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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ELECTION PETITION NO.9 OF 2025

Md. Arif Lalan Khan s/o Lalan Khan (Alias)
Naseem Khan

...Petitioner

Versus

Dilip Bhausahab Lande & Ors.

...Respondents

WITH

APPLICATION IN EP NO. 26 OF 2025

IN

ELECTION PETITION NO. 9 OF 2025

WITH

APPLICATION IN EP (L) NO. 26326 OF 2025

IN

ELECTION PETITION NO. 9 OF 2025

Mr. Virendra Tulzapurkar, Senior Advocate *a/w R. D. Soni, Sakshi Agarwal i/b Adv. Bipin Joshi, for the Petitioner.*

Adv. Shardul Singh *a/w Ninad Thikekar i/b SHS Chambers, for Applicant in AEP(L)/12012/2025, for Respondent No.1 in EP/4/2025.*

Adv. Naira Jejeebhoy *a/w Arun Panickar, Tanmay Pawar, Vinay Nair and Ayush Yadav for the Respondent No.2 and Applicant in AEP(L)/26326/2025.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 7, 2026

JUDGEMENT:

Context and Factual Background:

1. This Election Petition is filed by Shri. Md. Arif Lalan Khan (**“Khan”**), challenging the election victory of Respondent No.1, Shri. Dilip Bhausahab Lande (**“Lande”**), who was returned from Constituency No. 168 i.e. the Chandivali Assembly Constituency, Mumbai (**“Constituency”**) to the Maharashtra State Legislative Assembly, on November 20, 2024 (**“Polling Date”**).

2. The Application in Election Petition No. 26 of 2025 has been filed by Lande for rejection of the Election Petition (**“Rejection Application”**) under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (**“CPC”**), on the premise that the Election Petition does not disclose a cause of action, lacking in pleading of material facts. By consent, the Rejection Application was taken up for final hearing.

3. Khan was the closest rival to Lande, losing the election to Lande by a margin of 20,625 votes. Lande polled 1,24,641 votes while Khan polled 1,04,016 votes.

4. In the Petition, Khan has prayed for setting aside the poll outcome, returning Lande to represent the Constituency under Section 100 of the Representation of the People Act, 1951 (“***the Act***”); and for Khan, as the second highest recipient of votes, to be declared as the winner of the elections under Section 101 of the Act. During the hearing of the Rejection Application, Khan gave up the relief under Section 101, which is discussed subsequently in this judgement.

5. The grounds of challenge to the election are essentially based on the following three sets of facts:

A) On the Polling Date, at 3:08 p.m. Shri. Eknath Shinde (“***Shinde***”), the then Chief Minister of Maharashtra, who was also designated as a “star campaigner” of the Shiv Sena, on whose ticket Lande contested, visited the Constituency, in particular, at the Kajupada Pipeline Road. Shinde’s visit was allegedly converted into a campaign and road show from Kajupada Ghas Compound to St. Jude’s High School, canvassing

and appealing to voters during the prohibited silent period of 48 hours prior to closing of the poll. This is alleged to be in direct violation of Section 126 of the Act, and Clauses 8.1 and 8.11 of the Model Code of Conduct (“**Model Code**”) formulated by the Election Commission of India (“**Election Commission**”);

B) Lande filed his disclosure affidavit as per Rule 4A of the Conduct of Elections Rules, 1961, which was meant to conform to Form 26 (“**Form 26 Affidavit**”), which necessitates making material disclosures and disclosure of pending criminal cases, but Lande included in it multiple civil cases, thereby giving a misleading appearance of Lande being involved in civil disputes of a degree far more than being arraigned in criminal proceedings; and

C) Khan apprehends that the Electronic Voting Machines (“**EVM**”) had been tampered with and therefore, in consonance with the guidelines issued by the Supreme Court in the case of **Association for Democratic Reforms**¹, Khan sought

¹ *Association for Democratic Reforms (ADR) v. Election Commission of India– (2025) 2 SCC 732*

verification in respect of 20 sets of EVM machines, for which he has paid the stipulated fees and charges.

6. Based on the aforesaid pleaded facts, the premises of Khan's attack to the election result is two-fold: (i) Lande having indulged in allegedly corrupt practice; and (ii) Lande's alleged non-compliance with the requirements of the Act and the Model Code. Khan would invoke *Section 100(1)(b)* of the Act in respect of *corrupt practice* committed by the returned candidate; and *Section 100(1)(d)(iv)* of the Act in respect of non-compliance with the Act and subordinate legislation made thereunder.

Contentions of the parties :

7. I have heard Mr. Shardul Singh, Learned Advocate on behalf of Lande, and Dr. Virendra Tulzapurkar, Learned Senior Advocate on behalf of Khan. With their assistance, I have perused the plaint and the exhibits annexed thereto in the context of the applicable provisions of law and the law declared in relevant judgements.

Lande's Contentions:

8. Mr. Singh on behalf of Lande would contend that Khan has not pleaded material facts, as a result of which, the Election Petition is vague and ambiguous as to how the aforesaid acts complained of, would translate into an arguable case for purposes of relief under Section 100 or for that matter, Section 101 of the Act. Mr. Singh would submit that it is now trite law that the absence of material facts in the pleadings would lead to an outright rejection of an Election Petition. He would contend that the Petition does not specify which "corrupt practice" under Section 123 of the Act has translated into a cause of action that is capable of being pursued in an Election Petition.

9. As regards the *first* charge, Mr. Singh would contend that it was incumbent on Khan to plead as to how the alleged visit by Shinde to the Constituency in the last 48 hours before conclusion of the poll, materially affected the electoral outcome in the Constituency. He would submit that the five polling stations or the polling booths in such stations, alluded to in the pleadings as having been unduly influenced by Shinde's visit, have not even been identified in the Petition. Mr. Singh would submit that it was incumbent on Khan to actually point out the extent of voting that had

taken place by 3:08 p.m. and then demonstrate that after Shinde's visit, the voting turnout shot up. The Petition ought to have pleaded with data from the said five polling stations allegedly affected by the visit, to indicate how the visit contributed to the margin of victory of 20,625 votes. It is only if such precise facts are pleaded, Mr. Singh would contend, that Khan would be able to put Lande to notice on how to defend his election victory in these proceedings. The absence of such pleadings and lack of material facts, Mr. Singh would submit, is fatal to the very basis of the Election Petition.

10. As regards the *second* charge of furnishing excessive information in the Form 26 Affidavit, Mr. Singh would contend that the law stipulates minimum disclosure requirements, and if a candidate chooses to disclose more than the stipulated minimum, it is illogical to find fault with voluntary additional disclosures. He would submit that the Petition lacks material facts as to how such a disclosure translated into a corrupt practice or for that matter, unduly influenced voters, such that the election result stood vitiated. Therefore, the bundle of facts to be pleaded to depict a cause of action, Mr. Singh would submit, is missing under this charge.

