



IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

EMP No.6 of 2023 in
Election Petition No.1 of 2022
Reserved on:-08.09.2025
Decided on 26th September, 2025

Shri Ram Lal Thakur
Versus
Shri Randhir Sharma and others

...Petitioner
...Respondents

Coram
Hon'ble Mr. Justice Ajay Mohan Goel, Judge
¹Whether approved for reporting? Yes

For the petitioner: Mr. Peeyush Verma, Senior Advocate,
with Mr. Ajay Sharma, Advocate, for
the non-applicant/petitioner.

For the respondent: M/s Satya Pal Jain and Anshul Bansal,
Senior Advocate, with M/s Virbahadur
Verma, Daves Moudgil, Prajwal Busta,
Anshul Attri, Ankit Chandel and Mukul
Sharma, Advocates, for
applicant/respondent No.1.

Non-applicants/respondents No.2 to 4
ex parte.

Non-applicants/respondents No.5 to 7
are deleted from the array of parties
vide order dated 20.03.2024.

Ajay Mohan Goel, Judge (Oral)

By way of this EMP filed under Order VI, Rule 16 read with Order VII, Rule 11 read with Section 151 of the Civil Procedure Code, the applicant has prayed for the following relief:-

"It is therefore, respectfully prayed that paragraphs 3, 4, 7(I)(a) to (f), 7(II)(a) and (b), 7(III)(a) and 8 may kindly be struck off under Order 6 Rule 16 and the Election Petition may kindly be dismissed under Order 7 Rule 11 r/w Section 151 of CPC r/w Section 81, 83, 86 & 87 of the Representation of the People Act, 1951, in the interest of justice."

2. In terms of this application, the applicant/respondent No.1 in the election petition contends that the non-applicant/election petitioner (hereinafter referred to as the petitioner), has challenged his election from Assembly Constituency-49, Shree Naina Devi Ji, as a member of the Himachal Pradesh Legislative Assembly.

3. According to the applicant, the election petition has been filed in violation of the provisions of the Representation of People Act, 1951 (hereinafter referred to as 'the 1951 Act'). It is

vague, ambiguous, lacks material facts and does not disclose any cause of action. The averments made in the election petition do not amount to alleging or stating of any ground for setting aside the election of the applicant. The election petition has been filed in violation of the provisions of Section 82(b) of the 1951 Act, as respondents No.5 to 7 impleaded in the election petition were neither other candidates who contested the election nor proper or necessary parties. It is further the contention of the applicant that Section 83 of the 1951 Act, mandates that an election petition must contain all material facts which the petitioner is relying upon. If allegation of corrupt practice exist, then, it must contain all material facts as well as the particular of corrupt practice alleged and in the absence of same, the petition is liable to be dismissed in *limine*. As per the proviso to Section 83(1) of the 1951 Act, a statutory Form 25 has been provided vide Rule 94-A, of the Conduct of Elections Rules, 1961 for filing of the affidavit in support of the allegations of corrupt practice. In terms of Rule 94-A the affidavit referred to in the proviso to sub-section(1) or sub-section (83) shall be sworn before a Magistrate 1st Class or a Notary or a Commissioner of oaths and has to be in Form-25.

The applicant contends that though in the election petition there are allegations of corrupt practice, yet the election petitioner has not filed the prescribed affidavit in Form-25 and, therefore, as there is a non-compliance of Rule 94-A of the 1961 Rules, read with Section 83(1) of the 1951 Act, and in absence of this affidavit being in Form-25, the petition cannot be put to trial.

4. Further, it is the contention of the applicant that the allegations regarding corrupt practice have been verified by the petitioner in the other affidavit as "true and correct as per legal advice received". According to the applicant, once the law requires the petitioner to clearly specify with regard to corrupt practice as to which allegations are based on the basis of personal knowledge and which as per information received, it is mandatory for the petitioner to disclose the same and that too in the prescribed format and as in the present case there is a breach thereof, therefore, the same is fatal to the election petition.

5. It is further the contention of the applicant that the election petition completely lacks material facts and Paras- 71(I)(a) to (f) are liable to be struck off on account of the reasons

mentioned in the application. This Court is not dwelling upon this aspect of the matter, because, arguments were primarily addressed for the rejection of the plaint under Order VII, Rule 11 of the Civil Procedure Code.

6. It is further contended in the application that the election petition is only a roving and fishing enquiry attempted by the election petitioner, as it completely lacks all material facts. Election law requires that pleadings must be clear and specific and should make out a clear cut case and all this is lacking in the election petition. The pleadings do not make out any ground under Sections 100 or 101 of the 1951 Act for setting aside the election of the applicant. The petition has not been verified as per law. The so called verification is no verification in the eyes of law. Allegations levelled in the election petition do not make out or fall within any corrupt practice mentioned under Section 123 of the Representation of the People Act, 1951 or within any of the grounds laid down under Section 100 of the said Act and on this count, the applicant has prayed for the rejection of the election petition.

7. In the reply filed to the application, the averments made in the application are strongly refuted. It is averred therein that the application has been filed with the intent to delay the proceedings. It stands denied that the election petition lacks material particulars or does not disclose any cause of action or is in violation of the statutory provisions of the Representation of the People Act or the Rules framed therein. It is mentioned in the reply that there is no violation of Rule 94-A of the 1961 Rules or Section 83(1) of the Representation of the People Act and even if it is to be assumed that it is so, then also, the alleged defects are curable. It is also denied in the reply that the vague averments stood made in the election petition and essential ingredients, material facts or material particulars are missing in the election petition. It is further denied in the reply that the details of corrupt practice have not been mentioned in the application. It has been prayed that as there is no merit in the application, the same be dismissed.

