



(1)

EP-02-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION IN ELECTION PETITION NO. 162 OF 2025
(EXHIBIT-23)
IN
ELECTION PETITION NO.02 OF 2025

Amol Dhondiba Khatal
Age: 42 years, Occu: Politician
Address: At Post Sangamner,
Taluka Sangamner, Dist. Ahilyanagar.

...APPLICANT
(Orig. Res. No.1)

IN THE MATTER BETWEEN

Vijay Alias Balasaheb Bhausahab Thorat
Age: 71 years, Occu: Agri.
R/o. Sudarshan, 7 – Shivajinagar,
Sangamner, Tal. Sangamner,
Dist. Ahilyanagar

...PETITIONER

VERSUS

- 1] Amol Dhondiba Khatal
Age: 41 years, Occu: Business
Saiharsh, Near Pasaydan Colony,
Atharv Colony, Ghulewadi Road
Sangamner, Tal. Sangamner,
Dist. Ahilyanagar.
- 2] Abdulaziz Ahmedsharif Vohara
Age: 49 years, Occu: Business,
Vijaynagar, Kuran Road,
Sangamner, Tal. Sangamner,
Dist. Ahilyanagar.



- 3] Yogesh Manohar Suryawanshi
Age: 34 years, Occu: Labour,
Old Akole Naka, Maliwada,
Sangamner, Tal. Sangamner,
Dist. Ahilyanagar.
- 4] Suryabhan Baburao Gore
Age: 59 years, Occu: Business,
Gaothan, At-Mendhwan,
Post-Kauthe Kamleshwar,
Tal. Sangamner, Dist. Ahilyanagar.
- 5] Avinash Haushiram Bhor
Age: 48 years, Occu: Agri.,
Trimurti Banglow,
Anand Colony, Chitanya Nagar,
Sangamner, Dist. Ahilyanagar.
- 6] Kaliram Bahiru Popalghat
Age: 72 years, Occu: Agri.,
At Post – Sakur, Tal. Sangamner,
Dist. Ahilyanagar.
- 7] Gaikwad Bhagwat Dhondiba
Age: 58 years, Occu: Agri.,
At-Kasare, Po-Kauthe-Kamleshwar,
Tal. Sangamner, Dist. Ahilyanagar.
- 8] Pradeep Vitthal Ghule
Age: 28 years, Occu: Business,
133/42-Keshav Nagar, Gunjalwadi,
Sangamner, Tal. Sangamner,
Dist. Ahilyanagar.



- 9] Bharat Sambhaji Bhosale
Age: 40 years, Occu: Business,
110, DhabeVasti, Konchi,
Tal. Sangamner, Dist. Ahilyanagar.
- 10] Shashikant Vinayak Darole
Age: 45 years, Occu: Agri.,
Rajapur Road, Navnath Mandir,
DaroleVasti, Gunjalwadi,
Dholewadi, Tal. Sangamner,
Dist. Ahilyanagar.
- 11] Ajay Ganpat Bhadange
Age: 27 years, Occu: Business & Social Activist,
At Post Rajur, Tal. Akole,
Dist. Ahilyanagar.
- 12] Dattatraya Raosaheb Dhage
Age: 34 years, Occu: Business,
At/Po-Khandgaon, Tal. Sangamner,
Dist. Ahilyanagar.

...RESPONDENTS

...

Mr. V. D. Hon, Senior Advocate alongwith Shubham S. Kote i/by Ashwin V. Hon, Advocates for Applicant.

Mr. R. N. Dhorde, Senior Advocate alongwith Amit A. Karande and V.R. Dhorde i/by R.L. Kute, Advocates for the Respondent No.1.

Ms. Nikita N. Gore, Advocate for respondent No.4.

Mr. Shaikh Taher Mobin H. Advocate for respondent No.6

CORAM : KISHORE C. SANT, J.

RESERVED ON : 09th JANUARY 2026.

PRONOUNCED ON : 30th MARCH 2026.

**JUDGMENT :-**

1. Heard Mr. Hon, the learned Senior Advocate for the Applicant/orig. Respondent No.1, Mr. Dhorde, the learned Senior Advocate for Respondent No.1/original election petitioner, Ms. Gore, the learned Advocate for Respondent No.4 and Mr. Shaikh, the learned Advocate for Respondent No.6.

2. Application No.162 of 2025 (Exhibit-23) is filed by a returned candidate/Respondent No.1 in Election Petition No.02/2025. The Election Petition is filed against the present applicant and others by the petitioner/defeated candidate in the election to the Maharashtra Legislative Assembly from Constituency No.217 - Sangamner. The other respondents are the persons who also contested the said election, and therefore, they have been made parties to the Election Petition. The petitioner has prayed for a declaration that the election of Respondent No.1 is void and has also further prayed that he being a candidate securing the second highest votes in the election, he be declared as elected from the said Constituency in terms of Section 84 read with



Section 101(b) of the Representation of Peoples Act, 1951 (for short "*the Act of 1951*").

3. The facts, giving rise to the Election Petition necessary to appreciate this application are that on 15.10.2024, the general election to the Legislative Assembly for Constituency-217 Sangamner declared by the Election Commission was as under:-

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

4. The returned candidate filed his nomination form on 29.10.2024. The results were declared on 23.11.2024, wherein the Respondent No.1 is declared elected. Thereafter, the petitioner collected the certified copies of the documents necessary to file election petition on 03.01.2025. The Returning Officer refused to give information, including



copy of Form 7-A. The petitioner, thereafter, made an application under Right to Information Act and collected certain documents from Goods and Service Tax (for short “**GST**”) Department, the information about professional taxes, dues etc. of the returned candidate. It is, thereafter, the petition came to be filed.

5. The main grounds on which the Election Petition is filed are as follows:

(i) The returned candidate happened to be a partner in one partnership firm namely, Nilkamal, however, he has not disclosed this fact and the Assets and Liabilities of the said Firm. He has not paid the Professional Taxes for the said firm. The returned candidate thus committed an act of corrupt practice attracting Section 100(1)(b) of the Act of 1951.