11. Finally, as regards the *third* charge of tampering of EVM, Mr. Singh would say that the pleadings are completely vague and generic. Apart from

alluding to an apprehension of EVMs being tampered with, the Petition contains nothing to translate the purported apprehension of tampering into a case for setting aside the election result. Therefore, he would submit, on this count too, the facts pleaded do not disclose a cause of action

12. Mr. Singh would rely on a range of judgments in this regard and press into service the analysis contained therein to buttress his claim that for an Election Petition to be validly filed, disclosure of material facts would be a *sine qua non*. The judgements he would press into service include: (i) **Anil Salgaonkar**²; (ii) **V. Narayanaswamy**³; (iii) **Ram Sukh**⁴; (iv) **Ashok Mankar**⁵; (v) **Ashok v. Rajendra**⁶; (vi) **Khan Mohammed**⁷; (vii) **Kanimozhi**⁸ and (viii) **Karikho Kri**⁹.

13. Relying on **Anil Salgaonkar**, Mr. Singh would submit that an Election Petition can be summarily dismissed if it does not comply with the

² *Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar* – (2009) 9 SCC 310

³ *V. Narayanaswamy v. C. P. Thirunavukkarasu* – (2000) 2 SCC 294

⁴ *Ram Sukh v. Dinesh Aggarwal* – (2009) 10 SCC 541

⁵ *Ashok s/o Mahadeorao Mankar v. Rajendra Bhausahab Mulak* – 2010 (7) Mh.L.J. 503

⁶ *Ashok Mahadeorao Mankar v. Rajendra Bhausahab Mulak* – (2012) 12 SCC 27

⁷ *Khan Mohammed Arif Lallan v. Dilip Bhausahab Lande & Ors.* – 2022 SCC OnLine Bom 94

⁸ *Kanimozhi Karunanidhi v. A. Santhana Kumar & Ors.* – (2024) 18 SCC 592

⁹ *Karikho Kri v. Nuney Tayang & Anr.* – (2024) 15 SCC 112

mandatory requirements of Section 83 of the Act, which necessarily requires incorporation of material facts in the Petition. Pointing out that the Supreme Court, in reliance upon ***Samant Balkrishna***¹⁰ and ***Udhav Singh***¹¹, set out the primary facts which need to be proved by the Petitioner in an Election Petition to establish the cause of action, Mr. Singh would contend that in the context of an alleged corrupt practice, the basic facts which constitute the ingredients of the specific corrupt practice as alleged, must be specified. Mr. Singh would submit that omission of a single material fact would lead to an incomplete cause of action entitling the returned candidate to seek a rejection of the Petition under Order VII, Rule 11 of the CPC.

14. He would rely on ***Karikho Kri*** in relation to the accuracy of the Form 26 Affidavit, to contend that the defect complained of has to be of such a substantial nature that it ought to undermine the integrity of the election result. Every departure from the prescribed format in the Form 26 Affidavit, Mr. Singh would submit, cannot be a ground for rejection of a nomination as held in ***Karikho Kri***, and cannot constitute a case of a corrupt practice. He would submit that the Petition ought to have pleaded

¹⁰ *Samant N. Balkrishna & Anr. v. George Fernandez & Ors.* – (1969) 3 SCC 238

¹¹ *Udhav Singh v. Madhav Rao Scindia* – (1977) 1 SCC 511

how the alleged violations by Lande would have translated into an impact of more than 20,625 votes.

15. Mr. Singh would point out that in the previous election to the Maharashtra Legislative Assembly, the election of the very same returned candidate (Lande) had been challenged by the very same losing candidate (Khan), with a much smaller margin of votes, but on an identical ground – the only difference was that in the earlier round, Shri. Uddhav Thackeray, the then chief of the Shiv Sena, also a star campaigner, had made a similar visit to the Constituency on the polling day. Khan had alleged that such visit had constituted a corrupt practice and that it had materially affected the result of the election. A Learned Single Judge of this Court was pleased to reject the Petition under Order VII Rule 11 of the CPC, holding that it is necessary to plead specific facts on how such a visit would have impacted the outcome. Therefore, he would submit that the outcome of the Rejection Application this time around, should be no different.

Khan's Contentions:

16. In contrast, Dr. Tulzapurkar on behalf of Khan would submit that the Petition as a whole, along with all its annexures must be examined for

purposes of adjudicating the Rejection Application. He would submit that each of the three facets that has led to the cause of action has been well disclosed in the Election Petition. If these facts are proven, the case for annulling the election result would be made out. At this stage, it is not for the Court to assess the plausibility of the facts pleaded, but to check whether the facts relied upon to make out a case, have actually been pleaded.

17. Dr. Tulzapurkar would submit that the pleadings in the Petition would leave no one in doubt as to the cause of action being pursued. Pointing to the contents of the Petition and its annexures, Dr. Tulzapurkar would submit that the details of all the polling stations where the EVM machines were apprehended as having been manipulated are set out. The entire complaint made to the Election Commission is annexed and the report is awaited. As regards the corrupt practice of Shinde campaigning in the Constituency during the prohibited period, Dr. Tulzapurkar would submit that the identity of the star campaigner, the date and time of his illegal campaign, as well as his conduct during the campaign, are all sufficiently pleaded.

18. Therefore, enough material to defend the allegations has been made available, Dr. Tulzapurkar would submit, contending that it cannot be said that there is no pleading about material facts. Dr. Tulzapurkar would submit that the only plea made in the Rejection Application is that the Election Petition discloses no cause of action and there is no material particular of corrupt practice. However, on each of the three counts, there is adequate pleading of material facts to indicate that even if one of the allegations is found to contain a pleading of material facts, the Election Petition would survive. There can never be a partial rejection of a plaint or an Election Petition, Dr. Tulzapurkar would submit, contending that while all three sets of facts have been adequately pleaded, for the Rejection Application to be allowed, it would be necessary to hold that none of the three allegations as pleaded, disclose a cause of action.

19. Dr. Tulzapurkar would rely upon ***Sejal Glass***¹², ***Ramchandran***¹³ and ***Bhim Rao Patil***¹⁴ in this regard. Submitting that the Election Petition must be read as a whole, he would submit that no reasonable person could draw a conclusion that material facts have not been pleaded.

¹² *Sejal Glass Limited v. Navilan Merchants Private Limited* – (2018) 11 SCC 780

¹³ *D. Ramchandran v. R. V. Janakiraman And Ors.* – (1999) 3 SCC 267

¹⁴ *Bhim Rao Baswanth Rao Patil v. K. Madan Mohan Rao And Ors.* – (2023) 18 SCC 231

Dealing with Mr. Singh's contention that the Election Petition is required to allege with pleadings as to the precise empirical impact that the acts complained of would have had, Dr. Tulzapurkar would submit that the Rejection Application is based on a misconception of the law.

20. The pleading as to how a result has been materially affected is necessary for invocation of Section 100(1)(d) and not for the invoking Section 100(1)(b) of the Act, Dr. Tulzapurkar would submit. Section 100(1)(b), which translates into a corrupt practice, would take colour, for purposes of this Petition, from Section 123(2) of the Act, which stipulates the substantive standard in law, and gives only two illustrative examples of what would constitute undue influence to fall within the meaning of “corrupt practice”. Therefore, Dr. Tulzapurkar would submit, the requirement of linking an alleged corrupt practice to a precise effect on the result, is totally unnecessary and quite irrelevant in the facts of the instant case.