8. Learned Senior Counsel for the applicant has taken the Court through the Execution Petition and argued that in the present case despite the fact that corrupt practice has been

alleged, yet affidavit has not been filed in terms of Rule 94-A of the 1961 Rules in Form-25. He referred to the affidavit filed in support of the election petition and submitted that this affidavit is neither the one envisaged under Rule 94-A of the 1961 Rules, nor the same is in Form-25. He submitted that what stands filed is a general affidavit filed in support of the election petition and it is not the one which has to be filed when corrupt practice is alleged. Learned Senior Counsel further submitted that in terms of this affidavit, it is mentioned in Para-2 thereof that the contents of Paras-7 to 13 of the election petition are true and correct on the basis of legal advice received, no part of it is false and no material has been concealed. He submitted that a perusal of the election petition demonstrates that the factual allegations of corrupt practice etc., are made from Para-7 onwards. According to the learned Senior Counsel, these averments could have been made either on the basis of the personal information of the petitioner or on the basis of information received and by no stretch of imagination, the contents of these paras could have been verified on the basis of legal advice received. Learned Senior Counsel submitted that averments made in the election

petition on facts can by no stretch of imagination be based on legal advice which demonstrates that the affidavit accompanying the election petition is no affidavit in the eyes of law. Learned Senior Counsel further submitted that no source of information was disclosed in the election petition, material facts of corrupt practice, as have to be mentioned in the election petition, were completely missing and how the election was materially affected by the allegations made in the election petition, was also not mentioned.

9. By referring to the provisions of Order VI, Rule 15 of the Civil Procedure Code, learned Senior Counsel vehemently argued that the contents of Paras-7 to 13 of the petition which contained allegations of corrupt practice have been verified on legal advice. He submitted that allegations in the petition alleged against the officials did not suggest that whatever allegedly they did, the same was on the behest of the applicant and it has also not been mentioned in the election petition as to how all this materially affected the election.

10. On the other hand, learned Senior Counsel for the non-applicant/petitioner argued that there was no merit in the application. He referred to Paras 9 and 10 of the reply and also took the Court through the contents of the election petition and submitted that complete details of corrupt practice were given in Paras-7(d) and 7(e) of the election petition. It was mentioned in the election petition as to who all indulged in corrupt practice. Learned Senior Counsel submitted that no case was made out for the rejection of the plaint under Order VII, Rule 11 of the Civil Procedure Code. He argued that as far as the names of respondent No.5 to 7 are concerned, the same already stand deleted in terms of the order passed by this Court on 20.03.2024. Learned Senior Counsel further argued that the election petition complied with the provisions of the 1971 Act. The parameters which an election petition has to meet were detailed in the election petition. The application was filed just to delay and linger on the matter with an ulterior motive. Learned Senior Counsel further submitted that otherwise also whatever was being contended by the applicant was no ground to reject the election petition under Order VII, Rule 11 of the Civil Procedure Code,

because, the contentions of the applicant were more in the nature of defence and it is settled law that an application under Order VII, Rule 11 of the Civil Procedure Code is not to be decided on the basis of the defence of the respondent/defendant. Learned Senior Counsel further submitted that there was no infirmity in the affidavit filed by the petitioner alongwith the election petition and complete details of corrupt practice stood mentioned in the election petition and the statutory requirements which have to be complied with, in case an election is assailed on the basis of corrupt practice have also been completely met with in the election petition.

11. Accordingly, he prayed that as there is no merit in the application, the same be dismissed.

12. I have heard learned Senior Counsel for the parties and have also carefully gone through the application as well as the reply filed thereto and the contents of the election petition.

13. At the very outset, this Court would like to make an observation that though the application has been filed under Order VI, Rule 16 read with Order VII, Rule 11 of the Civil Procedure Code, however, as arguments were addressed on

Order VII, Rule 11 of the Civil Procedure Code, therefore, the application is being decided from the said perspective only. Rest of the issues are kept open.

14. Order VII, Rule 11 of the Civil Procedure Code provides for certain eventualities when a plaint can be rejected. These eventualities *inter alia* include where the plaint or petition does not disclose any cause of action or is barred by law.

15. By way of the election petition in issue, the petitioner has challenged the election of the respondent as a Member of the Legislative Assembly, Constituency-49, Shree Naina Devi Ji. A perusal of the election petition demonstrates that it is mentioned therein that the petitioner contested the election from Assembly Constituency-49, Shree Naina Devi Ji, as a candidate of Indian National Congress and respondent No.1 contested the election as a candidate of Bharatiya Janata Party. Respondent Nos.2 to 4 impleaded in the election petition were the remaining candidates. The election took place on 12.11.2022 and the counting of the votes took place on 08.12.2022. As per the petitioner, unfortunately, mainly due to the illegalities and irregularities committed by respondent Nos.5 and 7 in the

process of counting of votes, cast through postal ballots and corrupt practices adopted by respondent No.1, the petitioner lost the election by a slender margin of 171 votes. It is further mentioned in the election petition that during the process of counting of votes, especially postal ballots, gross and blatant violations of the provisions of the Act, 1961 Rules, the mandatory directions contained in the handbook for Returning Officer and also direction dated 28.10.2022 issued by respondent No.6 were committed. The counting agent of the petitioner sought recounting of the Postal Ballot Papers by way of an application expressing apprehension that the same was not properly counted. Respondent No.5 allowed the application seeking recount i.e., of the already counted votes. Total number of postal ballots received were 2816, out of these, 341 postal ballots were declared invalid without informing the petitioner or his authorized agents. Thereafter, after counting the remaining 2475 votes, respondent No.5 rejected 14 votes. Finally, the petitioner polled 499 votes against 525 votes polled by respondent No.1 and, thus, the number remained the same.

