



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

APPLICATION (L) NO. 10196 OF 2025

IN

ELECTION PETITION NO. 24 OF 2025

Rajesh Govardhan More]
Age : 55, Occ. : Business]
Satish Bungalow, Reti Bandar Road,]
Near Navnath Temple, Motha Gaon,]
Dombivali (West), Tal. Kalyan, District. Thane] **...Applicant**

In the matter of :

Pramod Ratan Patil,]
Age : 50, Occ. Business.]
Having address at Shanti Villa No. 6,]
Casa Bela, Golfink, Palava City,]
Kalyan Shill Road, Dombivli (E),]
Tal. Kalyan, District – Thane – 421 2024.] **...Petitioners**

Versus

1. Rajesh Govardhan More]
Age : 55, Occ. : Business]
Satish Bungalow, Reti Bandar Road,]
Near Navnath Temple, Motha Gaon,]
Dombivali (West), Tal. Kalyan,]
District Thane]
2. Subhash Ganu Bhoir]
Age : 66, Occ. Business,]
Chandraratna Villa, Mumbra Panvel Road,]
Near Hanuman Hotel, Shilphata, Post –]
Padle, Tal. - Thane, District – Thane]
3. Deepak Datta Khandare]
Age : 41, Occ. Business]
Aai Mumbra Devi Chawl No. 03, Gala No. 11,]
Shlok Nagar, Dativali Road, Diva (East),]
Taluka – Thane, District Thane 400612.]
4. Vikas Prakash Ingle]
Age : 42, Occ : Business]

- 304, 3rd Floor, Sant Krupa Apartment,
Sandap Gaon, Manpada Road,
Tal. Kalyan, Dist. Thane 421 204.]
5. Habiburrehman Khan]
Age : 64, Occ : Business]
Flat No. 507, Mannat Housing Society,]
Firoj Height, Khardi Road,]
Mumbra – Thane, Dist. Thane, 400612.]
6. Ashwini Ashok Gangavane]
Age : 44, Occ. : business,]
1/1, Sai Siddhi Society,]
Nand Deep Nagar, Puna Link Road, Chakki]
Naga, Kalyan (East), Taluka – Kalyan,]
District – Thane]
7. Chandrakant Rambhaji Mote]
Age : 63, Occ. : Reporter,]
Amber Heights, Row House, K-2,]
Near Green City, B. Cabin Road, Ambernath]
(East), Taluka – Ambernath, District – Thane]
8. Deepak Ramkisan Bhalerao]
Age : 32, Occ. : Business,]
Hedutane Gaon, Badlapur Pipe Line Road,]
Kalyan, Dist – Thane.]
9. Narsing Dattu Gaisamudre]
Age : 54, Occ. : Service]
Mahatma Gandhi Nagar,]
Tata Power House,]
Near Satyanarayan Kirana Store,]
Pisavli, Kalyan (East), Tal. Kalyan,]
Dist. Thane 421306.]
10. Paresh Prakash Badve]
Age : 36, Occ. : Service]
4, Nagubai Niwas, Ground Floor,]
Devi Chowk, Shastri Nagar,]
Dombivali (West), Tal. Kalyan,]
District Thane 421 202.]
11. Priyanka Gajanan Mayekar]

Age : 36, Occ. Business]
Flat No. 105, D Wing, Mangeshi Dezzel, 90 Ft]
Road, Near Krishnai Bunglow, Dombivali]
(East), Tal. Kalyan, Dist. Thane 421 204.]

12. Shiva Krishnamurthi Iyer]
Age : 62, Occ. Advocate]
17, Murit Bhavan, Ravi Kiran Society, Chira]
Nagar, Sagaon, Dombivali (East), Tal. Kalyan,]
Dist. Thane 421204.]

...Respondents

Mr. Nilesh Pandey, Mr. Sameer S. Vispute, Ms. Sayali Shinde, Mr. Rishabh Dubey for Petitioner.

Mr. Chirag Shah, Mr. Bhavya Shah i/b Mr. Vishal Acharya for Applicant/Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 26th March, 2026.

Pronounced on : 9th April, 2026.