21. As regards Mr. Singh's reliance upon the outcome in the Election Petition filed in the earlier round of Maharashtra Legislative Assembly elections with the dispute being between the very same parties, Dr. Tulzapurkar would submit that the decision of the Learned Single Judge

was challenged in the Supreme Court, which issued notice and noted for consideration, the very contention now being made by Khan in the present case, for issuance of notice. Dr. Tulzapurkar would point to the order of the Supreme Court, recording the contention that it is fallacious to link an allegation relating to corrupt electoral practice to material effect on the result.

22. The upshot of this submission is that under Section 100(1)(d), the ingredients stipulated therein must necessarily be pleaded to indicate how a material effect on the election outcome occurred in order to set aside the election result. For purposes of Section 100(1)(b), a corrupt practice by the returned candidate or his agent would itself be a ground for setting aside the election result. Therefore, under Section 100(1)(b), the pleading would need to indicate what the corrupt practice was and that would be the “material fact”. The details would be “material particulars” that would be fleshed out during the trial of the Petition.

23. As regards Shinde's visit to the Constituency, Dr. Tulzapurkar would submit, to the extent such visit constitutes a violation of Section 126 of the Act, it would be covered by Section 100(1)(d)(iv), but to the extent it constitutes a corrupt practice under Section 123(2), it would not be

necessary for such visit to meet the standard of a material effect on the election result as per Section 100(1)(b) of the Act. The very act of indulging in such violative practice would suffice to outlaw the outcome and all the facts relating to Shinde's visit have indeed been pleaded.

Analysis and findings

Pleadings on Facts in the Petition:

24. For adjudicating the Rejection Application, it is necessary to note and deal with the pleadings contained in the Petition, to see if they make out a cause of action. The following extracts would be relevant to assess whether the Petition makes out a cause of action across the three grounds canvassed. At the threshold, the contents of paragraph 5 may be noted :

5. *The Petitioner lost election by 20,625 votes, due to the corrupt practices adopted by the Respondent No. 1 as set out hereinafter. The material facts and material particulars corrupt practices of Respondent No. 1 are set out herein below which has materially affected the election result of the Petitioner.*

[Emphasis Supplied]

25. As regards the alleged campaign by Shinde during prohibited hours, the following pleadings are relevant:

6.1. On 20.11.2024, i.e. on the date of polling at 03.08 PM, Shri Eknath Shinde the star campaigner as well as Candidate of another Constituency (Kopri Panch Pakhadi) Thane, visited the said Constituency No. 168 - Chandivali Assembly particularly in Kajupada Pipeline Road, at Kajupada Ghas compound to S.T Jude's High School and joined election campaign which was practically converted into Road Show from Kajupada Ghas Compound to St. Jude High School. There are as many as 5 polling stations located in its close proximity. Shri Eknath Shinde the then C.M and the Respondent No. 1 were canvassing and appealed to voters to vote for Respondent No., 1. The aforesaid act on the part of Respondent No. 1 as well as Mr. Shinde is violative of provisions of Model Code of Conduct, as well as provisions of Section 126 of Representation of People's Act, 1951. The relevant provision of Model Code of Conduct No. 8.1 and 8.11 are reproduced hereinafter.

6.2 The sole purpose of visit of Mr. Shinde and Respondent No. 1 on the date of polling and that too within the prohibitory hours before commencing of poll, was to specifically to influence the voters and cannot be any other purpose, for their visit and Road Show. Some of the photographs of said visit, waving hands, Mr. Eknath Shinde giving blessings to Respondent No. 1 are taken by party workers of Respondent No. 1 which have become viral in electronic media as well as in various WhatsApp group and on Facebook. The aforesaid photographs and an Appeal for votes to voters of same Constituency

under the guise of blessing of Mr. Eknath Shinde to Respondent No.

1. The said campaign was obviously for soliciting votes within the close proximity of few polling stations i.e. within 100 metres of polling place which has materially affected prospects of the Petitioner. The aforesaid act on the part of the Respondent No.1 and Mr. Eknath Shinde was violative of the mandate of Model Code of Conduct. It is submitted that during the period of 48 hours, ending with hours fixed for closing of poll (prohibited hours), neither Mr. Eknath Shinde nor Respondent No. 1 was entitled to display to public any election matter by means of electronic media, which intend or calculate to influence or affect results as envisaged under the provisions of Section 126 of the Act.

6.3 The aforesaid WhatsApp messages and videos posted to vote on the date of polling reveals highly objectionable conduct of the Respondent No. 1 and Mr. Eknath Shinde. Hereto annexed and marked as Exhibit "B" are the copies of screen shots and/or stilt videos downloaded from WhatsApp messages dated 20.11.2024.

6.4 The Petitioner therefore on the same day i.e. on 20.11.2024 at the earliest possible moment, lodged telephonic complaint as well as complaint in writing to Mrs. Kalpana Gode, the Returning Officer through her Chief Polling Agent Mr. Ganesh Chavan, and requested to take serious action against the concerned persons including registration of FIR. Hereto annexed and marked as Exhibit "C" is the copy of the police complaint dated 20.11.2024 made by the Petitioner against the Respondent No. 1 and Mr. Eknath Shinde. Along with photographs the copy of the said letter was also endorsed to the Election Commissioner, Election Commission of India, as well as the

State Election Commissioner. The Petitioner also lodged Complaint dated 20.11.2024 to Smt. Kalpana Gode for unlawful Election Campaign on the day of election on 20.11.2024 with request to direct local police to register FIR. Hereto annexed and marked Exhibit "D" is the copy of Petitioner's complaint dated 20.11.2024 to the Returning Officer made through her Chief Polling Agent Mr. Ganesh Chavan.

6.5 Despite the Police complaint and complaint to Returning Officer, no actions are taken by the any of the authorities.

[Emphasis Supplied]

26. The aforesaid pleadings indicate when Shinde's visit took place and where it took place. That such visit was violative of the Model Code and Section 126 of the Act has also been pleaded. It has been pleaded that the illegal campaign within 100 metres of polling stations has materially affected the poll result.

27. As regards non-compliant disclosures in the Form 26 Affidavit, the following extracts from the pleadings, would be relevant :-

"7.1 The Respondent No. 1 filed Notarized Affidavit in Form 26 under Rule 4-A dated 29.10.2024, (said affidavit). Inter alia, clause 5 of the said affidavit refers to furnishing details of pending criminal cases of Respondent No. 1. The Respondent No.1 mentioned details of eleven cases though all are not criminal cases but some of the matters are of

civil nature. By mentioning more number of civil cases, the first Respondent has tried to mislead the members of the public. Hereto annexed and marked as Exhibit "E" is the copy of dated the Affidavit of Respondent No. 1 in Form – 26 29.10.2024 and Exhibit "E-1" is the translated copy of the Affidavit of Respondent No. 1 in Form – 26 dated 29.10.2024.

7.2 The purpose of incorporating irrelevant information does not satisfy the guidelines of the Honourable Supreme Court for filing the correct information or particulars of the candidates. The sole purpose of furnishing affidavit of disclosure for Respondent No. 1 is to reveal to the members of public about the credibility and character of the concerned candidate contesting election.