(ii) The election is materially affected by improper acceptance of Nomination Form, attracting Section 100(1)(d) (i) of the Act of 1951 as the form was not complete.

(iii) The election is materially affected by non-compliance with the provisions of Constitution of India and the Act of



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1951 by not following Rules and the Orders made under the said Act. The election is, therefore, void under Section 100(1)(d)(iv) of the Act of 1951.

- (iv) The returned candidate has unduly influenced the voters and secured the votes. The election is, therefore, materially affected under Section 101(b) of the Act of 1951.

6. It is stated that the returned candidate, while filing the nomination paper alongwith Form 26 - affidavit required under Section 33 of the Act of 1951 read with Rule 4 and 4(A) of the Conduct of Elections Rules, has suppressed the fact that he was a partner of a firm which was in arrears of payment of taxes. It is alleged that the returned candidate has registered himself under Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (for short "***Professional Tax Act, 1975***"). A certificate was issued to him on 23.04.2015 which is stated to be still active. The said information is collected from the website of the State GST portal. It is alleged that the Respondent No.1 has not paid professional tax since 2015. The total dues are stated to be Rs.25,000/- for the period from 2015-2016 to 2024-2025 on which now interest is



shown to be Rs.29,650/-. Thus the total arrears with interest of Rs.54,650/-. Thus, he has suppressed the fact of being a partner in the firm namely, Nilkamal.

7. By suppressing all these facts, the returned candidate has shown the source of income as business through Sai Enterprises. However, the said Firm is not registered under the Professional Tax Act, 1975, whereas only Firm registered is Nilkamal for tax purpose. The petitioner further gathered the information that, as per website, the returned candidate has voluntarily cancelled his GST registration by filing an application. However, Sai Enterprises is not a registered firm. Since these matters were within the personal knowledge of the returned candidate, the returned candidate ought to have disclosed the same in his affidavit. Though there were dues on Nilkamal, the returned candidate in the nomination form has shown the Government dues as "Nil".

8. It is further alleged that because of these suppression, the voters could not take informed decision. This suppression has therefore materially affected the result of an election, alleging violation of Section



123(2) of the Act of 1951 read with Rule 4(A) of Form 26 of the Conduct of Election Rules, 1961. It is alleged that when there is non-disclosure of assets and liabilities, it need not be shown that the election is materially affected. It is stated that the total votes counted were 2,20,721, and 2,19,111 votes were counted excluding the rejected votes i.e. 140 and NOTA 1470 votes i.e. None of the Above. The margin is only of 10,560 votes. The count of votes of remaining 11 candidates i.e. respondent Nos. 2 to 12 is only 4899. It is thus stated that, since the margin is only of 10,560 votes, it is clear that the result is materially affected because of suppression of facts. It is also stated that the nomination form was improperly accepted and even if the election is not materially affected, still for wrong reception of the form, the election needs to be declared as void. It is submitted that, for want of documents from the GST Department under Right to Information Act, those only relied upon as and when provided by the authorities.

9. The application Exh. 23 under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, 1908 filed by the Respondent No.1/returned



candidate, praying for summary dismissal of the election petition under Section 86(1) of the Act of 1951. It is the case that the petitioner has not stated as to how the election is materially affected under Section 100 (1) (d) (i) to (iv) of the Act of 1951. No any calculation is given as to how many votes were influenced by the Act or inaction on the part of the returned candidate. Nothing is specifically pleaded to show that the form was wrongly accepted. There is no sufficient pleading to show that the election is materially affected.

10. As regards allegation of corrupt practice under Section 100(1)(b) it must be shown that those are committed after the candidate became a contesting candidate i.e. only from the date of publication of the list of contesting candidate till the date of vote. There is no corrupt practice committed by the returned candidate falling under Section 123 of the Act of 1951. The allegations are beyond the scope and ambit of Section 123 of the Act and cannot be said to be a corrupt practice for the purpose of Section 81 and Section 100(1)(b) of the Act of 1951. No material facts are pleaded showing that the corrupt practices have taken



place. No date and place of commission of such corrupt practices are mentioned. There is no complete cause of action disclosed. No proper affidavit in Form 25 is filled under Rule 94-A of the Rules with the election petition. No source of information is furnished for each of the alleged corrupt practices. These things are fatal to the election petition and the petition is not maintainable and deserves to be summarily dismissed.

11. On the limitation, it is stated that the results were declared on 23.11.2024. The petition is filed on 03.01.2025. On the date of filing the petition, it was incomplete. The objections were raised on 06.01.2025 stating that material documents were not annexed to the petition. It is, thereafter, the petitioner filed an amendment application to add and produce the documents to remove the office objections raised by the office of the Court. Thus, the petition is filed beyond 45th day. No true copy of the petition is served on returned candidate. The copies are not attested by the petitioner under his own signature to be true copies of the petition. Even the petitioner applied for production of certain



documents after a period of 45 days was over from the date of election. Those documents were also not served upon returned candidate. There is no compliance of Section 100(1)(d) of the Act of 1951. No clear averment is made as to how the election is materially affected. The prayer clauses (A) and (B) of the petition deserves to be struck of. No sufficient details and particulars are given under Section 123 (2) of the Act of 1951. It is thus prayed that the petition deserves to be dismissed.

12. The application is replied by the election petitioner stating that the election petition is complete in all respects. All material particulars are stated. The petitioner has also filed an application for amendment of the petition as he wants to include averments and to produce certain other documents on record. The said application is opposed by the returned candidate stating that the amendment cannot be allowed after limitation period is over. It is only to fill up the lacuna in the election petition and cannot be permitted. The other respondents have not contested amendment application. The application for amendment can be decided in case the present application is allowed and petition is dismissed and



the Court proceeds with the election petition.