16. It is further averred in Para-5 of the election petition that Section 100 of the 1951 Act provides for declaring the election of a returned candidate as void in case the result of the election has been materially affected by improper refusal or rejection of any vote or by non-compliance with the provisions of the 1951 Act or Rules or Orders framed therein. Likewise, election of a returned candidate can also be declared as null and void in case the said candidate or his agent is guilty of any corrupt practice.

17. Thereafter, in Para-7 of the election petition, grounds of challenge to the election of respondent No.1 are given. Ground No.1 mentioned therein is non-compliance of the provisions of the Representation of People Act, 1951 and the Rules, directions and orders passed thereunder, Ground No.2 mentioned therein is improper refusal and rejection of votes, Ground No.3 is regarding votes obtained by the returned candidate by a corrupt practice. On these three counts, the election of respondent No.1 is assailed by the petitioner.

18. As this Court is dealing with an application filed under Order VII, Rule 11 of the Civil Procedure Code, therefore, this Court is confining itself to the said aspect of the matter only.

19. As already observed hereinabove, respondents No.5 to 7 were already ordered to be deleted by this Court in terms of its order dated 20.03.2024.

20. The challenge qua the maintainability of the election petition, in terms of the provisions of Order VII, Rule 11 of the Civil Procedure Code on behalf of the applicant is on two grounds i.e., though corrupt practice is alleged in the election petition, yet the election petition is not accompanied by an affidavit as provided under Rule 94-A of the 1961 Act in Form 25 and further the statutory provisions contained in the 1951 Act which are mandatory in nature and have to be taken care of while filing the election petition alleging corrupt practice, do not stand complied with.

21. Before dwelling on these issues further, at this stage, this Court would like to refer to the relevant statutory provisions of the Act.

22. Part-IV of the 1951 Act, deals with disputes regarding election. Section 80 thereof provides that no election shall be called in question except by an election petition presented in accordance with the provisions of said part of the Act.

23. Section 81 of the 1951 Act provides that an election petition calling in question any election may be presented on one or more of the 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 forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidates at the election and dates of their election are different, the later of those two dates.

24. Section 83 of the 1951 Act deals with the contents of petition and the same provides that an election petition shall contain a concise statement of the material facts on which the petitioner relies and 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. Sub-section (c) of Section

83(1) provides that an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. The proviso thereto provides 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.

25. Section 83 of the 1951 Act for ready reference is quoted hereinbelow:-

“(1) An election petition-

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

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

(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.”

26. Section 100 of the 1951 Act provide the grounds for declaring election to be void and the same reads as under:-

- (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 (20 of 1963); or of md 18 be an*
 - (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, insofar as it concerns a returned candidate, has been materially affected-*
 - (i) by the improper acceptance of 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;

(b) [Omitted]

(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."

27. Para-VII of the 1951 Act deals with corrupt practice and electoral offences. Section 123 thereof defines corrupt practice. This Section for ready reference is quoted hereinbelow:-

"The following shall be deemed to be corrupt practices for the purposes of this Act,-

(1) "Bribery" that is to say-

(A) any gift, offer or promise by a candidate or his agent or by any person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing-

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to-

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward-

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or

any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation: For the purposes of this clause, the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and in it includes all forms of entrainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78."

(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 interested, with injury of any kind including social ostracism and ex-communication 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 publication, 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.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any

person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

PROVIDED that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between or language, by a candidate or his agent or any other person with the consent of a the prospects of the election candidate or for prejudicially affecting the election of any candidate.

(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation: For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987.

(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such

vehicle or vessel for the free conveyance of any elector (other than the candidate himself the members of his family or his agent) to or from any polling station provided under Section 25 or place fixed under sub-section(1) of Section 29 for the poll.

PROVIDED that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

PROVIDED FURTHER that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation: In this clause, the expression "vehicle" means any vehicle used capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, [from any person whether or not in the service of the Government] and belonging to any of the following classes, namely:-

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed force of the Union;
- (d) members of the police forces; (e) excise officers;
- (f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or

commission on, the amount of land revenue collected by them but who do not discharge any police functions;

(g) such other class of persons in the service of the government as may be prescribed; and

[(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections:]

PROVIDED that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.

(8) Booth capturing by a candidate or his agent or other person.

Explanation 1: In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

Explanation 2: For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts an election agent of that candidate.

Explanation 3: For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof-

- (i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and
- (ii) (ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service such person ceased to be in such service with effect from the said date.

[Explanation 4: For the purposes of clause(8), "booth capturing" shall have the same meaning as in section 135A.]