7.3 Inter alia, the said Affidavit, the Respondent No. 1 has not furnished details of his residential premises which he has been occupying since last more than 30 years i.e. at Adesh Sandesh Bhuvan, Kaju Pada, Kurla (West), Mumbai - 400 072. The said residential premise is also an asset of the Respondent No. 1 The aforesaid material is falsely suppressed in the said Affidavit. Nothing is mentioned about the details of purchase/ acquisition of the said residential property, where the Respondent No. 1 is residing.”

[Emphasis Supplied]

28. The pleading in this regard is about a false suggestion and impression having been given, by indicating that civil cases against Lande were more in number than criminal cases against him. It is pleaded that

this misled the voters. It is also pleaded that information about the purchase and ownership of the residential premises occupied by Lande had not been mentioned.

29. As regards the tampering of EVMs, the following extracts are relevant:

8. *The Petitioner's apprehended about tempering of EVM machines and therefore in consonance with guidelines laid down by the Honourable Supreme Court the Petitioner has complained to the District Election Officer for "Checking and Verification" of burnt-memory, micro-controller or tampering or modification in control unit, ballot unit and VVPAT for 168 Chandivali Assembly Constituency. The Petitioner has also paid Rs. 9,44,000/- (Rs. Nine lakhs forty-four thousand only) for 20 sets of EVM machines selected for checking and verification activity. Hereto annexed and marked Exhibit "F" is the copy of receipt of payment of Rs. 9,44,000/- (Rs. Nine lakhs forty-four thousand only), Exhibit "F-1" is the translated copy of receipt of payment of Rs. 9,44,000/- and Exhibit "G" is the copy of Application in form Annexure 1, along with details of polling station numbers and ballot unit number.*

9. *The Petitioner also challenged the election results of the Respondent No. 1 on the ground of corrupt practice, due to malfunctioning or manipulation and/or tampering of EVM machine and will result upon the report of District Election Officer, about checking and verification of 20 EVM machines. Since the Petitioner*

has already filed checking and verification with the Election Commissioner, particularly of 20 EVMs sets, the Petitioner has no objection for the Election Commissioner to verify the aforesaid 20 EVM sets. Upon availing report of checking and verification the Petitioner challenged the election report of Respondent No. 1 on that ground.

[Emphasis Supplied]

30. It will be seen that the pleadings about EVMs is about a request having been made for verification of the EVMs having been sought. Malfunctioning and manipulation of the EVMs has been stated.

Pleadings on Law in the Petition:

31. Khan has contended that the Lande's conduct and Shinde's campaign constitutes a violation of Section 126 of the Act and thereby an electoral offence as well as a corrupt practice. Towards this end, the following pleadings are relevant :-

11. The Petitioner submits that Respondent No. 1 has committed corrupt practices as well as violated provisions of Section 126 of the Act as well as committed electoral offences and therefore he is required to be declared as disqualified and as such, his election is to be declared as null and void. The aforesaid violation and corrupt practices has materially and adversely affected the outcome of election of the Petitioner, and Respondent No. 1 is the only beneficiary of

aforesaid unlawful acts and/or said violation. The unlawful campaign during the prohibited 48 hours of election by Shri Eknath Shinde the then C.M. and Police authorities was for the only purpose of election campaign. The aforesaid acts have resulted in unlawful election process which resulted in favour of the Respondent No. 1.

12. The Petitioner further states that Respondent No. 1 inter alia, has committed acts which inter alia fall within mischief of Section 100 sub-section 1(d)(iv).

13. Petitioner further states that Respondent No. 1 has also deliberately acted in contravention of section 126 of the Act in as much as Respondent No. 1, his agent and/or other persons on his behalf including leader of the party of the Respondent No. 1, Mr. Eknath Shinde, the then C.M. who was a star campaigner, convened held attended and/or joined and further addressed a public meeting and was part of a procession or election campaigning in connection with the said election on 20.11.2024 at 03:08 PM which is within the period of 48 hours prior to hour fixed for conclusion of poll as would be demonstrated herein below. Petitioner states that Respondent No. 1 has also deliberately intentionally and knowingly committed electoral offence as mentioned hereinabove.

14. Petitioner further states that Chapter VIII of Model Code of Conduct framed by the Election Commission provides for Restriction of persons of political functionaries in a constituency during the last 48 hours prior to conclusion of poll.

15. Petitioner further states that clause 8.2.1 provides that political functionaries and party workers who have been brought from outside

the constituency and who are not voters of the constituency should not remain present in the constituency as their continued presence after end of the campaign period may undermine the atmosphere for free and fair poll and hence, Election Commission has directed that District Election Administration / Police administration shall ensure that all such functionaries leave the constituency immediately after the campaign is over. Petitioner states that Respondent No. 1 had deliberately violated the aforesaid direction as provided in Chapter VIII Rule 8.2.1. Petitioner states that it is an undisputed fact that Shri Eknath Shinde is the Chief as well as star campaigner of the party of Respondent No. 1. The Respondent No. 1, his star campaigner admittedly addressed gathering on the said occasion and appealed for votes which has resulted in influencing the voters to vote for Respondent No. 1.

16. The Petitioner states that a complaint was immediately filed by the Petitioner with Respondent No. 2 Returning Officer, the Election Commission, the concerned Police station and Police personnel as also District Administration which was required to oversee the election process, maintain and implement Model Code of Conduct in letter and spirit. The Petitioner along with said complaint has also supplied a view clip evidencing the said incident, but nothing is done in the matter.

17. The Petitioner states that non-compliance of Respondent No. 1 with provisions of R.P. Act of 1951, particularly section 126 and section 125 thereof as also clause 8.2.1 of the Election Code of Conduct which has a statutory force falls within mischief of Section 100(1)(a)(iv) of the said Act.

18. The Petitioner further states that but for the aforesaid practices adopted by the Respondent No. 1, the Petitioner would have obtained majority of valid votes and thus Petitioner is entitled to a declaration by this Honourable Court under Section 101 of the R.P. Act, 1951 of having been duly elected in the said election by invoking powers vested with this Honourable Court. The Petitioner states that this is a fit case for exercising the powers under section 101 of the R.P. Act, 1951 by this Honourable Court in as much as as all the ingredients required for exercising the said power are proved by Petitioner with supporting material in the form of oral and documentary evidence and the Petitioner is able to prove the same by material and documentary evidence.

[Emphasis Supplied]

Statutory Provisions:

32. Having extracted the pleadings from the Petition, it would be necessary to examine the relevant provisions of the Act.

33. Section 83 stipulates the contents of an Election Petition and is extracted below:

83. Contents of petition.—

(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

Page 24 of 60

March 7, 2026

Chaitanya

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

[Emphasis Supplied]

34. A plain reading of the foregoing would show that the Petition ought to contain a concise statement of material facts and full particulars of corrupt practices that are alleged. The names of parties alleged to have committed the corrupt practice, and the date and place of commission must be pleaded.

35. What is alleged to be a corrupt practice must conform to Section 123, and the relevant provisions relied upon are extracted below:

“123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:

*(1) ******

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause”

[Emphasis Supplied]

36. Dr. Tulzapurkar would place reliance on Section 123(2) of the Act to base the allegation of corrupt practice that Lande has indulged in. Essentially, that would mean Lande is accused of having used undue influence on the electoral outcome. This is defined to mean any direct or indirect interference or attempt to interfere with the free exercise of any electoral right. Therefore, the pleadings in the Petition ought to point to direct or indirect interference or an attempt to interfere with the free will and choice of the electorate by reason of the act complained of. Such act ought to have been on the part of the candidate himself or his election agent, or by any other person with the candidate's consent.