Judgment :

1. The present Application under Order VII, Rule 11 of Code of Civil Procedure, 1908 [for short, "**CPC**"] is at the instance of returning candidate whose election is called in question by the present Election Petition. The Applicant seeks dismissal of the Election Petition as being barred by limitation, non disclosure of cause of action and under Section 86(1) of Representation of People Act, 1951 [for short, "**R.P. Act**"] for non compliance of Section 81 of R.P. Act.

2. By the Election Petition, the election of the returning candidate from constituency no. 144-Kalyan Rural, District – Thane to Maharashtra State Legislative Assembly Elections held on 20th

November, 2024, the results of which came to be declared on 23rd November, 2024 is questioned and declaration is sought that the Election Petitioner has been duly elected in the election to 144-Kalyan Rural constituency, Maharashtra held on 20th November, 2024.

3. The Petition *inter alia* seeks direction to the District Election Officer/ Returning Officer/Election Commissioner of India to count and tally the electronic count data in the Control Unit (C.U) with manual slip count of VVPAT in respect of 17 EVM sets and to secure the units, to declare the Respondent No 1's election as void and to declare the Election Petitioner as the elected candidate. It is pleaded that the Election Petitioner secured 74,412 votes and the Respondent No. 1/returned candidate secured 1,40,770 votes and the margin was only 66,358 votes.

4. Mr. Shah, learned counsel appearing for Applicant submits that Election Petition fails to disclose the cause of action. Drawing attention to the pleadings in Paragraph 8(b) of the Election Petition, he submits that the Election Petitioner has failed to disclose the source of the information. He submits that as the election has been questioned under Section 100 (1)(d)(iii) of R.P. Act, it is necessary to plead and substantiate that the results of the election insofar as it concerns the returning candidate is materially affected by improper reception of votes or void votes. He would further submit that under Section 101 of

R.P. Act, a candidate other than the returned candidate can be declared elected if it is shown that the Petitioner or other candidate received majority of valid votes or that but for the votes obtained by returned candidate by corrupt practices, the Petitioner or such other candidate would have obtained majority of the valid votes. He would submit that there is no averment to satisfy the requirements of Section 101(b) and there is no material particulars of the corrupt practices alleged. He submits that though the relief is sought against the Returning Officer/ Election Commissioner, the Petitioner has not impleaded them as party to the Election Petition.

5. He would further submit that the results were declared on 23rd November, 2024 and the period of 45 days expired on 6th January, 2025. The Petition has been lodged on 7th January, 2025 and on 9th January, 2025, the concise statement in support of the Petition was filed and hence, the Petition is barred by limitation. In support, he relies upon the following decisions :

***Ravindra Dattaram Waikar vs. Amol Gajanan Kirtikar*¹**

***Kanimozhi Karunanidhi vs. A. Santhana Kumar*²**

***Anil Yeshwant Desai vs. Mahendra Tulshiram Bhingardive*³**

1 2024 SCC Online Bom 3828.

2 2023 SCC OnLine SC 573.

3 Application (L) No. 29382 of 2024, decided on 15th October, 2024.

***Karim Uddin Barbhiya vs. Aminul Haque Laskar*⁴**

***Mangani Lal Mandal vs. Bishnu Deo Bhandari*⁵**

***Jyoti Basu vs. Debi Ghosal*⁶**

***Dr. P. Nalla Thampy Thera vs. B. L. Shanker*⁷**

6. Mr. Pandey, learned counsel appearing for Respondent-original Petitioner would submit that the results were declared on 23rd November, 2024 and the notification was issued on the next day. He submits that for the purpose of calculating the period of limitation, the date on which the results have been declared has to be excluded. He submits that as the last date for filing of the Election Petition was on 7th January, 2025, the Registry has accepted the lodging of the Petition.

7. He would further submit that the Applicant's case is that the election is questioned on the ground of corrupt practice which is not the case of the Election Petitioner. He submits that it is the specific case of the Petitioner that there is discrepancy between the manmade electronic device and the vote count shown in the machine which would not match with VVPAT slips which raises a triable issue. He submits that non-joinder of the parties is a curable defect and the Petition cannot be rejected on that ground. He submits that Petition

4 2024 SCC OnLine SC 509.

5 (2012) 3 SCC 314.

6 (1982) 1 SCC 691.

