



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

**ELECTION PETITION NO. 2 OF 2021**

Sangram Sampatrao Deshmukh .. Petitioner  
**Versus**  
The Election Commissioner of India and Ors. .. Respondents

**WITH  
APPLICATION IN ELECTION PETITION (L) NO. 1145 OF 2022  
IN  
ELECTION PETITION NO. 2 OF 2021**

Arun Ganpati Lad .. Applicant  
**IN THE MATTER BETWEEN:**  
Sangram Sampatrao Deshmukh .. Petitioner  
**Versus**  
The Election Commissioner of India and Ors. .. Respondents

**WITH  
APPLICATION IN ELECTION PETITION (L) NO. 22668 OF 2021  
IN  
ELECTION PETITION NO. 2 OF 2021**

The Election Commissioner of India and Ors. .. Applicants  
**IN THE MATTER BETWEEN:**  
Sangram Sampatrao Deshmukh .. Petitioner  
**Versus**  
The Election Commissioner of India and Ors. .. Respondents

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- Mr. Pralhad Paranjape a/w. Mr. Manish Kelkar, Mr. Yash Tembe & Mr. Pratik Irpatgir for Petitioners
- Mr. P.G. Lad a/w Ms. Aparna Kalanthil & Mr. Kunal Boghani for Respondent No.4
- Mr. Shubham Dhenge i/by Mr. Chetan Patil for Respondent No. 67

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 02, 2025

**JUDGMENT:**

1. Election Petition No.2 of 2021 is filed by Mr. Sangram Sampatrao Deshmukh on 18.01.2021 for the following reliefs :-

*"A. This Hon'ble Court may after perusing the Election Petition and all the documents in the Petition and after considering the case be pleased to declare the Election of the Respondent No.4 to the Pune Division Graduates' constituency held on 1/12/2020 and the declaration of the result on 4/12/2020 as void in accordance with the grounds as set out under Section 100(1)(d) (iv) and Section 100(1)(d)iii) of the RP Act 1951 and this Election Petition may kindly be allowed;*

***In the alternative to and without prejudice to prayer clause (A)***

*B. This Hon'ble Court may after perusing the Election Petition and all the documents in the Petition and after considering the case be pleased to declare the Election of the Respondent No.4 to the Pune Division Graduates' constituency held on 1/12/2020 and the declaration of the result on 4/12/2020 as void in accordance with the grounds as set out under Section 100(1)(d) (iv) and Section 100(1)(d)(iii) of the RP Act 1951 and this Election Petition may kindly be allowed and the Petitioner be declared as duly elected for the Pune Division Graduates' constituency in accordance with Section 84 of the RP Act 1951."*

2. Application (L) No.1145 of 2022 is filed by Mr. Arun Ganpati Lad - Respondent No.4 for dismissal of Election Petition under Section 86 of the Representation of the People Act, 1950 (for short "**the said Act**") read with Order VII Rule 11 of the Civil Procedure Code, 1908, (for short "**CPC**"). Respondent No.4 is the returned candidate / elected candidate in the elections under challenge.

3. Application (L) No.22668 of 2021 is filed by Respondent Nos. 1, 2 and 3 i.e. Election Commission for the following reliefs :-

*"a) That this Hon'ble Court be pleased to declare that the Election Commission of India (Respondent No. 1/Applicant No. 1), The Chief Electoral Officer (Respondent No. 2/Applicant No. 2) and The Divisional Commissioner and Electoral Registration Officer and The Returning Officer (Respondent No. 3)/Applicant No. 3) herein, cannot be made parties to the Election Petition.*

*b) That this Hon'ble Court be pleased to delete the names of the Election Commission of India (Respondent No. 1/Applicant No. 1), The Chief Electoral Officer (Respondent No. 2/Applicant No. 2) and The Divisional Commissioner and Electoral Registration Officer and The Returning Officer (Respondent No. 3)/Applicant No. 3) from the Election Petition No. 2 of 2021."*

3.1. In effect, Respondent Nos.1, 2 and 3 seek deletion of their names from the Election Petition filed by Petitioner. When the present Election Petition and aforesaid Applications are heard, none is present for Respondent Nos. 1, 2 and 3 in the Petition. The grounds on which the aforementioned Application is filed by Respondent No. 1, 2 and 3 are contained in Para Nos. 4 to 8 of the Application. It is contended therein that due to the decisions of the Supreme Court in the case of (i) *Jyoti Basu & Ors. Vs. Debi Ghosal & Ors.*<sup>1</sup>; (ii) *B. Sundara Rami Reddy Vs. Election Commission & Ors.*<sup>2</sup> and (iii) *Michael B. Fernandes Vs. C. K. Jaffar Sharif & Ors.*<sup>3</sup>, it is settled position of law that in view of the provisions of Sections 82 read with 86 (4) of the said Act, the

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1 1982 (1) SCC 691

2 1991 Suppl (2) SCC 624

3 AIR 2002 SC 1041

Election Commission of India and its Officers cannot be impleaded as Respondents to the Election Petition. Hence Respondent Nos.1, 2 and 3 seek deletion of their names from the Election Petition. At the outset this Application of Respondent Nos. 1, 2 and 3 is decided before proceeding with the Election Petition.

**3.2.** It is seen that Respondent Nos. 1, 2 and 3 are Statutory Officers appointed under the said Act, acting under superintendence and control of the Election Commission of India. Section 82 of the said Act reads thus:-

***82. Parties to the Petition.*** - *A Petitioner shall join as respondents to his Petition -*

*(a) where the Petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further declaration is claimed, all the returned candidates; and*

*(b) any other candidate against whom allegations of any corrupt practice are made in the petition."*

**3.3.** From the above it is seen that Section 82 of the said Act clearly defines the parties who can be joined as Respondents to an Election Petition. Impleadment is restricted only to either the returned candidate / candidates or the contesting candidate or any other candidate against whom allegations of any corrupt practice are made in the Petition. Perusal of the aforementioned 3 (three) decisions of the Supreme Court relied upon by Respondent Nos. 1, 2 and 3 reveal

that Supreme Court has clearly observed that the right to elect or to be elected or a dispute regarding election is neither a fundamental right or common law right but confined to the provisions of the said Act and Rules made thereunder namely the statutory provisions. Supreme Court while referring to Sections 82 and 86 (4) of the said Act has further held that contest of the Election Petition is designed to be confined to the candidates at the election and all others stand excluded and therefore only those may be joined as Respondents to the Election Petition who are covered by the aforesaid provisions and no other.

3.4. I have perused the 3 (three) decisions. Paragraph No. 4 in the case of **Michael B. Fernandes** (3<sup>rd</sup> supra) confirms the aforementioned settled legal position. The relevant portion of paragraph No. 4 is reproduced below for reference :-