37. The simplest way to piece this together is that Khan's contention is that the Shinde's visit was obviously with the consent of Lande and this interfered with the exercise of electoral right in the Constituency. The proviso to Section 123(2) of the Act gives two examples, that are without prejudice to the generality of the primary provision of the sub-section. These are examples of threats of bodily harm or social harm being held out, and fear of divine displeasure or spiritual censure being held out.

Implications of the Road Show for Section 123(2):

38. One would need to apply this legal framework to the pleadings contained in the Petition, to see if the pleading makes out a case of undue influence. To begin with, one would need to see the meaning of “influence” and then examine if “undue influence” has been pleaded. The plain English dictionary meaning¹⁵ of “*influence*” is the capacity to have an effect on the character, development or behaviour of someone or something. Influence is also assigned the meaning¹⁶ of “the power to have an effect on people or things, or a person or thing that is able to do this”. Therefore, when one has the ability to impact someone’s behaviour one has influence on such behaviour.

39. Moving further from the plain English meaning of the term “undue influence” when one looks at legal dictionary meanings, the following extracts of the meaning of “undue influence” from ***Black’s Law Dictionary***¹⁷, would be instructive:

¹⁵ *Oxford Languages meaning*

¹⁶ *Cambridge Dictionary meaning*

¹⁷ *Revised Fourth Edition by the Publisher’s Editorial Staff, St. Paul, Minn. West Publishing Co. 1968*

Any improper or wrongful constraint, machination, or urgency of persuasion whereby the will of a person is overpowered and he is induced to do or forbear an act which he would not do or would do if left to act freely.

Influence which deprives person influenced of free agency or destroys freedom of his will and renders it more the will of another than his own.

"Undue influence" is not necessarily physical injury or threat of it, but is a species of duress, or at least often indistinguishable from it. And although there is no coercion amounting to duress, but transaction is result of moral, social, or domestic force, consciously and designedly exerted on party, peculiarly susceptible to external pressure on account of mental weakness, old age, ignorance, and the like, controlling the free action of the will, and preventing a true consent, equity may relieve against the transaction on the ground of "undue influence."

But modest persuasion or arguments addressed to the understanding or the appeal of affection cannot be deemed "undue influence".

Undue influence at elections occurs where any one interferes with the free exercise of a voter's franchise, by violence, intimidation, or otherwise. It is a misdemeanor.

[Emphasis Supplied]

40. In **Krishnamoorthy**¹⁸ the Supreme Court summarised the position on “undue influence” under Indian law in the following manner:

58. From the aforesaid authorities, the following principles can be culled out:-

¹⁸ *Krishnamoorthy v. Sivakumar* – 2015 (3) SCC 467.

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- (i) The words “undue influence” are not to be understood or conferred a meaning in the context of English statutes.
- (ii) The Indian election law pays regard to the use of such influence having the tendency to bring about the result that has contemplated in the clause.
- (iii) If an act which is calculated to interfere with the free exercise of electoral right, is the true and effective test whether or not a candidate is guilty of undue influence.
- (iv) The words “direct or indirect” used in the provision have their significance and they are to be applied bearing in mind the factual context.
- (v) Canvassing by a Minister or an issue of a whip in the form of a request is permissible unless there is compulsion on the electorate to vote in the manner indicated.
- (vi) The structure of the provisions contained in Section 171-C of IPC are to be kept in view while appreciating the expression of “undue influence” used in Section 123(2) of the 1951 Act.
- (vii) The two provisos added to Section 123(2) do not take away the effect of the principal or main provision.
- (viii) Freedom in the exercise of judgment which engulfs a voter’s right, a free choice, in selecting the candidate whom he believes to be best fitted to represent the constituency, has to be given due weightage.
- (ix) There should never be tyranny over the mind which would put fetters and scuttle the free exercise of an electorate.

(x) The concept of undue influence applies at both the stages, namely, pre-voting and at the time of casting of vote.

(xi) “Undue influence” is not to be equated with “proper influence” and, therefore, legitimate canvassing is permissible in a democratic set up.

(xii) Free exercise of electoral right has a nexus with direct or indirect interference or attempt to interfere.

[Emphasis Supplied]

41. Since the term “undue influence” is explained in wide and general terms in Section 123 of the Act, with the proviso giving only two examples, the test is to see if the pleadings in the Petition allege interference with the free volition of the electorate in the exercise of its autonomous will, or whether it was supplanted by something else. Indeed, influence in the form of advice, argument or appeal to affection would be legitimate but for undue influence to have occurred, there has to be a subversion of the integrity of exercise of electoral right. There has to be at least an attempt to disrupt free volition in exercise of electoral rights. Substituting the free will of a candidate or a vote with another manner of exercise of such will is vital to be pleaded. The Petition has no pleading to this effect to point out how there is any such undue influence, to enable Lande to be able to meet the case sought to be set up.

42. The visit by Shinde to the Constituency could indeed influence the voters in the Constituency. In the electoral context, one must then examine the pleadings to see if such influence alleged of constitutes “*undue influence*”. Therefore, it is vital to understand how the term “undue influence” is to be construed in the context of Section 123(2) of the Act. In its most simple form, the influence that the candidate or his agent or any other person with his consent, exercises, ought to interfere with the exercise of free will by the electorate. If such person attempts to interfere with such exercise of free will of the electorate, then too undue influence would occur. This is why the illustrative examples in the proviso to Section 123(2) are valuable. The examples represent interference in the form of threats, which are held out to the candidate or the electorate (such threat being of bodily harm or social harm) or in the form of inducement of fear (such as inducing a candidate or the electorate to believe that they would be recipients of divine displeasure if they acted as they would have in the ordinary course). Outside of these examples, there could also be other ways for undue influence to come about – say gratification that is based, not on fear, but greed.

43. The use of “*influence*” to disrupt the ordinary course of expected conduct by the candidate or the electorate is what makes it “*undue influence*”. There has to be an attempt to interfere with what would have happened in the ordinary course for undue influence to occur. Therefore, the appearance of the star campaigner, Shinde, in the Constituency by itself would not be enough. There ought to be something more to show that such visit interfered with what would have been the ordinary flow of conduct by the electorate for the visit to have had undue influence on the electorate.

44. When seen through this lens, I am afraid the Petition does not indicate how the visit of Shinde interfered with the exercise of electoral will in order to constitute undue influence. There is no pleading of such visit leading to any threat, or any inducement, which need not have been of divine displeasure (that is just an example in the proviso). For the visit by Shinde during prohibited campaign hour to constitute undue influence, the pleadings ought to show how the visit disrupted what would have been the ordinary exercise of electoral will.

45. I have examined the pleadings with a fine toothcomb, bearing the aforesaid standard in mind. The pleadings indicate that Shinde visited during prohibited campaign hours; practically ran a campaign; canvassed

and appealed for votes in close proximity to five polling stations; waved hands; gave blessings to Lande, and photographs and videos of such violative road show and campaign went viral on social media. Paragraph 6.2 of the Petition uses the phrase “influence” twice but stop short of indicating how such influence was undue influence. It does not even have a whisper of whether during such visit, any threat, coercion, inducement, fraud or any misrepresentation was made by such visit, for the material fact of undue influence to be considered as having been pleaded.

