



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPLICATION (L) NO.28990 OF 2025
IN
ELECTION PETITION NO.7 OF 2025**

Mufti Mohammad Ismail Abdul Khalique	...	Applicant
in the matter of		
Shaikh Asif Shaikh Rashid @		
Asif Shaikh Rasheed	...	Petitioner
versus		
Mufti Mohammad Ismail Abdul Khalique and Ors.	...	Respondents

Mr. Shadan Farasat, Sr. Advocate with Mr. Suyash N. Khose, Mr. Siddharth Sutaria, Mr. Abhijit G. Aher, ,for Respondent No.1 in EP No.7 of 2025 and for Applicant.

Mr. S.S.Patwardhan with Mr. Bhooshan Mandlik, Ms. Mrinal Shelar, Mr. A.V.Hardas, Mr. Anurag Patwardhan, Mr. Aaroh Kulkarni, for Petitioner.

Ms. Manisha Desai i/by M/s. M.P.Vashi and Associates, for Respondent No.5.
Mr. Mahendra N. Sandhyanshiv, for Respondent No.6 (through VC).

CORAM: N.J.JAMADAR, J.

RESERVED ON : 4 FEBRUARY 2026

PRONOUNCED ON : 8 JUNE 2026

JUDGMENT :

1. By this application, the Respondent No.1 – returned candidate, seeks rejection of the Petition assailing his election, under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 ('the Code') and Section 86(1) of the Representation of the Peoples Act, 1951 (the RP Act, 1951).

2. The background facts leading to the filing of the Election Petition can be stated, in brief, as under :

2.1 General elections to the Maharashtra State Legislative Assembly were held on 20 November 2024. The Petitioner contested the election from Malegaon Central Constituency (the Constituency) as the official candidate for the Indian Secular Largest Assembly of Maharashtra (ISLAM), on the election symbol of “Auto Rikshaw”.

2.2 Respondent No.1 contested the said election as official candidate of the All India Majlis-e-Ittehadul – Muslimeen (AIMIM), on the election symbol “Kite”. Respondent Nos.2 to 12 also contested the said election.

2.3 The counting of votes was held on 23 November 2024. The Petitioner secured 109491 votes. Respondent No.1 secured 109653 votes. Respondent No.1 was, thus, declared elected by a margin of 162 votes.

2.4 The Petitioner has assailed the election of Respondent No.1 on the ground that the election of Respondent No.1 was void as the Respondent No.1 has been guilty of having committed “corrupt practices”, as defined under Part VII of the RP Act, 1951. The election is also assailed on the ground that it was void on account of improper reception of void votes. The Petitioner has also sought a declaration that the Petitioner has been duly elected.

Grounds in the Election Petition :

3. The substance of the Petition is that, the Respondent No.1 is a religious leader. Respondent No.1 is guilty of corrupt practices as the Respondent

No.1 has influenced the minds of the voters of the Constituency with threat of divine displeasure or spiritual censure. Abusing his position as Imam of Jame Masjid at Malegaon and Eid-gaah at Malegaon, by virtue of which Respondent No.1 leads congregational prayers, Respondent No.1 has said 'Dua' (the prayers) for his electoral success and made the followers and audience in the said prayers to pledge for his electoral victory. References are made to the events in which 'Dua' (the prayers) were made by the Respondent No.1 and by others at his instance, during the course of campaigning.

3.2 Secondly, Respondent No.1 and his campaigners / campaign managers / activists have stoked religious feelings of Muslims at Malegaon. Speeches were made by the campaigners / agents of Respondent No.1 in his presence and the Respondent No.1 has authorized and assented to those offending speeches. Excerpts of seven offending speeches purportedly made by the Respondent No.1 and/or his campaigners / agents, are extracted in the Petition. The Petitioner asserts, those speeches amount to corrupt practices as the votes were sought on the ground of religion and appealing to religious sentiments of the electorate. Those speeches, which were made with the consent of the Respondent No.1 and in his presence, have materially affected the results of the election.

3.2 Thirdly, the Respondent No.1's campaigner Asaduddin Owaisi has

vilified the Petitioner by comparing him to 'Yazid', whom the followers of Islam consider as the principal enemy of the said religion, and irresponsibly called the Petitioner a "drug peddler". The said deliberate false statements were made to prejudice the prospect of the election of the Petitioner by impeaching the personal character of the Petitioner.

3.3 Fourthly, it is alleged that the Respondent No.1 and his agents – campaigners were also guilty of indulging in the corrupt practices by promoting feelings of enmity or hatred between different classes of citizens on the ground of religion as well as the classes within Islam, namely, 'Dakhani Muslims' and 'Momins', a slang typical to the said constituency, for furtherance of the prospect of the election of Respondent No.1 and prejudicially affecting the election of the Petitioner.

3.4 Reference is also made to the campaigning activity of Ms. Rafea Abdul Khalique, sister of Respondent No.1, including the distribution of pamphlets with an objective of stoking the religious sentiments of Muslims. An attempt was also made by the said agent of Respondent No.1 to influence the voters on the ground of gender by distributing pamphlets that, the people who elect woman as their leader can never prosper while two women candidates were in the electoral fray. Likewise, Ms. Sarah Mufti Ismail, daughter of Respondent No.1, in the purported prayer meet for the speedy recovery of Respondent No.1 from illness had solicited votes on the ground of religion.