13. Mr. Hon, the learned Senior Advocate, vehemently argued the application by giving the particulars of the dates. He submits that the petition was not complete on the date of presentation. There is no proper averment as regards the corrupt practice and that the election result was materially affected. The contents of the affidavit are available on the website and those are downloaded. When the scrutiny of nomination form was done, no objection was raised by the petitioner at that stage. The respondent No.1 was associated with the Firm Nilkamal only till 03.03.2015. The alleged Firm stood dissolved long back and thus there was no question of disclosing the information about the same. Only two firms are shown as Nilkamal and Sai Enterprises. There is no specific pleading about the same. The proof required in the election petition is strict as required in a criminal trial. Vague allegations in the petition have no place.

14. As far as Sai Enterprises is concerned, he submits that, no information is given by the petitioner. The petitioner thus has made



averments without any knowledge to him. The petition needs to be presented only in the manner provided under the Act and only on the grounds mentioned under the Act. No document is produced to show that the applicant was a partner of the association namely, Nilkamal. He further submits that the information is already supplied in the form. It was necessary for the petitioner to produce the material on record. The information which is already available on the website of the Election Commission is produced. The margin of votes is more than 10,000. It was necessary to show that these many voters were influenced because of the alleged non-disclosure on the information. Thus, there is no compliance of mandatory provision. The alleged non-payment of taxes etc. cannot be said to be a corrupt practice. The allegation about turnover is made without any proof. Averments in the petition are vague and not specific.

15. In support of his submissions, the learned Senior Advocate Mr. Hon relied upon the following Judgments.

- (i) *Dhartipakar Mandalal Agarwal Vs. Rajiv Gandhi [AIR 1987 SC 1577];*



- (ii) *FA. Sapa ETC Vs. Singhora and Others Etc.*[AIR 1991 SC 1557];
- (iii) *L. R. Shivaramagowda Etc Vs. T. M. Chandrashekar Etc.* [AIR 1999 SC 252];
- (iv) *Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar* [(2009) 9 SCC 310];
- (v) *Ishwardas Rohani Vs. Alok Mishra and Ors.* [(2012) 7 SCC 309];
- (vi) *Ajmera Shyam Vs. Kova Laxmi and Ors.* [2025 SCC OnLine Sc 1723];
- (vii) *Harmohinder Singh Pradhan Vs. Ranjeet Singh Talwandi and Ors.* [(2005) 5 SCC 46];
- (viii) *Rajendra Dhedya Gavit Vs. Sudhir Brijendra Jain* passed by this Court at Principle seat in Interim Application (L) No.5808 of 2025 in Election Petition No. 03 of 2025.
- (ix) *Kanimozhi Karunanidhi Vs. A. Santhana Kumar and Ors.* [2023 SCC OnLine SC 573];
- (x) *Ravindra Dattaram Waikar Vs. Amol Gajanan Kirtikar and Ors.* [2024 SCC OnLine Bom 3828];
- (xi) *Senthil Balaji V. Vs. A. P. Geetha and Ors.* [(2023) 16 SCC 279];
- (xii) *Karikho Kri Vs. Nuney Tayang and Anr.* [2024 SCC OnLine SC 519].

16. Learned Senior Advocate further submits that there is no compliance of Section 83 (a) of the Act of 1951. He further submits that the petitioner himself applied for certain documents on 24.12.2024 after



the election. When the petitioner himself was not aware of the facts alleged in the petition, it cannot be assumed that the voters had knowledge of the same.

17. In reply, Mr. Dhorde, the learned Senior Advocate, vehemently argued that, in the election petition, the copies of the documents are already annexed. Only certified copies were not available, and therefore, those were not annexed. The law requires only copies of the documents and not certified copies. The petition is therefore filed within limitation. Once allegation is of improper reception of the nomination, there is no need to show that the election is materially affected. It is the obligation of the candidates to disclose the source of income. In the present case, it is clearly demonstrated that the returned candidate did not correctly disclose the source of income, as required in the case of *Lok Prahari Vs. Union of India [2018 (4) SCC 699]*. The improper acceptance is on account of non-disclosure of correct information so as to income. There were Government dues of taxes of a partnership Firm, and therefore, it was necessary to state the same in Form 26. Whether the firm was in



existence or was dissolved cannot be gone into at this stage. It may be one of the defences available to the petitioner. However, certainly when sufficient averments are made, petition needs to go for trial. The income of Sai Enterprises is not shown. Thus, Form 26 was incomplete. It is sufficiently averred in the petition as to how there was suppression of material facts. He invited attention to the particulars and specific averments to show that those are sufficient. Once there is an enrollment certificate obtained, liability of the partnership firm starts. From the website of the GST Department, it is clearly seen that there were dues against the candidate shown in the name of partnership firm. The status of the firm is shown to be active even on 01.01.2025. It is also seen from the website that no tax returns were filed of the firm.

18. So far as verification is concerned, he submits that, the source of information is clearly given, including the Laptop on which the information was downloaded and the name of the person whose laptop it was. The record is linked with Nilkamal which firm is shown to be active till downloading of the information. There is no whisper about



non-disclosure or suppression of the name of the firm. He invited attention to the forms filled in by the returned candidate alongwith nomination form. He submits that there are sufficient averments made in the petition. This is a fit case where a trial is required. The non-disclosure is not only a violation of statutory provisions, but also a violation of right of information of the voters.