46. Instead, the pleadings simply allude to the Shinde’s visit being violative of Section 126 of the Act by reason of the illegal campaign having been conducted during the prohibited period of 48 hours preceding the scheduled closing of the poll. A campaign during the silent period would indeed constitute a violation of Section 126 of the Act but that has its own sanction as discussed later in this judgement. For the visit of Shinde, however violative of Section 126 of the Act, cannot constitute undue influence if it rallied the loyal base of the party or Shinde himself. It is not even alleged to have caused an interference with what would have otherwise been the exercise of electoral rights by the electorate or the candidate. In the absence of any pleading about how the conduct of Shinde

interfered with the free exercise of electoral rights, the Petition evidently only indicates “influence” and does not indicate “undue influence”.

47. A careful reading of the pleadings would indicate that the visit allegedly rallied those who would be enthused by Shinde’s presence, which indeed constitutes a campaign to influence votes. Energising loyalists who would be enthused by the star campaigner’s presence would indicate the deployment of *influence* and not the deployment of *undue influence*. That would not necessarily point to such a campaign constituting one of “undue influence”.

Implications of the Road Show for Section 126:

48. This is not to say that such a campaign is legitimate for purposes of provisions other than Section 123 of the Act. The core contention by Khan is that the campaign is violative of Section 126 of the Act. Taking this at its highest, in my opinion, such a campaign, if the allegations are right, would constitute a violation of Section 126 of the Act, which has its own sanction – in fact, a criminal sanction. However, the standard of Section 126 of the Act being violated would not automatically lead to such a campaign being a “corrupt practice” for purposes of Section 123.

49. Section 126, which stipulates the prohibition of public meetings during the 48 hours prior to the conclusion of the poll, is extracted below:

126. Prohibition of public meetings during period of forty—eight hours ending with hour fixed for conclusion of poll.—

(1) No person shall—

(a) convene, hold or attend, join or address any public meeting or procession in connection with an election; or

(b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or

(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the fixed for the conclusion of the poll for any election in the polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(3) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.

[Emphasis Supplied]

50. The pleadings in the Petition directly point to an alleged violation of Section 126 of the Act. This provision has an inherent criminal sanction – imprisonment for a term of up to two years or fine or both. Propagation of any “election matter” in any polling area with a view to attracting the members of the public during the prohibited period of 48 hours preceding the conclusion of the poll is a criminal offence. The term “election matter” means any matter intended to influence or affect the result of an election. Care has been taken to use the word “influence” here and not the phrase “undue influence”. Indeed, Khan has pleaded that he has filed a first information report, which is advisedly his effort to put the criminal justice system into motion in relation to the alleged offence.

51. However, an allegation of a violation of Section 126 of the Act, would not automatically constitute “undue influence” for purposes of Section 123 of the Act. Each clause of Section 126(1) of the Act may be pressed into service, but the machinery for the sanction envisaged in the Act is not the machinery of an election petition for declaring an election void under Section 100 or for declaration of the next highest grossing candidate as the winner under Section 101 of the Act.

Implications for Section 100 of the Act:

52. In this light, Section 100 of the Act, which deals with grounds for declaring an election to be void ought to be noticed. This provision needs analysis since Dr. Tulzapurkar would nuance his submissions on the distinctions drawn within the scheme of this provision. The relevant provisions relied upon by Khan are extracted below:

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) *****; 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) *****; 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.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void.”

[Emphasis Supplied]

53. A plain reading of the foregoing provisions would indicate that for purposes of Section 100(1)(b), the High Court would need to form an opinion that a “corrupt practice” has been committed by the returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent. Likewise, under Section

100(1)(d)(ii) if the High Court would need to form an opinion that the result has been materially affected by the commission of a corrupt practice that was in the interest of the returned candidate. If the factual ingredients are of this nature, the High Court would void the electoral outcome.

54. Under Section 100(1)(b), the commission of a corrupt practice by the candidate or by his election agent or by any other person with the returned candidate's consent would suffice to declare the election void. Under Section 100(1)(d)(ii), the standard that must be met is that of the result in favour of the returned candidate ought to be found to have been "materially affected" by the corrupt practice committed "in the interests of the returned candidate".

55. The ingredients of the two provisions are different. Under Section 100(1)(b), the commission of the corrupt practice has to be by the candidate or his election agent or by any other person with the consent of the returned candidate. If these ingredients are found, the electoral outcome shall have to be declared void. Under Section 100(1)(d)(ii), the commission of the corrupt practice is not by the returned candidate but by an agent other than his election agent. In the instant case, the insinuation is that the star campaigner is an agent other than the election agent and he

has committed a corrupt practice in the interests of Lande, the returned candidate.

56. In view of my reasons as to why the pleadings do not disclose how the allegedly violative visit by Shinde to the Constituency in the prohibited hours constituted a “corrupt practice” (for which purpose, the reliance placed has been on Section 123(2) of the Act read with Section 126 of the Act, which have been analysed above), the implications of absence of pleadings would affect the pleadings relating to Section 100 as well. Indeed, the requirement to show that the result was “materially affected” is found only in Section 100(1)(d)(ii) and not in Section 100(1)(b) of the Act, but in the factual matrix of this case, in the context of the Rejection Application, it would make no difference.

57. The provisions of Section 100(1)(d)(iv) are noteworthy since this is not a provision linked to “corrupt practice”. Under this provision, non-compliance with the provisions of the Act or any rules or orders made under the Act would suffice to declare the electoral outcome void, *provided*, the High Court is satisfied that the electoral result, insofar as it relates to the returned candidate, was materially affected by such non-compliance.

58. Mr. Singh's contends that Khan ought to have shown the voter turnout and polling pattern until the time of the Chief Minister's visit and compare it with the voter turnout and polling pattern after the visit, in order to clinically show how the visit materially affected the electoral result in Lande's favour. Such time-based data during the course of the polling day does not appear to be available, and that too on a polling station-wise basis. A query to the Learned Advocate for the Election Commission indicated that such time-based data would not be available for any candidate who lost to be able to bring it to bear in his pleadings.

59. However, as is well-settled, one must read the Petition as a whole for purposes of Order VII, Rule 11 to see if the material facts have been pleaded. Indeed, Khan has pleaded how according to him, the Chief Minister's visit was violative of Section 126 of the Act. That would fall within the mischief of Section 100(1)(d)(iv) of the Act, but the bar that has to be met in the pleading is to show how the violation of Section 126 of the Act materially affected the electoral result in Lande's favour. Towards this end, when one reads the Petition as a whole (see extracts in the earlier portion of this judgement), the case set up by Khan can be broken down to the following narrative:

-
- a) The Chief Minister visited the Constituency at 3:08 PM on polling day (*Paragraph 6.1 read with Paragraph 11 of the Petition*);
- b) His visit was converted into a road show and campaign rally by waving to the public; and in the guise of blessing Lande, soliciting votes for Lande, and thereby propagating an election matter in breach of Section 126 of the Act (*Paragraphs 6.2 to 6.5 read with Paragraphs 12 and 13 of the Petition*);
- c) Such conduct is a violation of Section 126 of the Act, which brings it within the mischief of Section 100(1)(d)(iv) of the Act (*Paragraph 17 of the Petition*);
- d) But for such practices that constitute an electoral offence, Khan would have obtained a majority of valid votes and is therefore entitled to a declaration under Section 101 of having been duly elected (*Paragraph 18 of the Petition*);
- e) “Supporting material in the form of oral and documentary evidence” has been adduced and Khan “is able to prove the same by material and documentary evidence” (*Paragraph 18 of the Petition*).