3.5 Religious organizations namely, Jamiyat-e-ulma and Jamaat-e-Islami Hind Malegaon declared their support for the candidature of Respondent No.1 and appealed to the voters to vote in favour of Respondent No.1. Such appeal by the religious organizations to vote for Respondent No.1 on the ground of religion also constituted corrupt practice within the meaning of Section 123 of the RP Act, 1951.

3.6 Lastly, the Petitioner claims, around 1082 persons who were dead were included in the voters list of the Constituency. Those dead persons were also shown to have cast their votes in the election held on 20 November 2024. Those 1082 void votes were improperly received and thereby the result of the election has been materially affected as the Petitioner had polled only 162 less votes than the Respondent No.1. Therefore, the election of the Respondent No.1 from the Constituency was void under the provisions of Section 100(1)(d)(iii) of the RP Act, 1951.

4. Respondent No.1 has appeared and filed written statement controverting the assertions in the Petition.

Plea for rejection of Petition and response thereto :

5. Respondent No.1 has also filed the instant application seeking rejection of the plaint contending, inter alia, that the Petition deserves to be rejected at the threshold as the Petitioner neither has complied with the correct procedure for presenting the election petition, nor the allegations in the

Petition are substantiated with the precise facts to make out an offence under the RP Act, 1951.

5.1 The allegations in the election petition, according to Respondent No.1, can be classified in two parts. First, based on pure speculation. Those allegations are not supported by any relevant material facts and, resultantly, those allegations cannot be said to disclose any triable issue. Second, there are allegations which even if taken at par, do not make out any offence on the basis of which the election can be assailed under the provisions of RP Act, 1951.

5.2 Respondent No.1 contends, the allegations in the election petition (briefly referred to above) are vague, unsubstantiated and baseless. The allegations do not satisfy the test envisaged by Section 83(1) of the RP Act, 1951. Neither there is a concise statement of material facts on which the Petitioner relies, nor the Petitioner has taken care to set forth full particulars of the alleged corrupt practices, much less as full a statement as possible of the name of the parties alleged to have committed such corrupt practices and the date and place of the commission of each such practices.

5.3 Respondent No.1 categorically contends that the election petition which does not disclose all material facts and fails to set forth full particulars, ceases to be an election petition. The omission to mention even a single material fact leads to an incomplete cause of action and renders the Petition liable to be

rejected.

5.4 An endeavour has been made by the Respondent No.1 in the application to dissect each of the grounds in the Petition (adverted to above) and demonstrate that the pleadings fall short of the requisite threshold and, even otherwise, they do not constitute the corrupt practices. On the substance of the each of the allegations, Respondent No.1 made an attempt to demonstrate that, those speeches / utterances, even if construed generously and taken at their face value, do not make out any offence under the RP Act, 1951.

5.5 In regard to the alleged inclusion of 1082 dead persons in the voters list, Respondent No.1 contends that, neither Respondent No.1 can be attributed with any responsibility for the alleged improper reception of the void votes. Nor there is material to show that the votes were actually cast in the names of the voters who were shown to be dead. The allegations in the Petition in this context, were also stated to be as vague as they could possibly be.

6. The Petitioner resisted the application by filing an affidavit in reply. At the outset, it was contended that, since the issues have been settled, at this stage, it cannot be contended that the Petition does not disclose a clear cause of action. According to the Petitioner, the application for rejection of the Petition does not make out any case which would justify the rejection fo the

Petition at the threshold.

6.1 With reference to the pleadings in the election petition, the Petitioner asserts that there are more than adequate pleadings along with the material facts and full particulars, which make out triable issues. It was categorically denied that the instant petition lacks material facts and full particulars. On the contrary, the Petitioner claimed to have set forth the material facts and particulars with necessary details as to the time, date and place of the incidents / acts amounting to corrupt practices on the part of Respondent No.1 as well as his agents and campaigners. The explanation sought to be offered by the Respondent No.1 in regard to the allegations of corrupt practices were stated to be unworthy of acceptance. It was denied that the election petition suffers from any procedural defect. Thus, the Petitioner prayed for rejection of the application for rejection of the Petition.

Submissions :

7. In the wake of the pleadings in the Petition, the instant application and the response thereto and the material on record, I have heard Mr. Shadan Farasat, the learned Senior Advocate for the Applicant – Respondent No.1 and Mr. S.S.Patwardhan, the learned Counsel for the Petitioner, at some length. The learned Counsel took the Court through the pleadings and the material on record.

8. Mr. Farasat, learned Senior Advocate for the Applicant-Respondent

No.1, after adverting to the provisions contained in Section 83 of the RP Act, 1951 and the definition of the corrupt practices under Section 123 of the RP Act, 1951, strenuously urged that, ex-facie the Petition lacks “material facts” and “full particulars”, as warranted under the provisions contained in Section 83 of the RP Act, 1951.

