

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ELECTION PETITION NO. 01 OF 2017

Sanjay Jagannathrao Jadhav
Age 50 years, Occ. Agri/Business
R/o. Plot NO. 168, N-3, CIDCo,
AURANGABAD

..Petitioner..

Versus

1. Kale Vikram Vasantrao,
Age 48 years, Occ. Services
Claiming to be Principal
R/o. At post Palsap,
Tq. Ad district Osmanabad
2. Election Commission of India
Nirvachan Sadan, Ashoka Road
New Delhi 110 001
3. Returning Officer
Divisional Commissioner
5- Aurangabad Division Teachers
Constituency

...Respondents

...

Mr. S.V. Deshmukh and Mr. R.A. Deshmukh, advocates for
the petitioner

Mr. N.B. Khandare, advocate for respondent No.1
Mr. S.B. Deshpande, Assistant Solicitor General for
respondent No. 3

...

WITH
CIVIL APPLICATION NO. 1486 OF 2018
IN
ELECTION PETITION NO. 01 OF 2017

The Returning Officer,
Divisional Commissioner
5-Aurangabad and Another

...Applicant..

Versus

Sanjay Jagannathrao Jadhav
and another

...Respondents...

...

Mr. S.B. Deshpande, Assistant Solicitor General for
applicants

Mr. S.V. Deshmukh ad Mr. R.A. Deshmukh, advocates for
respondent No.1

Mr. N.B. Khandare, advocate for respondent No.2.

.....

WITH

CIVIL APPLICATION NO. 1488 OF 2018

IN

ELECTION PETITION NO. 01 OF 2017

Sanjay Jagannathrao Jadhav

...Applicant

Versus

Kale Vikram Vasantrao and
others

...Respondents

.....

Mr. S.V. Deshmukh ad Mr. R.A. Deshmukh, advocates for
applicant

Mr. N.B. Khandare, advocate for respondent No.1

Mr. S.B. Deshpande, Assistant Solicitor General for
respondent No. 3

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CORAM : V. K. JADHAV, J.

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Reserved on : January 16, 2020

Pronounced on : April 30, 2020

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ORDER :-

1. By the instant Election Petition no.1 of 2017, the petitioner is challenging the elections of Aurangabad Teacher's Constituency. The petitioner is seeking declaration that the election of respondent no.1 as null

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and void on the grounds as detailed in the election petition. In response to the notice issued, respondent no.1 has appeared in the Election Petition and also filed his written statement. Respondent no.1 has filed an application under order VII Rule 11 of the Civil Procedure Code for rejection of the plaint. The petitioner has also filed his say to the said application filed under Order VII Rule 11 of the Civil Procedure Code.

2. Learned counsel appearing for respondent no.1 submits that the election petition from its contents do not provide material particulars as to the allegations made in the body of the election petition. Learned counsel submits that for want of material particulars, the election petition failed to disclose the cause of action. Learned counsel submits that the petition if taken as it is, is liable to be rejected in terms of the provisions of Order VII Rule 11 of the Civil Procedure Code and in terms of the provisions of section 81 to 84 more particularly, section 83 (1)(b) of the Representation

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of People Act, 1951 (hereafter for short referred to as 'the act of 1951) read with Rule 94-A and form No.25 of the Conduct of Elections Rules, 1961 (hereafter for short referred to as 'the rules of 1961'). Learned counsel submits that paragraph nos.4 and 5 of the election petition contain allegations regarding filing of false affidavit about the municipal taxes and electricity dues. Learned counsel submits that the petitioner has not provided material facts alongwith full particulars of the fact as to the actual amount of dues towards Municipal Taxes and electricity bills so as to indicate the arrears. Learned counsel submits that these two paragraphs 4 and 5 respectively do not provide any material particulars as to the year of municipal taxes and the dues towards electricity bills. Furthermore, the petitioner has also not provided material particulars as to whether any notice of demand was ever issued asking for arrears by the concerned authorities and despite same, respondent no.1 failed to pay the taxes. Learned counsel submits that the election petition, contents thereof allegations together do not satisfy the provisions

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of section 81 to 84 of the Act of 1951. Learned counsel submits that in paragraph no.6 of the election petition, allegations have been made that respondent no.1 represented himself and his wife as 'Principal' instead of their original position as 'Headmaster' and thus influenced and mislead the voters by showing higher occupation. Learned counsel submits that it is not clear from the pleadings of the election petition as to how the voters were influenced and mislead by mentioning the designation as 'Principal' in the nomination. Learned counsel submits that the petitioner was required to provide details as regards the nature of influence, the persons on whom it was exercised and time and place of it. However, the election petition does not contain any allegation that beside mentioning the designation as 'Principal' in nomination form the said designation was used during election campaign including public meetings and printed material so as to demonstrate influence on voters. Petition also does not contain allegation as to how being a "Head Master" using the expression "Principal" is void. Learned counsel submits

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that paragraph nos.7 and 8 of the election petition makes reference of the judgment of the Apex Court and directions issued by the Election Commission of India, however, no specific averment has been made to point out and substantiate as to where incomplete information or suppression of material information is done which is of substantial character. Learned counsel submits that there are no particulars to substantiate allegations of corrupt practice. Learned counsel submits that so far as the allegations regarding printing of ballot papers and impermissible printing of the same in other press rather than in the Government press so also the colour of the ballot paper, the petitioner has miserably failed to disclose any cause of action as to how the same was done for undue benefit of the returned candidate. Learned counsel submits that vague allegations do not constitute the cause of action. Learned counsel submits that there are no details in the election petition as to how the tainted motive of the election officer to help the respondent no.1 was gathered by petitioner. Learned counsel submits that for want of details there is no

