

“S.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].”

13. I have carefully gone through paragraph nos.5(l) to 5(n) of the Election Petition and the documents annexed in support of those averments. The corrupt practice as alleged in paragraph nos. 5(l) regarding carrying out campaign on 06.05.2024 is very vague and lacks material particulars namely; time, place and identity of the persons who

were campaigning. The news reports are also not sufficient to precisely corroborate the claim of the respondent no.1. Further corrupt practice stated in paragraph no.5(m) pertains to complaint dated 16.05.2024. It is not sufficient to identify the person, the amount, time or place. The averments of paragraph no.5(n) pertaining to the incident of 06.05.2024 also lacks material particulars. Jadhav is is very common surname. The averments are lacking material particulars as referred above.

14. Learned Senior Counsel Mr. Maneshinde has relied upon the judgment of **Kanimozhi Karunanidhi** (supra). In that case, Application under Order VI Rule 17 was rejected by High Court which was challenged in the Supreme Court and the Appeal was allowed thereby dismissing the Election Petition. The following are the relevant paragraphs :-

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

- i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.
- ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgement of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.

Conclusion:

29. In the light of the afore-stated legal position, let us see whether the respondent/election petitioner had complied with the requirements of Section 83(1)(a) of the RP Act, by stating "material facts" in the Election petition, constituting cause of action and the ground as contemplated in Section 100(1)(d)(iv) of the RP Act, for declaring the election of the Appellant-returned candidate to be void. The bone of contention raised by the learned counsel appearing for the respondent-election petitioner is that the Election Commission of India had called for the information prescribing the Form 26 in regard to status of filing of income tax return of candidates and their family members by exercising powers under Article 324 of the Constitution of India and in that the petitioner had provided information that her spouse was working as consultant at foreign country and earning salary against the column No.8, Serial No.9(b) and 9A(b), respectively under Part A of Form 26. Besides, she had mentioned "No" to the query regarding Income tax dues of her spouse, (mentioned as "Ethumilai" in

Tamil language). She had further stated that her spouse had bank accounts in Singapore with deposit of dollars against column No.7 Serial No.(ii) of column in Part A of Form 26 but had failed to disclose the status of filing income tax return of her spouse in the foreign country. He therefore submitted that these material facts which have already been stated in the Election petition, were sufficient to constitute cause of action for filing Election petition under Section 100(1)(d) (iv) of the RP Act.

30. It may be noted the precise allegations made by the respondent-election petitioner in para 5 to 9 of his Election petition have already been reproduced hereinbefore, from which it clearly transpires that the election petitioner i.e., the respondent has made very bald and vague allegations without stating the material facts as to how there was non-compliance of any of the provisions of the Constitution of India or of the RP Act or of the rules made thereunder. If the averments made in the Election petition are read in juxtaposition to the information furnished by the appellant-turned candidate in Form No. 26, it clearly emerges that against the information sought about the PAN number of the spouse of the appellant, it has been stated that "No PAN No.", "Spouse K. Aravindhnan Foreign Citizenship". Against the information sought with regard to "The financial year for which the last income tax return has been filed", the information supplied by the appellant about her spouse is "Not applicable". The appellant has filled in all the columns of Form No. 26 by furnishing the information with regard to her Permanent Account Number and status of filing of income tax return etc. and of her husband wherever applicable. If according to the respondent-election petitioner, the appellant-turned candidate had suppressed the Permanent Account Number of her spouse and also about the non-payment of income tax of her spouse in the foreign country, it was obligatory on the part of the Election petitioner to state in the Election petition as to what was the Permanent Account Number of the spouse of the returned candidate in India which was suppressed by her and how the other details furnished about her husband in the said Form No. 26 were incomplete or false.

31. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition. As well settled not only positive statement of facts, even a positive statement of negative fact is also required to be stated, as it would be a material fact constituting a cause of action. The material facts which are primary and basic facts have to be pleaded by the Election petitioner in support of the case set up by him to show his cause of action and omission of a single material fact would lead to an incomplete cause of action, entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) CPC read with Section 83(1)(a) of the RP Act.

33. As elaborately discussed earlier, Section 83(1)(a) of RP Act mandates that an Election petition shall contain a concise statement of material facts on which petitioner relies, and which facts constitute a cause of action. Such facts would include positive statement of facts as also positive averment of negative fact. Omission of a singular fact would lead to incomplete cause of action. So far as the present petition is concerned, there is no averment made as to how there was non-compliance with provisions of the Constitution or of RP Act or of the Rules or Order made thereunder and as to how such non-compliance had materially affected the result of the election, so as to attract the ground under Section 100(1)(d) (iv) of the RP Act, for declaring the election to be void. The omission to state such vital and basic facts has rendered the petition liable to be dismissed under Order VII, Rule 11(a) CPC read with Section 83(i)(a) of the RP Act, 1951.”