19. In support of his submission, Mr. Dhorde, the learned Senior Advocate, has relied upon following Judgments:

- (i) *Lok Prahari Vs. Union of India* [2018 (4) SCC 699]
- (ii) *Kisan Shankar Kathore Vs. Arun Dattatray Sawant and Ors.* [(2014) 14 SCC 162];
- (iii) *Mairembam Prithviraj @ Prithviraj Singh Vs. Pukhrem Sharatchandra Singh* [(2017) 2 SCC 487];
- (iv) *Tarun Prasad Chatterjee Vs. Dinanath Sharma,* [(2000) 8 SCC 649];
- (v) *Rajkumar Yadav Vs. Samir Kumar Mahaseth and Ors.* [(2005) 3 SC 601];
- (vi) *Ramdhan Vs. Bhanwarlal* [AIR 1985 Rajasthan 185];
- (vii) *Bhim Sen Vs. Gopali and Ors.* [(1960) 22 ELR



- 288];
- (viii) *Sethi Roop Lal Vs. Malti Thaper* [AIR Online 1994 SC 187].
- (ix) *Yendapalli Srinivasulu Reddy Vs. Vemireddy Pattabhirami Reddy* [AIR 2022 SC 5467];
- (x) *Sahodrabai Rai Vs. Ram Singh Aharwar and Ors.* [AIR 1968 SC 1079];
- (xi) *Madiraju Vyankata Ramana Raju Vs. Peddireddigari Ramachandra Reddy and Ors.* [(2018) 14 SCC 1]
- (xii) *D. Ramchandran Vs. R. V. Jankiraman and Ors.* [AIR 1999 SC 1128].
- (xiii) *Syed Dastagir Vs. T. R. Gopalakrishna Setty* [AIR 1999 SC 3029].
- (xiv) *Liverpool and London S. P. and I. Association Ltd. Vs. M. V. Sea Success I.* [AIR 2003 SCC 527]
- (xv) *Ashraf Kokkur Vs. K. V. Abdul Khader Etc.* [2014 AIR SCW 4913]
- (xvi) *Mayar (H.K.) Ltd. Vs. Owners & Parties, Vessel M. V. Fortune Express and Ors.*[AIR 2006 SC 1828];
- (xvii) *Umesh Challiyil Vs. K. P. Rajendran* [AIR 2008 SC 1577];
- (xviii) *Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh* [AIR 2005 SC 22];



- (xix) *Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and Ors. [AIR 2012 SC 2638];*
- (xx) *G. M. Siddeshwar Vs. Prasanna Kumar [AIR 2013 SC 1549];*
- (xxi) *Ajay Arjun Singh Vs. Sharadendu Tiwari and Ors. [AIR 2016 SC 487];*
- (xxii) *Saroj Sandesh Naik (Bhosale) Vs. Suyakant Venkatrao Mahadik, passed by this Court at Principal Seat in EP/14/1990;*
- (xxiii) *Shrikrishna Vasudeo Datye Vs. Bhalchandra Anant Sawant passed by this Court at Principal Seat in EP/10/1978;*
- (xxiv) *Resurgence India Vs. Election Commission of India [(2014) 14 SCC 189];*
- (xxv) *B. Sundara Rami Reddy Vs. Election Commission of India [1991 AIR SCW 772];*
- (xxvi) *Ganesh Ramchandra Naik Vs. Sitaram Bhoir and Ors. [AIR 2000 Bombay 294];*
- (xxvii) *Sathi Vijay Kumar Vs. Tota Singh [2007 AIR SCW 304];*

20. The learned Senior Advocate Mr. Hon, in rejoinder, submits that the partnership firm is already dissolved. The GST registration was also



cancelled on 09.01.2019. The election has taken place in 2024. There are no statements in the application that the firm is still in existence. Since the firm was not in existence, there was no reason to disclose this fact. About Sai Enterprises, everything is disclosed. It was necessary for the petitioner to make positive statement in the petition that the Nilkamal firm is in existence. Many things are now sought to be brought on record by way of amendment application.

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

22. In the case of *Dhartipakar Mandalal Agarwal Vs. Rajiv Gandhi* (supra), it is held that when the election petition is on the ground of corrupt practices, it is necessary to specifically plead the corrupt practice.

23. In the case of *EA. Sapa Etc. Vs. Singora and Ors.* (supra), it is held that the allegation of corrupt practice must be taken seriously. The High



Court, in election petition, has to ensure strict compliance with the requirement of Section 83 before the parties to go for a trial. The Court needs to keep in mind the impact on the future political and public life of the candidate future needs to be considered. On the other hand, it needs to be kept in mind that when it to be ensure, the purity of the election process, and in that view, the allegations of corrupt practice must be seriously examined. The compliance of Section 83 therefore must be strictly scrutinized. The omission to disclose the grounds or sources of information, though it may not be fatal, however, would affect the probative value of the evidence ultimately to be lead at the trial. The charge of corrupt practice needs to be proved beyond reasonable doubt and not merely by preponderance of probabilities. The allegation of corrupt practice is of quasi-criminal nature. Therefore, there must be disclosed full particulars at the earliest point of time and to disclose the source of information promptly.

24. In the case of *L.R. Shivaramgowda Vs. T.M. Chandrashekar* (supra), it is held that, if there is failure on the part of election petitioner



to plead specifically, and if there are no ingredients shown in the petition demonstrating that the election is materially affected by the alleged non-compliance with the provisions of the Act or the Rules. In that case, the allegation was of expenditure exceeding the prescribed limit and that the election result was, therefore, materially affected, as no true and correct account of expenditure was given. It is also further held that the defects in the election petition invalidates the petition. No evidence could have been permitted to be adduced without stating the material facts.

25. In the case of *Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar* (supra), it is held that failure to state even a single material fact entails dismissal of election petition. In absence of pleading, party cannot be allowed to lead evidence. The Court discussed what constitutes material facts and material particulars. The election petition can be summarily dismissed if there is no cause of action disclosed.

26. In the case of *Ishwardas Rohani Vs. Alok Mishra & Ors.* (supra), there was a difference of opinion in the Bench and the matter was



therefore placed before the Hon'ble Chief Justice. Consequently, the petition abetted. This Court, therefore, need not go into the facts of the case and the discussion therein.

27. In the case of *Ajmera Shyam Vs. Kova Laxmi* (supra), a specific question considered by the Hon'ble Apex Court was about non-disclosure of the income shown in the income tax returns for four financial years out of last five financial years in Form 26 affidavit, while submitting the nomination paper by the respondent/returned candidate, and acceptance of the said nomination by the Returning Officer was considered. It was considered as to whether that would amount to improper acceptance of the nomination or whether it would amount to corrupt practice by the returned candidate. It was further considered as to whether such non-disclosure would amount to non-compliance with the provision of Act and the Rules, Orders made thereunder.

