IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 35918 OF 2025
IN
ELECTION PETITION NO. 46 OF 2025

Mr. Chetan Vitthal Tupe …Applicant

In the matter of:

Mr. Prashant Sudam Jagtap ...Petitioner

Versus

Mr. Chetan Vitthal Tupe ...Respondent

Mr. Asim Sarode (Through VC) a/w. Ms. Shriya Awle, Mr. Siddharth Ingle and Mr. Saurav More for the Petitioner.

Mr. Abhijit P. Kulkarni a/w. Mr. Abhishek Roy, Ms. Sweta Shah, Gourav Shahane, Shreyas Zarkar for Respondent.

CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 28th APRIL, 2026

PRONOUNCED ON : 15th JUNE, 2026

P.C.

1. The Applicant, who is the Respondent in the captioned Election Petition has filed the present Interim Application under the provisions of Section 86 of the Representation of the People Act, 1951 ("**R.P. Act**") read with

Order VII Rule 11 of the Code of Civil Procedure, 1908 ("**CPC**"), seeking dismissal of the Election Petition.

2. For convenience, the parties shall be referred to as they are arrayed in the captioned Election Petition.

3. However, before proceeding to consider the rival contentions, it is useful for context to set out the background of facts in which the captioned Election Petition and Interim Application have been filed.

Facts in Brief:

4. The general elections ("**the Election**") for the Maharashtra State Legislative Assembly were held on 20th November 2024. The Petitioner as well as the Respondent and other candidates contested the election from 213-Hadapsar Assembly Constituency.

5. The results of the Election were declared on 23rd November 2024, and the Respondent was declared elected by a margin of 7122 votes.

6. The Petitioner then, on 7th January 2025, filed the captioned Election Petition under the provisions of Section 80, 80A, 81, 100(1)(d)(i),

100(1)(d)(iv), 125(A), 36(1) and (2)(b) of the R.P. Act, as well as Rule 4(A) of Conduct of Election Rules, 1961, seeking to have the result of the Election declared as void.

7. The grounds on which the Petitioner has alleged improper acceptance of the nomination form are the following viz.

i. The Respondent has not affixed the photograph at the designated place as per FORM 26 but has done so at the end of the affidavit and not on the front page.

ii. The details about pending criminal cases against the Respondent are not as per the format, and the Respondent has failed to provide information as to details of cases pending before the concerned Court, and also the case numbers are missing.

iii. The Respondent has not filled Part 4 of the Affidavit as per the Conduct of Election Rules, 1961 ("**the ECI Rules"**), which mandate disclosure of the Income Tax Returns of the past 5 years.

iv. The Respondent has not filed the Income Tax Returns of his son.

v. The Respondent has not attached the 'No Dues Certificate' of Government residences along with the FORM 26.

8. Conversely, the Respondent has filed the present Interim Application made under Rule 11 of Order VII of CPC, seeking rejection of the Election Petition.

Submissions on behalf of the Respondent:

9. Mr. Kulkarni, Learned Counsel appearing on behalf of the Respondent at the outset, submitted that the Petition would have to be dismissed since there was not a single averment in the Petition as to how the result of the said Election had been materially affected on account of any of the breaches alleged on the part of the Respondent under the provisions of Sections 100(1)(d)(i) and 100(1)(d)(iv) of the R.P. Act. He submitted that on this ground alone, the Petition would have to be dismissed.

10. Mr. Kulkarni then also submitted that the Petition was also liable to be dismissed on the ground of limitation. In support of his contention, he pointed out that the results of the said Election were declared on 23rd

November 2024, and the statutory period of 45 days as per Section 81(1) of the R.P. Act expired on 7th January 2025. It was his contention that even though the Petition was lodged on 7th January 2025, and objections were raised the next day, i.e., 8th January 2025, the Petitioner removed the objections only on 16th August 2025, which he submitted was well after the time prescribed for the removal of office objections under the provisions of the Bombay High Court Election Petition Rules ("**the Rules"**).