15. This judgment has been consistently followed in various judgments of High Court and Supreme Court and those are the guiding principles. Applying those principles, I find that there is non-compliance of Section 83 of the Act as the pleadings are extremely vague.

16. Further reliance is placed on the judgment of **Karim Uddin Barbhuiya** (supra). It was also the case of rejection of application under Order VII Rule 11 by High Court, which was turned down by the Supreme Court. Following are the relevant paragraphs :-

“**19.** Now, from the bare reading of the Election petition, it emerges that the respondent no. 1 has made only bald and vague allegations in the Election Petition without stating the material facts in support thereof as required to be stated under Section 83(1)(a) of the RP Act. Apart from the fact that none of the allegations with regard to the false statements, and suppression and misrepresentation of facts allegedly made by the respondent no. 1 with regard to his educational qualification or with regard to his liability in respect of the loan availed by him for his partnership firm or with regard to his default in depositing the employer's contribution to provident fund, would fall within the definition of "Corrupt practice" of "undue influence" as envisaged in Section 123(2) of the RP Act, the Election petition also lacks concise statement of "material facts" as contemplated in Section 83(a), and lacks "full particulars" of the alleged Corrupt practice as contemplated in Section 83(b) of the RP Act.

20. So far as the allegations of "Corrupt practice" are concerned, the respondent no. 1 was required to make concise statement of material facts as to how the appellant had indulged into "Corrupt practice" of undue influence by directly or indirectly interfering or attempted to interfere with the free exercise of any electoral right. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of making a concise statement of the "material facts" in the Election Petition. The material facts which are primary and basic facts have to be pleaded in support of the case set up by the Election petitioner to show his cause of action. Any omission of a single material fact would lead to an incomplete cause of action entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule

11(a) of CPC read with Section 83(1)(a) of the RP Act. The said legal position has been well settled by this Court in *Azhar Hussain vs. Rajiv Gandhi* (1986) 2 SCR 782, wherein this Court after referring to the earlier pronouncements in *Samant N. Balkrishna and Another vs. George Fernandez and Others* (1969) 3 SCR 603 and *Shri Udhav Singh vs. Madhav Rao Scindia* (1976) 2 SCR 246, observed that the omission of a single material fact would lead to incomplete cause of action, and that an Election petition without the material facts is not an Election petition at all. It was further held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an Election petition can be and must be dismissed, if it suffers from any such vice.

21. It is also pertinent to note at this juncture that a charge of "Corrupt practice" is easy to level but difficult to prove because it is in the nature of criminal charge and has got to be proved beyond doubt. The standard of proof required for establishing a charge of "Corrupt practice" is the same as is applicable to a criminal charge. Therefore, Section 83(1)(b) mandates that when the allegation of "Corrupt practice" is made, the Election Petition shall set forth full particulars of the corrupt practice that the Election Petitioner alleges, including as full a statement as possible of the names of parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The pleadings with regard to the allegation of corrupt practice have to be precise, specific and unambiguous whether it is bribery or undue influence or other corrupt practices as stated in Section 123 of the Act. If it is corrupt practice in the nature of undue influence, the pleadings must state the full particulars with regard to the direct or indirect interference or attempt to interfere by the candidate, with the free exercise of any electoral right as stated in Section 123(2) of the Act. We are afraid, Mr. Gupta has failed to point out from the pleadings of the Election petition as to how the appellant had interfered or attempted to interfere with the free exercise of any electoral right so as to constitute "undue influence" under Section 123(2) of the Act.

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

17. Further reliance is placed on the **Ravindra Dattaram Waikar** (supra). Various judgments are dealt with by the co-ordinate bench and the trite principles are reiterated in following paragraphs :-

“**24.** Thus, it is mandatory under provisions of Section 83(1) (a) of the RP Act that an Election Petition must contain a concise statement of all material facts on which the Petitioner relies. When provisions of Section 83(1)(a) of the RP Act 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 fact to demonstrate non-compliance with provisions of the Constitution or of the Act or Rules or orders made thereunder.

25. The necessary corollary of conjunctive reading of provisions of Section 83(1)(a) and Section 100(1)(d) (iii) and (iv) of the RP Act is that an Election Petition which does not disclose pleading of material facts demonstrating grounds under sub-clauses (iii) or (iv) of the clause (d) of sub-section (1) of Section 100 of the RP Act will have to be rejected by invoking powers under Order VII Rule 11 of the Code.