28. The Hon'ble Apex Court, on analyzing the relevant facts, considered as to whether writing the income as "Nil" in Form 26



affidavit would amount to material defect. The Court while analyzing the same, the court also considered the judgment in the case of *Lok Prahari Vs. Union of India* (supra). It is thus held that mere failure to disclose assets in the affidavit would not constitute a material defect and is not of substantial character, and the same would not make the acceptance of the nomination improper so as to validate the election. It must be determined by the Court based on the specific facts of each case, as observed *Karikho Kri Vs. Nuney Tayang and Another* (supra). Though it may be considered a technical defect under the Rules, it was considered not to be a defect of significant importance, as it does not conceal assets. In the present case also, there is no allegation that the assets are not disclosed. The allegation is only that in the income tax return or GST return, the amount shown is “Nil”. It was considered that had there been allegation that the assets of the candidate are disproportionate to the low income, and in that view, suppression of the fact about the income tax return could have been taken seriously. It is further held that there was no objection taken during the scrutiny of the nomination form by the Returning Officer under Section 36 of the Act of



1951. Though that would not prevent anyone from challenging the validity of the nomination, however, that fact would become relevant as to whether the objection was raised when deficiencies which could have been easily ascertained and detected at the time of scrutiny itself. In the present case, it is not found that any objection was raised at the time of scrutiny. Ultimately, the Hon'ble Apex Court held that mere non-disclosure of certain information related to assets should not lead the Court to invalidate the election by adopting a highly penal and fastidious approach unless it is shown that it has influenced the election result. This judgment, being latest and by considering all earlier judgments, this certainly best more.

29. In the case of *Harmohinder Singh Pradhan Vs. Ranjeet Singh Talwandi*, (supra), the Hon'ble Apex Court considered corrupt practice under Section 123(3) of the Act of 1951. It also considered the requirement of material facts in an election petition. It was held that the material facts cannot be supplied after expiry of limitation period for filing election petition. Necessary averments of facts constituting an



appeal, if are missing, it cannot be supplied after the expiry of limitation period. In that case, those averments were directed to be struck off under Order VI Rule 16 of the CPC.

30. In the case of *Rajendra Dhedya Gavit Vs. Sudhir Brijendra Jain* (supra), it is a judgment of this Court at principal seat dated 23.06.2025 in Election Petition No.03/2025. This Court after considering the arguments and the facts, dismissed the election petition, holding that there were no specific averments disclosing the cause of action, by considering the judgment in the case of *Jyoti Basu and Ors. Vs. Debi Ghosal and Ors. [AIR 1982 SC 983]* and in the case of *Kanimozhi Karunanidhi Vs. A. Santhana Kumar* (supra). The Court also considered the observation of the Hon'ble Supreme Court that mere bald and vague allegations without any basis would not be sufficient compliance with the requirement of stating material fact in the election petition, and even if there is omission to state a single material fact that is fatal.

31. In the case of *Kanimozhi Karunanidhi Vs. A. Santhana Kumar and Ors.* (supra), the Hon'ble Supreme Court considered as to what



constitutes material facts and that such facts need to be stated within a period of limitation. Paragraph No.57 reads as under:

“57. It is settled legal position that all “material facts” must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of “material facts” on which the petitioner relies.”

32. In the case of *Ravindra Waikar* (supra). In the said case also, this Court at Bombay has taken a view that there has to be complete disclosure of facts. It was recorded that the petition was not in strict compliance with the provisions of section 83(1)(a) of the R. P. Act. There was no concise statement of material facts constituting the complete cause of action, and on that ground, the petition must summarily dismiss.

33. In the case of *Senthilbalaji V. Vs. A.P. Geetha* (supra), it is held that when the allegations are of corrupt practice, the proceeding becomes in the nature of quasi-criminal proceeding. It is, therefore, necessary that



the elected candidate get adequate notice of the allegations against him, and therefore, it is necessary to state material facts.

34. In the case of *Karikho Kri Vs. Nuney Tayang and Anr.* (supra), the Hon'ble Apex Court allowed the civil appeal by setting aside the judgment and order passed by the High Court in Election Petition, observing that the High Court was in error in concluding that the sufficient grounds were made out under Sections 100(1)(b), 100(1)(d) (i) and 100(1)(d)(iv) of the Act of 1951.

35. So far as judgment relied upon by the election petitioner are discussed are below. In the case of *Lok Prahari Vs. Union of India* (supra), it is about non-disclosure of assets and sources of income of candidates and their associates as required by Rule 4-A of the Conduct of Election Rules and Form 26. This judgment is already considered the said judgment. This Court thus has to consider whether mere writing "Nil" in the column of payment of income tax etc., would materially affect the election result, as there is no suppression about the assets and



liability in substance. It is held that, it is the right of the voters to know and to have information about the candidate's antecedents. In the said case, the nomination paper was with blank particulars in the affidavit as regards the antecedents of the candidate were considered. In that case, the Returning Officer did not reject the nomination paper though the spaces in the affidavit were blank. It was held that it affected the election. In the said judgment, it is further held that at least what is expected is to write a remark as "Nil" or "not applicable" or "not known" in the column. In the present case, the candidate has written "Nil" and has not left the spaces blank.

36. So far as judgment in the case of *Kisan Shankar Kathore Vs. Arun Dattatray Sawant and Ors.* (supra) is concerned, it was considered as to whether non-disclosure of Government dues would amount to material lapse. It was held that it would depend upon the facts and circumstances of each case. In that case the non-disclosure was about electricity and municipal dues by the appellant in the affidavit filed alongwith nomination papers, as there was a dispute pending between the authorities and the candidate about the dues. In that case, it was held



that non-disclosure of properties in the name of partnership firm of which the candidate was a partner was held to be serious lapse, and on that ground, the election was set aside by the High Court. It was held that it is necessary to disclose such information in nomination papers as per 2006 guidelines.