60. Whether such pleading meets the requirements of Section 83 of the Act, bearing in mind that Section 100(1)(d)(iv) is being pressed into service, is the issue to be considered. As stated earlier, under Section 83 of the Act, the Petition ought to contain a concise statement of material facts on which the Petitioner relies. To invoke Section 100(1)(d)(iv) read with Section 101 of the Act, the material facts have to necessarily include how the violation of Section 126 complained of, materially affected the electoral result.

61. The pleadings in Petition have to be read as a whole. The only element of how the violation of Section 126 of the Act as alleged, had materially affected the electoral result is the pleading in Paragraph 18 of the Petition, that but for the visit, Khan would have won. While there need not be any time-linked clinical accuracy to the voter turnout and polling pattern in the facts pleaded, there has to be something more to indicate how a material effect took place that turned out to be adverse to Khan and furthered the interests of Lande for this Court to form an opinion that the visit materially affected the electoral outcome within the meaning of Section 100(1)(d)(iv) of the Act.

62. To my mind, the pleadings are nothing more than a simple and bald averment that but for the visit, Khan would have won. In the course of the hearing, in response to queries from the Bench, Khan was willing to not press the relief sought under Section 101, which empowers this Court to declare Khan as the winner. However, that is a matter of what relief is being pressed and what is given up, but would not change the standard required to be met for pleadings in the Petition to disclose all material facts for purposes of bringing an action under Section 100(1)(d)(iv) of the Act.

63. In ***Kanimozhi***, the Supreme Court declared the law in the following summarised terms:

Conclusion

28. *The legal position enunciated in aforesaid cases may be summed up as under:*

27.1. Section 83(1)(a) of the 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.

27.2. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is, every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the 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.

27.3. 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.

27.4. 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, insofar as it concerned the returned candidate, was materially affected.

27.5. *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.*

27.6. 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 7CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.

[Emphasis Supplied]

64. Against this backdrop, it would also be useful to also notice the law declared in **Virender Nath Gautam**¹⁹ to set out the standard expected in the pleadings, which reads thus:

¹⁹ *Virender Nath Gautam Vs. Satpal Singh And Ors.*, (2007) 3 SCC 617

50. *There is distinction between facta probanda (the facts required to be proved i.e. material facts) and facta probantia (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.*

[Emphasis Supplied]

65. The interplay between the principles declared in **Kanimozhi** and in **Virendra Nath Gautam** is to be examined.

66. Under Section 83(1)(b) when it comes to corrupt practice, the Petition must set out full particulars of the corrupt practice (to attract Section 100(1)(b) of the Act). For grounds other than corrupt practice (to attract Section 100(1)(d)(iv) of the Act), the pleadings must spell out facts based on which the electoral result is said to have been *materially affected*.

67. The captioned Petition contains a simple averment that the election was materially affected by Shinde's visit and thereby linking the allegation under Section 126 with the scope of jurisdiction under Section 100(1)(d)(iv) of the Act. How such visit materially affected is not even sought to be

spelt out. I have already discussed above, although in the context of “corrupt practice” that influence would not automatically constitute “undue influence” and that one must show how the influence subverted the ordinary course of exercise of electoral rights by the electorate or by any other candidate in the election. I have explained why I believe there is no pleading on how the influence wielded by Shinde constituted undue influence. Likewise, it is necessary to plead how the visit materially affected the outcome. Just as some high order of clinical precision is not expected as sought to be canvassed by Mr. Singh, it is equally true that a bald averment that the visit materially affected the electoral result would not suffice.

68. In this context, it would be fruitful to examine what the Supreme Court stated in ***Mangani Lal Mandal***²⁰ in the context of a violation alleged in the Form 26 Affidavit, that was sought to be brought into the ambit of Section 126 of the Act, and thereby within the scope of Section 100(1)(d)(iv) of the Act. It was held that every non-compliance or breach of the Constitution or any statutory provision would not invalidate the election and it is essential for the petitioner to aver by material facts how

²⁰ *Mangani Lal Mandal v. Bishnu Deo Bhandari* – (2012) 3 SCC 314

the result of the election was materially affected by such non-compliance.

The following extracts are noteworthy:

10. A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non-compliance as well as establish that the result of the election has been materially affected. It is only on the basis of such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void.

11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz.

Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in: (1) Jabar Singh v. Genda Lal [AIR 1964 SC 1200 : (1964) 6 SCR 54] ; (2) L.R. Shivaramagowda v. T.M. Chandrashekar [(1999) 1 SCC 666] ; and (3) Uma Ballav Rath v. Maheshwar Mohanty [(1999) 3 SCC 357]

12. *Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellant's first wife and the dependent children born from that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election petition there is no pleading at all that the suppression of the information by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and non-disclosure of their assets and liabilities has materially affected the result of the election.* There is no issue framed in this regard nor is there any evidence let in by the election petitioner. The High Court has also not formed any opinion on this aspect.

13. *We are surprised that in the absence of any consideration on the above aspect, the High Court has declared the election of the returned candidate to the 15th Lok Sabha from Jhanjharpur Parliamentary Constituency to be void. The impugned judgment of the High Court is gravely flawed and legally unsustainable. As a matter of law, the election petition filed by the election petitioner deserved dismissal at the threshold yet it went into the whole trial consuming Court's precious time and putting the returned candidate to unnecessary trouble and inconvenience.*

[Emphasis Supplied]

69. There has to be something more to at least show some rational basis of indicating materiality of the impact of the visit for Lande to be able to meet the allegation and defend the electoral outcome. If that is absent, the rigours of how to treat applications under Order VII, Rule 7(a) of the CPC as enunciated in **Kanimozhi** and **Mangani Lal Mandal** would come into play. Therefore, while the principles declared in **Virendra Nath Gautam** are unexceptionable, on the facts of the case, the declaration of the law in **Mangani Lal Mandal** would squarely apply to this case, necessitating allowing the Rejection Application on this count.

70. In these circumstances, for the reasons set out above, I am not satisfied that the Petition pleads all material facts necessary to bring an action under Section 100(1)(d)(iv) of the Act.

Violative Form 26 Affidavit:

71. The analysis of the law above must also be applied to the other two grounds. First, the allegation of the faulty Form 26 Affidavit, which is

alleged to contain unnecessary and excessive disclosure of civil cases along with the criminal cases that Lande is involved in, and the non-disclosure of the house that Lande lives in as his asset.