9. Mr. Farasat would urge that, the pleadings in an election petition should be absolutely precise and clear and should contain all necessary details and particulars. It is now fairly crystalized that the election petition which does not disclose material facts so as to constitute a complete cause of action, deserves to be nipped in the bud. Failure of the petitioner to raise necessary pleadings to make out a case of existence of ground under Section 100(1)(d) of the RP Act, 1951, would necessarily entail the consequence of rejection of election petition by invoking the power under Order VII Rule 11 of the Code, 1908.

10. Mr. Farasat would urge that the special provisions envisaged by the RP Act, 1951 are required to be appreciated in the light of the overarching principle that, a democratically elected person cannot be unseated in a light manner. It was submitted that, each of the grounds, on which the election of Respondent No.1 is sought to be declared void, falls through as no case of corrupt practice is made out, even if the offending speeches / acts are considered to have been made or consented to by the Respondent No.1.

11. To lend support to these submissions, Mr. Farasat placed reliance on the decisions in the cases of **Samant N. Balakrishna v/s. George Fernandez¹**; **Dhartipakar Madan Lal Agarwal V/s. Rajiv Gandhi²**; **Ramakant Mayekar V/s. Celine D'Silva³**; **Kanimozhi Karunanidhi V/s. A. Santhana Kumar⁴**; and **Karim Uddin Barbhuyia V/s. Aminul Haque Laskar⁵**.

12. Mr. Farasat submitted that the substratum of the Petitioner's case is that the Respondent No.1 had indulged in corrupt practice in soliciting votes on the ground of religion. However, the foundational premise of the Petition is based on misconception of the provisions contained in Section 123 of the RP Act, 1951. Elaborating the submission, Mr. Farasat would urge, what sub-section (3) of Section 123 prohibits is soliciting the votes or appealing the electorate to refrain from voting for any person on the ground of his religion / caste, etc. Mere reference to the religion in the campaign can never be a corrupt practice.

13. To buttress this submission, Mr. Farasat placed a very strong reliance on the judgment of the Supreme Court in the case of **Dr. Ramesh Yashwant Prabhoo V/s. Prabhakar Kashinath Kunte and Ors.⁶** wherein it was, inter

1 (1969) 3 SCC 238

2 1987 Supp SCC 93

3 (1996) 1 SCC 399

4 2023 SCC Online SC 573

5 2024 SCC Online SC 509

6 (1996) 1 SCC 130

alia, enunciated that the mention of religion as such in an election speech is not forbidden by sub-section (3) of Section 123 so long as it does not amount to an appeal to vote for a candidate on the ground of his religion or to refrain from voting for any other candidate on the ground of his religion.

14. Mr. Farasat submitted that the Petition lacks material facts and full particulars to justify an inference that the alleged offending speeches / acts were made / done by the purported agents of the Respondent No.1 with the consent of Respondent No.1. Mere presence of Respondent No.1 at the time the offending speeches were allegedly delivered, is not sufficient to infer consent. It was urged that there can be no implied consent. To this end, reliance was placed on the decision of the Supreme Court in the case of **Manohar Joshi V/s. Nitin Bhaurao Patil and Anr.**⁷.

15. The decision of the Supreme Court in the case of **Chandrakanta Goyal V/s. Sohan Singh Jodh Singh Kohli**⁸ was also pressed into service to drive home the point that, even in the case of a leader of the party, ordinarily, consent of the candidate or his election agent is to be pleaded and proved, if the election of the candidate is to be declared void under Section 100(1)(b) for the corrupt practice committed by the leader.

16. A very strong reliance was placed by Mr. Farasat on the judgment in the case of **Kultar Singh V/s. Mukhtiar Singh**⁹ wherein the Supreme Court

⁷ (1996) 1 SCC 169

⁸ (1996) 1 SCC 378

⁹ AIR 1965 SC 141

adverted to the recognition of a political party, membership of which is predominantly by the persons practicing a particular religion and emphasised the care to be taken in determining whether the particular appeal having religious overtones may fall within the mischief of Section 123(3) of the RP Act, 1951.

17. In regard to the improper acceptance of the void votes, Mr. Farasat would urge that the averments in the Petition failed to make out a prima facie case. In fact, an identical challenge in connection with the Parliamentary elections was repelled by this Court in the case of **Shobha Dinesh Bacchav V/s. Dr. Subhash Ramrao Bhamre**¹⁰ in respect of the very same constituency, submitted Mr. Farasat. Therefore, the Petition deserves to be rejected for failing to make out a cause of action, urged Mr. Farasat.

18. In opposition to this, Mr. Patwardhan, learned Counsel for the Petitioner, submitted that the application is clearly misconceived as even if it is assumed that the pleadings do not conform to the requirement under Section 83 of the RP Act, 1951, yet, the Petitioner cannot be non-suited on the said ground as Section 86(1) of the RP Act, 1951, does not include the non-compliance with the provisions contained in Section 83 as a ground for dismissal of an election petition.

19. Mr. Patwardhan further submitted that, the averments in the Petition along with the concise statements do make out a clear cause of action to

¹⁰ 2025 SCC Online Bom 2329

warrant a trial. By no stretch of imagination, Mr. Patwardhan would urge, it can be said that there is non-compliance of the mandate contained in Section 83 of the RP Act, 1951. Mr. Patwardhan would urge that there is a well marked distinction between the material facts and material particulars. The Petitioner has pleaded all the material facts. If the expectation of the Respondent No.1 is to have better material particulars, the prayer for rejection of the plaint is not the proper remedy. To lend support to this submission, Mr. Patwardhan placed reliance on the judgment of the Supreme Court in the case of **Virender Nath Gautam V/s. Satpal Singh and Ors.**¹¹ wherein the distinction between the material facts and material particulars was illuminatingly postulated.