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disclosure of the cause of action. Learned counsel submits that so far as the allegation of corrupt practice in collusion with the authorities in order to secure the invalid votes as valid in favour of the respondent no.1, no details and material particulars are provided. There are no particulars as to when oral objection was raised and by whom. Learned counsel submits that averments about non-filing of account of election expenses contravenes section 10A of the Act of 1951 is devoid of merits in light of provisions of section 77 of the Act which excludes the application of section 10A to the Legislative Council elections. Learned counsel submits that concise statement of the material fact is not in accordance with the rules so also the affidavits filed are not as per the requirement and in conformity of the Civil Procedure Code, more particularly, Order VI Rule 15 as contemplated in section 83(1)(c) of the Act of 1951. Petitioner has not sworn the contents of the Petition and filed affidavit as per the requirement of the Act of 1951. Learned counsel submits that strict compliance of the provisions of section 83 (1)(c) proviso of the Act of 1951

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is necessary for presenting the valid election petition. Learned counsel submits petitioner failed to make out a case so as to entertain the election petition for want of compliance of Rule 94-A of the Rules of 1961 and form 25. The affidavit in support of the corrupt practice is not in conformity with form 25. Learned counsel submits that election petition is thus liable to be rejected under Order VII Rule 11 of the Civil Procedure Code.

3. Learned counsel appearing for the respondent no.1, in order to substantiate his submissions, placed reliance on the following cases :-

- (i) Azhar Hussain vs. Rajiv Gandhi, reported in 1986 (Supp) SCC 315.
- ii) Ram Sukh vs. Dinesh Aggarwal, reported in (2009) 10 SCC 541.
- iii) Navjot Singh Sidhu vs. Om Prakash Soni and others, reported in (2017) 4 SCC 348.
- iv) Samar Singh vs. Kedar Nath @ K.N. Singh and others, reported in 1987 (Supp) SCC 663.
- v) Mairembam Prithviraj @ Prithviraj Singh vs. Pukhrem Sharathchandra Singh, reported in (2017) 2 SCC 487.
- vi) Lalit Kishore Chaturvedi vs. Jagdish Prasad Thada and others, reported in 1990 (supp) SCC 248.

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- vii) B. Sundara Rami Reddy vs. Election Commission of India and others, reported in 1991 Supp (2) SCC 624.
- viii) Michael B. Fernandes vs. C.K. Jaffer Shariff and others, reported in (2002) 3 SCC 521.
- ix) C.P. John vs. Babu M. Palissery and others, reported in (2014) 10 SCC 547.
- x) Shambhu Prasad Sharma vs. Charandas Mahant and others, reported in (2012) 11 SCC 390.
- xi) Resurgence India vs. Election Commission of India and another, reported in (2014) 14 SCC 189.
- xii) Shivaji Balaram Haibatti vs. Avinash Maruthi Pawar, reported in (2018) 11 SCC 652.

4. Learned counsel appearing for the petitioner in Election Petition No.1 of 2017 submits that the application filed by the respondent no.1 under Order VII Rule 11 of the Civil Procedure Code for rejection of the plaint/election petition is misconceived and based on incorrect facts. Respondent no.1 is trying to prolong the trial and hence the application under Order VII Rule 11 of the Civil Procedure Code came to be filed with sole intention to delay the proceeding. Learned counsel submits that petitioner has specifically mentioned the property number against which municipal taxes were pending at the relevant time and further respondent no.1 has not specifically denied the said contention.

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Learned counsel submits that educational qualification required for 'Headmaster' and for the post of 'Principal' are different and post of the Principal is available only to the Higher Secondary college. Learned counsel submits that in catena of judgments the Apex Court has held that mentioning of the wrong information is against fair and democratic process and deserves to be curtailed. Learned counsel for the petitioner submits that as far as issue of ballot paper is concerned, voting on the ballot papers shall be made strictly as per the guidelines of the Election Commission and as per Rule 37A and 70 of the Rules of 1961. Further Clause 10 of the Hand Book for returning Officer also prescribed the manner of voting. Learned counsel submits that voting without adherence to the format and manner given by the rules and hand book is required to be considered as invalid. Learned counsel submits that at the time of counting polling agent of the petitioner has taken oral objection and further requested for physical checking of said ballot papers, however, the Election Officer did not allow for the same. Learned counsel submits that counting had

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taken place inside iron cage and hence the agent of the petitioner could not able to note down the numbers of said ballot papers since there was 10 to 15 feet distance between the counting place and the place where the agents were instructed to stand and observe the counting. Further, the issue of ballot papers in different colours is also raised by the petitioner and the same is required to be answered after appreciating the evidence. Learned counsel submits that the Apex Court has taken a view that in such a situation the ballot papers are required to be declared invalid and for that purpose the Election Commission is required to file the reply stating therein the total number of ballot papers on which voting was not as per the rules. Learned counsel submits that respondent no.1 has issued many full page advertisements in the newspaper incurring huge expenses to grab the attention of the voters by illegal means. Learned counsel submits that even on the day of voting, respondent no.1 had issued advertisement in the news paper for campaigning, which is illegal and against the rules and order issued by the election

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commission. Learned counsel for the petitioner submits that the Election Petition contain required averments both relevant facts, material particulars and so also supported by the affidavit filed in accordance with the provisions of section 83 (1)(a) of the Act of 1951 and Rule 94-A of the Rules of 1961. Learned counsel submits that if there is any lacking in the affidavit or the election petition filed by the petitioner, the petitioner should be given an opportunity to carry out the necessary amendment to the election petition and also to file the additional affidavit in support of the election petition. The learned counsel submits that the application filed by respondent no.1 under Order VII Rule 11 of the Civil Procedure Code is thus liable to be rejected.