37. In the case of *Mairembam Prithviraj @ Prithibiraj Vs. Shri Pukhrem Sharatchandra Singh* (supra), it is held that a false declaration was made in Form 26. It was held that a defect was of substantial character and the nomination was liable to be rejected under Section 36(4) of the Act of 1951. It was further held that the voters have a right to know about the educational qualification of the candidate contesting the election. It is held that mere finding that there has been an improper acceptance of the nomination is not sufficient for a declaration that the election is void under Section 100(1)(d), but it is held that, there has to be further pleading and proof that the result of the election of the returned candidate was materially affected. However, the said requirement is necessary when it is shown that the nomination form is



improperly accepted, more so, when there were only two candidates in the fray. In the present case, it is not the case that there are only two candidates in the fray, however it has to be seen whether there is improper acceptance of nomination, and if so, whether it is sufficient to declare the election petition void.

38. In the case of *Tarun Prasad Chatterjee Vs. Dinanath Sharma*, (supra), the Hon'ble Court was examining the limitation under Section 81(1) of the Act of 1951. It considered that the day of election needs to be excluded and the period of limitation thus would start computing from the next day. The election petition thus presented on 45th day was held to be within limitation by considering the provisions of Section 9 of the General Clauses Act, 1897. The Court particularly considered the expression day "from" and day "to". There need not be any dispute on this. In the present petition, what needs to be examined is whether when there are defects on the date of presentation of the petition, and whether it can be said to be within limitation and whether by way of amendment, averments containing material facts can be introduced.



39. In the case of *Rajkumar Yadav Vs. Samir Kumar Mahaseth* (supra), the question of limitation was again considered. It was held that the limitation would expire on the midnight immediately preceding the commencement of the next day. In the said case, the petition was presented at 04:25 p.m. on the 45th day. By that time, the Judge had already risen from the open Court and was available in the chambers within the Court premises. The dispute was as regards the presentation of the petition whether necessarily meant that it should be produced before the Judge or whether it is sufficient compliance to present the petition in the office of the Court. The Hon'ble Apex Court held that the law does not require that the petition must be presented to a Judge. It is an administrative duty of the office which can be assigned to the administration. The petition was held to be presented within limitation.

40. So far as averments in the election petition is concerned, reliance is place on the Full Bench Judgment of the Rajasthan High Court in the case of *Ramdhan Vs. Bhanwarlal* (supra). In the said case, it was held that the Court has ample power to allow addition of prayer. The



character of the petition is not changed by allowing such amendment. It was held that the prayer clause added relates back to the date of presentation of the petition and can be allowed.

41. In the case of *Bhim Sen Vs. Gopali and Ors.* (supra), the petition was filed on 22.04.1957. The respondent filed written statement on 24.07.1957 and on the basis of pleading issues were framed on 26.09.1957. It is thereafter the petitioner therein applied for amendment on 05.10.1957. The same was objected on 08.10.1957. The Election Tribunal overruled the objections of the respondents and allowed the amendment prayed for by the appellant and two additional issues were framed. The election petition came to be allowed later on. The findings were solely on the basis of issues which were subsequently framed after the amendment. The appeal was filed before the Allahabad High Court. The decision on the ground was set aside on the ground that the Tribunal erred in law in allowing the amendment in question. The result of the Election Tribunal came to be set aside. The High Court found that when the petition was drafted, the information which later on was



received by him was not within his knowledge regarding the double voting. It was subsequently, disclosed on inspection of ballot papers, and it is in that view, the amendment was sought. The pleading was required to be changed accordingly. The amendment application was in respect of double voting. At the time of filing petition, it was impossible for any candidates to know exactly as to in how many cases the double voting had occurred. It was in that view the amendment was allowed. In the present case, there is no such allegation and there is nothing which can be said to have come to the knowledge of the petitioner only after filing of the petition and was not possible for him to know prior to filing of such petition. In the present case, this Court need not consider the said judgment as it is in a totally different context and based on a different set of facts.

42. In the case of *Sethi Roop Lal Vs. Malti Thaper* (supra), again the question was of amendment of pleadings. The ground taken was of a bogus voting. There, the amendment was required to be considered in the light of section 87 and de hors section 86(5) of the Act, as the



amendment was not related to corrupt practice.

43. In the case of *Yendapalli Srinivasulu Reddy vs Vemireddy Pattabhirami Reddy (supra)*, the election petition was already filed on the ground of improper acceptance of invalid votes. No ground of corrupt practice was raised. The amendment was limited to improper acceptance of nomination form for non-compliance with statutory requirements. It was held that it cannot be considered as introduction of new cause of action or new ground of challenge. The grounds sought to be pleaded were not of a nature of changing character of the election petition, and in that view, the amendment was allowed. There, the election results were declared on 21.03.2017. The petition was filed on 27.04.2017. The amendment was sought by filing an application thereafter. There was a criminal case filed against the returned candidate which he had not disclosed in the nomination form about the pending criminal case. The application was opposed on the ground that it was filed after expiry of period of limitation and it was not permissible to amend the petition. The High Court rejected the application and it is



thus the matter was carried to the Hon'ble Supreme Court. The Hon'ble Apex Court considered the provisions of Section 33-A Right to information Act i.e. the requirement to furnish information as regards criminal cases. It was held that the amendment was not intending to bring in his election petition was not related to corrupt practice, and therefore, that needs to be considered in the light of Section 87 and it was held that the amendment needs to be allowed.