20. Mr. Patwardhan joined the issue on the absence of pleadings in regard to the consent of Respondent No.1 for the offending speeches made by the agents / leaders of Respondent No.1. It was submitted that, on facts, the challenge is not well founded as the Petitioner has made adequate pleadings. In law also, the challenge is not well grounded as both the presence and inaction and failure to protest on the part of the Respondent No.1 when the offending speeches were delivered, betrays clear consent. To this end, Mr. Patwardhan placed reliance on the observations in the case of **Dr. Ramesh Yashwant Prabhoo (supra)**, wherein the consent was inferred from the

¹¹ (2007) 3 SCC 617

conduct of the returned candidate, including his personal presence in the meetings. Reliance was also placed on the judgment of the Supreme Court in the case of **Manubhai Nandlal Amorsey V/s. Popatlal Manilal Joshi and Ors.**¹², wherein also on the basis of the presence of the returned candidate and failure to raise any objection to the impugned speeches, it was ruled that the offending speeches were made with the consent of the returned candidate.

21. Mr. Patwardhan further submitted that, reliance placed by Mr. Farasat on the judgments in the cases of **Dr. Ramesh Yashwant Prabhoo (supra)**, **Ramakant Mayekar (supra)** and **Samant N. Balakrishna v/s. George Fernandez (supra)**, was inapposite as those decisions were rendered after the full-fledged trial.

22. Lastly, Mr. Patwardhan would urge, there are multiple grounds on which the election of Respondent No.1 has been called in question. The Petitioner has placed on record ample material to demonstrate that the Respondent No.1 won by a thin margin of 162 votes, while 1082 void votes were improperly received. The veracity of those allegations can only be determined at the trial. Thus, banking upon the judgment of the Supreme Court in the case of **Madhav Prasad Aggarwal and Anr. V/s. Axis Bank and Anr.**¹³, Mr. Patwardhan submitted that, at any rate, the election petition must go for trial if

¹² (1969) 1 SCC 372

¹³ (2019) 7 SCC 158

some of the grounds of challenge survive as the Petition cannot be rejected in part.

CONSIDERATION :

23. To begin with, it is necessary to note that the right to contest the election and assail the legality and validity of election stem out of the statutory provisions. To question the election by instituting an election petition is neither a common law nor a constitutional remedy. It is a statutory remedy strictly governed by the provisions of the statute under which the election is challenged. In the matter of election to legislative bodies, the RP Act, 1951 is construed to be a complete and self-contained Code. Therefore, recourse to the legislative regime enshrined by the RP Act, 1951 becomes imperative.

Statutory Regime :

24. Section 80 of the RP Act, 1951 peremptorily declares that no election shall be called in question except by an election petition presented in accordance with the provisions of the Part VIII of that Act. Section 81(1) provides that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector. Who shall be joined as Respondents in an election petition is delineated by Section 82. What should be the contents of the election petition is prescribed in Section 83; with which we would be primarily

concerned. Section 86 enjoins the High Court to dismiss the election petition which does not comply with the provisions of section 81 or section 82 or section 117 which mandates the deposit of a sum of Rs.2,000/- as security for the costs of the petition.

25. Section 87 of the RP Act, 1951 makes the procedure prescribed under the Code of Civil Procedure, 1908 (the Code), applicable to the election petition. It provides that, subject to the provisions of that Act, and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code, 1908 to the trial of suits.

26. In the context of the controversy at hand, where the rejection of the Petition is sought on the ground of non-compliance of the mandate contained in Section 83 of the RP Act, 1951, it would be necessary to extract the text of Section 83. It reads as under :

“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.”

27. Section 100 of the RP Act, 1951 enumerates the grounds for declaring an election void. It reads as under :

“100. Grounds for declaring election to be void. - (1)

Subject to the provisions of sub-section (2), if the High Court is of the opinion -

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

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

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

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected-

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

(ii) by any corrupt practice committed in the

interests of the returned candidate by an agent other than his election agent, or

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

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

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

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

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

(b).....

(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.”

28. Section 101 incorporates the grounds for which the candidate other than the returned candidate may be declared to have been elected. It reads

as under :

“101. Grounds for which a candidate other than the returned candidate may be declared to have been elected. - If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion -

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

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

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

29. Section 123 of the RP Act, 1951, states what shall be deemed to be corrupt practices for the purposes of that Act. Clauses relevant for the purpose of the determination of the instant petition, read as under :

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

(1)

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

electoral right :

Provided that -

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

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

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

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

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

[Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol

for the purposes of this clause].

(3-A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

.....

(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."

Distinction between Rejection and Dismissal of Petition :

30. At this juncture, it may be apposite to first deal with the preliminary objection sought to be raised by Mr. Patwardhan to the tenability of the application for rejection of the Petition premised on the non-compliance of the mandate contained in Section 83 of the RP Act, 1951, as the non-compliance of Section 83 is not covered by the provisions contained in Section 86 of the RP Act, 1951.