5. Learned counsel for the petitioner, in order to substantiate his submissions, placed reliance on following judgments :-

- i] G.M.Siddeshwar vs. Prasanna Kumar, reported in 2013 AIR (SC) 1549.
- ii] Harikrishna Lal Vs. Babu Lal Marandi, reported in 2004 AIR (SC) 107.

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- iii] Kisan Shankar Kathore Vs. Arun Dattatraya Sawant and others reported in 2014 AIR (SC) 2069.

6. Meanwhile, respondent nos.2 and 3 i.e. returning Officer and Election Commission of India has filed Civil application No.1486 of 2018 for deletion/striking the names of respondent nos.2 and 3 from the array of the respondents. Learned Assistant Solicitor General submits that Election Petition has been filed under section 80-A and 81-1 of the Act of 1951 and, thus, the provisions of section 82 of the Act of 1951 governs the provisions regarding parties to the election petition. Learned A.S.G. submits that perusal of the above provisions made it abundantly clear that the persons who are mentioned in section 82 shall be joined as respondents to the election petition. Learned A.S.G. submits that admittedly present applicants do not fall within the scope of section 82-A or 82-B of the Act of 1951. Learned A.S.G. submits that this provision time and again has been interpreted by the Apex Court. Learned ASG relied on a judgment in the case of **Jyoti**

Basu Vs Debi Ghoshal reported in AIR 1982 S.C. 983 and submits that the Supreme Court held that no one may be joined as party to the election petition otherwise than as provided by section 82 and 86 (4) of the Act of 1951. Learned A.S.G. submits that the above judgment is consistently followed in the subsequent and recent judgments.

7. Learned counsel appearing for the original petitioner submits that so far as the issue of ballot papers is concerned, voting on the ballot papers shall be made strictly as per the guidelines of the election commission and in terms of the sub-rule 37A under rule 70 of the Rules of 1961. Further, Clause 10 of the Hand Book for the Returning Officer prescribes the manner of voting. Learned counsel submits that voting without adherence to the format and manner given by the rules and hand book is required to be considered as invalid. In view of the specific allegations in respect of the ballot papers, the allegations about inaction on the part of respondent nos. 2 and 3, the respondent nos.2

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and 3 are the necessary parties to the election petition and, as such, the Civil Application no.1486 of 2018 in E.P.1 of 2017 is liable to be rejected.

8. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the election petition, annexures thereto and the reply filed by the respondents.

9. In order to appreciate the legal issues raised in the civil application/petition, the relevant provisions of the Representation of the People Act, 1951 and the Conduct of Elections Rules, 1961 are reproduced herein below :-

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

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- (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.]

123. Corrupt practices :-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 other 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;

* * * * *

- (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."

10. The Conduct of the Election Rules, 1961 rule 94-A, form of affidavit to be filed with election petition, and Form no.25 reads thus :-

"Rule 94-A. Form of affidavit to be filed with election petition

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The affidavit referred to in the proviso to sub-section (1) of [section 83](#) shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.

FORM 25

I,, the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati..... (respondent No..... in the said petition) make solemn affirmation/oath and say-

(a) that the statements made in paragraphs..... of the accompanying election petition about the commission of the corrupt practice of and the particulars of such corrupt practice mentioned in paragraphs of the same petition and in paragraphs of the Schedule annexed thereto are true to my knowledge ;

(b) that the statements made in paragraphs of the said petition about the commission of the corrupt practice of and the particulars of such corrupt practice given in paragraphsof the said petition and in paragraphs of the Schedule annexed thereto are true to my information;

(c)-(d) *****etc.

Signature of deponent,

Solemnly affirmed/sworn by Shri/Shrimati..... atthis
..... Day of 20.....

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Before me, Magistrate of the first class/ Notary/Commissioner of Oaths.”

11. In a case **C.P. John Vs. Babu M. Palissery and others reported in (2014) 10 Supreme Court Cases page 547** relied upon by learned counsel for respondent no.1, the Supreme Court has observed that the substantive part of section 83(1) consists of three important elements, namely, that an election petition should contain a concise statement of material facts which an election petitioner relies upon. Under section 83(1)(b) it is stipulated that the election petition should set forth full particulars of any corrupt practice which is alleged by the petitioner. The Supreme Court has further observed that a reading of section 83(1)(b) is to the effect that such particulars should be complete in every respect and when it relates to an allegation of corrupt practice, it should specifically mention names of the parties who alleged to have been committed such corrupt practice and also the date and place where such corrupt practice was committed. Particulars relating to the corrupt practice should not be lacking in any

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respect. The Supreme Court in paragraph nos.18, 19 and 20 has made following observations :-

- “18. When we read [Section 83](#), the substantive part of [Section 83\(1\)](#) consists of three important elements, namely, that an Election Petition should contain a concise statement of material facts which an election petitioner relies upon. The emphasis is on the material facts which should be stated in a concise form. Under [Section 83\(1\)\(b\)](#) it is stipulated that the Election Petition should set forth full particulars of any corrupt practice which is alleged by the petitioner. A reading of the said section 83(1)(b) is to the effect that such particulars should be complete in every respect and when it relates to an allegation of corrupt practice it should specifically state the names of the parties who alleged to have committed such corrupt practice and also the date and place where such corrupt practice was committed. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as the names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice.
19. To put it differently, when the Election Petition is taken up for consideration, the Court which deals with such an Election Petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both [Sections 83\(1\)\(a\)](#) and (1)(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94-A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of 1st class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in Form No.25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such

corrupt practices are alleged. It also mentions as to which of those statement of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.

20. Therefore, a conspectus reading of [Section 83\(1\)\(a\)](#) read along with its proviso of the Act, as well as, Rule 94-A and Form No.25 of the Rules make the legal position clear that in the filing of an Election Petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the Election Petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the Court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas, with which the provisions contained in [Section 83\(1\)](#) read along with [Section 86](#) came to be incorporated while deciding this appeal.”