*“4. ....In the former case, Chinnappa Reddy, J., speaking for the Court, held that right to elect or to be elected or dispute regarding election are neither fundamental rights nor common law rights but are confined to the provisions of the Act and the Rules made thereunder and consequently, rights and remedies are all limited to those provided by the statutory provisions. On the question of joinder of parties, referring to Sections 82 and 86(4) of the Representation of the People Act, it was held that the contest of the election petition is designed to be confined to the candidates at the election and all others are excluded and, therefore, only those may be joined as respondents to an election petition, who are mentioned in Sections 82 and 86(4) and no others. An argument had been advanced in that case that even if somebody may not be a necessary party under Section 82 of the Act, but yet he could be added as a proper party as provided in Order 1 Rule 10 of the Code of Civil Procedure. But the Court rejected that contention on a finding that the provisions of the Civil Procedure Code apply to election disputes only as far as*

may be and subject to the provisions of the Act and any rules made thereunder and the provisions of the Code cannot be invoked to permit that which is not permissible under the Act. It was in that context the Court further observed that the concept of "proper parties" is and remains alien to an election dispute under the Act. This decision was followed in *B. Sundara Rami Reddy case [1991 Supp (2) SCC 624]* referred to supra and it was reiterated that the concept of "proper party" is and must remain alien to an election dispute under the Act and only those may be joined as respondents to an election petition, who are mentioned in Sections 82 and 86(4) of the Act and no others. The Court in this case added that however desirable and expedient it may appear to be, none else shall be joined as the respondents. Mr Venkataramani, the learned Senior Counsel appearing for the appellant, contended that the law enunciated in the two decisions and the observations made are too wide and while Section 82 casts an obligation on an election petitioner to join those mentioned in clauses (a) and (b) as party-respondent, it does not put an embargo for addition of any other person in an appropriate case, depending upon the nature of allegation made and consequently, the expression "any other" in the two decisions referred to above, must be held not to have been correctly used. Mr Venkataramani relied upon the observations made by this Court in *M.S. Gill case [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405 : (1978) 2 SCR 272]* wherein the Court had observed that the Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances and submitted that the basis of electoral democracy being a free and fair election and fairness imports an obligation to see that no wrongdoer candidate benefits from his own wrong. In case where allegations are made against the Returning Officer or the Chief Electoral Officer with regard to the conduct of the election, there should be no bar to array them as parties and according to Mr Venkataramani in *Gill case [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405 : (1978) 2 SCR 272]* the Chief Election Commissioner was a party and, therefore, this Court in *Jyoti Basu [(1982) 1 SCC 691]* as well as the subsequent case, having not noticed the aforesaid judgment of the larger Bench, the latter decision will be of no assistance. We are not in a position to accept the submission of Mr Venkataramani inasmuch as in *Gill case [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405 : (1978) 2 SCR 272]* an order of the Election Commissioner was under challenge by filing a writ petition and it was not an election petition under the provisions of the Representation of the People Act. There is no dispute with the proposition that a free and fair electoral process is the foundation of our democracy, but the question for consideration is, whether by indicating in the Act as to who shall be arrayed as party, the

*court would be justified in allowing some others as parties to an election petition. For the aforesaid proposition, Gill case [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405 : (1978) 2 SCR 272] is no authority. Mr Venkataramani then relied upon the decision of the Calcutta High Court in Dwijendra Lal Sen Gupta v. Harekrishna Konar [AIR 1963 Cal 218 : 66 CWN 917] where the question came up for consideration directly and the Calcutta High Court did observe that the Returning Officer may nevertheless in an appropriate case be a “proper party” who may be added as party to the election petition and undoubtedly, the aforesaid observation supports the contention of Mr Venkataramani. Following the aforesaid decision, a learned Single Judge of the Bombay High Court in the case of H.R. Gokhale v. Bharucha Noshir C. [AIR 1969 Bom 177 : 70 Bom LR 466] had also observed that the observations of Shah, J. In Ram Sewak Yadav case [Ram Sewak Yadav v. Hussain Kamil Kidwai, AIR 1964 SC 1249] in paragraph 6 are not intended to lay down that the Returning Officer can in no event be a proper party to an election petition. But both these aforesaid decisions of Calcutta High Court [AIR 1963 Cal 218 : 66 CWN 917] and Bombay High Court [AIR 1969 Bom 177 : 70 Bom LR 466] had been considered by this Court in Jyoti Basu case [(1982) 1 SCC 691] and the Court took the view that the public policy and legislative wisdom both seem to point to an interpretation of the provisions of the Representation of the People Act which does not permit the joining, as parties, of persons other than those mentioned in Sections 82 and 86(4). The Court also in paragraph 12 considered the consequences if persons other than those mentioned in Section 82 are permitted to be added as parties and held that the necessary consequences would be an unending, disorderly election dispute with no hope of achieving the goal contemplated by Section 86(6) of the Act. In the aforesaid premises, we reiterate the views taken by this Court in Jyoti Basu case [(1982) 1 SCC 691] and reaffirmed in the later case in B. Sundara Rami Reddy [1991 Supp (2) SCC 624] and we see no infirmity with the impugned judgment, requiring our interference under Article 136 of the Constitution. This appeal accordingly fails and is dismissed.”*

3.5. The aforementioned legal position stands undisturbed till date. In view of the above, the Application filed by Respondent Nos. 1, 2 and 3 deserves to be allowed. There is no serious opposition by Petitioner and contesting Respondent No. 4 appearing in the Election Petition before me to the Application. Hence Application (L) No.



22668 of 2021 stands allowed in terms of prayer clause 'A' and 'B'. In view of this order, Petitioner shall carry out the necessary amendment by deleting names of Respondent Nos. 1, 2 and 3 in the Election Petition within a period of 1 (one) week from today. Re-verification stands dispensed with. Registry shall permit the Petitioner's Advocate to delete the names of Respondent Nos. 1, 2 and 3. This order disposes Application (L) No. 22668 of 2021.

4. However it is seen Respondent No. 4 has filed Interim Application (L) No. 1145 of 2022, wherein he has supported the case of Respondent Nos. 1, 2 and 3 made out in Application (L) No. 22668 of 2021. One of the grounds taken by Respondent Nos. 4 in his Application is that only relevant parties be impleaded to the Election Petition as contemplated under Section 82 of the said Act and it is contended that Respondent Nos. 1 to 3 being Statutory Authorities are neither necessary or proper parties to the Election Petition. Respondent No. 4 also placed reliance on the 3 (three) decisions of Supreme Court cited hereinabove by Respondent Nos. 1, 2 and 3.

4.1. Application (L) No. 1145 of 2022 is filed by Respondent No. 4 under Order VII Rule 11 of CPC, for seeking dismissal of the Election Petition on the principal ground of non-disclosure of cause of action in the Election Petition as envisaged under Section 100 read with Section 101 of the said Act. It is contended by Respondent No. 4



that Section 86 of the said Act specifically provides for dismissal of Petition for non-compliance of provisions of Sections 81, 82 and 117 of the said Act. It is contended by Respondent No. 4 that contents of the present Election Petition do not satisfy the provisions of Sections 81, 82 and 117 of the said Act, *inter alia*, referring to and alleging that Respondent No. 4 committed corrupt practices under Sections 100 (1) (d)(iii) and 100 (1)(d)(iv) of the said Act. It is further stated that there is non-compliance of the provisions of Section 83 of the said Act by not providing adequate details with respect to the concise statement of material facts, setting full particulars of any corrupt practices and names of the parties alleged to have committed corrupt practices. It is also alleged that other statutory provisions of the said Act including the Rules framed thereunder are also not followed by the Petitioner. Petitioner in the Election Petition has filed an Affidavit-in-reply dated 04.06.2024 to the Application. Rejoinder dated 25.07.2024 is filed.