11. He then invited my attention to Rules 7, 8, 9 and 19 and pointed out that objections in an Election Petition must be removed within 4 days from the date of presentation of the Election Petition. He submitted that if this was not done, the Election Petition was liable to be dismissed under the provisions of Section 86(1) of the R.P. Act. He also took pains to point out that the captioned Election Petition was, in fact, thereafter dismissed not once but twice. He submitted that the first dismissal was on 31st January 2025, after which the Petition was restored only to be dismissed once again on 11th June 2025. He submitted that even after the Petition was restored for the second time, the Petitioner did not remove the office objections

within the time granted by this Court, which was well after the expiry of the statutory period under the Rules 7 and 8 of the Rules.

12. Mr. Kulkarni then submitted that the R.P. Act was a complete Code and that neither the Rules nor any procedural provisions could override the provisions of the R.P. Act. In support of his contention, he placed reliance upon the decision of this Court in the case of ***Ashok Shankar Gholap v. Krishnarao Deshmukh***[1]**.** He also placed reliance upon the decision of the Hon'ble Supreme Court in ***Satya Narain v. Dhuja Ram***[2]**,** to point out that the High Court Rules cannot confer upon the Registrar or the Deputy Registrar any power to permit correction or removal of defects in an election petition presented beyond the period of limitation provided under the Act. He therefore submitted that the objections could not have been removed beyond the time prescribed, and therefore the Petition could not be said to have been filed within the prescribed time.

[1] AIR 1980 Bom 224.
[2] (1974) 4 SCC 237.

13. He then, without prejudice to the above, placed reliance upon the decision of the Hon'ble Supreme Court in ***Karikho Kri v. Nuney Tayang***[3] to point out that every defect or non-disclosure cannot automatically be treated as a defect of a substantial nature and that only substantial defects would justify interference with the election results. He then pointed out that the grounds taken in the Petition, based on which the Petitioner had alleged non-compliance with Sections 100(1)(d)(i) and 100(1)(d)(iv) were entirely technical and venial in nature and that none of them would qualify as substantial so as to warrant declaring the election void.

14. Mr. Kulkarni made the following submissions to substantiate his contention that the grounds taken by the Petitioner under Section 100(1)(d)(i) and 100(1)(d)(iv) were not substantial grounds which would warrant declaration of the election results as being void but were grounds which had been loosely taken and entirely lacking in substance.

I. Failure to affix his photograph at the designated place on the nomination form.

[3] (2024) 15 SCC 112.

15. Mr. Kularni pointed out that the Respondent had admittedly affixed his photograph on the nomination form as well as at the end of the affidavit where the document was identified and notarised. He submitted that the object of requiring a photograph was to identify a candidate, which object had been fully satisfied since the Respondent had affixed a photograph. He also pointed out that there was no allegation whatsoever that the identity of the Respondent was concealed or that any prejudice was caused by the fact that the photograph was affixed at the end of the Affidavit and not on the first page. Basis this, he submitted that the Respondent's nomination could not, therefore, be considered as being invalid, nor would it constitute non-disclosure under Section 33A of the R.P. Act.

II. Failure to disclose the case numbers of the pending criminal cases against the Respondent

16. Mr Kularni pointed out that the Respondent had specifically disclosed all the details and more in respect of the pending criminal cases. He pointed out that the Respondent had disclosed the crime register numbers; the police station concerned; the relevant Sections of the various statutes

which were invoked against the Respondent; the Court before which the proceedings were pending; and the status of the relevant charge sheet. He thus submitted that the Respondent had made full and complete disclosure of all the details of the criminal cases pending against him. He further submitted that all the pending criminal cases had also been published in the newspapers on three separate occasions, and there was no allegation that any criminal case had been suppressed by the Respondent.

17. Mr Kulkarni then submitted that the Respondent was not even required to make any such disclosure. In support of his contention, he invited my attention to Section 33A of the R.P. Act and pointed out that a disclosure is only required where (i) the candidate is accused of offences which are punishable with imprisonment of two years or more or (ii) the candidate has been convicted and sentenced to imprisonment of one year or more. He submitted that since none of the cases referred to by the Petitioner fell within the scope of Section 33A, there was in fact no statutory obligation for the Respondent to disclose any of the said cases, despite which the Respondent had nevertheless done so out of abundant caution.