12. Thus, keeping in mind the ratio laid down by the Supreme Court, I have carefully examined the allegations about the corrupt practice allegedly adopted by the respondent no.1. In paragraph no.9, 11 and 12 of the election petition which is reproduced herein below the petitioner has made allegations about corrupt

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practice.

- “9. It is also pertinent to note that, the respondent no.1 has illegally utilized huge amount of money in the election which is certainly beyond limits prescribed by rules. That, on the date of filing of nomination that is on 17.1.2017 the respondent no.1 has organized huge rally. That, more than 10000 voters were called from different districts of Marathwada and for that purpose the respondent no.1 has provided 2000 four wheelers and many other transport facilities and expenses towards the same that is 1,01,00,000/- were borne by respondent no.1. Further, there are many rallies and huge public meetings organized by the respondent no.1 where vehicles, holdings, poster banner, quality food, flags, caps have been provided to the participants/voters of rally and huge amount of money has been spent on the said rallies.
11. Further, the ballot papers for the said elections of the teacher's constituency have been printed in the private press and not in the government press. It is most respectfully submitted that the ballot papers are required to be printed in government press and hence the act of printing the ballot papers in private press is illegal and against the rules. Further, the names of the candidate on ballot papers have not been arrayed as per rules. Further, the colour of the ballot paper was not the same there were two types of ballot paper one is in “Faint Pink” colour and other set was in “Dark Pink” colour which is clearly in contravention with the guidelines of the election commission and it has been done for the undue benefit to the returned candidate.
12. That, sub-rule 37A under Rule 70 of Conduct of Election Rules, 1961 specifically and clearly prescribes the manner of voting on ballot papers. That voting shall be casted by using 1 for the first preference of Indian numerical. Further the clause 10 of Hand Book for Returning Officer has also prescribed manner of voting. That, voting without adherence to the formant and manner given by the rules and hand book is required to be considered as invalid. I say that there are more than 15000 ballot papers on which voting has not been casted as per rules as it contains mark like “|” which is not as per rules and hence the returning officer ought to have

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rejected the said votes as invalid. However, the returning officer has committed illegality with tainted motive by accepting the said votes as valid in favour of the respondent no.1. Hereto annexed and marked as Exhibit G is the copy of the relevant pages of the Hand Book for returning officer issued by the election commission of India.”

13. In the concise statement of the material facts in paragraph no.5, 8, 9 and 10 the allegations about corrupt practice allegedly adopted by the respondent no.1 are mentioned.

- “5. It is also pertinent to note that the respondent no.1 has illegally utilized huge amount of money in the election which is certainly beyond limits prescribed by rules. That, on the date of filing of nomination that is on 17.1.2017 the respondent no.1 has organized huge rally. That, more than 10000 voters were called from different districts of Marathwada and for that purpose the respondent no.1 has provided 2000 four wheelers and many other transport facilities and expenses towards the same that is 1,01,00,000/- were borne by respondent no.1. Further, there are many rallies and public meetings organized by the respondent no.1 where vehicles, food, flags, caps have been provided to the participants/voters of rally and huge amount of money has been spent on the said rallies.
8. Further, the ballot papers for the said elections of the teacher's constituency have been printed in the private press and not in the government press. It is most respectfully submitted that the ballot papers are required to be printed in government press and hence the act of printing the ballot papers in private press is illegal and against the rules. Further, the names of the candidate on ballot papers have not been arrayed as per rules.
9. Further, the names of the candidate on ballot papers have not been arrayed as per rules. Further the colour of the ballot paper was not the same there were two types of ballot paper one is in “Faint Pink”

colour and other set was in “Dark Pink” colour which is clearly in contravention with the guidelines of the election commission and it has been done for the undue benefit to the returned candidate.

10. That, sub-rule 37A under Rule 70 of Conduct of Election Rules, 1961 specifically and clearly prescribes the manner of voting on ballot papers. That voting shall be casted by using 1 for the first preference of Indian numerical. Further the clause 10 of Hand Book for Returning Officer has also prescribed manner of voting. That, voting without adherence to the formant and manner given by the rules and hand book is required to be considered as invalid. I say that, there are more than 17000 ballot papers on which voting has not been casted as per rules as it contains mark like “l” which is not as per rules and hence the returning officer ought to have rejected the said votes as invalid. However, the returning officer has committed illegality with tainted motive by accepting the said votes as valid.”

14. In the affidavit as per section 83 of the Act of 1951 in paragraph nos.5, 8 and 9 the Corrupt practice allegedly adopted by the respondent no.1 are explained.

Paragraph nos. 5, 8 and 9 reads thus :-

- “5. It is also pertinent to note that, the respondent no.1 has illegally utilized huge amount of money in the election which is certainly beyond limits prescribed by rules. That, on the date of filing of nomination that is on 17.1.2017 the respondent no.1 has organized huge rally. That, more than 10000 voters were called from different districts of Marathwada and for that purpose the respondent no.1 has provided 2000 four wheelers and many other transport facilities and expenses towards the same that is 1,01,00,000/- were borne by respondent no.1. Further, there are many rallies and public meetings organized by the respondent no.1 where vehicles, food, flags, caps have been provided to the participants/voters of rally and huge amount of money has been spent on the said rallies.