5. Accordingly Application (L) No. 1145 of 2022, filed for rejection of the Election Petition under Section 86 of the Representation of the People Act, 1950 read with Order VII Rule 11 of CPC is called out for hearing. For the State of Maharashtra the terms of three (3) Graduates' Divisions and two (2) Teachers' Divisions were getting over on 19.07.2020 and therefore in accordance with its earlier

detailed notification dated 05.09.2016, for the purpose of preparation of a fresh electoral roll, the Election Commission of India, issued notification dated 31.07.2019 to the Chief Electoral Officers of various states notifying the holding of elections for the Maharashtra Graduates' and Teachers' Constituencies in the year 2020 as the earlier members were retiring on 19.07.2020. In this notification it was stated that the electoral roll would have to be prepared afresh with reference to 01.11.2019 as the qualifying date. The Election Commission of India, fixed up a schedule under the said Act and the Electors Rules, 1960, by this notification for preparation of electoral roll as under:-

<i>Sr. No.</i>	<i>Activites</i>	<i>Period</i>
1.	<i>Issue of public notice under Rule 31(3) of the Registration of Electors Rules, 1960</i>	<i>1/10/2019</i>
2.	<i>First re-publication of notice in newspapers under Rule 31(4) of the Registration of Electors Rules, 1960</i>	<i>15/10/2019</i>
3.	<i>Second re-publication of notice in newspapers under rule 31(4) of the Registration of Electors Rules, 1960</i>	<i>25/10/2019</i>
4.	<i>Last date of receipt of applications in Form 18 or 19 as the case may be</i>	<i>6/11/2019</i>
5.	<i>Period for preparation of manuscripts and printing of draft electoral rolls</i>	<i>19/11/2019</i>
6.	<i>Draft publication of electoral rolls</i>	<i>23/11/2019</i>
7.	<i>Period for filing claims and objections</i>	<i>23/11/2019 to 9/12/2019</i>

8.	<i>Date by which the claims and objections shall be disposed of and supplements be prepared and printed</i>	26/12/2019
9.	<i>Final publication of electoral rolls</i>	30/12/2019

5.1. On 05.11.2020, program for conduct of election was announced as under:-

- i. Notification for issuance of the election was 5/11/2020,
- ii. The last date for filing of nominations was 12/11/2020,
- iii. Scrutiny of nominations was 13/11/2020,
- iv. The last date for withdrawal of candidates was 17/11/2020,
- v. The date of poll was 1/12/2020. Hours of polling was scheduled on 1/12/2020 from 8.00 am to 5.00 pm,
- vi. Counting of votes was kept on 3/12/2020 and
- vii. Date before or on which election was to be completed was kept as 7/12/2020.

5.2. Respondent No. 4 is the returned candidate having secured 1,22,145 votes as against Petitioner being Runner up candidate having secured 73,321 votes. Respondent Nos. 5 to 64 are other candidates who contested the elections. Respondent Nos. 65 to 80 are candidates who had withdrawn their candidature after acceptance of nomination, but before the date of withdrawal.

6. Petitioner's grievance in the Election Petition is that Respondent No. 3 permitted online voter registration after declaration

of the Election Program and voters who applied online thereafter were registered without verification in accordance with the laid down procedure. Petitioner has alleged that if the votes of online voters registered subsequent to declaration of Election program are held to be invalid, then in that case, Petitioner would be elected as the returned candidate in place of Respondent No. 4. This is Petitioner's main case for challenge as averred in paragraph No.4(C) of the Petition. On a conjoint reading of paragraph Nos.4(A) and 4(B) along with 4(C), what Petitioner would imply is that the losing margin of 48,824 votes is that of those voters who were registered online without verification and if registration of these voters is set aside then Petitioner would be elected as the returned candidate. This is the substantive challenge of the Petitioner in the Petition.

7. Respondent No. 4 has filed written statement dated 08.01.2022 to the Election Petition. It is appended at page No. 397. Grounds taken in the written statement primarily pertain to statutory provisions under Sections 81, 82, 83, 100 (1) (d) (iii), 100 (1) (d) (iv), 101 and 117 of the said Act. The same grounds are pleaded in the Application filed below Order VII Rule 11 of CPC by the Respondent No. 4, in order to avoid repetition the grounds have been delineated while recording submissions made by Mr. Lad, learned Advocate appearing for Respondent No.4.

7.1. Mr. Lad would submit that the Petition is liable to be dismissed on the ground of non-compliance of Section 81 of the said Act. He would submit that Section 81 of the said Act specifically provide that Election Petition can be filed on one or more grounds specified in Section 100(1) and Section 101 of the said Act. In other words, Petition for challenging election cannot be filed on any other ground than specified in Sections 100 (1) and 101 of the said Act. He would submit that contents of the Petition do not satisfy that this Respondent has committed corrupt practice as per the grounds of Sections 100 (1) (d)(iii) and 100 (1)(d) (iv) of the said Act.

7.2. He would submit that Section 83 of the said Act provides as to what should be the contents of the Election Petition. He would submit that the contents of the Petition should be a concise statement of material facts, setting full particulars of any corrupt practice including all details and names of party alleged to have committed corrupt practice. Present Petition is filed by the Petitioner on the grounds provided under Section 100(1)(d)(iii) and Section 100(1)(d) (iv) of the said Act as stated in paragraph No.3 of the Petition. He would submit that to invoke the grounds under Section 100(1)(d)(iii) of the said Act, Petitioner is required to plead material fact with full particulars of corrupt practice committed by returned candidates, which Petitioner has failed to do.

7.3. He would submit that Petition is liable to be dismissed as the same is filed beyond the period of the limitation prescribed in Section 81 of the said Act. As per Section 81 of the said Act Petitioner is required to file the Petition within 45 days from the date of election of returned candidate. Date of election is 01.12.2020 and the present Petition is filed on 18.01.2021 which is beyond the period prescribed in Section 81 of the said Act.

7.4. He would submit that the ground under Section 100(1)(d)(iii) can be invoked only if a case is made out that the votes were improperly received, improperly refused or improperly rejected or void vote have been received. He would submit that from a combined reading of Sections 83 and 100, requirements of law is that for invoking Section 100(1)(d)(iii), Petitioner is required to give details of any corrupt practices committed by Respondent No.4 with full particulars and the names of parties alleged to have committed such corrupt practice and date and place of commission of each such practice.

7.5. He would submit that grievances of the Petitioner set out in paragraph No.5(B) on page 31 is that while preparation of Electoral Roll, Respondent Nos.2 and 3 have not observed the provision of Sections 21, 22 and Rule 31 of the said Act as laid down by the

Supreme Court in case of *Election Commission Vs. Praful and Anr.*<sup>4</sup>. Respondent No.4 states that the Sections 21 and 22 of the said Act provide for preparation and revision of Electoral Roll and correction of entries in Electoral Roll and Rule 31 of Registration of Electoral Rule, 1960 provides for Electoral Roll for graduates' and teachers' constituencies. Every person who is eligible to be enrolled in the Electoral Roll for these constituencies is required to make Application in prescribed form i.e. Form No.18. Grievance of the Petitioner is that though the notification was issued by Election Commission on 31.07.2019 with election programme of preparation and publication of final Electoral Roll, the same is not followed by Respondent Nos.2 and 3 by permitting online registration beyond 30.12.2019 and thus Respondent Nos.2 and 3 have violated the statutory provisions of Section 21, 22, 23, 27 and 28 of the said Act and Rules 10 to 27 and 31 of the Registration of Electoral Rule, 1960 and due to which there are instances where the name one person appears more than once in the Electoral Roll and names of persons who are not graduates, has been included in the Electoral Roll. He would submit that failure on part of Respondent Nos.2 and 3 or irregularity in preparation of Electoral Roll cannot be a ground for challenging the Election of this Respondent. Section 81 of the said Act specifically provided that the

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4 (2016) 12 SCC 738



Election Petition can be filed only on one or more grounds specified in Sections 100(1) and 101 of the said Act.

7.6. He would submit that Sections 100(1) and 101 of the said Act do not provide the alleged irregularity in preparation of voters' list as a ground for challenge. He would submit that the Petition does not disclose any cause of action as per the provisions of Order VII Rule 11 (A) of CPC and therefore the Petition is liable to be dismissed. While making the grievances against Respondent Nos.2 and 3 permitting registration of voters after 30.12.2019 i.e. date of publication of final voters list as per programme given by Respondent No.1, Petitioner has lost sight of Section 23(3) of the said Act which says that inclusion of names in the Electoral Roll is permitted till last date for making nomination for election. He would submit that in the present case, last date of nomination was 12.11.2020.