18. He also placed reliance upon the decisions in ***Rajan Baburao Vichare v. Naresh Ganpat Mhaske***[4], ***Karikho Kri v. Nuney Tayang***, and ***Mangani Lal Mandal v. Bishnu Deo Bhandari***[5] to point out that it was now well settled that the returned candidate was not required to disclose conviction of a criminal offence if the conviction had not resulted in imprisonment of a year or more. Basis this he submitted that the contention that the specific case numbers had not been disclosed was entirely devoid of merit as a ground to have the result of the election declared void.

III. The Respondent has not filed ITR as per the ECI Rules which mandate disclosure of the income tax returns for the preceding five years

19. Mr. Kulkarni pointed out that in Form 26, the Respondent had not only fully disclosed all his income tax particulars but also those of his wife and the HUF of which he was the Karta for the relevant period. He pointed out that the Respondent had additionally made a complete disclosure of his own, his wife's, and the HUF's PAN numbers, income figures, and assessment years, and that there was no concealment of any income or

[4] 2025 SCC OnLine Bom 3137.
[5] (2012) 3 SCC 314.

financial particulars whatsoever by the Respondent. In support of his contention, he placed reliance upon the decision of the Hon'ble Supreme Court in ***Ajmera Shyam v. Kova Laxmi***[6] from which he pointed out that the Hon'ble Supreme Court had held that non-disclosure of income tax returns for certain years, absent the concealment of assets or income, would at best amount to a technical defect.

IV. Failure to disclose and/or file the income tax returns of the Respondent's dependant son

20. Mr. Kulkarni then submitted that the allegation regarding the alleged non-filing of income tax returns by the Respondent's dependent son was entirely speculative and unsupported by any material particulars. He also pointed out that there was no pleading with regard to any of the alleged suppressed income or concealed assets and that the Petitioner had also not produced any material to establish that the Respondent's dependent son was liable to file income tax returns. He submitted that vague allegations based merely on ownership of agricultural land cannot constitute a cause

[6] (2026)3 SCC 373.

of action under Section 100 of the R.P. Act. He then basis the law laid down in ***Kanimozhi Karunanidhi v. A. Santhana Kumar***[7], ***Karikho Kri v. Nuney Tayang*** and ***Ajmera Shyam v. Kova Laxmi***, submitted that it was mandatory for the Petitioner to specifically aver in what manner the result of the election was materially affected due to any such alleged omission, which was clearly absent in the present case.

V. Failure to attach a "No Dues Certificate" in respect of Government accommodation

21. Mr. Kulkarni submitted that the relevant clause in Form 26 was applicable only if the candidate had occupied a Government residence and/or accommodation. In the facts of the present case, he submitted that the Respondent had specifically stated that the clause was not applicable since the Respondent had never occupied any Government residence. He then also submitted that there was not even a pleading in the Petition asserting that the Respondent had occupied Government residence or that any dues

[7] (2024) 18 SCC 592.

were outstanding, and therefore such contention was also entirely devoid of merit.

22. He thus submitted that the grounds taken by the Petitioner, seeking to have the result of the election declared void, were clearly loosely taken and without an iota of substance. He therefore reiterated that the said grounds could in no manner be considered as substantial grounds which would warrant the declaration of the election result as void. This, he reiterated, was more so given the fact that it was not even the Petitioner's pleaded case that results of the Election had been materially affected by any of the grounds set out in (**I**) to (**V**) above.

23. Mr. Kulkarni then also took pains to point out that the Petition had not been filed under Section 100(1)(b), i.e., alleging any corrupt practice. He submitted that even if Section 100(1)(b) had been mentioned in the Petition even then, the Petition would have to be dismissed for non-compliance with the provisions of Section 83 of the R.P. Act. In support of his contention, he pointed out that the Petition neither contained a concise statement of material facts as mandated under Section 83(a) nor did it

contain any particulars of any corrupt practice, much less the full particulars as mandated under the provisions of Section 83(b) of the R.P. Act. He pointed out that although vague references of "corrupt practice" had been made, the Petition nowhere specified the details of any such alleged corrupt practice, the acts which constituted such alleged corrupt practice, the persons involved, the date, time or place of commission of such alleged corrupt practice, or the manner in which the election result was materially affected on account of such alleged corrupt practice.