7 (1984) 1 S.C.R. 688.

discloses the cause of action and cannot be rejected at the threshold. He submits that the concise statement of facts is in conformity with the statutory provisions. He would further submit that the request was made to the District Election Officer for recounting of VVPAT slips and that it is specifically pleaded in paragraph no. 12 that the result of the election of the returned candidate was affected materially as there was no counting of VVPAT slips for purpose of cross verification with the EVM data and that the Petitioner received majority of valid votes. In support, he relies upon the following decisions :

***Membor Gogoi vs. Renupama Rajkhowa*⁸**

***Thangjam Arunkumar vs. Yumkham Erabot Singh*⁹**

***Gurudev Singh vs. Harvinder Singh*¹⁰**

***Ashraf Kokkur vs. K. V. Abdul Khader*¹¹**

***Patel Dipakbhai Chimanbhai vs. Chavda Ishwarbhai Kohdabhai*¹²**

***Ashwani Kumar Sharma vs. Yaduvansh Singh and Others*¹³**

***Tarun Prasad Chatterjee vs. Dinanath Sharma*¹⁴**

REASONS AND ANALYSIS :

8. The present Application seeks dismissal of the Petition on the

8 1992(1) GLJ 149.

9 AIR(SC) 4531: 2023.

10 2022(3) Apex Court Journal 360:2022.

11 AIR (SCW) 4913:2014.

12 2005(12) SCC 187.

13 AIR (SC) 337:1997.

14 Appeal (Civil) No. 2937 of 2000 decided on 10th October, 2000 by Hon'ble Supreme Court.

ground of being barred by limitation and non disclosure of cause of action. Dealing first with the issue of limitation, Section 81 of R.P. Act provides that an Election Petition calling in question any election may be presented on one or more grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within 45 days from, but not earlier than the date of election of the returned candidate. The expression used in Section 81 of R.P. Act is “the date of election”.

9. Section 66 of R.P. Act provides that when the counting of votes has been completed, the returning officer shall in the absence of any direction by the Election Commission to the contrary, forthwith declare the result of the election in the manner provided by the Act or Rules made thereunder. Section 67 of R.P. Act, provides that as soon may be after the result of an election has been declared, the returning officer shall report the result to the appropriate authority and Election Commission and in the case of an election to the House of Parliament or of Legislature of a State also to the Secretary of that House and the appropriate authority shall cause to be published in the Official Gazette the declarations containing the names of the elected candidates.

10. Section 67A of R.P. Act reads as under:

“67A. Date of election of candidate - For the purposes

of this Act, the date on which a candidate is declared by the returning officer under the provisions of section 53 or section 66, to be elected to a House of Parliament or of the Legislature of a State shall be the date of election of that candidate.”

11. The date of election for the purpose of Section 81 of R.P. Act is the date of declaration of results by the returning officer and the Election petition is required to be filed within forty five days from the date of election. The pleading in paragraph 1 of the Election Petition is that the elections were held on 20th November, 2024, with the vote counting conducted on 23rd November, 2024 in which post election counting as per the results declared, the Petitioner secured the second position. The results were declared on 23rd November, 2024 as per the Election Petition. Under Section 12 of the Limitation Act, 1963, for the purpose of computation of period of limitation, the day from which such period is to be reckoned, shall be excluded. The date of declaration of results i.e. 23rd November, 2024 is required to be excluded and the period of forty five days would expire on 7th January, 2025. The Election Petition has been filed on 6th January, 2025 within the period of forty five days from date of election.

12. The concise statement of material facts under Section 83 of R.P. Act has been filed on 9th January, 2025 beyond the period of 45 days. The delayed filing of the concise statement, according to Mr. Shah, would entail dismissal of the Election Petition in limine. It would be

apposite to note Section 86 of R.P. Act which provides for dismissal of Election Petition at the threshold only for violations of Section 81, Section 82 or Section 117 of R.P. Act.

13. In *T.M. Jacob vs Poulouse*¹⁵, the Hon'ble Apex Court observed in paragraph 38 as under:

"38.....That apart, to our mind, the legislative intent appears to be quite clear, since it divides violations into two classes — those violations which would entail dismissal of the election petition under Section 86(1) of the Act like non-compliance with Section 81(3) and those violations which attract Section 83(1) of the Act, i.e., non-compliance with the provisions of Section 83. It is only the violation of Section 81 of the Act which can attract the application of the *doctrine of substantial compliance* as expounded in *Murarka Radhey Shyam* [AIR 1964 SC 1545 : (1964) 3 SCR 573] and *Ch. Subbarao*[AIR 1964 SC 1027 : (1964) 6 SCR 213] cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the *doctrine of curability*, on the principles contained in the Code of Civil Procedure....."