7.7. He would submit that polling booths were not located within convenient travel distance from the voters' place. He would submit that aforesaid grievances are against Respondent Nos.2 and 3. He would submit that Petitioner has not stated any role of Respondent No.4 in preparation of Electoral Roll and or fixation of polling booth stations for voters.

7.8. He would submit that for challenging the Election on the ground of Section 100(1)(d)(iii) and 100(1)(d)(iv), Petitioner is required to plead as to how this Respondent has committed corrupt practice as per Section 100(1)(d)(iii) and 100(1)(d)(iv). He would submit that the ground of Section 100(1)(d)(iii) is corrupt practice by improper reception, refusal or rejection of any vote or reception of any void vote. Grievances in the entire Petition is that there is irregularity in preparation of Electoral Roll resulting into repetition of voter's name more than once twice and inclusion of the names of non-eligible persons in voters' list. He would submit that pleading in the Petition is only to the extent of repetition of voter's name more than once and registration of non-eligible voters. He would submit that in law, Petitioner is required to establish the improper reception or improper refusal or rejection of any vote or reception of illegal vote and that to by returned candidate, which Petitioner has failed to bring out in the Petition. Therefore, he would argue that Petitioner has not satisfied ingredients of Section 100(1)(d)(iii). He would submit that Respondent Nos.2 and 3 have not discharged their statutory obligations as result, there is irregularity in voters list and their pleadings are not sufficient to establish the requirement of any ground under Section 100(1)(d)(iii) of the said Act.

7.9. He would submit that Petitioner has not pleaded the role of Respondent No.4 in improper reception, refusal of vote, rejection or reception of void vote, hence according to him pleadings in the Petition do not satisfactorily establish the grounds provided in Section 100(1)(d)(iii) of the said Act. He would submit that Petitioner has not given any details and particulars of improper reception of votes or improper refusal or rejection of votes or reception of void votes. He would submit that Petitioner has not personally verified the correctness of voters list and the instances according to him of the same name appearing more than once with their different qualifications and having same mobile number. Therefore, he would argue that pleadings in the Petition are vague, without verification of its correctness by Petitioner. He would state that Petition does not disclose as to how this Respondent is involved in the aforesaid alleged corrupt practices and hence failure of Respondent Nos.2 and 3 to discharge statutory obligations cannot be a ground for declaration of the election as void.

7.10. He would submit that as per Section 100(1)(d)(iv) of the said Act, election of returning candidate cannot be declared void for non-compliance of the provisions of Constitution of India or the said Act or Rules. He would submit that as per Rule 4(A) of the Conduct of Election Rule, 1961, candidate is required to file an Affidavit at the

time of submitting nomination paper. He would submit that Respondent No.4 filed his statutory Affidavit at the time of submission of his nomination form / papers and complied with Rule 4(A). He would submit that as per Section 33(A) of the said Act, every candidate is required to give true and correct information in Affidavit submitted as per Rule 4(A) of the Conduct of Election Rule, 1961. He would submit that Respondent No.4 has submitted true and correct information and complied with the provision of Section 33(A) of the said Act, therefore, there is compliance with the provisions of Conduct of Election Rule, 1961; the said Act and Rules or Orders made under the said Act. Hence, according to him, averments in the Petition fail to make out any case that Respondent No.4 has not complied with the provisions of the Constitution of India, the said Act, Rules or orders passed under the said Act.

7.11. He would submit that contention of the Petitioner that Affidavit filed by Respondent No.4 is false, misleading and there is suppression of details of his income is also incorrect. He would submit that Section 125(A) of the said Act provide penalty for filing false Affidavit to the extent of imprisonment of a prison term which may be extended to 6 months or fine. He would submit that for invoking provisions of Section 125(A), Petitioner has to initiate separate proceedings and establish that Respondent No.4 has filed false

Affidavit or concealed any information in his Affidavit filed as per Rule 4(A) read with Section 31(A) of the said Act. Therefore, he would argue that allegations of Petitioner in the Petition are not sufficient to establish conviction under Section 125(A) of the said Act which can be ground of corrupt practice. He would submit that Petitioner has not given any details as to how the statutory Affidavit of Respondent No.4 is false, misleading and how Respondent No.4 has suppressed the income. Therefore, Petitioner has failed to establish ground under Section 100(1)(d)(iv) of the said Act. Hence, he would submit that there is no cause of action to file the present Petition and the Petition is liable to be dismissed as per the provisions of Order VII, Rule 11 (A) of CPC for want of cause of action.

7.12. He would submit that the *sine qua non* for maintenance of Election Petition and to take the same to trial is demonstration through pleading as to how the allegations, if taken to be true, would materially affect the election of the returned candidate. He would submit that if there are no pleadings demonstrating that the result of the election is materially affected, the Court must reject the Election Petition by exercising jurisdiction under Order VII Rule 11 of CPC. In support of this contention, he would rely upon judgments of the Supreme Court in the case of *Mangani Lal Mandal Vs. Bishnu Deo*

*Bhandari*<sup>5</sup> , *Shambhu Prasad Sharma Vs. Charandas Mahant and others*<sup>6</sup> and *Mairembam Prithviraj alias Prithviraj Singh Vs. Pukhrem Sharatchandra Singh*<sup>7</sup>

7.13. He would rely upon judgment of the Supreme Court in *Kanimozhi Karunanidhi Vs. A. Santhana Kumar and others*<sup>8</sup> to demonstrate the principles summarized for maintenance of a valid Election Petition and also in support of his contention that omission of a single material fact leads to incomplete cause of action and the Election Petition in such case must be dismissed under Order VII Rule 11 of the Code. That the said principles have been reiterated by the Supreme Court in the case of *Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and others*<sup>9</sup>. He would also rely upon judgment of the Supreme Court in *Karikho Kri Vs. Nuney Tayang and another*<sup>10</sup> in support of his contention that a small irregularity does not affect election of democratically elected candidate in absence of pleadings that any irregularities has materially affected election of the Returned Candidate. He would also rely upon judgment of this Court in the case of *Mahendra Tulshiram Bhingardive Versus. Anil Yeshwant Desai*

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5 (2012) 3 SCC 314

6 (2012) 11 SCC 390

7 (2017) 2 SCC 487

8 2023 SCC OnLine SC 573

9 2024 SCC OnLine SC 509

10 2024 SCC OnLine SC 519

*and others*<sup>11</sup>. Mr. Lad would accordingly pray for rejection of the Election Petition under provisions of Order VII Rule 11 of CPC.

8. Application under Order VII Rule 11 of CPC, is vehemently opposed by Mr. Paranjape, learned Advocate appearing for the Petitioner.

8.1. He would submit that result of the election held on 01.12.2020 is affected by non-compliance of provisions of the Constitution of India, the said Act and the Rules or orders framed under the said Act namely violation of Section 100(1)(d)(iv) of the said Act. He would contend that Article 171(3)(b) of the Constitution of India provides that 1/12th members of Legislative Council shall be elected by electorates consisting of persons residing in the State who have been residing in the State for at least three years, and they ought to be graduates from any University in the territory of India. He would submit that voter registration / preparation of electoral roll as permitted by Respondent Nos. 2 and 3 in the Pune Division Graduates' Constituency was allowed without any guidelines issued by Respondent No. 1 in the absence of any statutory authority. He would submit that in the present case there is non - compliance of the provisions of Sections 21, 22 and 27 of the said Act and contravention of Rules 10, 11, 12 - 20 and 31 of the Electoral Rules, 1960.