24. He then submitted that it was well settled that mere reproduction of statutory provisions, absent the necessary pleadings and foundational facts, does not amount to pleading material facts. In support of his contention, he placed reliance upon the decisions in ***Hari Shanker Jain v. Sonia Gandhi***[8], ***Kanimozhi Karunanidhi v. A. Santhana Kumar, Mangani Lal Mandal v. Bishnu Deo Bhandari***, ***Ganesh Kumar Yadav v. R. Tamil Selvan***[9], ***Mahendra Tulshiram Bhingardive v. Anil Yeshwant Desai***[10]

[8] (2001) 8 SCC 233.
[9] 2025 SCC OnLine Bom 2929.
[10] 2024 SCC OnLine Bom 3303.

and ***Mahesh Baliram Sawant v. Sadanand Sarvankar***[11]. Basis this he submitted that even though the Petition made reference to various provisions of the R.P. Act, the same were wholly immaterial absent the necessary pleadings.

25. Basis the above, he submitted that the Interim Application be allowed as prayed for.

Submissions on behalf of the Petitioner:

26. Mr. Sarode, first in dealing with the contention that the Petition was barred by limitation because the office objections were removed on 16th August 2025, submitted that such contention was entirely untenable and belied the Respondent's complete misunderstanding of the provisions of the R.P. Act and the ECI Rules. He submitted that Section 81 of the R.P. Act provides for the "presentation" of an Election Petition within a period of 45 days from the date of election of the returned candidate. He then pointed out that in the facts of the present case, there was no dispute that the Petition had

[11] Order dated 7th April 2026 in AEP(L)12766 of 2025 passed by Bombay High Court.

in fact been presented within the time prescribed. Mr. Sarode submitted that once an Election Petition is presented within the time prescribed, i.e., the question of delay or limitation does not arise. He thus submitted that the question of the Petition being liable to be dismissed under the provisions of Section 86 of the R.P. Act, on the ground of limitation, did not arise.

27. In dealing with Rules 7, 8 and 9 of the Bombay High Court Rules relating to Election Petitions, he submitted that Rules 7 and 8 merely deal with the raising and removal of office objections, whereas Rule 9 contemplates placing the matter before the Court for appropriate orders in the event that objections are not removed. He pointed out that Rule 9 itself contemplates judicial consideration by using the expression "*place before the Judge for such orders as may be required to be passed*" and further provides that if the Petition is not dismissed, summons are to be issued.

28. Mr. Sarode then also took pains to point out that in the present case the Election Petition was never dismissed under the provisions of Section 86 of the R.P. Act. He then submitted that neither of the two Orders by which

the Petition had been previously dismissed had been passed under the provisions of Section 86(1) of the R.P. and that the dismissal was only because of office objections had not been removed.

29. Mr. Sarode submitted that the Rules framed by the High Court were purely administrative and procedural in nature and cannot override or supersede the substantive provisions of the R.P. Act. He submitted that the statute only mandates that the presentation of an Election Petition should be within 45 days, and as long as an Election Petition is "presented" within 45 days, the same is within limitation even if the "registration" is later. He submitted that the Respondent was seeking to equate "registration" with "presentation", which was impermissible, and the fact that the office objections were removed only on 16th August 2025 would make no difference since the Petition had undeniably been present within the time prescribed under Section 81 of the R.P. Act and had not been dismissed under the provisions of Section 86 of the R.P. Act.

30. He submitted that the interpretation the Respondent had sought to advance, namely that the limitation would be extended only upon registration of the

Election Petition, was contrary to settled legal principles. In support of this contention, he placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Tarun Chatterjee v. Dinanath Sharman***[12] which he pointed out held as follows, viz.