28. Thus, Section 123 of the 1951 Act defines what corrupt practices are. In the context of the present case, the allegation of corrupt practice alleged against the winning candidate is of bribery. The allegations of corrupt practice as are alleged in the petition, contained in Para-7-III (a) read as under:-

"That during the course of Elections, the Respondent No.1 used and distributed liquor and money in order to influence the Electorate to cast votes in his favour. On 11.11.2022 the Petitioner received information that agents of the Respondent No.1 were distributing liquor and money at Jamlaghat. Immediately, the Petitioner called upon his supporters to act in this behalf. Thereafter on 11.11.2022 itself, at about 09:00 pm, the supporters of the petitioner intercepted a Tata Nano vehicle bearing Registration No.HP-69-2126, wherein three persons wherein three persons were seated, suspecting that the same was being used to transfer and distribute

liquor and money. On being intercepted, two of the occupants of the JAY vehicle fled away from the spot and only one namely Shri Dev Raj, Son of Shri Ram Dittu, Resident of Village Thalaila, Post Office Dagsech, Tehsil Sadar, District Bilapur, H.P. remained. On checking the vehicle was found to be transporting one bottle of country liquor (Santra), three bottles of IMFL (Episode) and three bags which had been used for distribution of money and liquor. The occupant of the vehicle Shri Dev Raj disclosed that the liquor and money was being transported and distributed by him and other supporters, at the instance, with the consent and positive knowledge of the Respondent No.1 for being distributed amongst the voters at Jamlaghat. The said Shri Dev Raj further disclosed that he alongwith other supporters of the Respondent No.1 had been doing this for the past 3-4 days. An intimation in this regard was sent to the SHO, Barmana, for taking appropriate action and on his failure to do the needful, intimation had to be sent to the SP, Bilaspur, H.P. It is only thereafter that police officials came on the spot and a criminal case was registered. On the same day i.e. 11.11.2022, another person namely Shri Krishan Singh, Son of Shri Madhav Ram, Resident of Villge Gawahi Cheta, Post Office Namhol, Tehsil Sadar, District Bilaspur, H.P., was intercepted at Village Bathoh Hardu in Vehicle No.HP-24B-1513, while he was carrying two boxes of country liquor (Santra), by the supporters of the Petitioner. The said Shri Krishan Singh on being asked also disclosed that he had been distributing liquor in the nearby areas at the instance, consent and positive knowledge of the Respondent No.1. An intimation in this regard was also sent to the SHO, Barmana, but no action whatsoever was initiated for the reasons that the Respondent No.1 was contesting as a candidate from the political party in power and as such, was able to manipulate things. A perusal of the booth-wise voting pattern would reveal that the performance of the Petitioner in the polling booths surrounding the area where persons of the Respondent No.1 were caught distributing money and liquor, has been adversely hit. The corrupt practice

indulged into by the Respondent No.1 and his supporters has thus materially influenced the voters of the area and affected the result to a large extent, resulting in the defeat of the Petitioner by a slender margin of 173 votes. The voters have not voted for the Respondent No.1 out of their free will but their right to vote has been illegally affected by acts of bribery and undue influence.

29. Thus, what is alleged in the election petition is that during the course of the election, respondent No.1 used and distributed liquor and money in order to influence the electorate to cast votes in his favour. On 11.11.2022, the petitioner received information that agents of respondent No.1 were distributing liquor and money in Jamlaghat. Accordingly, the petitioner called his supporters to act on this behalf. Around 9:00 P.M., the supporters of the petitioner intercepted a Tata Nano vehicle bearing Registration No.HP-69-2126, wherein three persons were seated. On interception, two of the occupants of the vehicle fled away from the spot and one Dev Raj was apprehended. When vehicle was checked, it was found transporting one bottle of country liquor, three bottles of IMFL and three bags which had been used for distribution of money and liquor. Dev Raj disclosed that liquor and money was being transported and

distributed by him and other supporters at the instance, with the consent and positive knowledge of respondent No.1 for being distributed amongst the voters at Jamlaghat. The matter was reported to the police also and only with the intervention of the Superintendent of Police concerned, a criminal case was registered. On the same date, another person (Krishan Singh) was intercepted again in a vehicle carrying two bottles of country liquor by the supporters of the petitioner and he on being asked also disclosed that he had been distributing liquor in the nearby areas at the instance, consent and positive knowledge of respondent No.1.

30. Before proceedings further, this Court would like refer to certain judgments, relied upon by learned Senior Counsel for the parties which dwell on the issue of corrupt practice as well the issue of non-filing of an affidavit in support of the allegations of corrupt practice in terms of the provisions of Section 83(1) read with Rule 94-A of the 1961 Rule and Form 25 thereof as well as Election Petition disclosing triable cause and fulfilling mandatory condition.

31. A two Judge Bench of the Hon'ble Supreme Court in Azhar Hussain, versus Rajiv Gandhi, AIR 1986 Supreme Court 1253 by referring to its earlier judgments has held:-

...there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant N. Balkrishna & Anr. v. George Fernandez & Ors., [1969] 3 S.C.C. 239, has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Udhav Singh v. Madhav Rao Scindia, [1977] 1 S.C.C. 511, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be

dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.”

32. A two Judge Bench of the Hon'ble Supreme Court in Dhartipakar Madan Lal Agarwal versus Rajiv Gandhi, AIR 1987 Supreme Court 1577 held that if the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the Court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the Court finds that no triable issues remain to be considered, it has power to reject the election petition.

33. A three Judge Bench of the Hon'ble Supreme Court in R.P. Moidutty versus P.T. Kunju Mohammad and another, (2000) 1 Supreme Court Cases 481 has held as under:-