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<sup>11</sup> Application (L) No. 29382 of 2024 in Election Petition No.1 of 2024 decided on 15.10.2024.



**8.2.** On issue relating to violation of timeline without issuing any appropriate notification, he would submit that Respondent No.1 issued notification on 31.07.2019 notifying the qualifying date as 01.11.2019 and timeline was set out after issuance of public notice on 01.10.2019 till the final publication of electoral roll on 30.12.2019. He would submit that subsequent to issuance of notification, Respondent No. 2 published election schedule on 01.08.2019. He would submit that in accordance with the schedule issued by Respondent No. 1 for preparation of fresh voter roll by placing reliance on notification dated 31.07.2019 and direction dated 01.08.2019, Respondent No. 3 issued directions to the District Collectors and District Assistant Electoral Registration Officers on 11.10.2019 intimating the program for preparation of electoral rolls as directed by Respondent No. 1 and Respondent No. 2.

**8.3.** On issue relating to online voter registration beyond the last date without verifying whether persons registered were graduates and also had been residing for 3 years prior to the qualifying date. He would submit that no information regarding such online registration of voters was provided for rectification. He would submit that on 25.11.2019 a letter was addressed by Respondent No. 3 to Respondent No. 2 informing that one person had particularly demanded online registration and a reply dated 26.11.2019 was sent stating that online

voter registration will soon be made available. He would submit that no guideline / update / notification regarding permitting online voter registration was published and voters were registered online until 12.11.2020 despite the last date for publication of electoral roll being 30.12.2019, thus violating the provisions of Sections 21, 22, 23, 27 and 28 of the said Act readwith Rules 31, 10 to 27 of the Electoral Rules, 1960. He would submit that no record of a fresh schedule by Respondent No. 1 after 30.12.2019 is available permitting online voter registration. He would submit that no opportunity to raise objection was granted to Petitioner despite he addressing representations dated 11.01.2021 and 12.01.2021 seeking circulars / notifications / guidelines for permissibility of online voter registration.

**8.4.** On issue relating to voters names appearing more than once and also names of non-graduates appearing in the electoral roll. He would submit that according to Section 18 of the said Act, a person cannot be registered more than once in any constituency. He would submit that on perusal of the final online electoral roll published on 12.11.2020, a total of 11,319 names appeared more than once. He would submit that as per official data, the list provided by the State Election Commission to the political parties showed names of more than 2300 persons who were non-graduates despite which their names had been included in the final list by Respondent No.2 without due

verification and this fact has materially affected the final election result.

8.5. He would submit that the average timeline for voting on the election day was a clear case of foul and average time for casting one vote by following the procedure is about 3-5 minutes but an unusual time of 1 minute was consumed as 700 - 800 votes were casted within one hour and the said excess voting benefited Respondent No. 4 as he secured the majority votes since he was the authorized candidate for 3 parties thus resulting in improper voting and thereby materially affecting the election result.

8.6. On the issue of suppression of vital information by the elected candidate, he would submit that according to Rule 4A of the Conduct of Election Rules, 1961, form of Affidavit is to be filled in accordance with Form No. 26 which mandates disclosure of total income of the candidate for the last 5 (five) financial years. Under Section 33A of the said Act correct information is required to be provided, however on perusal of Respondent No.4's Affidavit it is seen that he has provided false and misleading information of his income by stating non-applicability of Income Tax for previous 4 (four) financial years.

8.7. He would submit that the aforesaid issues raised by the Petitioner, there is a violation of statutory provisions in the conduct of the Election program and the Respondent No. 4 is guilty of not disclosing the relevant information in his Affidavit of disclosure and such lack of transparency and non-disclosure has materially affected the result of the election.

8.8. In support of his above submissions, he has referred to and relied upon the following decisions of Supreme Court.

*(i) Ganesh Ramchandra Naik Vs. Sitaram Bhoir and Others<sup>12</sup>;*

*(ii) Manda Jaganath Vs. K.S. Rathnam and Others<sup>13</sup>; and*

*(iii) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others<sup>14</sup>*

8.9. Mr. Paranjape, would submit that the Election Petition is not liable to be dismissed in *limine* under Section 86 of the said Act for alleged non-compliance of Section 83 (1) or Section 83 (2) of the said Act. He would submit that the Petitioner must be permitted to prove the allegations/ contentions made out in the Election Petition by leading appropriate evidence in a trial. Hence he would pray for the Application under Order VII Rule 11 of CPC to be dismissed.

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12 2000 SCC Online Bom 157

13 (2004) 7 SCC 492

14 (1978) 1 SCC 405

8.10. Triable contentions of the parties are considered and submissions made by the learned Advocates for both the parties have received due consideration of this Court.

9. Petitioner has challenged the election of Respondent No. 4 under Section 100 (1) (d) (iii) and Section 100 (1) (d) (iv) of the said Act and has sought his own election in the Maharashtra Graduates' and Teachers' Constituencies.

9.1. Section 100 of the said Act provides for grounds for declaring election to be void and provides thus:-

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

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

*(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or*

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

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

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

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

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

*(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or*

*(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,*

*the High Court shall declare the election of the returned candidate to be void.*

*(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.”*

**9.2.** For invoking the grounds enumerated under Section 100(1)(d)(iii) of the said Act it is necessary for the Election Petitioner to plead in the Petition that the result of the election of Returned Candidate has been materially affected by improper reception, refusal or rejection of any vote or the reception of any vote which is void. Similarly for invoking the ground under Section 100(1)(d)(iv) of the said Act, it is incumbent for the Election Petitioner to plead in his Election Petition that the result of election of the Returned Candidate has been materially affected by non-compliance with the provisions of the Constitution or the provisions of said Act or of any Rules or orders made thereunder.

**9.3.** Section 83 of the said Act deals with contents of Election Petition and provides thus:-

“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.”

9.4. Thus, it is mandatory under provisions of Section 83(1) (a) of the said Act that an Election Petition must contain a concise statement of all material facts on which the Petitioner relies. When provisions of Section 83(1)(a) of the said Act are read in conjunction with provisions of Section 100(1)(d)(iii) and (iv) of the said Act, what emerges is that the Election Petition must contain a concise statement of material facts to demonstrate the ground of improper reception, refusal or rejection of any vote or reception of any vote which is void or a concise statement of material fact to demonstrate non-compliance with provisions of the Constitution or of the Act or Rules or orders made thereunder.



9.5. The necessary corollary of conjunctive reading of provisions of Section 83(1)(a) and Section 100(1)(d) (iii) and (iv) of the said Act is that an Election Petition which does not disclose pleading of material facts demonstrating grounds under sub-clauses (iii) or (iv) of the clause (d) of sub-section (1) of Section 100 of the said Act will have to be rejected by invoking powers under Order VII Rule 11 of the Code.

10. In the recent decision of this Court passed in the case of ***Ravindra Dattaram Waikar Vs. Amol Gajanan Kirtikar and Ors.***<sup>15</sup> (Coram : Mr. Sandeep V. Marne, J.) has reiterated the settled position of law under the said Act dealing with the necessity of pleading of material facts for maintainability of the Election Petition in paragraph Nos. 26 to 33 which refer to the well settled authoritative pronouncements of the Supreme Court in this scenario. Paragraph Nos. 26 to 33 are reproduced hereinbelow for immediate reference:-

*" 26) Before proceeding ahead with the examination as to whether the Election Petition filed by the Petitioner discloses concise statement of material facts demonstrating grounds under Section 100(1)(d)(iii) and (iv) of the RP Act, it would be necessary to take stock of few judgments dealing with the necessity for pleading of material facts for maintenance of an Election Petition. By now it is well settled position of law that Election Petition is a statutory remedy and not an action in equity or a remedy in common law. It is also equally well settled position that said Act is a complete and self-contained Code. Therefore, strict compliance with the provisions of the said Act is mandatory requirement for exercising the statutory remedy under the RP Act. Reference in this regard*

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<sup>15</sup> Application (L) No. 29930 of 2024 with Application (L) No. 29880 of 2024 in Election Petition No.6 of 2024 decided on 19.12.2024.

can be made to the judgment of the Apex Court in **Jyoti Basu** (supra) wherein the Apex Court has held in paragraph 8 as under:-

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say?”