> *"14. By Section 81(1), the legislation fixes the period for filing election petition and at the same time states that no elector or candidate shall file an election petition before the date of election of the returned candidate and if there are more that one candidates, at the election and dates of their election are different, the later of those two dates. The learned Senior Counsel for the appellant contended that if the date of election of the candidate is excluded from computing the period of 45 days, the period of limitation would be extended by one day, and therefore, it is against the mandate of the statute. It was also contended that the filing of the application on the date of election of the returned candidate cannot be considered as valid presentation of petition as envisaged in the section. We do not think that any such interpretation is possible by a conjoint reading of Section 81(1) of the RP Act and Section 9 of the General Clauses Act, 1897. The first day for period of limitation is required to be excluded for the convenience of the parties and if the declaration of the result is delayed or is done late in the night, the candidate or elector would hardly get any time for presentation of the election petition. Law comes to the rescue of such parties to give full forty five days period for filing the election petition. Nevertheless, any petition presented on the date of election of the returned candidate would be certainly within the period of limitation as it is a presentation on the date of election of the returned candidate."*

[12] (2002) 8 SCC 649.

Basis the above, he submitted that it was not open for the Respondent to contend that the Petition was filed beyond limitation or deserved to be dismissed on the ground that office objections were removed after the expiry of the period of limitation, i.e., after 7th January 2025.

31. Mr. Sarode also placed reliance upon the decision of this Court in the case of ***Saroj Sandesh Naik (Bhosale) v. Suryakant Venkatrao Mahadik***[13] to point out that office objections are routine in nature and not linked with the mandatory statutory requirements under the R.P. Act. He therefore submitted that delayed removal of office objections cannot be treated as a ground for dismissal of an Election Petition.

32. In dealing with the decisions cited by the Respondent in the case of ***Ashok Gholap, Satya Narain*** and ***Pankajkumar Velani (Jain)***, Mr. Sarode submitted that all the said decisions were clearly distinguishable on facts since objections concerned in those cases were in respect of non-compliance with mandatory statutory provisions of the R.P. Act, thereby

[13] 1991 SCC OnLine Bom 184.

directly attracting Section 86 of the R.P. Act, unlike in the present case where the objections were administrative and procedural in nature.

33. He submitted that the Election Petition specifically pleads suppression, misinformation and non-disclosure of material facts in the nomination affidavit filed by the Respondent and therefore clearly discloses a complete cause of action. He submitted that the Respondent cannot seek dismissal of the Petition by selectively relying upon provisions unrelated to the specific challenge raised under Sections 100(1)(d)(i) and 100(1)(d)(iv) of the R.P. Act. In support of his contention, Mr. Sarode placed reliance on the decision of the Hon'ble Supreme Court in ***Kisan Shankar Kathore v. Arun Dattatray Sawant***[14], which, he pointed out *inter alia,* held that every case must turn on its own facts and that there can be no straightjacket formula for determining when non-disclosure amounts to a defect of substantial character, and where suppression or misinformation in a nomination affidavit is ultimately established, the same would amount to improper acceptance of the nomination and would render the election void. Mr.

[14] 2014 SCC OnLine SC 447.

Sarode pointed out that in paragraph 38 of the said judgment the Hon'ble Supreme Court had expressly observed that the Returning Officer may not be in a position to conduct a detailed inquiry at the stage of scrutiny and that the appropriate stage for such adjudication would be during the trial of an Election Petition.

34. Mr. Sarode submitted that the Election Petition specifically alleges failure on the part of the Returning Officer to comply with the provisions of Section 33 of the R.P. Act and the prescribed requirements of Form 26. He pointed out that the Respondent had in fact admitted to deviation from the prescribed format and to the non-disclosure of certain particulars required under Form 26. With respect to the "No Dues Certificate", Mr. Sarode submitted that although the Respondent had denied occupation of Government residence, the fact remains that the Respondent had admittedly served as an MLA from 2019 to 2024. He therefore submitted that whether or not there were any dues owing to the Government by the Respondent was also a matter which required evidence and detailed

examination at trial. He thus submitted that the Petition could not, therefore, be summarily rejected.

35. According to Mr. Sarode, disclosure regarding Government dues was a vital component of the nomination affidavit intended to enable voters to make an informed electoral choice, and any non-disclosure thereof would amount to misinformation and disinformation affecting electoral transparency. He submitted that the real test of a substantial defect is not the quantum involved but the conscious act of suppression and non-disclosure of material facts. He submitted that where suppression was deliberate, the defect ceases to be technical and assumes a substantive character.