“It is basic to the law of elections and election petitions that in a democracy, the mandate of the people as expressed at the hustings must prevail and be respected by the Courts and that is why the election of a successful candidate is not to be set aside lightly. Heavy onus lies on the election petitioner seeking setting aside of the election of a

successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people is one as has been truly, freely and purely expressed. The electoral process in a democracy such as ours is too sacrosanct to be permitted to be polluted by corrupt practices. If the court arrives at a finding of commission of corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent then the election of the returned candidate shall be declared to be void. The underlying principle is that corrupt practice having been committed, the result of the election does not echo the true voice of the people. As the consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same. The onus of proof is not discharged merely on preponderance of probabilities; the standard of proof required is akin to that of proving a criminal or a quasi-criminal charge. Clear cut evidence, wholly credible and reliable, is needed to prove beyond doubt the charge of corrupt practice. [See: *Ram Chandra Rai vs. State of Madhya Pradesh & Ors.* (1970) 3 SCC 647; *Manphul Singh vs. Surinder Singh* AIR 1973 SC 2158; *Rahim Khan vs. Khurshid Ahmed and others* AIR 1975 SC 290; *Bir Chandra Barman vs. Shri Anil Sarkar and others* AIR 1976 SC 603; *Lakshmi Raman Acharya vs. Chandan Singh and others* AIR 1977 SC 587; *Amolak Chand Chhazad vs. Bhagwandas Arya (Dead) and anr.* AIR 1977 SC 813]. The legislature has taken extra care to make special provision for pleadings in an election petition alleging corrupt practice. Under [Section 83](#) of the Act ordinarily it would suffice if the election petition contains a concise statement of the material facts relied on by the petitioner, but in the case of corrupt practice the election petition must set forth full particulars thereof including as full a statement as possible of (i) the names of the parties alleged to have committed such corrupt practice, (ii) the date, and (iii) place of

the commission of each such practice. An election petition is required to be signed and verified in the same manner as is laid down in the [Code of Civil Procedure](#), 1908 for the verification of pleadings. However, if the petition alleges any corrupt practice then the petition has additionally to be accompanied by an affidavit in Form No. 25 prescribed by rule 94A of the Conduct of Elections Rules, 1961 in support of the allegations of such corrupt practice and the particulars thereof. Thus, an election petition alleging commission of corrupt practice has to satisfy some additional requirements, mandatory in nature, in the matter of raising of the pleadings and verifying the averments at the stage of filing of the election petition and then in the matter of discharging the onus of proof at the stage of the trial.

In *F.A.Sapa etc.etc. vs. Singora and others* etc. AIR 1991 SC 1557, this Court has held:

"A charge of corrupt practice has a two dimensional effect: its impact on the returned candidate has to be viewed from the point of view of the candidate's future political and public life and from the point of view of the electorate to ensure the purity of the election process. There can, therefore, be no doubt that such an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of [Section 83](#) before the parties go to trial. While defective verification of a defective affidavit may not be fatal, the High Court should ensure its compliance before the parties go to trial so that the party required to meet the charge is not taken by surprise at the actual trial. It must also be realised that delay in complying with the requirements of [Section 83](#) read with the provisions of [the C.P.C.](#) or the omission to disclose the grounds or sources of information, though not fatal would weaken the probative value of the evidence ultimately lead at the actual trial. Therefore, an election petitioner can afford to

overlook the requirements of [Section 83](#) on pain of weakening the evidence that he may ultimately tender at the actual trial of the election petition. The charge of corrupt practice has to be proved beyond reasonable doubt and not merely by preponderance of probabilities. Allegation of corrupt practice being quasi- criminal in nature, the failure to supply full particulars at the earliest point of time and to disclose the source of information promptly may have an adverse bearing on the probative value to be attached to the evidence tendered in proof thereof at the trial. Therefore, even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the court in a given case to doubt the veracity of the evidence ultimately tendered."

The affidavit filed by the petitioner in support of the election petition as required by Rule 94 A also does not satisfy the requirement of proviso to sub section (1) of [Section 83](#) of the Act and Form No. 25 appended to the Rules. The several averments relating to commission of corrupt practice by the first respondent as contained in paragraphs 4 to 12 and 16 of the petition have been verified as true to the best of " my knowledge and information " - both, without specifying which of the allegations were true to the personal knowledge of the petitioner and which of the allegations were based on the information of the petitioner believed by him to be true. Neither the verification in the petition nor the affidavit gives any indication of the source of information of the petitioner as to such facts as were not in his own knowledge.

All the averments made in paras 1 to 17 of the petition have been stated to be true to the personal knowledge of the petitioner and in the next breath the very same averments have been stated to be based on the information of the petitioner and believed by him to be true. The source of information is not disclosed. As observed by the Supreme Court in F.A. Sapa etc.etc. vs. Singora

and others AIR 1991 SC 1557, the object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. However, the defect of verification is not fatal to the petition; it can be cured [see: [Murarka Radhey Sham Ram Kumar vs. Roop Singh Rathore and Ors.](#) AIR 1964 SC 1545, [A.S. Subbaraj vs. M. Muthiah](#) 5 ELR 21]. In the present case the defect in verification was pointed out by raising a plea in that regard in the written statement. The objection was pressed and pursued by arguing the same before the Court. However, the petitioner persisted in pursuing the petition without proper verification which the petitioner should not have been permitted to do. In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into and tried at all. In fact, the present one is a fit case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings.”

34. A two Judge Bench of the Hon'ble Supreme Court in *Ravinder Singh versus Janmeja Singh and others* (2000) 8 Supreme Court Cases 191 held that the proviso to Section 83(1) of the Act lays down in mandatory terms that where an election petitioner alleges any corrupt practices, the election petition shall also be accompanied by an affidavit, in the prescribed form, in support of the allegations of such practice

and the particulars thereof. Hon'ble Supreme Court further held that Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to [Section 83\(1\)](#) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving enquiry and save the returned candidate from being taken by surprise, in the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial the defect being of a fatal nature.