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8. Further, the ballot papers for the said elections of the teacher's constituency have been printed in the private press and not in the Government press. It is most respectfully submitted that the ballot papers are required to be printed in Government press and hence the act of printing the ballot papers in private press is illegal and against the rules. Further, the names of the candidate on ballot papers have not been arrayed as per rules.
9. Further the names of the candidate on ballot papers have not been arrayed as per rules. Further the colour of the ballot paper was not the same there were two types of ballot paper one is in "Faint Pink" colour and other set was in "Dark Pink" colour which is clearly in contravention with the guidelines of the election commission and it has been done for the undue benefit to the returned candidate.

15. There are also allegations in the petition and also in the concise statement of the material facts that ballot boxes have not been placed in strong room within stipulated time and, as such, there is strong possibility that the respondent has managed to replace the original ballot papers by fake and manipulated voting and perhaps this is the only reason for delayed delivery of ballot boxes in strong room.

16. So far as the allegations of bribery falling under section 123(1)(A) are concerned, those are serious allegations. The Supreme Court in the cited case **C.P. John Vs. Babu M. Palissery** and others (supra) in
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paragraph no.18 has observed that one who reads the averments relating to the corrupt practice should be in a position to gather every minute details about the alleged corrupt practice such as names of the persons, the nature of the alleged corrupt practice indulged in by such person/persons, the place, the date, the time and every other detail relating to alleged corrupt practice. In that context, section 83 (1)(a) and (1)(b) and proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, in as much as the affidavit to be filed in respect of the corrupt practice should specifically support the facts pleaded, as well as the material particulars furnished. Rule 94-A of the Rules of 1961 in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of the First Class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. Furthermore, format of the affidavit as prescribed in Form 25 elaborates as to the requirement

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of specifically mentioning of paragraphs where the statement of the facts are contained and also the other paragraph where material particulars relating to such corrupt practices are alleged.

17. In the instant case, the allegations as per the paragraphs reproduced here-in-above are vague in nature. Those allegations are lacking in material particulars. It has been alleged that 2000 four wheelers were provided to 10000 voters for arranging huge rallies and expenses to the tune of Rs.1,01,00,000/- (Rs. One crore one Lakh) incurred by the respondent no.1. However, no details are given about the place and time of the said rally nor name of any of such voters who attended the said rally. It is also not clear as to from which Districts those voters were called to attend the rallies. If 2000 four wheelers came to be provided as alleged, no details of those vehicles are mentioned. There is no basis as to how the election petitioner has arrived at a quantum of expenses allegedly incurred by the applicant/original respondent no.1 to the tune of
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Rs.1,01,00,000/- (Rs.One Crore One Lakh).

Furthermore, source of such allegation is also not mentioned. In terms of the provisions of section 83 (1) (b) of the Act of 1951, it is incumbent upon the petitioner to set forth full particulars of alleged corrupt practice including a full statement as possible of the names of the parties alleged to have committed such practice and the date and place of the commission of each such corrupt practice. In terms of Rule 94-A of the Rules of 1961, particularly clause (a) and (b), the statements as referred are not mentioned in the affidavit. It has been simply alleged in a vague manner that vehicles for the voters, food for them and stage for other activities were provided. Thus, the averments made in the Election Petition about corrupt practice were not in conformity with the provisions of Section 83 of the Act of 1951 read with section 123. Furthermore, in the affidavit which has been filed in support of the election petition, there is no reference to the paragraphs of the election petition, wherein the allegations about corrupt practice have been made. It is not clear from
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the allegations as to who has paid the bribe and to whom it was paid and further the date, time and place of the alleged incident of bribe as mandatory under section 83 (1)(b) of the Act of 1951. It is also pertinent that the election petitioner instead of making any attempt to cure any defects either in the affidavit or in the petition, the election petitioner all the while has taken a stand that he wanted to proceed with whatever the contents averred in the election petition and whatever the documents filed in support with the election petition.

In the instant case, applicant/respondent no.1 has filed written statement pointing out the serious defects as regards material facts and particulars as set out by the election petitioner and no compliance of the proviso to section 83(1) of the affidavit filed in support of the election petition. Applicant/respondent no.1 has also filed an application for rejection of the election petition for want of the cause of action in which specific grounds are raised about non-compliance of the provisions of section 83 of the Act of 1951, Rule 94-A of

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the Rules 1961 and form no.25. However, the election petitioner has not taken any steps nor shown his inclination to rectify the defects whatever those were pointed out by the applicant/respondent no.1.

18. In a case of **Azhar Hussain Vs. Rajiv Gandhi** (supra) relied upon by the learned counsel for respondent no.1, in paragraph no.14 of the judgment the Supreme Court has restated the settled principle of law as it emerges from the numerous decisions of the Supreme Court in regard to the question as to what exactly is the content of the expression “material facts and particulars”, which the election petitioner shall incorporate in his petition by virtue of section 83(1) of the Act of 1951. Paragraph no.14 reads thus :-

14. Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression ‘material facts and particulars’, which the election petitioner shall incorporate in his petition by virtue of [Section 83\(1\)](#) of the Act.
- (1) What are material facts and particulars ? Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not

appeared to oppose the election petition on the basis of the facts pleaded in the petition.

- (2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded.
 - a) mode of assistance;
 - b) measure of assistance; and
 - c) all various forms of facts pertaining to the assistance.
- (3) In the context of an allegation as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of Government servants in election it is absolutely essential to plead the following :-
 - a) kind or form of assistance obtained or procured ;
 - b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election-candidate for promoting the prospects of his election.
- (4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured.
- (5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered.
- (6) The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars."