36. Mr. Sarode submitted that the Respondent had admitted in the affidavit that agricultural land bearing Survey No. 839/1 admeasuring 18.33 Are stands in the name of the Dependent No. 1, who was the dependent son of the Respondent. He submitted that the 7/12 extract annexed to the Election Petition also clearly elucidates that the land is cultivable, and the records show crops such as sugarcane, onions, and chickpeas being cultivated

thereon. He invited my attention to the Petition to point out that the Petitioner had specifically alleged that the Respondent had suppressed the income generated from agricultural land of which the Respondent's son had derived benefit. Mr. Sarode, submitted that the issue of whether income was in fact generated and suppressed was a matter requiring trial and evidence and cannot be conclusively determined in summary proceedings under Order VII Rule 11 CPC.

37. Mr. Sarode then submitted that the defence now sought to be taken by the Respondent, namely that the Respondent's dependent son had no independent source of income, was itself a disputed question of fact requiring adjudication. Mr. Sarode, therefore, submitted that suppression of income generated from agricultural land constitutes a substantive issue and material defect warranting a full-fledged trial.

38. Mr. Sarode, therefore, submitted that the Election Petition clearly disclosed a complete cause of action. He reiterated that the Petitioner had specifically pleaded suppression of material information; improper acceptance of nomination by the Returning Officer; non-compliance with mandatory

provisions of the R.P. Act and ECI Rules; and material effect on the purity and fairness of the electoral process.

39. He also submitted that the Petition had specifically set out that the Returning Officer had failed to conduct a proper scrutiny as contemplated under Section 36 of the R.P. Act. It was this failure on the part of the Returning Officer which he submitted, that had vitiated the entire election process since it resulted in the improper acceptance of the Respondent's Nomination form. He submitted that free and fair elections constitute part of the basic constitutional framework, and the nomination affidavit is a mechanism which is intended to ensure transparency and informed electoral choice, which stood vitiated by the improper acceptance of the Respondent's nomination form.

40. When asked to point out from the Petition where it was pleaded that the result of the election had been materially affected as a result of what the Petitioner alleged was the improper acceptance of the Respondent's nomination form, Mr. Sarode fairly stated that the Petition did not contain any such averment. He, however, submitted that the Election Petition must

be read as a whole, and if the pleadings disclose triable issues, the Petition cannot be rejected in *limine*. In support of his contention, he placed reliance upon the decisions in ***Madiraju Vyankata Ramana Raju v. Peddireddigari Ramachandra Reddy and Ors***[15], ***D. Ramachandra Reddy v. R. V. Jankiraman and Ors.***[16], ***Mayar (H.K.) Ltd v. Owners & parties, Vessel M.V. Fortune Express and Ors.***[17] and ***Ponnala Lakshmaiah v. Kommuri Pratap Reddy and Ors.***[18]**.**

41. Mr. Sarode submitted that it was also well settled that the Court, when considering an application under the provisions of Order VII Rule 11 of the CPC, must proceed on a demurrer. He then placed reliance upon a recent decision of the Hon'ble Supreme Court in the case of ***Bhim Rao Baswanath Rao Patil v. K. Madan Mohan Rao***[19] to point out that allegations regarding non-compliance with the disclosure requirements under the provisions of the R.P. Act and the ECI Rules cannot ordinarily be adjudicated in summary proceedings and can be examined only after a

[15] (2018) 14 SCC 1.
[16] AIR 1999 SC 1128.
[17] AIR 2006 SC 1828.
[18] AIR 2012 SC 2638.
[19] (2023) SCC OnLine SC 871.

full-fledged trial. He also submitted that the Hon'ble Supreme Court had specifically cautioned that Courts ought not to prejudge the effect of withholding information at the threshold stage. Mr. Sarode submitted that none of the decisions relied upon by the Respondent, except cases involving express non-compliance with Sections 81, 82 or 117 of the R.P. Act, were matters dismissed at the threshold under Order VII Rule 11 CPC.

42. Mr. Sarode then also placed reliance on the decision in ***Shaligram Shrivastava v. Naresh Singh Patel***[20] to point out that the Hon'ble Supreme Court had emphasised the voter's elementary right to know full particulars concerning a candidate and held that the issue of whether there is substantial compliance with affidavit requirements cannot ordinarily be decided summarily. He then, from the decision in the case of ***Union of India v. Association for Democratic Reforms***[21], pointed out that disclosure obligations imposed upon contesting candidates form an essential component of free and fair elections, which flows directly from Article 19(1)(a) of the Constitution of India.