"27) In **Dharmin Bai Kashyap Vs. Babli Sahu and others**<sup>16</sup>, the Apex Court has reiterated the position that where a right or a liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by the statute must be availed

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16 (2023) 10 SCC 461

*of in accordance with the statute and that if a statute provides for doing a thing in a particular manner it has to be done in that matter alone and in no other manner. The Supreme Court has held in paragraph 17 as under:-*

*“17. There is hardly any need to reiterate the trite position of law that when it comes to the interpretation of statutory provisions relating to election law, jurisprudence on the subject mandates strict construction of the provisions [Laxmi Singh v. Rekha Singh, (2020) 6 SCC 812]. Election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which has to be strictly construed. The petitioner having failed to make any application in writing for re-counting of votes as required under Section 80 of the Nirvachan Niyam, 1995, and having failed to seek relief of declarations as required under Rule 6 of the 1995 Rules, the election petition filed by the petitioner before the Sub-Divisional Officer (R) seeking relief of re-counting of votes alone was not maintainable.”*

*"28) Having held that strict compliance with provisions of RP Act is mandatory requirement for exercise of statutory remedy, it would be appropriate to discuss the relevant case law on the subject dealing with the nature of pleadings that are required for maintainability of a valid Election Petition. In **Mangani Lal Mandal** (5<sup>th</sup> supra), the Apex Court held that the sine qua non for declaring an election of returned candidate to be void under Section 100(1)(d)(iv) of the RP Act is further proof of the fact that such breach or non-observance results in materially affecting the result of returned candidate. It is further held that mere violation or breach or non-observance of the provisions of Constitution, the Act, Rules or orders made thereunder would not ipso facto render the election of returned candidate void. The Supreme Court held in paragraphs 10, 11 and 12 as under:-*

*“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 election of a returned candidate. In other words, the violation or breach or non-observance 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.”

**"29)** In *Shambhu Prasad Sharma* (supra) the Apex Court dealt with an Appeal arising out of order passed by the High Court dismissing the Election Petition on the ground that the same did not make concise statement of material facts and did not disclose of cause of action. Upholding the rejection of Petition under provisions of Order VII Rule 11 of the CPC, the Apex Court held in paragraphs 15, 18 and 20 as under:-

“15. Suffice it to say that the case pleaded by the appellant was not one of complete failure of the requirement of filing an affidavit in terms of the judgment of this Court and the instructions given by the Election Commission but a case where even according to the appellant the affidavits were not in the required format. What is significant is that the election petition did not make any averment leave alone disclose material facts in that regard suggesting that there were indeed any outstanding dues payable to any financial institution or the Government by the returned candidate or any other candidate whose nomination papers were accepted. The objection raised by the appellant was thus in the nature of an objection to form rather than substance of the affidavit, especially because it was not disputed that the affidavits filed by the candidates showed the outstandings to be nil.

16. to 17.                    xxxxx

18. From the above it is evident that the form of the nomination papers is not considered sacrosanct. What is to be seen is whether there is a substantial compliance with the requirement as to form. Every departure from the prescribed format cannot, therefore, be made a ground for rejection of the nomination paper.

19.                            xxxxx

20. Coming to the allegation that other candidates had also not submitted affidavits in proper format, rendering the acceptance of their nomination papers improper, we need to point out that the appellant was required to not only allege material facts relevant to such improper acceptance, but further assert that the election of the returned candidate had been materially affected by such acceptance. There is no such assertion in the election petition. Mere improper acceptance assuming that any such improper acceptance was supported by assertion of material facts by the appellant-petitioner, would not disclose a cause of action to call for trial of the election petition on merit unless the same is alleged to have materially affected the result of the returned candidate.”

**"30) In *Mairembam Prithviraj alias Prithviraj Singh* (supra), the Apex Court has relied upon its judgment in *Durai Muthuswami Versus. N Nachiappan*<sup>17</sup>, and held in paragraphs 22 and 23 as under:-**

“22. The facts, in brief, of *Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45]* are that the petitioner in the election petition contested in the election to the Tamil Nadu Legislative Assembly from Sankarapuram constituency. He challenged the election of

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17 (1973) 2 SCC 45

*the first respondent on the grounds of improper acceptance of nomination of the returned candidate, rejection of 101 postal ballot papers, ineligible persons permitted to vote, voting in the name of dead persons and double voting. The High Court dismissed the election petition by holding that the petitioner failed to allege and prove that the result of the election was materially affected by the improper acceptance of the nomination of the first respondent as required by Section 100(1)(d) of the Act. The civil appeal filed by the petitioner therein was allowed by this Court in *Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45]* in which it was held as follows : (SCC pp. 48-49, para 3).*

*“3. Before dealing with the question whether the learned Judge was right in holding that he could not go into the question whether the 1<sup>st</sup> respondent's nomination has been improperly accepted because there was no allegation in the election petition that the election had been materially affected as a result of such improper acceptance, we may look into the relevant provisions of law. Under Section 81 of the Representation of the People Act, 1951 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. It is not necessary to refer to the rest of the section. Under Section 83(1)(a), insofar as it is necessary for the purpose of this case, an election petition shall contain a concise statement of the material facts on which the petitioner relies. Under Section 100(1) 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...*

*(b)-(c) \*\*\**

*(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)-(iii) \*\*\**

*the High Court shall declare the election of the returned candidate to be void. Therefore, what Section 100 requires is that the High Court before it declares the election of a returned candidate is void should be of opinion that the result of the election insofar as it concerns a returned candidate has been materially affected by the improper acceptance of any nomination. Under Section 83 all that was necessary was a concise statement of the material*



*facts on which the petitioner relies. That the appellant in this case has done. He has also stated that the election is void because of the improper acceptance of the 1st respondent's nomination and the facts given showed that the 1st respondent was suffering from a disqualification which will fall under Section 9-A. That was why it was called improper acceptance. We do not consider that in the circumstances of this case it was necessary for the petitioner to have also further alleged that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of the 1st respondent's nomination. That is the obvious conclusion to be drawn from the circumstances of this case. There was only one seat to be filled and there were only two contesting candidates. If the allegation that the 1st respondent's nomination has been improperly accepted is accepted the conclusion that would follow is that the appellant would have been elected as he was the only candidate validly nominated. There can be, therefore, no dispute that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination because but for such improper acceptance he would not have been able to stand for the election or be declared to be elected. The petitioner had also alleged that the election was void because of the improper acceptance of the 1st respondent's nomination. In the case of election to a single-member constituency if there are more than two candidates and the nomination of one of the defeated candidates had been improperly accepted the question might arise as to whether the result of the election of the returned candidate had been materially affected by such improper reception. In such a case the question would arise as to what would have happened to the votes which had been cast in favour of the defeated candidate whose nomination had been improperly accepted if it had not been accepted. In that case it would be necessary for the person challenging the election not merely to allege but also to prove that the result of the election had been materially affected by the improper acceptance of the nomination of the other defeated candidate. Unless he succeeds in proving that if the votes cast in favour of the candidate whose nomination had been improperly accepted would have gone in the petitioner's favour and he would have got a majority he cannot succeed in his election petition. Section 100(1)(d)(i) deals with such a contingency. It is not intended to provide a convenient technical plea in a case like this where there can be no dispute at all about the election being materially affected by the acceptance of the improper nomination. "Materially affected" is not a formula that has got to be specified but it is an essential requirement that is contemplated in this section. Law does*