44. In the case of *Sahodrabai Rai Vs. Ram Singh Aharwar and Ors.* (supra), the objection was of non-supplying the copy of annexure to the respondent alongwith petition. It is held that the annexure to the petition cannot be treated as part of the petition. In that case, it was a translated copy of Hindi pamphlet into English. In the case of *Madiraju Vyankata Ramana Raju Vs. Peddireddigari Ramachandra Reddy and Ors.* (supra), there was no averment as regards the improper acceptance of nomination. It was held that it must be proved that the election was materially affected by acceptance of a nomination which was not acceptable, and mere acceptance would not automatically mean that the



election was materially affected. In that case, the allegation was of false declaration regarding details of immovable assets and failure to fill up nomination/affidavit and sign its pages. It was held that the Court cannot dissect an election petition sentence-wise or paragraph-wise but has to read the plaint as a whole to see whether a cause of action is disclosed. The petition was dismissed by the High Court for non-disclosure of cause of action. The Hon'ble Apex Court remanded the matter back for trial by setting aside the order of the High Court. The judgment also considered the pleadings and particulars of material facts and distinguished the material facts from particulars of evidence. The purpose of pleading and giving particulars was considered. While concluding Hon'ble Apex Court observed that the approach of the High Court in examining the Election Petition as filed is to read it as a whole without subtracting any portion therefrom. The Court found that the pleadings alleged to be frivolous and vexatious were not shown. It was observed that the plain reading of the petition disclosed cause of action for filing of the Election Petition and passed the order remanding the petition.



45. In the case of *D. Ramchandran Vs. R. V. Jankiraman and Ors.* (supra), the Hon'ble Apex Court recorded distinction between full particulars and material facts which Court needs to consider while deciding an application under Order VII Rule 11 of CPC. While doing so, it is held that the Court cannot dissect pleadings into several parts and strike out portions which do not disclose cause of action. Cause of action consists of such pleadings which, if unrebutted, would lead to conclusion that the result of the petition is void. The plaint cannot be rejected in part. This view is again reiterated in the judgment of *Bhim Rao Baswanth Rao Patil Vs. K. Madan Mohan Rao and Ors.* [(2023) 18 SCC 231].

46. In the case of *Syed Dastagir Vs. T. R. Gopalakrishna Setty (supra)*, the Court considered Order VI Rule 1 of CPC. The Hon'ble Apex Court in a case of specific performance of contract held that the pleading should be read to gather true spirit behind it, and therefore, it needs to be read as a whole.

47. The case of *Liverpool and London S. P. and I. Association Ltd. Vs.*



M. V. Sea Success I. (supra), was under Maritime Act. Section 8 of the said Act is considered, wherein it was held that the High Court of Admiralty has jurisdiction to decide the question as to ownership etc. The Court consider the history of the jurisdiction of the High Court.

48. In the case of *Ashraf Kokkur Vs. K. V. Abdul Khader Etc.* (supra), the petition was filed on the ground that the candidate was holding of office of profit under State Government as Chairperson of Kerala State Waqf Board. It was held that it clearly constituted a material fact giving rise to triable issue. In that case, the petition was dismissed holding that it did not disclose complete cause of action or a triable issue. The Hon'ble Apex Court held that there was clearly a question made out for trial.

49. A well settled principle is reiterated in the judgment in the case of *Mayar (H.K.) Ltd. Vs. Owners & Parties, Vessel M. V. Fortune Express and Ors.* (supra), that an application under Order VII Rule 11 CPC cannot result in rejection of the plaint on the basis of allegations made by



defendant in his written statement. It was held that mere opinion of the Judge that the plaintiff may not succeed is no ground to reject the plaint. There cannot be any quarrel on the proposition.

50. In the case of *Umesh Challiyil Vs. K. P. Rajendran* (supra), the petition was rejected on the ground of Rule 94-A i.e. verification of pleading was not properly done. Though the verification was not in specific format, it was held that the petition is not liable to be dismissed if, in substance, the verification is in the prescribed format.

51. In the case of *Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh* (supra), the said judgment also considered Rule 94A, it is held that non-compliance with the requirement of filing an affidavit cannot be a ground for dismissal of the election petition *in limine*. In case the High Court forms an opinion that there is a defect in the affidavit, the petitioner should be given an opportunity to remove the defect by filing a proper affidavit.



52. In the case of *Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and Ors.* (supra), it is held that the petition, by taking averments in totality and by assuming them to be factually correct, need not be dismissed at the threshold.

53. In the case of *G. M. Siddeshwar Vs. Prasanna Kumar*, (supra), it was held that the petition alleging corrupt practice need not be accompanied by two affidavits i.e. one in support of allegations of corrupt practice and another as per requirements of Order VI Rule 15(4) of CPC. It is held that the verification of pleading and affidavit filed in support of pleading are quite different. An affidavit is a stand alone document and not a part of verification. It is held that any defect in affidavit or in its verification is curable defect and is not sufficient ground to dismiss the petition *in limine*.

54. In the case of *Ajay Arjun Singh Vs. Sharadendu Tiwari and Ors.* (supra), the Hon'ble Apex Court was considering grounds specified under Clauses (A) to (C) of Order VI Rule 16 of CPC, it is held that each



of them is a distinct ground. The authority of the court under clause (C) of Order VI Rule 16 of CPC was considered. It was held that in Election Petition, the Court has to assume that all averments in the election petition are factually correct and decide the application by scrutinizing as to whether allegations are relevant in the context of the relief sought.

55. In the case of *Saroj Sandesh Naik (Bhosale) Vs. Suyakant Venkatrao Mahadik* (supra), the office objections were removed after a period of limitation was over. It was held that the objections were routine office objections and were not linked with any mandatory provision of Act, and therefore, those cannot be taken as a ground for dismissal of the petition.

56. In the case of *Shrikrishna Vasudeo Datye Vs. Bhalchandra Anant Sawant* (supra), this Court held that the petition should be complete when it is handed over to the proper officer in the office of Prothonotary and Senior Master. The subsequent stages such as entry in the special register or acceptance by the judge are distinct and do not affect the date of presentation. It was held that the petition was lodged within



prescribed time limit.

57. In the case of *Resurgence India Vs. Election Commission of India* (supra), in the said case, the Hon'ble Apex Court held that keeping the column in the form blank makes it incomplete form and such nomination form is to be rejected by the Returning Officer. In the said case, the candidate failed to fill the blank even after being reminded of the same by the Returning Officer.