[20] (2003) 2 SCC 176.
[21] (2002) 5 SCC 294.

43. Lastly, Mr. Sarode submitted that the present Election Petition raises serious issues concerning suppression of material information, transparency in electoral disclosures, improper acceptance of nominations and the voter's right to know. According to him, these issues necessarily require evidence and adjudication after trial and cannot be summarily terminated under Order VII Rule 11 CPC.

44. Mr. Sarode therefore submitted that the present Interim Application deserves to be rejected and the matter proceeded to trial.

45. After having carefully gone through the averments made in the Election Petition and having considered the rival contentions of Learned Counsel for the Parties and the case law upon which reliance is placed, I don't have the slightest hesitation in holding that the Application would have to be allowed. I say so for the following reasons:

A. Though the Petition adverts to several provisions of the R.P. Act, in essence it is premised only upon the alleged breach and/or violations of Sections 100(1)(d)(i) and 100(1)(d)(iv) of the R.P. Act. Despite this, there is not so much as a mention in the Petition much less a

positive pleading, as to how the result of the said Election has been affected, let alone materially affected on account of such alleged breaches. A plain reading of Section 100(1)(d) makes clear that to sustain a ground of challenge under any of the provisions of Sub-Section (d) of Section 100, it is incumbent upon the Petitioner to specifically plead that the result of such election has been materially affected by any of the breaches and/or violations of the provisions of Section 100(1)(d). In the facts of the present case, and as already noted, it is an admitted position that the Petition is entirely bereft of any such pleading. In my view, this omission is fatal and warrants dismissal of the Election Petition on this ground alone.

B. It is now well settled, as held by the Hon'ble Supreme Court in the case of ***Kanimozhi Karunanidhi v. A. Santhana Kumar***, ***Karikho Kri v. Nuney Tayang*** and ***Ajmera Shyam v. Kova Laxmi***, that it is mandatory for an election petitioner to specifically plead how the alleged non-compliance or improper acceptance of a nomination has materially affected the result of the election. Failure to do so renders

an Election Petition liable to be rejected under Order VII Rule 11 of the CPC read with Section 83(1)(a) of the R.P. Act. As already noted in (**A**) above, in the present case, it is an admitted position that the Petition does not contain a single averment explaining how the result of the election was materially affected. Thus, on this ground alone, the Petition is liable to be rejected under Order VII Rule 11 of the CPC.

C. Though it was submitted that the Petition contains averments regarding corrupt practices, the Petition has admittedly not been filed by invoking Section 100(1)(b) of the R.P. Act as a ground for declaring the election void. More importantly, the Petition does not contain particulars of any such alleged corrupt practices, much less particulars in the manner contemplated under Section 83(1)(b) of the R.P. Act. The averments relied upon are, to my mind, vague, sketchy and entirely bereft of the material particulars, details and specific instances required in law. An example of such loose pleading, as contained in paragraph '50.(XI)' of the Petition, is extracted below:

> "*XI. It has been observed that the official authorities have taken undue advantage of the complex and technical nature of election petitions. The ECI and officers working as District Election Officers and his subordinates are largely responsible for the failure of elections to be conducted in a free and fair manner. At the same time burden of proving the corrupt practices cannot be fulfilled without varied kind of information which is primarily with the government agencies and in the custody of ECI. The Hon'ble Court is empowered to seek all the information and documents from the concerned authorities to reach to the ends of justice.*"

D. In light of what has been held in (**A**) to (**C**) above, I find no merit in the Petitioner's contention that the averments in the Petition, when read as a whole, disclose a complete cause of action and therefore warrant an opportunity to lead evidence. As already noted, it is an admitted position that the Petition is bereft of any pleading that the election "has been materially affected" either by the alleged improper acceptance of the nomination or by the alleged non-compliance with the provisions of the R.P. Act.