*not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a ground. The petitioner had stated the ground on which the 1st respondent's election should be declared to be void. He had also given the material facts as required under Section 83(1)(a). We are, therefore, of opinion that the learned Judge erred in holding that it was not competent for him to go into the question whether the 1st respondent's nomination had been improperly accepted."*

*23. It is clear from the above judgment in Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the respondent to prove that result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected."*

*"31) The conspectus of the above discussion is that for maintaining an Election Petition and for taking it to the stage of trial, it is necessary that there is strict compliance with the provisions of Section 83(1)(a) of the RP Act. The concise statement of material facts must constitute a complete cause of action. Failure on the part of the Election Petitioner to raise necessary pleadings to make out a case of existence of ground under Section 100(1)(d)(iii) or (iv) of the RP Act would necessarily result in dismissal of Election Petition by invoking powers under Order VII Rule 11 of the Code. The Apex Court*

has summed up the legal position in this regard after taking stock of various judgments rendered in the past in **Kanimozhi Karunanidhi** (supra) in paragraph 28 as under:-

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

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

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

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

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

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

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

"32) The above principles are reiterated in subsequent judgment in **Karim Uddin Barbhuiya** (supra), in which it is held in paragraph Nos. 13, 14, 15, 22 and 24 as under:-

"13. It hardly needs to be reiterated that in an Election Petition, 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 said Act. As held in *Bhagwati Prasad Dixit in Dhartipakar Madan Lal 'Ghorewala' v. Rajeev Gandhi and 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 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.

14. A beneficial reference of the decision in case of *Laxmi Narayan Nayak v. Ramratan Chaturvedi* be also made, wherein this Court upon review of the earlier decisions, laid down following principles applicable to election cases involving corrupt practices:—

"5. This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being:

(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93] and *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442].

(2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh v. Surinder Singh* [(1973) 2 SCC 599 : (1974) 1 SCR 52], *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442] and *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93].

(3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide *Jumuna Prasad*

*Mukhariya v. Lachhi Ram [(1954) 2 SCC 306 : (1955) 1 SCR 608 : AIR 1954 SC 686] and Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660].*

*(4) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide Ram Sharan Yadav v. Thakur Muneshwar Nath Singh [(1984) 4 SCC 649].*

*(5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660], M. Narayana Rao v. G. Venkata Reddy [(1977) 1 SCC 771 : (1977) 1 SCR 490], Lakshmi Raman Acharya v. Chandan Singh [(1977) 1 SCC 423 : (1977) 2 SCR 412] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260].*

*(6) The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660], Mohan Singh v. Bhanwarlal [(1964) 5 SCR 12 : AIR 1964 SC 1366] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260].”*

15. The legal position with regard to the non-compliance of the requirement of Section 83(1)(a) of the said Act and the rejection of Election Petition under Order VII Rule 11, CPC has also been regurgitated recently by this Court in case of *Kanimozhi Karunanidhi v. A. Santhana Kumar (supra)*:—

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22. So far as the ground contained in clause (d) of Section 100(1) of the Act, with regard to improper acceptance of the nomination of the Appellant is concerned, there is not a single averment made in the Election Petition as to how the result of the election, in so far as the appellant was concerned, was materially affected by improper acceptance of his nomination, so as to constitute a cause of action under Section 100(1)(d)(i) of the Act. Though it is true that the Election Petitioner is not required to state as to how corrupt practice had materially affected the result of the election, nonetheless it is mandatory to state when the clause (d)(i) of Section 100(1) is invoked as to how the result of election was materially affected by improper acceptance of the nomination form of the Appellant.

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24. As stated earlier, in Election Petition, the pleadings have to be precise, specific and unambiguous. If the allegations contained in Election Petition do not set out grounds as contemplated in Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the Election Petition is liable to be rejected under Order VII, Rule 11 of CPC. An 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 Election petitioner relies for establishing a cause of action, would entail rejection of Election Petition under Order VII Rule 11 read with Section 83 and 87 of the said Act.”

"33) The Apex Court in **Karikho Kri** (supra) held in paragraph Nos.40 and 41 as under:-

40. Having considered the issue, we are of the firm view that every defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts, insofar as that aspect is concerned. The case law on the subject also manifests that this Court has always drawn a distinction between non-disclosure of substantial issues as opposed to insubstantial issues, which may not impact one's candidature or the result of an election. The very fact that Section 36(4) of the Act of 1951 speaks of the Returning Officer not rejecting a nomination unless he is of the opinion that the defect is of a substantial nature demonstrates that this distinction must always be kept in mind and there is no absolute mandate that every non-disclosure, irrespective of its gravity and impact, would automatically amount to a defect of substantial nature, thereby materially affecting the result of the election or amounting to 'undue influence' so as to qualify as a corrupt practice.

41. The decision of this Court in **Kisan Shankar Kathore** (supra), also demonstrates this principle, as this Court undertook examination of several individual defects in the nomination of the returned candidate and found that some of them were actually insubstantial in character. This Court noted that two facets required consideration - Whether there is substantial compliance in disclosing requisite information in the affidavits filed along with the nomination and whether non-disclosure of information on identified aspects materially affected the result of the election. This Court observed, on facts, that non-disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was a bonafide dispute about the same. Similar was the observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-valuation

*and re-assessment for the purpose of tax assessment. Earlier, in Sambhu Prasad Sharma v. Charandas Mahant, this Court observed that the form of the nomination paper is not considered sacrosanct and what is to be seen is whether there is substantial compliance with the requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper.”*

11. In the present case, it is seen that there is absolute non-compliance of the provisions of Section 83 of the said Act in the first instance. As contemplated under the said statutory provision an Election Petition has to mandatorily contain concise statement of material facts to begin with on which the Petitioner relies. Next, he has to place full particulars of any corrupt practice that he alleges (*underlined emphasised*) including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices and the date and place of the commission of each such practice.

12. The aforesaid are the *sine qua non* and specific requirements to be stated in the Election Petition.

13. In the present case, Petitioner has firstly alleged violation of timeline by the Election Commission. The remedy of Petitioner cannot be by way of Election Petition alleging violation under Section 83 of the said Act. Hence, the first ground stated in the Petition is not in consonance with the violation alleged under Section 83 readwith

Sections 100(1)(d)(iii) and 100(1)(d)(iv) of the said Act as no particulars are given.

14. It is seen that preparation of electoral roll for the Election programme in the present case was notified in the first instance on 31.07.2019. In the present case, nine specific dates and events for the above program, beginning from 01.10.2019 to 30.12.2019 were notified in advance. It is seen that one of the major grievance of Petitioner is with respect to violation of timeline without issuing any appropriate Notification. Nothing prevented the Petitioner to challenge the Notification dated 31.07.2019 in the present case. In fact Petitioner accepted the same and filled his candidature in the election program conducted almost one year thereafter. That apart, no specific details whatsoever have been given. The ground of violation of timeline, *inter alia*, pertaining to issuance of Notification dated 31.07.2019 for preparation of electoral roll and the alleged violation according to Petitioner therein was not challenged by him. In fact the said challenge in the Petition is *sans* material facts and is completely inadequate on the face of record.