14. The non compliance of provisions of Section 83 has been held to be capable of being dealt with under the doctrine of curability. It is not the case of the Applicant that absent the concise statement of material facts, the Election Petition cannot be treated as a Election Petition as contemplated under Section 81(1) of R.P. Act. Similarly, the non joinder of Election Officer and the Returning Officer is a curable defect, which cannot result in dismissal of the Petition. The Election Petition cannot be held to be barred by limitation nor can be dismissed

¹⁵ (1999) 4 SCC 274.

under Section 86 of R.P. Act.

15. Dealing with the contention of non disclosure of cause of action, under the statutory provisions of R.P. Act, 1951, the election can be questioned only on the grounds set out in Section 100(1) of R.P. Act. As the Election Petitioner also seeks declaration that the Petitioner be declared as elected, the provisions of Section 101 of R.P. Act are attracted. Section 100(1) and Section 101 of the R.P. Act, 1951, reads as under :

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

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

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

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

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

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

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

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

(iii) by the improper reception, refusal or

rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.”

“101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion—

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the High Court shall, after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.”

16. Against the statutory background, the pleadings in the Petition will have to be perused to ascertain whether the Election Petition discloses a cause of action. The main grounds on which the election has been challenged is by reason of discrepancy between the vote count shown in the Control Unit of EVM and the VVPAT slips. As is known, VVPAT i.e. voter verified paper audit trail is an independent vote verification system. During the process of elections, the VVPAT machine generates paper slips which contains the necessary details as

to the political party symbol, name of candidate etc. After the vote is cast, the voter gets to view the slip on the VVPAT to verify correct casting of vote.

17. The substratum of the Petitioner's case is set out in paragraph 9 of the Petition. I have taken the grounds ad-seriatim to consider whether the allegations gives rise to cause of action for the Election Petition to proceed for trial. Paragraph 9(d) (i) and (ii) pleads as under:

"(i) That in respect of one of the booth number in the constituency of Petitioner i.e. booth No.338 notably it has been found that the B.U. No. and C.U. No. maintained on the EVM machines were different from the Form No. 17C given by the ECI. Hereto Annexed and marked **Exhibit-"D"** is the copy of said Form No. 17C of booth No. 338.

(ii) That in respect of one of the EVM machine at booth No. 45 it was been observed that the EVM machine when opened from the container at which time there was no any Form No.17C of the said respective EVM was found and subsequently the EVM shown discrepancy and error as "not ok". Hereto Annexed and marked **Exhibit-"E"** is the copy of said Form No. 17C of Booth No. 45."

18. As the discrepancy is alleged in the B.U and C.U. numbers and Form 17C, it would be relevant to refer to the concerned Rule which prescribes Form 17C. Rule 49S of The Conduct of Election Rules, 1961 provides that the presiding officer at the close of the poll shall prepare an account of votes recorded in Form 17C and to furnish to every polling agent present at the close of the poll a true copy of the entries made in Form 17C. The prescribed Form 17C is in two parts : Part I

contains the details of the control units, balloting unit, total number of votes recorded as per the voting machine etc and Part II gives particulars of number of votes displayed on the control unit, the result of counting etc. Form 17C thus provides for accounts of the votes recorded.

19. Where the allegation of discrepancy is premised on the difference in the B.U. and C.U. numbers mentioned on EVM and the numbers given in Form 17C, the basic material fact to be pleaded are the B.U. and C.U. numbers which was mentioned on the EVM in contradistinction to the Form No 17C. The pleading in paragraph 9(c)(i) of the Election Petition makes no mention of the numbers appearing either on the EVM or Form 17C and merely annexes Form 17C of Booth No 338 as Exhibit "D". Perusal of Form 17C reflects the B.U. and C.U. numbers and VVPAT Id. Based only on the document that is Form 17C without any pleading in that respect, no case of discrepancy between the numbers as alleged is made out.