31. Mr. Patwardhan would urge that, an election petition can be dismissed

by the High Court if it does not comply with the provisions of Sections 81, 82 or 117 only. It is not the case of Respondent No.1 that the petitioner does not comply with the provisions contained in Sections 81, 82 or 117. Thus, the application for rejection of the Petition for the purported non-compliance of the provisions contained in Section 83 of the RP Act, 1951, is not tenable.

32. An elaborate analysis on the aforesaid point would be superfluous. Suffice to note, the submission sought to be canvassed by Mr. Patwardhan loses sight of the distinction between the “dismissal” of the Petition and “rejection” of the Petition. As noted above, in view of the provisions contained in Section 87 of the RP Act, 1951, an election petition is governed by the procedure prescribed under the Code, 1908. Thus, if an election petition does not satisfy the statutory requirements and lacks the concise statement of material facts and full particulars wherever warranted, and, resultantly, it is demonstrated that the election petition fails to make out a cause of action, the provisions contained in Order VII Rule 11 of the Code, 1908, are attracted with equal force.

33. Indeed for the dismissal of the petition under Section 86 of the RP Act, 1951, there should be non-compliance of the provisions of Sections 81, 82 or 117 and such dismissal is deemed to be an order made under clause (1) of Section 98 of the RP Act, 1951. Such a dismissal amounts to the dismissal of the Petition foreclosing the right of presentation of a fresh petition on the

same cause of action in contradistinction to the rejection of the petition under Order VII Rule 11 of the Code, which does not preclude the filing of a fresh petition on the same cause of action, albeit within the statutory period of limitation.

34. A profitable reference can be made to the decision of the Supreme Court in the case of **Azhar Hussain V/s. Rajiv Gandhi**¹⁴ which sets the controversy at rest, with the following observations :

“9. The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.

.....

11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in **Samant N. Balkrishna and Anr. v. George Fernandez and Ors. (supra)**, has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in **Udhav Singh v. Madhav Rao**

14 1986 (Supp) SCC 315

Scindia¹⁵, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.” (emphasis supplied)

35. In view of the aforesaid position in law, there is no substance in the preliminary objection to the tenability of the application for rejection of the Petition sought to be raised on behalf of the Petitioner.

Mandate of Section 83 of R.P.Act, 1951 :

36. Reverting to the requirement of specific pleadings, emanating from the mandate contained in Section 83 of the RP Act, 1951, a conjoint reading of the provisions contained in Section 83 and Section 100 of the RP Act, 1951, which incorporate the grounds for the declaration of election to be void, it becomes abundantly clear that the election petition must contain a concise

¹⁵ (1977) 1 SCC 511

statement of material facts in relation to one or more of specific grounds incorporated under Section 100, which is/are pressed into service to annul the election.

37. By a catena of judicial precedents, it is fairly crystalized that the pleadings in an election petition must be precise, specific and unambiguous. An election petition shall contain a concise statement of material facts and if it is alleged that the returned candidate or his agents / representatives has been guilty of corrupt practice, it shall setforth full particulars of such corrupt practice, including as full 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 corrupt practice. Omission to plead a single material fact leads to an incomplete cause of action and the election petition becomes infirm.

38. In the case of **Karim Uddin Barbhuiya (supra)**, after adverting to the previous pronouncements, the Supreme Court enunciated the legal position as under :

“21. It is also pertinent to note at this juncture that a charge of “Corrupt practice” is easy to level but difficult to prove because it is in the nature of criminal charge and has got to be proved beyond doubt. The standard of proof required for establishing a charge of “Corrupt practice” is the same as is applicable to a criminal charge. Therefore, Section 83(1)(b) mandates that when the allegation of “Corrupt practice” is

made, the Election Petition shall set forth full particulars of the corrupt practice that the Election Petitioner alleges, including as full a statement as possible of the names of parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The pleadings with regard to the allegation of corrupt practice have to be precise, specific and unambiguous whether it is bribery or undue influence or other corrupt practices as stated in Section 123 of the Act. If it is corrupt practice in the nature of undue influence, the pleadings must state the full particulars with regard to the direct or indirect interference or attempt to interfere by the candidate, with the free exercise of any electoral right as stated I Section 123(2) of the Act. We are afraid, Mr. Gupta has failed to point out from the pleadings of the Election petition as to how the appellant had interfered or attempted to interfere with the free exercise of any electoral right so as to constitute “undue influence” under Section 123(2) of the Act.

.....

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 RP Act.”

(emphasis supplied)

39. In the case of **Kanimozhi Karunanidhi (supra)**, the Supreme Court summed up the legal position, as under :

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

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

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

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

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or

orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

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

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

40. In the case of **Rahim Khan V/s. Khurshid Ahmed and Ors.**¹⁶, the Supreme Court emphasised that an election once held is not to be treated in a light-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate.

41. The legislative object, as is discernible from the peremptory provisions of the RP Act, 1951 is that, an election can only be challenged on the specific grounds, and, thus, the challenge must be in conformity with the prescribed procedure and the challenge cannot be casual and flimsy. The candidate or

¹⁶ (1974) 2 SCC 660

the elector who professes to challenge an election, thus must approach the Court with specific pleadings with all the material facts and full disclosure, and, those pleadings ought to be such as to sustain an annulment of election, if they were to remain untraversed.