19. So far as the allegations of the corrupt practice allegedly adopted by the applicant/respondent no.1, either on his own, or on obtaining assistance from the Government servant, it is not clear from the pleadings as to in what manner the assistance was obtained and procured by the applicant/respondent

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no.1 for promoting prospectus of his election. In absence of the material facts and particulars as to who had obtained the assistance of the Government servant/ returning officer and the manner, petition would not disclose the cause of action. In paragraph no.22 of the judgment in the aforesaid case Azhar Hussain Vs. Rajiv Gandhi, the Supreme Court has made following observations :-

“22. The principle laid down is that the pleading in regard to matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of a meeting of which dates and particulars are not given would tantamount to failure to incorporate the essential particulars and that in as much as there was a possibility that witnesses could be procured in the context of a meeting at a place or date convenient for adducing evidence, the High Court should not even have permitted evidence on that point. In other words, no amount of evidence could cure the basic defect in the pleading and the pleading as it stood must be construed as one disclosing no cause of action. In the light of the aforesaid principle laid down by the Supreme Court which has held the field for more than 15 years, the High Court was perfectly Justified in reaching the conclusion called into question by the appellant.”

20. In the instant case, the material particulars are not given, the possibility of the witnesses could be procured in the said context for adducing evidence cannot be ruled out. Furthermore, no amount of evidence could cure the basic defects in the pleadings

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and the pleadings as it stood must be construed as one disclosing no cause of action.

21. In a case of **Ram Sukh Vs. Dinesh Aggarwal reported in (2009) 10 Supreme Court Cases 541**, in paragraph no.14 of the judgment the Supreme Court has referred the view expressed by three Judges Bench of the Supreme Court in a case of Samant N. Balkrishna Vs. George Fernandez reported in (1969) 3 SCC 238 as to the statement of the material facts and the consequences of lack of such disclosure with reference to section 81, 83 and 86 of the Representation of the People Act, 1951 which is as follows :-

- “14 The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to [Sections 81, 83 and 86](#) of the Act came up for consideration before a three-Judge Bench of this Court in Samant N. Balkrishna & Anr. Vs. George Fernandez & Ors. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., inter-alia, laid down that : -
- (i) [Section 83](#) of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;
 - (ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;
 - (iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;

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- (iv) material facts and particulars are distinct matters - material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and
- (v) in stating the material facts it will not do merely to quote the words of the Section because then the efficacy of the material facts will be lost.”

22. In paragraph no.15 and 16 of the judgment the Supreme Court has dealt with the phrases “material facts and particulars” as appearing in clause (a) and clause (b) of sub-section (1) of section 83 of the Act of 1951. The Supreme Court in this case has also dealt with the question by giving reference to earlier position where the powers under Order VI Rule 16 or under Order VII Rule 11 of the Civil Procedure Code to reject the election petition on the threshold can be exercised. In paragraph no.17 and 18 of the judgment, the Supreme Court has made following observations :-

- “17 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, 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.

18. 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."

23. In a case of **Navjot Singh Sidhu Vs. Om Prakash Soni and others** reported in (2017) 4 Supreme Court Cases page 348, relied upon by the learned counsel for respondent no.1, the Supreme Court has dealt with the issue of allegations about excess expenditure and though details of the expenditure incurred by the returned candidate on advertisement, on local TV Channels, etc. are mentioned, in paragraph nos.13 and 14 has made following observations :-

13. In paragraphs 12 to 15 of the Election Petition, the respondent- election petitioner, by giving details of expenditure incurred by the appellant in connection with public meetings held on different dates and in different venues, has contended that the expenses incurred on these public meetings is much more than what has been

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shown in the return of election expenses under the said head (Rs.1,83,466/-). While the details of the meetings i.e. the time, date and venue are mentioned and so is the number of persons who are claimed to have attended the meetings, we do not find any basis as to how the election petitioner had arrived at the quantum of expenses which he alleges to have been incurred by the returned candidate in holding each of the said meetings. What are the source(s) of information of the election petitioner with regard to the details furnished; whether he has personal knowledge of any of the said meetings; who are the persons who informed him of the details of such meetings; what is the basis of the estimate of the number of persons present and the facilities (chairs etc.) that were hired and the particulars of the refreshments served are nowhere pleaded. All such particulars that are an integral part of the allegation of corrupt practice alleged are absent.

14. In the absence of the aforesaid particulars, there can be no doubt that insofar as the allegations made in paragraphs 12 to 15 of the Election Petition are concerned, the same do not disclose any triable issue so as to justify a regular trial of the said allegations. The allegations mentioned in paragraphs 12 to 15, so far as commission of corrupt practice of submission of false/incorrect return of election expenses is concerned, are, therefore, struck off.

In the instant case, there is no material facts about so called expenses without any particulars thereof leave apart source of such information.

24. So far as the allegations about the illegality in accepting the nomination form of applicant/respondent no.1 on the ground that the applicant/respondent no.1 has suppressed the dues of municipal taxes of property falling under the jurisdiction of Municipal Council, Latur and also about

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suppression of electricity dues, the Supreme Court in a case of **Shambhu Prasad Sharma Vs. Charandas Mahant and others** reported in (2012) 11 Supreme Court Cases page 390 relied upon by learned counsel for respondent no.1, the Supreme Court in paragraph no. 8, 9 and 10 has made following observations :-