20. Similarly, the allegation in respect of one of the EVM in Booth No 45 is that there was no Form No 17C of the said EVM and subsequently the EVM showed discrepancy and error. The pleading does not proceed further so as to even make a bald assertion that the said EVM though in error was used for purpose of voting or that the Form 17C was furnished in respect of the said EVM. The Petition

proceeds to annex Form 17C at Exhibit "E" with the exhibit being described as copy of Form No 17C of Booth No 45. There is no nexus established between the Form 17 C which is annexed to the Petition and the said EVM machine at Booth No 45. There is no pleading about the nature of discrepancy or about the alleged error. With these unconnected assertions, the Petition does not disclose any case about discrepancies in so far as the the EVM and Form 17C is concerned.

21. The allegation in paragraph 9(d)(iii) is incomprehensible and reads as under:

"(iii) That the list provided by the election commission of India containing the B.U.ID, C.U.ID and VVPAT ID could not get tallied in 3 EVMs from the list provided by the election commission through Returning Officer / ECI in respect of which the list is annexed with this present with the highlighted 3 serial numbers, contained discrepancy in the round of counting. Hereto Annexed and marked **Exhibit- "F-Colly"** is the copy of said list provided by the election commission of India containing the B.U. ID, C.U. ID and VVPAT ID to the constituency of the Petitioner"

22. It appears that the case of the Petitioner is that there was discrepancy in the list provided by Election Commission of India and the list provided by the Returning Officer/ECI in respect of 3 EVMs, which could not be tallied. The list is annexed at Exhibit F-colly" and the 3 serial numbers are stated to be highlighted. Exhibit "F" is described as copy of list provided by Election Commission of India containing the BU ID, CU ID and VVPAT ID. Exhibit "F" is photocopy of list provided by

Election Commission of India. There are no highlighted serial numbers in Exhibit "F" of the Court record and the pleading itself should have set out the 3 EVMs whose numbers did not tally. From the pleading it is difficult to discern at to which EVMs at which serial numbers of which list could not be tallied. There is no list annexed as claimed to have been provided by the Election Commission through Returning Officer. There is no pleading as to the manner in which the alleged discrepancy resulted in improper reception of votes or acceptance of void votes.

23. Paragraph 9(d) (iv), (v) and (vi) alleges improper sealing of EVM and symbol loading units and reads as under:

"(iv) No any proper sealing process of EVM machines qua containers under which the EVMs are secured or been sealed under CCTV surveillance and in presence of candidate or their representatives/polling agents, which being mandate of law and non-following the mandatory recourse itself creates immense doubt about conduct of officers concern, who are ultimately officer of the state in which the subsisting government belongs to same political parties and there is every chance of casing inducement, threat, favour and such other impressions cause nuisance and annoyance in the sealing process.

(v) That there was no any proper sealing of symbol loading units.

(vi) The CCTV surveillance of counting halls would clearly indicate that the sealing containers were never bearing any signature of the candidates or the polling agents."

24. The material fact to be pleaded is the manner in which the sealing process of EVM and symbol loading units was carried out and the non conformity with the applicable statutory

provisions/orders/directions. In that context Rule 49T of The Conduct of Elections Rules, 1961 reads as under:

“49T. Sealing of voting machine after poll.—(1) As soon as practicable after the closing of the poll, the presiding officer shall close the control unit to ensure that no further votes can be recorded and shall detach the balloting unit from the control unit 1 [and from the printer, where printer is also used, so however, that the paper slips contained in the drop box of the printer shall remain intact]. (2) 2 [The control unit, the balloting unit and the printer, where it is used, shall] thereafter be sealed, and secured separately in such manner as the Election Commission may direct and the seal used for securing them shall be so affixed that it will not be possible to open the units without breaking the seals. (3) The polling agents present at the polling station, who desire to affix their seals, shall also be permitted to do so.”

25. Sub Rule (3) of Rule 49T permits the polling agents who desire to affix their seals if they so desire. It is not the pleaded case of the Petitioner that the polling agents were not permitted to do so. As to what is the non conformity in the sealing process is not set out in the Election Petition.

26. Paragraph 9(d)(vii) reads as under:

“(vii) No any 5% burnt memory micro controllers Assembly constituency or Assembly segment of Parliamentary constituency is been maintained.”