53. I am therefore of the view that Petitioner has failed to ensure strict compliance with the requirements of statutory provisions. There is non-compliance with provisions of Section 83(1) (a) of the RP Act. Therefore, following the mandate under various judgments of the Apex Court, particularly in *Kanimozhi Karunanidhi* (supra) and *Karim Uddin Barbhuiya* (supra), 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 the Code. In my view, the Election Petition does not disclose cause of action for making out any of the ground under Section 100(1)(d)(iii) or (iv) of the RP Act and therefore Election Petition cannot be taken to trial and is liable to be rejected by having recourse to the provisions of Order VII Rule 11 of the Code.”

18. Due to the absurd pleadings in paragraph no.5(l), 5(m) and 5(n), no cause of action is made out so as to try the Election Petition on the ground of corrupt practice as contemplated by Sections 100(1)(b)(e)(ii) and (iv) of the Act. I find substance in the submission of learned Senior Counsel Mr. Maneshide that the vital pleadings are very vague. The principles of above referred judgments are applicable to the present case. Any omission of a single material fact would lead to an incomplete cause of action entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) of CPC read with Section 83(1)(a) of the R.P. Act.

19. I have taken into consideration the documents annexed along with the Election Petition. In the absence of the requisite pleadings, the

documents would not be sufficient to fill up the lacuna. The respondent no.1 should have furnished transcription of contents of pen drive. If this is the situation, it would not be possible to ask the parties to lead evidence and thereafter to assess the matter. The objection raised by the applicant by invoking Order VII Rule 11 of the Code goes to the root of the matter.

20. I have gone through the affidavits dated 01.08.2024 and 19.01.2025. It is contended by the counsel Mr. Asim Sarode that the defect in the affidavits are curable. Reliance is placed upon the judgment in the case of **Bhim Rao Baswanth Rao Patil** (supra). In that case, the appellant was return candidate, who had filed application for rejection of the Election Petition by invoking provisions of Order VI Rule 15 unsuccessfully before the High Court. That case involves non-disclosure of criminal antecedents and the convictions. In that context, the observations are recorded by the Apex Court in paragraph nos.10, 29 and 33 holding that the allegations of non-compliance of statutory provisions, mandatory regulations and their effect cannot be examined in what are essentially summary proceedings under Order VII Rule 11 of the CPC or even under Order VI Rule 15 of the CPC. The case is distinguishable from the present matter and this will not help the respondent.

21. Reliance is placed on the matter of **D. Ramchandran** (supra). In that case, the Supreme Court remanded the matter to High Court for reconsideration of the application which was allowed by the High Court and the Election Petition was dismissed on the preliminary issue. This judgment also will not of much assistance to the respondent.

22. Further reliance is placed on the judgment of the Supreme Court in case of **Umesh Challiyill** (supra), **Ponnala Lakshmaiah** (supra) and **G.M. Siddeshwar** (supra). The decision in **G.M. Siddeshwar** (supra) is reference decided by three learned Judges of Apex Court which would carry more weightage. The said judgment has taken into account the previous judgments on the same line, therefore, I propose to consider three judges bench judgment in **G.M. Siddeshwar** (supra). Two questions were dealt with by the larger Bench which are as follows :-

“Leave granted. The principal question of law raised for our consideration is whether, to maintain an election petition, it is imperative for an election petitioner to file an affidavit in terms of Order 6 Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1) of the Representation of the People Act 1951. In our opinion, there is no such mandate in the Representation of the People Act, 1951 and a reading of *PA. Mohammed Riyas v. M.K. Raghavan* (2012) 5 SCC 511 which suggests to the contrary, does not lay down correct law to this limited extent.

2. Another question that has arisen is that if an affidavit

filed in support of the allegations of corrupt practices of a returned candidate is not in the statutory Form 25 prescribed by the Conduct of Elections Rules, 1961, whether the election petition is liable to be summarily dismissed. In our opinion, as long as there is substantial compliance with the statutory form there is no reason to summarily dismiss an election petition on this ground. However, an opportunity must be given to the election petitioner to cure the defect. Further, merely because the affidavit may be defective, it cannot be said that the petition filed is not an election petition as understood by the Representation of the People Act, 1951.”

23. The issue of defective affidavit was dealt with by considering Form No.25 as prescribed by Rule 94A. After referring the affidavit which was pressed into service in that case, following observations are made.

37. A perusal of the affidavit furnished by Prasanna Kumar ex facie indicates that it was not in absolute compliance with the format affidavit. However, we endorse the view of the High Court that on a perusal of the affidavit, undoubtedly there was substantial compliance with the prescribed format. It is correct that the verification was also defective, but the defect is curable and cannot be held fatal to the maintainability of the election petition.