42. On the aforesaid touchstone, the challenge to the instant election petition on the ground of non-compliance of the statutory requirements deserves to be appreciated. As noted above, the Respondent No.1 has mounted a two-fold challenge. First, the pleadings in relation to some of the grounds fall short of the requirements under Section 83(1)(a) and (b) of the RP Act, 1951. Second, few of the grounds, even if taken at par, do not make out the cause of action to merit trial.

43. This Court proposes to examine the averments in the petition in the light of the aforesaid grounds. Undoubtedly, the election petition would be required to be read as a whole on demurrer. It is well recognized that the averments in the Petition as a whole shall be read in a meaningful and not formalistic manner. It is not legally permissible to dissect the averments in the petition and read few portions of the petition in isolation and torn out of context.

44. Keeping in view the aforesaid principles, reverting to the averments in the election petition, it becomes evident that in para Nos.5 and 6 of the Petition, the Petitioner has referred to the fact that the respondent No.1, in the

capacity of Imam, leads a congregational prayers and at the end of the prayers (namaz), the Respondent No.1 had said dua (prayers) for his electoral success. That constitutes a corrupt practice. Relevant part of para 5 of the Petition containing allegation of corrupt practice, reads as under :

“The respondent No.1 prays for “Dua” at the end of Namaz (including the daily 5 prayers and the prayers on Eid-ul-fitr and Eid-ul-azha), thereby appealing the audience for his success in the elections. The audience utters “Amen” upon “Dua”, which denotes collective act of pledge for the desired “Dua”. These religious acts of “Dua” have been misused by the respondent No.1 for his political campaign.”

45. Likewise, in para No.6, the Petitioner refers to the “Dua” (prayers) made by Respondent No.1 on 25 October 2024, 17 November 2014 and 18 November 2024 and also by one Alim Falahi on 12 November 2024. Thereafter, the Petitioner has averred as under :

“The petitioner states that he has got the knowledge of the afore-said “Duas” from the several voters of the said Constituency including Mr. Mohammad Ali Ataullah having Voter ID No.SHE7252273 and Mr. Shaikh Amen Shaikh Ramzan having Voter ID No.GSZ1710573, who attended the aforesaid meetings and speeches followed by all these “Duas” as mentioned above in this paragraph, who also noted down the aforesaid offensive portions of the respective speeches in their notebook.”

46. With regard to the averments in paragraph No.5, extracted above, it becomes abundantly clear that those assertions are general in nature. There is no reference to the time, place and occurrence in regard to the alleged offending act. Nor the Petitioner has taken care to spell out the nature of the “dua” made by the Respondent No.1. A bald statement is made that the Petitioner has appealed the audience for his success in the election. This statement, even if taken at par, does not fall within the dragnet of corrupt practice.

47. In regard to the acts of saying “Dua” (prayers) in para No.6, the Petitioner has referred to the days and places. However, the refrain of the Petitioner is that the act of praying Dua at a political campaign / meeting constitutes the corrupt practice. The Petitioner has allegedly appealed for his success in the election. A common thread which runs through the assertions in paragraph Nos.5 and 6 is that the Respondent No.1 has prayed for his success in the electoral hustings. Audience has responded by saying “Amen”.

48. I find it rather difficult to accede to the submission of Mr. Patwardhan that the said act of saying “Amen” amounts to extracting pledge to vote for Respondent No.1. In plain terms, a “Dua” (prayers) is an act of invoking blessings, help or mercy of the God.

49. Dua refers to calling out the Almighty. It is an act of supplicating the

Almighty for any matter in life. In Islam, Dua (prayer) is considered an essence of worship. In Oxford Hindi and English Dictionary edited by R.S.McGregor, Dua is described as under :

“दुआ dua 1. invocation: one's wish for another); 2. prayer supplication; benediction. करना, or मांगना to pray (for, की); to with (for), to desire, देना (को), to bless, to pray for, आपकी — से (it is) thanks (only) to your prayer (formula acknowledging a kind act, or interest, दुआगो one who invokes or utters a blessing, a well-wisher, utterance of a blessing”.

50. In the new encyclopedia Britannica, Volume V, 15 Edition, the prayer is described as under :

“Prayer is an act of communication by man with the sacred or holy – God, the gods, the transcendent realm, or supernatural powers. Found in all religions in all times, prayer may be a corporate or personal act utilizing various forms and techniques. Prayer has been described in its sublimity as “an intimate friendship, a frequent conversation held alone with the Beloved” by St. Teresa of Avila, 16th-century Spanish mystic.”

51. Amen is in the nature of exclamation. In Concise Oxford English Dictionary, 12th Edition, Amen is defined as – “exclam. Said at the end of a prayer or hymn, meaning ‘so be it’. When one says Amen in response to the Dua, it amounts to imploring the God to grant one or other's prayer. The person who said Amen, can be said to express agreement with what has been prayed. In New Encyclopaedia Britannica, ‘Amen’ is described, inter alia, as under :

“amen, expression of agreement, confirmation, or desire
used in worship by Jews, Christians, and Muslims.”