35. A two Judge Bench of the Hon'ble Supreme Court in Ram Sukh versus Dinesh Aggarwal, (2009) 10 Supreme Court Cases 541 has held as under:-

"Now, before examining the rival submissions in the light of the afore-stated legal position, it would be expedient to deal with another submission of learned counsel for the appellant that the High Court should not have exercised its power either under Order VI Rule 16 or Order VII Rule 11 of the Code to reject the election petition at the threshold. The argument is two-fold viz. (i) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition and (ii) since [Section 83](#) does not find a place in [Section 86](#) of the Act, (2007) 3 SCC 617 rejection of petition at the threshold would amount to reading into sub-section (1) of [Section 86](#) an additional ground.

In our opinion, both the contentions are misconceived and untenable.

Undoubtedly, by virtue of [Section 87](#) of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order VI Rule 16 and Order VII Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the

discharge of his public duties for which the Electorate have reposed confidence in him. The submission, therefore, must fail.”

36. A two Judge Bench of the Hon'ble Supreme Court in Kalyan Kumar Gogoi versus Ashutosh Agnihotri and another, (2011) 2 Supreme Court Cases 532 has held as under:-

“The first question to be considered is whether there had been or not a breach of the Act and the Rules in the conduct of the election at this constituency. It is hardly necessary for this Court to go over the evidence with a view to ascertaining whether there was or was not a breach of the Act and the Rules in the conduct of the election concerned. Having read the evidence on record, this Court is in entire agreement with the decision of the learned Single Judge that by the change of venue of casting votes, breach of the provisions of Sections 25 and 56 of the Act read with Rule 15 of the Rules of 1961 was committed by the officials who were in charge of the conduct of the election at this constituency. This shows that the matter is governed by Section 100(1)(d)(iv) of the Act. The question still remains whether the condition precedent to the avoidance of the election of the returned candidate which requires proof from the election petitioner, i.e., the appellant that the result of the election had been materially affected insofar as the returned candidate, i.e., the respondent No. 2, was concerned, has been established in this case.

It may be mentioned that here in this case non-compliance with the provisions of the Representation of People Act, 1951 and the Election Rules of 1961 was by the officers, who were in- charge of the conduct of the election and not by the elected candidate. It is true that if clause (iv) is read in isolation, then one may be

tempted to come to the conclusion that any non-compliance with the provisions of the Constitution or of the Act of 1951 or any Rules of 1961 Rules or orders made under the Act would render the election of the returned candidate void, but one cannot forget the important fact that clause (d) begins with a rider, namely, that the result of the election, insofar as it concerns a returned candidate, must have been materially affected. This means that if it is not proved to the satisfaction of the Court that the result of the election insofar as it concerns a returned candidate has been materially affected, the election of the returned candidate would not be liable to be declared void notwithstanding non-compliance with the provisions of the Constitution or of the Act or of any Rules of 1961 Rules or orders made thereunder.

It is well to remember that this Court has laid down in several reported decisions that the election of a returned candidate should not normally be set aside unless there are cogent and convincing reasons. The success of a winning candidate at an election cannot be lightly interfered with. This is all the more so when the election of a successful candidate is sought to be set aside for no fault of his but of someone else. That is why the scheme of [Section 100](#) of the Act, especially clause (d) of sub-Section (1) thereof clearly prescribes that in spite of the availability of grounds contemplated by sub-clauses (i) to (iv) of clause (d), the election of a returned candidate shall not be voided unless and until it is proved that the result of the election insofar as it concerns a returned candidate is materially affected. The volume of opinion expressed in judicial pronouncements, preponderates in favour of the view that the burden of proving that the votes not cast would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate lies upon one who objects to the validity of the election. Therefore, the standard of proof to be adopted, while judging the question whether the result of the election insofar as it concerns a returned candidate is materially affected, would be proof beyond reasonable doubt or beyond pale

of doubt and not the test of proof as suggested by the learned counsel for the appellant.”

37. A three Judge Bench of the Hon'ble Supreme Court in *G.M. Siddeshwar versus Prasanna Kumar*, (2013) 4 Supreme Court Cases 776 while dealing with the question whether to maintain an election petition, it was imperative for an election petitioner to file an affidavit in terms of Order VI Rule 15(4) of the Code of Civil Procedure, in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1) of the 1951 held that there is no such mandate in the Representation of the People Act, 1951 and it further held that the judgment of the Hon'ble Supreme Court in *P.A. Mohammed Riyas v. M.K. Raghavan & Ors.*, (2012) 5 SCC 511 which suggests to the contrary, does not lay down correct law to this limited extent. Hon'ble Supreme Court further held that if an affidavit filed in support of the allegations of corrupt practices of a returned candidate was not in the statutory Form No. 25 prescribed by the Conduct of Election Rules, 1961, the election petition was not

liable to be summarily dismissed. As long as there was substantial compliance with the statutory form, there was no reason to summarily dismiss an election petition on this ground. However, an opportunity must be given to the election petitioner to cure the defect. Further, merely because the affidavit may be defective, it cannot be said that the petition filed is not an election petition as understood by the 1951, Act.

38. A two Judge Bench of the Hon'ble Supreme Court in Thangjam Arunkumar versus Yumkham Erabot Singh and others, (2023) 17 Supreme Court Cases 500 has held as under:-

"The only issue for consideration is whether the election petition is liable to be dismissed by allowing the Order 7 Rule 11 application for non-compliance of Section 83(1)(c) of the Act. Analysis:

9. We may at the outset state that there is absolutely no consideration of this issue by the High Court. Neither the implications of Section 83(1)(c) of the Act, nor the interpretation of its proviso were taken up for consideration by the High Court. Further, surprisingly, the High Court simply referred to the decision of this Court in Lok Prahari (supra) and rejected the submission. Lok Prahari (supra) has no bearing on the issue.

10. We would refer to the statutory provisions and the judgments on the point for answering the question of law raised by the Appellant. We will first refer to Sections 83 and 86 of the Act and [Order 6 Rule 15 of the CPC](#).