E. It is also well settled that evidence cannot travel beyond and make up for deficiency in the pleadings. Therefore, in the admitted absence of any pleadings that the result of the election has been

materially affected by any of the grounds taken in the Petition, no amount of evidence can cure such a fundamental defect. The Petitioner's reliance upon ***Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy***, ***D. Ramachandran v. R.V. Janakiraman***, ***Mayar (H.K.) Ltd. v. Owners & Parties***, ***Vessel M.V. Fortune Express*** and ***Ponnala Lakshmaiah v. Kommuri Pratap Reddy*** is therefore of no assistance since the Petition is plainly lacking the material facts necessary to sustain a challenge under Section 100(1)(d) of the R.P. Act.

F. Though it is undoubtedly well settled that when considering an application under the provisions of Order VII Rule 11 of the CPC, the Court must proceed on a demurrer, I find that in the facts of the present case, such contention would not in any manner advance the Petitioner's case. This is because even accepting the correctness of the averments in the Petition, the Court cannot infer or presume the existence of what is plainly absent in the pleadings, i.e., that the averment that the result of the Election has been materially affected.

In the present case it is an admitted position that the Petition is bereft of even a single pleading to that effect. This omission in the Petition is, in my view, fatal, and absent which the Petition cannot be said to have disclosed a complete cause of action under Section 100(1)(d) of the R.P. Act.

G. For the reasons set out in (**A**) to (**C**), I find that the Respondent's reliance upon the decisions in the case of ***Hari Shanker Jain v. Sonia Gandhi***, ***Kanimozhi Karunanidhi v. A. Santhana Kumar***, ***Mangani Lal Mandal v. Bishnu Deo Bhandari***, ***Ganesh Kumar Yadav v. R. Tamil Selvan***, ***Mahendra Tulshiram Bhingardive v. Anil Yeshwant Desai*** and ***Mahesh Baliram Sawant v. Sadanand Sarvankar,*** is well founded. These decisions clearly lay down that mere reproduction of statutory language, absent the necessary pleadings and material facts, would not satisfy the requirements of pleading a complete cause of action and that an Election Petition lacking such pleadings or a complete cause of action is liable to be

rejected at the threshold. The Petitioner has done precisely this in the present case.

H. Even on merits, I find that the grounds raised by the Petitioner and based on which the Petitioner seeks to have the result of the election declared void are loosely taken. The Petitioner has failed to plead a positive and complete case satisfying the requirements of Section 33A of the R.P. Act. The Petition also does not disclose particulars of any allegedly suppressed criminal cases against the returned candidate, nor does it place on record any material demonstrating that the returned candidate had occupied Government accommodation without payment of dues or that the Respondent's dependent son was under a legal obligation to file income-tax returns. The assertions made are therefore in the nature of the Petitioner's *ipse dixit* rather than material facts that constitute a cause of action. In this context, the Respondent's reliance upon ***Rajan Baburao Vichare*** also supports the contention that the

Petition does not disclose any facts showing any actionable non-disclosure under Section 33A of the R.P. Act.

I. Though the Petitioner has placed reliance upon the decisions in the case of ***Kanimozhi Karunanidhi v. A. Santhana Kumar*** and ***Karikho Kri v. Nuney Tayang*** in my view, both these decisions in fact support the Respondent's case since they, *inter alia*, hold that every defect or instance of non-disclosure does not automatically vitiate an election and that every defect in a nomination cannot be treated as being of such a substantial character as to render its acceptance improper and that the Court must distinguish between defects that are substantial and those that are merely technical or insubstantial.

J. While there can be no dispute regarding the importance of disclosure and electoral transparency, as emphasised in ***Kisan Shankar Kathore v. Arun Dattatray Sawant***, ***Bhim Rao Baswanth Rao Patil v. K. Madan Mohan Rao*** and ***Shaligram Shrivastava v. Naresh***

Singh Patel, these decisions do not assist the Petitioner in light of what has been noted in (**A**) and (**B**) above.

48. For all the aforesaid reasons, I am of the view that the Election Petition fails to disclose a complete cause of action and is therefore liable to be rejected under the provisions of Order VII Rule 11 of the CPC.

49. In light of the aforesaid reasons, I pass the following order:

a. The captioned Application is allowed and the Election Petition is accordingly rejected.

b. There shall be no order as to costs.

[ARIF S. DOCTOR, J.]