52. It, thus, becomes explicitly clear that, by saying Amen, the person can be said to have agreed with or seconded the prayer for the electoral success of the Respondent No.1. However, saying Amen is materially distinct from making the pledge, which is in the nature of a formal promise or undertaking.

53. The prayer for success in the electoral fray, or invocation of the blessings of the God or Deity has neither the trappings of soliciting the votes on the ground of religion of the candidate, nor it amounts to marring the prospect of the rival candidate with reference to his religion. Thus, the submission of Mr. Farasat that the assertions in paragraph Nos.5 and 6 of the Petition lack the material facts and the Petitioner has failed to disclose the full particulars, appears to carry substance. Even otherwise, it defies comprehension that the invocation of the blessings by praying for electoral success would amount to a corrupt practice.

54. The second set of alleged offending acts allegedly amounting to corrupt practice is speeches / utterances made by Respondent No.1 and his agents / campaigners. In paragraph No.7 of the Petition, the Petitioner has incorporated the excerpts of the offensive speeches made by Respondent No.1 as well as his agents / campaigners. First, the objectionable speeches made by Respondent No.1.

55. In paragraph 7(d), the Petitioner has extracted true translation of the alleged offending speech made by the Respondent No.1. It reads as under :

“And I believe that if there has been the most painful death in human history, then it was that of Hazrat Amna, the mother of our beloved Prophet Muhammad (peace to upon her). Those who know and read have history, know about this. And they believe that our master Muhammad (pace be upon him), who was 5 or 6 years old, went to Madina with his mother. He was returning to Mecca from Madina. 2 days and two nights way was travelled. And Hazrat Amna, who was 25 years old, had a heart attack on the way. Our master was with them, who was 6 years old. And there was a slave, Umme Aiman with them, and no 3rd person was with them. When she suffered heart attack there was a great deal of pain, so Hazrat Amna spoke with her blessed tongue, saying “Every living being has to die, and every young person is subject to loose it’s youth, but it seems to me that my death comes in youth.” And Hazrat Amna passed away. Those who have seen our master go from Medina to Mecca, when he was 6 years old. Hazrat Amna was buried in her grave. There was a hill that was a little steep, where Hazrat Amna’s body was kept and covered with stones. Umme Aiman, kept walking carrying our master. Our master took his hand and went back and then climbed the hill. When Umme Aiman returned, she was that the Prophet had taken his

mother's grave. He was 6 years old. When you were in our mother's womb, his father had passed away. Then he was 6 years old at that time his mother was also passed away. Heart attack did occur that time too, but at that time people were not aware of this. I had a heart attack, once, twice, thrice, and I went through these moments where my heart stopped breathing, my pulse stopped. I don't know how much time passed in such a state, it felt like what one sees in a dream, that some people are forcing themselves on me. I felt like that, so I was also trying to fight them. Suddenly I felt as if some people were riding on me. Suddenly, I opened my eyes and saw that some people were holding me down. One of them asked what my name was, I said Muhammad Ismail, they let me go. Allah gave me a second life."

56. After extracting the speech, the Petitioner avers as under :

"The Petitioner states that the Respondent No.1 is comparing himself to Hazrat Amna, the prophet's mother and appealing for votes on the basis of these religious sentiments of the Islam Religion, which is a corrupt practice under the provisions of the said Act, 1951, which has materially affected the results of the election."

57. At best, the afore-extracted assertions in the petition with reference to the speech of Respondent No.1 are inferential. The assertion that by referring to the incident involving mother of the Prophet, the Petitioner has appealed

for votes on the basis of religion is plainly far-fetched. Respondent No.1 has adverted to the said incident involving mother of the Prophet and declared that he too suffered heart attacks and God gave him a second life. The analogy may be completely unwarranted and exaggerated. However, it hardly amounts to a corrupt practice.

58. The second objectionable speech made by Respondent No.1 as extracted in para 7(f), reads as under :

“Dua -

O Allah, forgive our sins. Forgive our mistakes. Cover our faults. We are feeble and weak creature. We need your help on every step. O Allah extend helping hands towards us (thrice). Oh the lord of Universe, election has come for the betterment of the people of the city, for the progress prosperity of the city, for the availability of basic needs of the city and so we decided to fight election. We believe you are the only doer. Every thing is done by you. You are our creator. You are our owner. We are your slaves. We are finally dependent on you. Oh lord, you tell us to use resources to accomplish anything in this world. So we have used all the resources day in and day out. We strived hard. We knocked every door. We tried to meet each and every individual of the city. We met maximum people but suddenly circumstances changed, and I took ill and couldn't meet people who I wished to meet. We old ourselves responsible for it. We have tried but the decision is in your hands. Oh lord we did whatever we can. Our friends did to the best of their extent. Oh lord we did as per our potential but you are

the supreme decision maker. Oh Allah, have mercy on us.
On Allah, give us respect with ease and grace. Give us
success.....”

59. After extracting the aforesaid speech, the Petitioner has asserted that the people who attended the said gathering, said “Amen” in response to the ‘Dua’ prayed by the Respondent No.1 and that denotes collective act of pledge for the desired ‘Dua’, which is promise of Vote in favour of Respondent No.1.