58. In the case of *B. Sundara Rami Reddy Vs. Election Commission of India* (supra), the election petition was filed challenging the validity of the order of Election Commission declaring polling at the polling station as void and directing re-polling at the said polling station. In a petition, the Election Commission of India was made a party respondent. The Election Commission filed an application for deletion of its name. It was held by the High Court that the Election Commission was neither necessary nor a proper party and directed to delete the name of Election Commission of India from the array of parties. The said order came to be



upheld by the Hon'ble Apex Court. By relying upon the said judgment, this Court has also decided the case, as used by this Court in the case of *Ganesh Ramchandra Naik* (supra), holding that merely because allegations are made against some persons is no reason to make them parties to the petition. It is further held that the Returning Officer and the Election Commission are also not necessary parties.

59. In the case of *Sathi Vijay Kumar Vs. Tota Singh* (supra), this judgment is mainly on the ground under Order VI Rule 16 of the CPC i.e. striking out of pleadings and applicability of the said rule to trial of election petition. It is held that the court cannot direct the parties as to how they should prepare their pleadings. The parties if have not offended the rules of pleading by making averments or raising arguable issues. The court would not order striking out pleadings. The said power is extra-ordinary in nature which needs to be exercised sparingly and with extreme care, caution and circumspection. There is no dispute about the said proposition.

60. So far as office objections are concerned, the first objection is non-



joinder of Election Commission and the Returning Officer as parties to the election petition. Second objection is about pagination of the documents which is not mentioned in the index. Looking to the relief prayed by the petitioner in the petition, it is seen that the prayer is to declare the election of the respondent No.1 as void and also it be declared the election petitioner as duly elected candidate in terms of section 84 r/w 101(b) of the RP Act. Nothing is shown to indicate that looking to the prayers of the petition that the Election Commission is a necessary party. Even no objection is taken by the respondent on the said ground. So far not mentioning pagination in the index is concerned, this Court finds that it is a trivial objection and not of substantial nature. Nothing turns on the said objection even if it is not removed. This Court does not find force in the objection. The same therefore need not be considered.

61. Section 82 of the RP Act clearly stipulates as to who shall be a necessary party to the election petition. This Court finds that the Election Commission or Returning Officer are not necessary parties.



62. Presently, this Court has to decide the specific grounds raised in the application that the petition does not disclose a cause of action; that the petition was not complete on the date of presentation; and that there are no sufficient averments disclosing cause of action and material facts. The question is whether such averments can now be allowed to be inserted by way of amendment. The application for amendment is already filed and same is also pending for consideration before this Court. However, without going into that amendment application, the Court will have to decide, on the petition as it stands, whether cause of action is disclosed. Further question is whether the defects in verification etc. were curable and whether even now such defects can be allowed to be cured.

63. In this petition, there is specific allegation made that the elected candidate while filling up the nomination form has disclosed his earning source is the firm namely, Sai Enterprises. However, the fact that he is also a partner in firm namely, Nilkamal is suppressed. The respondent No.1 has also not disclosed the assets and liabilities of the firm Sai



Enterprises. So far as Sai Enterprises is concerned, it is not shown as to how much income he derived from the said firm, this is also a material fact.

64. The petitioner in the petition has specifically made averments that the respondent No.1 is a partner in Nilkamal firm. He relied upon the website maintained by the GST Department. It is further averred that in specific terms that in the website, it is seen that there are dues of professional taxes. In spite of this position, the respondent No.1 has not disclosed the fact of being a partner in the firm Nilkamal. So far as Government dues are concerned, he has stated "Nil" in Form 26. It is specific averment in the petition that there are dues to the tune of Rs.25,000/-. The amount of interest is Rs.26,650/-. Thus, the total dues of Rs.54,650/-. Though it is tried to be argued by Mr. Hon, Senior Advocate that the Respondent No.1 is no more partner in firm Nilkamal and the said firm is dissolved, it need not be considered at this stage as the petitioner has produced on record the copy downloaded from the website of the GST Department showing status of the firm as alive. In



such circumstances, merely because the defence is raised that the respondent No.1 is not the partner in firm Nilkamal, need not be considered at this stage being only the defence available to the Respondent No.1. This Court prima facie finds that this clearly attracts the ingredients of Section 100(1)(b) of the RP Act.

65. Above discussion would clearly lead to conclude that the nomination form filled in by the respondent No.1 was not properly filled in and such form is accepted. Had the liabilities of Nilkamal firm been shown in the nomination, there are chances that the voters would have noticed the said. In that case, there was possibility of election being materially affected.

66. This submission by the respondent No.1 find force in view of judgment in the case of Madiraju Venkata Ramana Raju (supra), wherein the elected candidate had not disclosed the substantive assets and the source of the assets.

67. The next question is about not following Rules and Orders made under the Act and non-compliance of provisions of Constitution of India



and the Act, 1951. It is seen that prima facie Form 26 is not properly filled in.

68. The returned candidate has duly influenced the voters and unduly secured the votes. This Court *prima facie* finds that there is no case made out under Section 101(b) of the RP Act. However, it is always open during the course of trial to look into this.

69. Considering all the judgments cited and specifically the judgment in the cases of *Bhim Rao Baswanth Rao Patil Vs. K. Madan Mohan Rao and Ors. (supra)* and *D. Ramchandran Vs. R. V. Jankiraman and Ors. (supra)*, on the point that plaint cannot be dismissed in part. Since the plaint cannot be rejected partly, there is no question of rejecting the petition at the threshold as some triable issue has been made out. There are sufficient averments in the petition to show that the petition requires a trial. This Court finds that when there is ground made out to go for trial, no case is made out to allow the present application. The application (Exhibit-23) therefore deserves to be dismissed. Hence, the following order:-



ORDER

- (i) Application (Exhibit-23) in Election Petition stands dismissed.

- (ii) Place the Election Petition for further consideration on 07.05.2026.

[KISHORE C. SANT, J.]

D.A.ETHAPE (PA)