- “8. The requirement of filing an affidavit arises from the decision of this Court in [Union of India v. Association](#) for Democratic Reforms and Anr. This Court had in that case examined the nature and the extent of jurisdiction exercised by the Election Commission under [Article 324](#) of the Constitution and held that the same was wide enough to include all powers necessary for smooth conduct of elections and that the word “elections” was used in a wide sense to include the entire process of election which comprises several stages and embraces several steps in that process. This Court held that the Election Commission could invoke its power under [Article 324](#) till Parliament brought a suitable legislation on the subject.
9. This Court recognized the right of the voters in this country to know about the particulars and antecedents of the candidates who would represent them in the Parliament where laws concerning their liberty and property may be enacted, and declared that the right of freedom of speech and expression guaranteed under [Article 19\(1\)\(a\)](#) of the Constitution would include the freedom of the voter to cast his vote, for which purpose the voter was entitled to know everything that would enable him to make the right choice. It was with that salutary object in mind that this Court issued directions to the Election Commission to call for information on affidavit from each one of the candidates seeking election to the Parliament or the State Legislatures as an essential part of his nomination papers furnishing therein information on the following aspects in relation to his/her candidature (Assn. For Democratic Reforms Case SCC p 322 para 48) :-
 - “1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.
 - (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in

which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

- (3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependents.
 - (4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.
 - (5) The educational qualifications of the candidate."
10. As a sequel to the above directions the Parliament amended [Representation of People Act, 1951](#) to introduce [Sections 33-A](#) and [33-B](#) with the [Representation of People \(Third Amendment\) Act 2002](#). [Section 33-A](#) made it obligatory for every candidate to furnish information whether or not he has been accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court and whether he has been convicted of an offence other than those referred to in sub-section (1) or sub-section (2) or covered in sub-section (3) of [Section 8](#) and sentenced to imprisonment of one year or more. Sub-section (2) to [Section 33-A](#) required a candidate or his proposer to deliver to the Returning Officer an affidavit sworn by the candidate in the prescribed form along with nomination papers in which the information specified above is set out. [Section 33-B](#), however, purported to neutralize the effect of the directions issued by this Court in [Union of India v. Association for Democratic Reforms and Anr](#) and declared that no candidate shall be liable to disclose or furnish any information, in respect of his election, which is not required to be disclosed or furnished under the Act or the Rules made thereunder."

25. The constitutional validity of the above additions to the statute was challenged before the Supreme Court in People's [Union For Civil Liberties and Anr. v. Union of India and Another](#) (2003) 4 SCC 399. The Supreme Court while upholding the vires of [Section 33-A](#) declared [Section 33-B](#) to be constitutionally invalid being in violation of [Article 19\(1\)\(a\)](#) of the Constitution. The Supreme Court also held that the order issued by

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the Election Commission relating to the disclosure of assets and liabilities will continue to hold good and be operative although direction No.4 in so far as verification of assets and liabilities by means of a summary inquiry and rejection of nomination papers on the ground of furnishing wrong information or suppression of material information was concerned, the same shall not be enforced.

In the instant case, I have gone through the allegations pertaining to nomination papers including the affidavit. I do not find any failure of the requirement of mentioning the information paragraph wise pertaining to the assets and liabilities including the dues so also the requirement of filing affidavit in terms of the judgment as aforesaid. The election petitioner though made certain allegations about the dues towards municipal taxes and the electricity bills, however, there are no particulars as to the year and the municipal taxes dues towards the electricity bills so also any reference to the notice of the demand asking the applicant for arrears by the concerned authorities. As it
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appears from the averments made in the election petition without any material facts or particulars, liberty is sought to produce the documents at the later stage to point out the arrears of municipal taxes and electricity bills.

26. In a case of **Resurgence India Vs. Election Commission of India and another** reported in (2014) 14 Supreme Court Cases page 189, relied upon by learned counsel for respondent no.1, in paragraph no.23 to 29.6 the Supreme Court has made following observations :-

- “23) For that purpose, the Returning Officer can very well compel a candidate to furnish information relevant on the date of scrutiny. We were apprised that the Election Commission already has a standard draft format for reminding the candidates to file an affidavit as stipulated. We are of the opinion that along with the above, another clause may be inserted for reminding the candidates to fill the blanks with the relevant information thereby conveying the message that no affidavit with blank particulars will be entertained. We reiterate that it is the duty of the Returning Officer to check whatever the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the ‘right to know’ of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

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- 24) We also clarify to the extent that in our coherent opinion the above power of rejection by the Returning Officer is not barred by Para 73 of People's Union for Civil Liberties which reads as under :-
- "73. While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in Assn. for Democratic Reforms case, the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary inquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the 'documentary proof'. Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission are not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in Assn for Democratic Reforms case and as provided under the [Representation of the People Act](#) and its third Amendment."

The aforesaid paragraph, no doubt, stresses on the importance of filing of affidavit, however, opines that the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary inquiry at the time of scrutiny of the nominations cannot be justified since in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. This Court was of the opinion that if sufficient time is provided, the candidate may be in a position to produce proof to contradict the objector's version. The object behind penning down the aforesaid reasoning is to accommodate genuine situation where the candidate is trapped by false allegations and is unable to rebut the allegation within a short time.

25. Para 73 of the aforesaid judgment in People's Union for Civil Liberties case nowhere contemplates a situation where it bars the Returning Officer to reject the nomination paper on account of filing affidavit with particulars left blank. Therefore, we hereby clarify that the above said paragraph will not come in the way of the Returning Officer to reject the nomination paper if the said affidavit is filed with blank columns. The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank, if he

desires that his nomination paper be accepted by the Returning Officer.