38. Recently, in *Ponnala Lakshmaiah v. Kommiri Pratap Reddy (2012) 7 SCC 788* the issue of a failure to file an affidavit in file an affidavit in accordance with the prescribed format came up for consideration. This is what this Court had to say: (SCC p. 802, para 28)

"28..... The format of of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not

by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so."

We have no reason to take a different view. The contention urged by Siddeshwar is rejected.

39. Undoubtedly, Section 86 of the Act makes no reference to Section 83 thereof and so, prima facie, an election petition cannot be summarily dismissed under Section 86 of the Act for non-compliance with the provisions of Section 83 thereof. This was briefly adverted to in *Hardwari Lal v. Kanwal Singh (1972) 1 SCC 214* but that was in the context of dismissal of the election petition under the provisions of CPC. The contention urged in *Hardwari Lal* was to the effect that since Section 83 of the Act does not find a mention in Section 86 thereof, an election petition could not be summarily dismissed for non-compliance with Section 83. A three-Judge Bench of this Court held that since an election petition is required to be tried as nearly as possible in accordance with the procedure applicable under CPC to the trial of suits, an election petition could nevertheless be dismissed if it did not disclose a cause of action."

24. It is further relevant to refer to following paragraph :-

"**45.** However, another aspect of this contention is is that if the provisions of Section 83 of the Act are are not complied with, then the election petition that has been filed cannot truly be described as an election petition."

25. After considering various judgments in paragraph nos.48 to 51, following observations are made:-

"**52.** The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial

compliance with the provisions thereof. However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold.

62. Applying these principles to the facts of the present case, it seems quite clear that the affidavit filed by Prasanna Kumar in compliance with the requirements of the proviso to Section 83(1) of the Act was not an integral part of the election petition, and no such case was set up. It also seems quite clear that the affidavit was in substantial compliance with the requirements of the law. Therefore, the High Court was quite right in coming to the conclusion that the affidavit not being in the prescribed format of Form 25 and with a defective verification were curable defects and that an opportunity ought to be granted to Prasanna Kumar to cure the defects.”

26. Applying the principles laid down in above judgment to the present case, I find that the objections of the applicant in respect of defective affidavit produced by respondent no.1 and the non-compliance of Order VI Rule 15 cannot be said to be substantial defect. I find merit in submission by Mr. Asim Sarode that Election Petition cannot be dismissed at the threshold because the defects are curable.

27. Further reliance is placed on the judgment of co-ordinate bench in **Amol Dhondiba Khatal** (supra), which *inter alia* refers to judgments of **Umesh Challiyill** (supra), **Ponnala Lakshmaiah** (supra) and **G.M. Siddeshwar** (supra). I am fortified in accepting the submission of the respondents.

28. Lastly, reliance is placed on **T.M. Jacob** (supra). I have considered paragraph no.38, 39 and 40, which are in respect of as to whether the defect is substantial or it is curable. If the defects are substantial then Election Petition it is liable to be dismissed for non-compliance under Section 81(3) of the Act. I have already observed that the non-compliance of Section 83 is a substantial defect which cannot be cured and the Election Petition is liable to be rejected.

29. Both sides have made rival submissions in respect of the translation of the documents. I am of the view that for inquiry under Order VII Rule 11 of the Code, the translation of the documents cannot be gone into. Reliance is placed on **Federation of Retail Traders Welfare Association** (supra) to make out a point that defective translation of the annexures would not be fatal. The principles are laid down in paragraph no.16. Learned counsel Mr. Asim Sarode is right in contending that defective translation cannot itself be a ground to reject the Election Petition. The other objections raised in the application pertaining to want of verification to the synopsis, statement of facts, memorandum of registered address, list of documents cannot be said to be fatal. Those are not very specifically pressed into service during oral submissions by the learned counsel for the applicant. Those are curable defects and are not causing grave prejudice to the applicant.

30. Reliance is placed on the judgment of **Adam Narsayya Narayan** (supra) by Senior Counsel Mr. Maneshinde. I have gone through paragraph nos.48, 49 and 54 which are in respect of defective affidavit. I have already observed that judgment of larger bench in case of **G.M. Siddeshwar** (supra) and other judgments referred in above paragraphs would be applicable and I am not inclined to give benefit of this judgment to the applicant.

31. There are other allegations in the petition besides those contained in paragraph nos.5(l) to 5(n). But I have held that there is non-compliance of Section 83 of the Act. No cause of action is made out as omission of material facts has resulted into entitlement to invoke Order VII Rule 11 of the CPC. Hence, the Election Petition is liable to be dismissed at the threshold. The result of above analysis is as follows:-

- (i) The Application in Election Petition (L) No. 35815 of 2024 is allowed.
- (ii) The Election Petition No.07 of 2024 shall stand rejected.
- (iii) There shall be no order as to costs.

(SHAILESH P. BRAHME, J.)