15. The second challenge in the Petition is with respect to online voters registration beyond the last date without verification of the twin conditions as on the qualifying date. Linked with this challenge is the challenge related to voters names appearing more



than once i.e. twice of 11,319 voters as alleged. Further it is alleged that as per the State Election Commission's official data showing the list of names provided to the political parties names of more than 2,300 persons who were non-graduates were included in the Electoral roll without verification. In so far as challenge under Section 100 of the said Act in the present Petition is concerned, the aforesaid two grounds are the only grounds for seeking declaration of the election to be void.

16. There is a third ground relating to corrupt practices but it is *qua* the Respondent No.4 which I shall advert to later.

17. With respect to the aforesaid two grounds, the principal case of the Election Petitioner is that if the reception of void votes is not counted then Petitioner would be declared as the elected candidate. This submission of the Petitioner is on the face of his own Election Petition incorrect. Petitioner has lost the election by a difference of more than 48,000 votes. By making a mere allegation with respect to the aforesaid twin issues without providing any concise statement of material facts and detail of 11,319 voters, the Petition is not maintainable.

18. The Petitioner has stated the grounds in three parts namely; part A, part B and part C. Part A pertains to the factual



conspectus in the Election Petition relating to preparation of the electoral roll and the program. It is contained in paragraph No.5B of the Petition. Perusal of the said paragraph merely reiterates the narration and details of preparation of electoral roll program and conduct of the election. Apart from narration, there is nothing in the entire part A which would justify invocation of Section 83 of the said Act in the first instance. In clause (s) of part A, Petitioner states that he has downloaded some parts of the final electoral rolls for the concerned districts of Pune, Satara, Sangli, Solapur and Kolhapur. These so called some parts of the final voter roll part-wise are appended as Exhibits G-1 to G-10. I have perused Exhibits G-1 to G-10. They are appended at page Nos.200 to 244 of the Petition. Each Exhibit is comprised in two parts. Part I which is nomenclatured as final electoral roll is a mere *in seriatim* serial number beginning from serial No.1 onwards and is completely blank. In each of the 10 Exhibits i.e. G-1 to G-10, it is the same. Part II of the aforesaid Exhibits are the names of some of the voters selectively selected by Petitioner. In fact as stated in the Petition, Petitioner has admittedly annexed certain details of the parts of the electoral roll. This is the admitted position on record. What is crucial from these annexures is whether the Petitioner has given a concise statement as required or not. That concise statement is absent. It is not there. In fact how does one interpret

Exhibits G-1 to G-10 is the moot question. Only the Petitioner can understand the same.

19. Next, the issue relating to multiple names appearing in the final electoral rolls is placed on record as Exhibits I-1 to I-5. Once again, save and except a few stray names in each of the said Exhibits, nothing else is placed on record. Petitioner has highlighted multiple names. They can be barely counted on the finger tips in so far as each of the Exhibits namely Exhibit I-1 to Exhibit I-5 are concerned. Once again, the details as contemplated and the concise statement of material facts with respect to the principal ground is absent when the allegation is that there are 11,319 such voters.

20. In the above background, it would be therefore worthwhile to see the provisions of Sections 100 (1)(d)(iii) and 100(1)(d) (iv) which apply to the present case. Section 100 (1)(d) (iii), *inter alia*, pertains to corrupt practice by improper reception, refusal or rejection of any vote or reception of any void vote. If this is the grievance of the Petitioner then, details of all such voter's as alleged by him in part A of the Election Petition should be given by him. Once that is not given and admittedly so when the Petition is read, the Petition suffers from the vice of Section 83 of the said Act. This Court cannot assume what is alleged by the Petitioner to be true unless *prima facie* placed on record. It would amount to the Petitioner

not having personally verified the correctness of the voters list. Merely by reproducing some names in some lists, it cannot come to the aid of the Petitioner. In any event, there is no nexus or corrupt practice shown by the Petitioner of the returned candidate in the preparation of the electoral roll. In so far violation of Section 100 (1)(d)(iv) is concerned, it is seen that there is a statutory procedure is envisaged under Rule 4A readwith Section 33A requiring every candidate to provide true and correct information on affidavit. A scrutiny process is involved pursuant to which, if details are found to be false it would invite harsh penalty under Section 125A of a term of imprisonment. The Affidavit filed by the returned candidate rather all candidates having been scrutinised and accepted by the statutory authorities, mere allegation cannot prove that details given in the statutory Affidavit are false and misleading. This is a ground taken for the sake of invoking Section 100 (1)(d)(iv) and nothing more.

**21.** Thereafter if the Petition is seen, part B pertains to improper acceptance, reception of votes in the Election. Petitioner's grievance is with respect to far away distance of polling stations and polling booths. He has commented upon the time taken in the polling booths for casting of votes. He has alleged that under Section 100(1) (d)(iii), a case is made out on the basis of votes cast in the last one hour in some of the polling booths which are stated in part B.

Assuming for the sake of argument, even if those votes are counted in favour of the Petitioner still he will not be able to make up the difference of more than 48,000 votes. The allegations and material details are therefore vague, insufficient and do not stand to challenge.

**22.** In so far as part C is concerned, I have already dealt with the Affidavit filed by the returned candidate and the relevant provisions herein above. The grounds of challenge do not present or raise objections with respect to details which are provided. In part B, various figures pertaining to some of the polling booths are stated. If according to Petitioner these votes casted in the last one hour are void and could not have been received, it is merely a surmise and suspicion raised by him. He has to pin-point as to whether such casting of votes has materially affected the result of election and how mere allegation by giving the figures is not enough. That exercise is not done. All that he states in paragraph No.ggg on page No.51 of the Petition is that Petitioner was declared as runner-up with 73,321 votes and Respondent No.4 was declared winner with 1,22,145 votes as a sequitur of his allegations. There is no concise statement of material facts with respect to the alleged votes as stated in part B. Petitioner cannot raise such an objection about reception and counting of tendered votes, the details of which are not at all pleaded in the Petition.

23. Considering the winning margin and the averments made in the Election Petition, Petitioner's case is vague and thoroughly inadequate. Petitioner has miserably failed to raise appropriate pleadings to disclose cause of action for setting aside the election under any of the ground enumerated in Section 100 of the said Act. Mere narration of figures without any backup data cannot be considered as a concise statement of material facts. Hence, in the absence of necessary pleadings and the above observations, the Election Petition is liable to be rejected under Order VII Rule 11 of CPC on a holistic consideration of the pleadings raised in part A, part B and Part C of the Petition. In view of the above, I am inclined to agree with the submissions and propositions advanced by Mr. Lad in the Application filed below Order VII Rule 11 of CPC.

24. I am of the view that Petitioner has failed to ensure strict compliance with the statutory provisions of the said act namely Section 83(1)(a) of the said Act. Therefore following the mandate under various judgments of the Supreme Court, particularly in *Kanimozhi Karunanidhi (supra)* and *Karim Uddin Barbhuiya (supra)*, even a singular omission of statutory requirement must entail dismissal of the Election Petition by having recourse to provisions of Order VII Rule 11 of CPC. In my view, the Election Petition does not disclose cause of action for making out any of the ground under

Sections 100(1)(d)(iii) or 100(1)(d)(iv) of the said Act and therefore the present Election Petition cannot be taken to trial and is liable to be rejected by having recourse to the provisions of Order VII Rule 11 of CPC.

25. In view of the above, Application (L) No.1145 of 2022 is allowed and accordingly Election Petition No.02 of 2021 is rejected under Order VII Rule 11 of CPC.

26. Election Petition No.02 of 2021 is accordingly dismissed.

27. Application (L) No.22268 of 2021 is also disposed in the above terms.

Ajay

[ MILIND N. JADHAV, J. ]

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Digitally signed  
by AJAY  
TRAMBAK  
UGALMUGALE  
Date: 2025.01.02  
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