- 26) At this juncture, it is vital to refer to Section 125A of the RP Act. As an outcome, the act of failure on the part of the candidate to furnish relevant information, as mandated by Section 33A of the RP Act, will result in prosecution of the candidate. Hence, filing of affidavit with blank space will be directly hit by Section 125A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning officer, we find no reason why the candidate must again be penalized for the same act by prosecuting him/her.
- 27) If we accept the contention raised by Union of India, viz., the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated on a par, it will result in breach of fundamental right guaranteed under [Article 19\(1\)\(a\)](#) of the Constitution, viz. 'right to know', which is inclusive of freedom of speech and expression as interpreted in Association for Democratic Reforms.
- 28) In succinct, if the Election Commission accepts the nomination papers in spite of blank particulars in the affidavits, it will directly violate the fundamental right of the citizen to know the criminal antecedents, assets and liabilities and educational qualification of the candidate. Therefore, accepting affidavit with blank particulars from the candidate will rescind the verdict in Association for Democratic Reforms. Further, the subsequent act of prosecuting the candidate under [Section 125A\(i\)](#) will bear no significance as far as the breach of fundamental right of the citizen is concerned. For the aforesaid reasons, we are unable to accept the contention of the Union of India.
- 29) **What emerges from the above discussion can be summarized in the form of following directions :-**
 - 29.1. The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognized. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of [Article 19\(1\)\(a\)](#) of the Constitution.
 - 29.2. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of

the citizens under [Article 19\(1\)\(a\)](#) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

- 29.3 Filing of affidavit with blank particulars will render the affidavit nugatory.
- 29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.
- 29.5. We clarify to the extent that Para 73 of People's Union for Civil Liberties case will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.
- 29.6. The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank."

In the instant case, I do not find any blank particulars in disclosing the assets and liabilities and the applicant/respondent no.1 has taken the efforts to explicitly remark as 'Nil' in the prescribed column. The applicant/respondent no.1 has also filed the affidavit to that effect.

27. So far as the cases relied upon by the

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learned counsel appearing for election petitioner are concerned, the settled legal position as observed by the Supreme Court in those cases is not disputed.

28. It has also been alleged in the election petition that the applicant/respondent no.1 represented himself and his wife as 'Principal' instead of 'Head Master' and thereby influenced and mislead the voters by showing higher occupation. It cannot be ignored that this is an election from the Teachers Constituency and in an ordinary election wherein the voters can be mislead in the manner as alleged in the petition. Furthermore, petition is lacking the material facts and particulars as to how voters are mislead by designation as a 'Principal' as detailed in the petition. Furthermore, there are no material facts alongwith the particulars to indicate that said designation was used during the election campaign including the public meeting and printed material to influence the voters.

29. So far as the allegations about not furnishing election expenses are concerned, learned counsel for

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applicant/respondent no.1 has pointed out the provisions of Section 77 of the Act of 1951. In terms of section 76 of the Act of 1951 Chapter No.VIII shall apply only to the elections to the House of the People and to the Legislative Assembly of a State. In view of the same the provisions of Section 77 of the Act of 1951 which mandates the account of the election expenses and maximum thereof if not applicable to the teacher's constituency/council constituency, then, I find no substance in the submissions made in this regard by the learned counsel appearing for the election petitioner. Learned counsel for the election petitioner has not pointed out any other provision about the compliance of provisions of section 77 of the Act of 1951 even in respect of the council election.

30. Election petition also lacking the material facts and particulars regarding the colour of the ballot papers and vague allegations as to the use of the 15000 ballot papers on which voting has not been casted as per the rules. I find no provision as to the colour of the

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ballot paper and its printing. I have carefully gone through the Hand Book for Returning Officer. Election Commission has issued the directions about the ballot papers for an election to a Legislative Council from a Council Constituency including minute specification and so far as the second column of the ballot paper which is 8 cm in width, name of each candidate and the party affiliation is required to be printed and in column no.3 which is 2 cm in width photograph of the candidate is, displayed. Last column on the right hand side of the ballot paper which is of 3 cm in width is required to be used by the voters for making their preferences. In view of the same, I hardly find any substance in the allegations about colour of the ballot papers. Furthermore, in absence of any material facts and particulars as to the manner in which the voting has not taken place in respect of 15000 ballots, even on this ground also, I find no cause of action for the election petitioner to proceed with the election petition.

31. In a democratic setup, election is the device

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to reflect the wish and will of the people in the manner to choose their political representative.

In the instant case, election petitioner has secured 119 number of votes and the applicant/respondent no.1 has secured 25288 votes and second highest candidate has secured 13735 of votes.

32. As discussed in length in the foregoing paragraphs, concise statement of the material facts is not according to the rules. Further, the grounds raised in the election petition do not specify the requirement of section 83 more particularly section 83 (1) (a) and 83 (1) (b) of the Act of 1951. There is no compliance of Rule 94-A of the Rules of 1961 and form No.25. The affidavit in support of the Corrupt Practice is not in conformity with the form no.25. I am of the considered view that no cause of action has been made out in filing the election petition. Thus, the application filed by respondent no.1 under Order VII Rule 11 deserves to be allowed and the Election Petition is liable to be rejected.

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33. So far as the application bearing Civil Application No.1486 of 2018 in E.P. 1 of 2017 filed by learned A.S.G. is concerned, in view of allowing of the application filed under Order VII Rule 11 of the Civil Procedure Code by the respondent no.1, the issue raised in this application by learned A.S.G. would be an academic issue. In view of the same, the issue as raised by the learned A.S.G. would be decided in other case, if occasion so arises. Civil application No.1486 of 2018 in E.P. No.1 of 2017 (The Returning Officer, Divisional Commissioner, 5-A Aurangabad, Teachers Constituency and another Vs. Sanjay Jagannathrao Jadhav and another) is thus disposed off. In the result, I proceed to pass the following order.

ORDER

- i] Civil Application bearing No.1488 of 2018 in Election Petition No.1 of 2017 (Sanjay Jagannathrao Jadhav Versus Kale Vikram Vasantrao) filed under Order VII Rule 11 Exhibit 9 is hereby allowed.

- ii]. Election Petition No.1 of 2017 is hereby rejected as the Election Petition and the pleadings contained therein does not disclose any cause of action.
- iii] Civil application No.1486 of 2018 in E.P. No.1 of 2017 (The Returning Officer, Divisional Commissioner, 5-A Aurangabad, Teachers Constituency and another Vs. Sanjay Jagannathrao Jadhav and another) is disposed off.

(V. K. JADHAV, J.)

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