27. The allegation appears to be founded on the direction of the Hon'ble Apex Court in ***Association for Democratic Reforms vs. Election Commission of India***¹⁶ that the burnt memory /micro

16 2024 SCC OnLine SC 661.

controller in 5% of EVM's that is the control unit, ballot unit and VVPAT should be checked and verified by team of engineers from the manufacturers of the EVMs post announcement of the results for any tampering or modification, on a written request made by a candidate who are at serial number 2 or 3 behind the highest polled candidate.

28. The pleading is that 5% burnt memory micro controllers is not maintained whereas the direction of Hon'ble Apex Court is that upon written request of candidate at serial no 2 and 3 behind the highest polled candidate the burnt memory/micro controller in 5% of EVMS shall be checked and verified. The decision does not direct that 5% burnt memory micro controllers should be maintained. The allegation is premised on incorrect reading of the decision of the Hon'ble Apex Court and an illusory cause of action is shown. That apart, there is no pleading that any such written request was made by the Election Petitioner. Perusal of letter dated 26th November, 2024 addressed by the Election Petitioner to the District Election Officer and the Returning Officer did not contain any request for such checking and verification and the request was only for recounting of VVPAT slips. The allegations contained in the said communication have been bodily lifted and incorporated in the Election Petition without any care being taken to ensure that the allegations discloses cause of action in accordance with the requirement of R.P. Act.

29. In case of ***Samant N. Balkrishna vs. George Fernandez***¹⁷, the Hon'ble Apex Court outlined the fine distinction between material facts and particulars as under:

“What is the difference between material facts and particulars? The word “material” shows that the facts necessary to formulated a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between the material facts and particulars but the two are quite distinct.The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture.”

30. The importance of setting out the material fact to constitute a complete cause of action was summed up by the Hon'ble Apex Court in ***Kanimozhi Karunanidhi v. A. Santhana Kumar*** (supra) in Paragraph No.28 as under:-

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

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would

17 1969 3 SCC 238

constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

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

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

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

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

31. The case of the Petitioner is that there is improper reception of votes or reception of void votes. The pleadings when considered holistically, even if accepted, does not disclose any cause of action as to the improper reception of votes or void votes. Unless and until it is

pleaded that the alleged discrepancies have resulted in improper reception of votes, the assertion of mere discrepancy in the EVM or Form 17 C by itself is insufficient to disclose any cause of action for the purpose of Section 100(1)(d)(iii) of R.P. Act.

32. Apart from the fact that the pleadings in paragraph 9 which constitutes the substratum of the Petitioner's case are vague, bereft of material facts and does not demonstrate cause of action, the requirement under Section 100(1)(d) of R.P. Act is that the results of the election must be shown to have been materially affected in so far as the returned candidate is concerned. As the allegation is about improper reception of votes, the Election Petitioner is required to plead about the manner in which the discrepancy in the vote count as per the EVM and VVPAT have resulted in increased votes to the returned candidate. The only pleading which can be found is in paragraph 12 which is one long sentence reads as under:

"12. The Petitioner by his letter dated 26.11.2024 has requested the authority i.e. District Election Officer and Returning Officer following the same ratio in order to strengthen the integrity of the election process that the respondent no. 3 to 5 be directed to count the VVPAT slips for validation be acceded by the concerned esteemed authorities, as 100% Cross Verification of all EVM data with Voter Verifiable Paper Audit Trail (VVPAT) records should match and there should be counting of all VVPAT paper slips manually as per mandate of law in respect of 17 EVMs data with Voter Verifiable Paper Audit Trail (VVPAT) be done and there should be counting of all concern VVPAT paper slips be counted manually, which request of the Petitioner could not be considered and no

response was given by the authority and as such the entire Scheme of the Election was vitiated due to materialistic defect in the EVM sets as above mentioned and as such recounting in the aforesaid matter was necessitated therefore the aforesaid materially affected the result of election of 1st respondent/returned candidate and the result of election was affected prejudicially in fact the petitioner or such other candidate received a majority of the valid votes.”