“83. Contents of petition — (1) An election petition—

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

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

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

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

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

86. Trial of election petitions — (1) The High Court shall dismiss an election petition which does not comply with the provisions of [Section 81](#) or [Section 82](#) or [Section 117](#).

Order 6 Rule 15: Verification of pleadings — (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the

satisfaction of the court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”

11. The first decision on this issue is by a Constitution Bench in [T.M. Jacob v. C. Poulouse](#)¹². In the said case, the returned candidate was defending an election petition filed against him on the ground of non-compliance with the requirements under Section 81(3) of the Act. This Court, after going through the difference in the legislative intent of Sections 81 and 83 of the Act, observed that non-compliance with the requirements of the former provides for an automatic dismissal of an election petition under Section 86 of the Act, and non-compliance with the latter is a curable defect and would not merit dismissal at the threshold. In this light, this Court observed that:

“38. ... 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, (1964) 3 SCR 573 and Ch. Subbarao, (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](#).”

12. In *Siddeshwar* (supra), the matter came up before a three-judge bench of this Court by way of a reference. When the matter was placed before a two-judge bench, it was contended, relying upon *P.A. Mohammed Riyas v. M.K. Raghavan*¹³, that an election petitioner has to file the Form-25 affidavit in support of the corrupt practice allegation, in addition to the usual verifying affidavit which forms an integral part of the election petition. On the other hand, the two-judge bench was also apprised of judgments to the contrary which held that not filing of the affidavit is a curable defect. In order to give quietus to the issue, the matter was referred to a bench of three judges. After relying on various precedents, the three Judge Bench in *Siddeshwar* observed as under:

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

2. Another question that has arisen is that if an affidavit filed in support of the allegations of corrupt practices of a returned candidate is not in the statutory Form 25 prescribed by the Conduct of Elections Rules, 1961, whether the election petition

is liable to be summarily dismissed. In our opinion, as long as there is substantial compliance with the statutory form, there is no reason to summarily dismiss an election petition on this ground.

However, an opportunity must be given to the election petitioner to cure the defect. Further, merely because the affidavit may be defective, it cannot be said that the petition filed is not an election petition as understood by the [Representation of the People Act, 1951](#).

22. A plain reading of Rule 15 suggests that a verification of the plaint is necessary. In addition to the verification, the person verifying the plaint is “also” required to file an affidavit in support of the pleadings. Does this mean, as suggested by the learned counsel for Siddeshwar that Prasanna Kumar was obliged to file two affidavits—one in support of the allegations of corrupt practices and the other in support of the pleadings?

23. A reading of [Section 83\(1\)\(c\)](#) of the Act makes it clear that what is required of an election petitioner is only that the verification should be carried out in the manner prescribed in [CPC](#). That Order 6 Rule 15 requires an affidavit “also” to be filed does not mean that the verification of a plaint is incomplete if an affidavit is not filed. The affidavit, in this context, is a stand-alone document.

25. It seems to us that a plain and simple reading of [Section 83\(1\)\(c\)](#) of the Act clearly indicates that the requirement of an additional affidavit is not to be found therein. While the requirement of “also” filing an affidavit in support of the pleadings filed under [CPC](#) may be mandatory in terms of Order 6 Rule 15(4) [CPC](#), the affidavit is not a part of the verification of the pleadings—both are quite different. While the Act does require a verification of the pleadings, the plain language of [Section 83\(1\)\(c\)](#) of the Act does not require an affidavit in support of the pleadings in an election petition. We

are being asked to read a requirement that does not exist in [Section 83\(1\)\(c\)](#) of the Act.

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

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

“28. ... The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so.” We have no reason to take a different view. The contention urged by Siddeshwar is rejected.” (emphasis supplied)

13. More recently, in [A. Manju v. Prajwal Revanna](#) (supra), this Court dealt with the same question as to whether an election petition containing an allegation of corrupt practice but not supported by an affidavit in Form 25, is liable to be dismissed at the threshold. This Court had observed:

“26. However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the

dismissal of the election petition. We say so because, in our view, the observations made in *Ponnala Lakshmaiah v. Kommuri Pratap Reddy*, (2012) 7 SCC 788 which have received the imprimatur of the three-Judge Bench in *G.M. Siddeshwar v. Prasanna Kumar*, (2013) 4 SCC 776, appear not to have been appreciated in the correct perspective. In fact, *G.M. Siddeshwar v. Prasanna Kumar*, (2013) 4 SCC 776, has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge i.e. *Ponnala Lakshmaiah v. Kommuri Pratap Reddy*, (2012) 7 SCC 788 as well as *G.M. Siddeshwar v. Prasanna Kumar*, (2013) 4 SCC 776, ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form.” (emphasis supplied)

14. The position of law that emerges for the above referred cases is clear. The requirement to file an affidavit under the proviso to [Section 83\(1\)\(c\)](#) is not mandatory. It is sufficient if there is substantial compliance. As the defect is curable, an opportunity may be granted to file the necessary affidavit.

15. In the instant case, the election petition contained on affidavit and also a verification. In this very affidavit, the election petitioner has sworn on oath that the paragraphs where he has raised

allegations of corrupt practice are true to the best of his knowledge. Though there is no separate and an independent affidavit with respect to the allegations of corrupt practice, there is substantial compliance of the requirements under [Section 83\(1\)\(c\)](#) of the Act.

16. We are in agreement with the conclusion of the High Court that there is substantial compliance of the requirements under [Section 83\(1\)\(c\)](#) of the Act and this finding satisfies the test laid down by this Court in [Siddeshwar](#) (supra). Even the subsequent decision of this Court in [Revanna](#) (supra) supports the final conclusion arrived at by the High Court.