72. The standard of Section 123(2) would need to be applied to show that the excessive disclosure and the shortcoming in the Form 26 Affidavit had “undue influence” on the exercise of electoral rights, for the manner of filing of the Form 26 Affidavit to constitute a corrupt practice to attract Section 100(1)(b) of the Act. There is admittedly no prohibition on volunteering more information than the statutory standard minimum for the provisions of Section 100(1)(d)(iv) to be attracted. The averment is that an impression was given that Lande is involved more in civil litigation than in criminal litigation. If that position of fact is by itself true, such a disclosure would not constitute a misstatement warranting intervention under Section 100 of the Act. There is nothing to indicate how the errors in the Form 26 Affidavit constitutes a corrupt practice (for Section 100(1)(b) of the Act) or materially affected the electoral outcome (for Section 100(1)(d)(iv) of the Act).

73. As regards Dr. Tulzapurkar’s contention that when considering the Rejection Application, this Court must not get into the plausibility of the

pleading and must only see if there is a pleading, the principle has its own optimal threshold beyond which it would not work as a universal principle. The challenge to an election outcome is a creature of statute and examination of the statutory ingredients necessary to bring about a challenge is necessary. If not, regardless of the objective facts pleaded, all that a failed candidate would need to do is make a bald averment to sustain proceedings, contending that plausibility is totally irrelevant. The standard in Order VII, Rule 7(a) is that the pleadings must disclose a cause of action and therefore, whether the facts pleaded at a basic level meet the requisite ingredients has to be seen.

74. Since Section 123(2) stipulates what a corrupt practice is from the standpoint of “undue influence”, which is what is relied upon on behalf of Khan, the Court must examine whether pleading of necessary facts to attract the ingredients of Section 123(2) have been made in the Petition. It is not Khan’s case that there was a shortcoming in the disclosure of criminal proceedings. The suggestion is that excessive disclosure by including civil proceedings diluted the perception of the criminal proceedings. How this leads to a cause of action for declaring it to be a corrupt practice or for it to materially affect the electoral outcome is not

pleaded. Likewise, about the residence of Lande, there is not even an averment that title to those premises are in the name of Lande and the assertion is that the house is occupied by him. The materiality of the effect of this alleged shortcoming on the electoral result must be pleaded, and is not found in the Petition.

75. Therefore, for the very same reasons set out above in relation to Shinde's allegedly violative visit, in my opinion, the pleadings in relation to the Form 26 Affidavit too do not disclose a cause of action for purposes of Section 100. The decision in **Mangani Lal Mandal**, extracted above, had been rendered in the context of alleged defects in the Form 26 Affidavit. Similarly in **Karim Uddin Barbhuiya**²¹ the Supreme Court has held thus, again in the context of the Form 26 Affidavit:

“13. It hardly needs to be reiterated that in an Election Petition, pleadings have to be precise, specific and unambiguous, and if the Election Petition does not disclose a cause of action, it is liable to be dismissed in limine. It may also be noted that the cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the RP Act. As held in Bhagwati Prasad Dixit ‘Ghorewala’ v. Rajeev Gandhi and in Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi, if the allegations contained in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement

²¹ *Karim Uddin Barbhuiya v. Aminul Haque Laskar & Ors.*— 2024 SCC OnLine SC 509

of Section 81 and 83 of the Act, the pleadings are liable to be struck off and the Election Petition is liable to be rejected under Order VII, Rule 11 CPC.

...

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

20. So far as the allegations of "Corrupt practice" are concerned, the respondent no. 1 was required to make concise statement of material facts as to how the appellant had indulged into "Corrupt practice" of undue influence by directly or indirectly interfering or attempted to interfere with the free exercise of any electoral right. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of making a concise statement of the "material facts" in the Election Petition. The material facts which are primary and basic facts have to be pleaded in support of the case set up by the Election petitioner to show his cause of action. Any omission of a single material fact would lead to an incomplete cause of action entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) of CPC read

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

[Emphasis Supplied]

76. The pleadings in the Petition collide against multiple emphatic declarations of the law declared by the Supreme Court. If the Petition were to be sent to trial, neither would Lande have clarity on what case to meet, nor would this Court have enough objective material on which it would conduct trial to consider if the serious consequences provided for under Section 100 of the Act ought to be visited on the electoral result.

Random Check of Electronic Voting Machines:

77. As regards the EVMs, the pleadings say nothing more than state that Khan has availed of the right to have the permissible sample tested owing to his apprehension of tampering. While there is specificity to the

EVMs identified in terms of the guidelines issued by the Supreme Court in ***Association for Democratic Reforms***, there is nothing to indicate and link the EVMs identified to either Shinde's visit or any other cause that reasonably led to an apprehension of tampering.

78. Simply pointing to the EVMs listed in the application seeking a check, would not constitute pleading of material particulars of how this facet leads to Section 100 being invoked. Any candidate is entitled under the aforesaid judgement to test the EVMs, but that in itself would hardly disclose a coherent pleading for cause of action to invoke Section 100 of the Act to take a measure as drastic as declaring the electoral outcome as void.

Summary of Findings:

79. To summarise, in my view:

- a) The Petition does not set out how the allegedly violative visit of the Chief Minister or the disclosure of civil proceedings in the Form 26 Affidavit of Lande was a corrupt practice, inasmuch as there is nothing to show how these facts constituted "undue

influence” for purposes of Section 123(2) of the Act read with Section 100(1)(b) of the Act;

b) The Petition does not set out how the said visit, as a violation of Section 126 of the Act, or the excessive disclosure in the Form 26 Affidavit as a violation of subordinate law made under the Act, materially affected the electoral outcome for purposes of invoking Section 100(1)(d)(iv) of the Act;

c) Khan availing of testing of the EVM is something he is entitled to do but the Petition does not indicate how Khan’s apprehension of EVMs being tampered leads to a corrupt practice or a violation of the Act that materially affects the electoral result for a cause of action to be properly contained under Section 83 of the Act;

d) Therefore, the Rejection Application deserves to be allowed since electoral outcomes in a democracy ought not to be lightly interfered with, without being subjected to the rigours of how Section 83 of the Act operates and has been held in various decisions of Courts;

e) Nothing contained in this judgement is an expression of an opinion of merits on the allegation that Section 126 had been

violated. The due process for pursuit of such alleged electoral offence may be resorted to uninfluenced by anything stated in this judgement. This judgement is restricted to whether the alleged violation of Section 126 has also led to a pleading and disclosure of how such violation materially affected the electoral outcome, solely for purposes of Section 100(1)(b) and 100(1)(d)(iv) of the Act;

f) The prayer for declaration of Khan as the returned candidate is not backed by any pleading of any material fact. Not pressing that relief would not lead to how the Court must consider the comprehensive and composite narrative in the Petition.

80. In the result, the ***Rejection Petition*** i.e. Application in Election Petition No. 26 of 2025 ***is allowed*** and the ***Petition is dismissed***. No costs.

81. In view of disposal of the Petition, ***Application In EP (L) No. 26326 of 2025*** also stands ***disposed of***.

82. It is made clear that the random check of the EVMs, which has already been permitted by this Court shall be carried out without this judgement posing a hurdle to the pursuit of the audit check by Khan. Likewise, nothing contained in this judgement is intended to pronounce

upon the merits of the criminal proceedings sought to be initiated in connection with the alleged violation of Section 126 of the Act occasioned by the allegedly violative visit by Shinde to the Constituency.

83. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]