33. For seeking a declaration under Section 101, the Petitioner must plead that Petitioner had received the majority of votes, which pleading is absent. The challenge to the Election Petition can be traced to Section 100(1)(d)(iii) whereby reason of improper reception of vote or a void vote, the result of the election in so far as it concerns the returned candidate has been materially affected. The requirement was thus to plead material facts as to the discrepancy in the vote count in Control Unit and the VVPAT slips and to further plead and show that by reason of the said discrepancy, the results of the election has been materially affected in so far as the returned candidate is concerned. It is not sufficient to do mere lip service to the provisions of Section 100(1)(d) and would require at least an assertion of fact that by reason of improper reception of votes, the returned candidate has been declared elected.

34. Coming to the citations relied upon by Mr. Pandey, in the decision of ***Member Gogoi vs. Renupama Rajkhowa*** (supra), the Gauhati High Court while considering the Election Petition which was

founded on allegations of anomalies in counting of polled ballots held that the allegation does not constitute commission of any corrupt practice. In the facts of that case, the Court found the statements are not devoid of material facts. There is no quarrel with the proposition that in the case of allegation of discrepancy in votes, the election is not questioned on the ground of corrupt practice. Pertinently, the submission of Mr. Shah on the aspect of corrupt practice was premised on Section 101(b) of RP Act.

35. Insofar as the decision of Hon'ble Apex Court in the case of ***Thangjam Arunkumar vs. Yumkham Erabot Singh*** (supra) is concerned, the application was filed under Order VII, Rule 11 of CPC, 1908 for non-compliance of Section 83(1)(c) of RP Act pertaining to the verification of pleadings. It has already been held by this Court that the violations under Section 83 are curable defect.

36. In the decision in the case of ***Gurudev Singh vs. Harvinder Singh*** (supra), the Hon'ble Apex Court dismissed the Special Leave Petition *in limine*. The relevancy of the said order dismissing the said SLP *in limine* is doubtful.

37. In the case of ***Ashraf Kokkur vs. K. V. Abdul Khader*** (supra), well-settled principles were reiterated that if the pleadings taken as a whole clearly show that the constituted material facts disclose a cause of action. There is no quarrel with the said proposition. The Hon'ble

Apex Court reiterated the distinction between the material facts and material particulars and that if claim discloses some cause of action, the mere fact that the case is weak is no ground for striking it off. In the present case, as this Court has held that the Election Petition is bereft of material facts, the said decision does not assist the case of the Petitioner.

38. In the decision of ***Patel Dipakbhai Chimanbhai vs. Chavda Ishwarbhai Kohdabhai*** (supra), the order is of dismissal of Special Leave Petition *in limine*.

39. In the case of ***Ashwani Kumar Sharma vs. Yaduvansh Singh*** (supra), the Hon'ble Apex Court in the facts of that case found that the Election Petition contained sufficient material facts regarding the alleged irregularities in vote counting. The decision of Hon'ble Apex Court was based upon the pleadings in the Election Petition contained therein and in view of the material facts pleaded in the Petition and thus held that the Petition discloses the cause of action. The decision was rendered in the facts of that case and does not assist the case of the Petitioner.

40. The decision in the case of ***Tarun Prasad Chatterjee vs. Dinanath Sharma*** (supra) is in the context of limitation. The Hon'ble Apex Court has held that the first day has to be excluded while computing period of limitation. There is no quarrel with the said

proposition.

41. The importance of precise and specific pleadings in an Election Petition cannot be undermined. It is well settled that right to be elected and right to dispute an election are statutory rights and are subject to strict compliance of the statutory provisions.

42. Upon a careful and meaningful reading of the Petition, if the question is asked as to whether the Election Petitioner could have secured a favourable verdict, if there is no opposition, the answer would be in the negative. This is the test to be applied while adjudicating an application under Order VII Rule 11(a) of CPC. Considering that in the Election Petition, the pleadings have to be specific, precise and unambiguous as provided by Section 83 of the R. P. Act, where the Election Petition even upon holistic reading does not disclose cause of action, the same is liable to be dismissed.

43. In light of the above discussion, the Petition fails to disclose any cause of action and is thus, liable to be rejected under Order VII, Rule 11 of CPC and is accordingly, rejected.

44. Interim Application is allowed. Resultantly, Election Petition stands dismissed under Order VII, Rule 11(a) of CPC.

[Sharmila U. Deshmukh, J.]