17. For the reasons stated above, we are of the opinion that the Appellant has not made out a case for interfering with the judgment of the High Court. We, therefore, proceed to dismiss C.A. Nos. 4179-

4180 of 2023 arising out of the judgment and order of the High Court dated 11.04.2023 in MC (El. Pet.) No. 67 of 2022 and MC (El. Pet.) No. 135 of 2022.

18. Parties shall bear their own costs.”

39. Therefore, it is apparent from the judgments of the Hon'ble Supreme Court in terms of the law as it stands today is that in case an election petition in which corrupt practice is alleged, is filed without the petition being accompanied by an affidavit in terms of Rule 94-A of the 1961 Rule in Form 25, then, this being a curable defect, an opportunity has to be granted to the petitioner to cure this defect.

40. In the context of the respective contention of the learned counsel for the parties herein and having perused the provisions of Section 83(1) of the Act as well as Rule 94 of the 1961 Rule and form 25, this Court has no hesitation in holding that the affidavit that has been filed in support of the present petition, in which petition corrupt practices have been alleged is not an affidavit which is in conformity with the provisions of Section 83(1) of the Act and Rule 94-A of the 1961 Rules and in Form 25. Yet, this cannot be a ground for the rejection of the election petition under Order 7 Rule 11 at this stage, as this Court would have to give an opportunity to the petitioner to remove the defect and only if thereafter the petitioner fails to remove the defect that the petition can be dismissed under Order 7 Rule 11.

41. Now, coming to the other aspect of the matter that the petition does not meet the requirements of Section 123(1)(A), the language of the statutory provision demonstrates that the bribery as defined therein is a gift, offer or promise by a candidate or his agent or by any person with the consent of the candidate or his election agent of any

gratification, to any person whomsoever, with the object, directly or indirectly of inducing the person to do the acts as are mentioned in this Section. Therefore, what is necessary is that it has to be pleaded that the corrupt practice was performed by either the candidate or his agent or by any person with the consent of the candidate or his election agent.

42. In this backdrop, if one peruses the contents of the election petition, one finds that in Para-7 thereof, wherein, the corrupt practice is alleged, it is mentioned therein that during the course of elections, respondent No.1 used and distributed liquor and money in order to influence the Electorate to cast votes in his favour. These averments in the considered view of this Court amount to an allegation of corrupt practice against respondent No.1 directly. Further, it is mentioned in this para that on 11.11.2022 the Petitioner received information that the agents of respondent No.1 were distributing liquor and money at Jamlaghat. Petitioner immediately called upon his supporters to act on this behalf, who at about 09:00 pm, intercepted a Tata Nano vehicle

bearing Registration No.HP-69-2126, wherein three persons were seated, who was suspected to be transferring and distributing liquor and money. It is further mentioned in the petition that on being intercepted, two of the occupants fled away and one Dev Raj disclosed that the liquor and money which was recovered from the vehicle was being transported and distributed by him and other supporters at the instance with the consent and positive knowledge of respondent No.1 for being distributed amongst the voters at Jamlaghat. Similar allegation is there against one Krishan Singh also, who as per the petitioner disclosed that he had been distributing liquor in the nearby areas at the instance, consent and positive knowledge of the respondent No.1.

43. Therefore, in light of the fact that it is mentioned in the petition that the acts of corrupt practice were with the consent and positive knowledge of respondent No.1 in the considered view of this Court, it cannot be said that the requirements of Section 123 or Section 83(1) have not been made out in the pleadings of the case so as to throw the petition out, at the outset. This Court is not even remotely

suggesting that there is merit in whatever has been alleged in the petition. All this this Court is observing is that because there are averments made in the petition, that the acts of corrupt practice were with the knowledge and consent of the returned candidate, therefore, it cannot be said that the basic pleadings which were required to be incorporated in the election petition were not included in the election petition.

44. In these circumstances, this Court is of the considered view that the provisions of Order VII, Rule 11 of the Civil Procedure Code, cannot come to the rescue of the applicant and the election petition cannot be rejected on this count. It will be very dangerous to throw out the petition under Order VII, Rule 11 at this stage and it would be in the interest of justice to let the parties contest the election petition on merit.

45. The other contentions raised in the application for the rejection of Order VII, Rule 11 of the Civil Procedure Code, in the considered view of this Court should be best left open for the parties to contest on merit. Learned Senior Counsel for the applicant had emphatically argued that the

allegations with regard to the non-adherence of statutory provisions by the Officers and Officials concerned were not supplemented with the pleadings and that all this was at the behest of returned candidate. It was also contended on behalf of the learned Senior Counsel that there are no averments in the petition stating that whatever has been alleged in the election petition has materially affected the outcome of the election petition. All this can always be raised by the applicant by way of defence and these facts can be taken care of by the Court at a later stage during the course of trial.

46. Accordingly, this petition is partly allowed. As this Court has found the affidavit filed by the petitioner in support of the petition to be deficient and not in terms of Section 83(1) of the 1951 Act read with Rule 94A of the 1961 Rule and Form-25A thereof, an opportunity is given to the election petitioner to file a fresh affidavit to rectify the said deficiency on or before 15.10.2025. If needful is not done by the petitioner on or before 15.10.2025, then, the Election Petition shall be deemed to be dismissed under Order VII, Rule 11 of

the Civil Procedure Code on this count. However, on other counts, the Court does not find any merit in the present application. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

September 26, 2025
(*Vinod*)

High Court of MP