60. As indicated above, the act of saying Dua (prayer) and the response thereto by “Amen” does not amount to pledge. As the Dua is essentially a form of the communication by the believer with the God, saying prayer for success in the election neither amounts to exercise of undue influence nor soliciting votes in the name of the religion. Respondent No.1 could have been accused of playing the sympathy card on account of the illness which he claimed to have suffered. But that is completely besides the point.

61. The second set of speeches to which the Petitioner takes umbrage at were allegedly made by the agents/campaigners/leaders of Respondent No.1. The translated version of those speeches have been extracted in paragraph 7a, 7b, 7c and 7e. The Petitioner asserted that those speeches by the campaigners/agents were made in the presence of Respondent No.1 and those speeches were authorised and assented to by Respondent No.1.

62. Clause (b) of Section 100(1) incorporates commission of a corrupt practice by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent, a ground for declaring the election to be void. Sub-Clause (ii) of Clause (d) of Section 100(1) provides that the result of the election, insofar as it concerns a returned candidate, has been materially affected by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, also a ground for declaring the election to be void. However, there is subtle yet significant distinction between Clause (b) of sub-Section (1) and sub-Clause (ii) of Clause (d) of sub-Section (1) of Section 100.

63. In sub-Clause (b) of sub-Section (1) commission of any corrupt practice by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent by itself is sufficient to declare the election to be void. In contrast, the commission of any corrupt practice in the interests of the returned candidate by an agent other than his election agent is a a ground for declaring the election to be void only when it is pleaded and proved that the result of the election in so far as it concerns returned candidate has been materially affected. In the latter case, however, there is no further requirement of consent of the returned candidate or his election agent.

64. It was submitted on behalf of Respondent No.1 that the Petition did not disclose how the speakers can be considered as Respondent No.1's agents. Nor the Petition reveals that Respondent No.1 has adopted or assented to those alleged offending speeches. Mr. Farasat, the learned Senior Advocate for Respondent No.1, would urge that, at best, it is alleged that the offending speeches were made in the presence of Respondent No.1. However, that is not sufficient to infer implied consent.

65. In the case of **Manohar Joshi (Supra)**, the Supreme Court after adverting to the distinction between Section 100(1)(b) and sub-Clause (ii) of Clause (d) of Section 100, enunciated that it has to be also remembered that the provision is made in the RP Act, 1951, as well as in the general law to punish the makers of such incendiary speeches. Thus even if the acknowledged leaders of a party have committed any corrupt practice which results in benefit to the returned candidate, then on proof of the benefit having materially affected the election result in favour of the candidate, his election would be set aside on the ground under Section 100(1)(d)(ii) of the RP Act, 1951. Thus there is no occasion to read into the ground in Section 100(1)(b) or the definition of "corrupt practice" the implied consent of the candidate for any act done by a leader of that party to dispense with a clear pleading and proof of the candidate's or his election agent's consent as a constituent part of

the corrupt practice for the ground under Section 100(1)(b) of the RP Act, 1951.

66. In the said case, the Supreme Court also adverted to the nature of the relationship between the candidate and leader of the party which has set him up, and the control which such candidate may exercise on the leader. The observations in Paragraph 42 are material and hence extracted below.

“42 It may also be mentioned that the proposition suggested in the argument of Shri Desai does not appear to be correct. Whenever the requirement is of consent, it must be free consent given by the giver of the consent, of his own volition. Ordinarily, it also implies a subservient role of the person to whom consent is given and the authority of the giver of the consent to control the actions of the agent. It is difficult to ascribe to an acknowledged leader of the party a role subservient to the candidate set up by that party inasmuch as the candidate is ordinarily in no position to control the actions of his leader. However, if even without giving his consent, the candidate has received benefit from the leader's act in a manner which materially affects his election favorably, on pleading and proof of such material effect on the election, the candidate's election is liable to be set aside on the ground under Section 100(1)(d)(ii) unless, as provided in sub-section (2) of Section 100 he further discharges the onus placed upon him that in spite of his opposition and taking due precautions that act had been committed for which he cannot be responsible.”

(emphasis supplied)

67. Where it is alleged that corrupt practice has been committed by an agent/campaigner/leader of the returned candidate, ordinarily, it would be necessary to make specific pleadings on the aspect as to whether the case would fall under Clause (b) of Section 100 (1) or such corrupt practice has been committed in the interests of the returned candidate by an agent other than the election agent; which would fall within the ambit of sub-Clause (ii) of Clause (d) of Section 100.

68. In the case at hand the Petitioner, after extracting the speeches made by the agents/campaigners of Respondent No.1 has asserted that the speeches were made with the consent of Respondent No.1 in his presence, which has materially affected the results of the election. However, the Petitioner has not specifically averred that corrupt practices were committed by making those offending speeches in the interest of Respondent No.1. *Prima facie*, the assertions in the Petition do not make out a specific case under sub-Clause (ii) of Clause (d) of Section 100(1) of the RP Act, 1951.

69. Mr. Patwardhan would urge that the presence of the Petitioner when the offending speeches were made has been specifically pleaded and that betrays consent and authorisation. Adverting to the decision of the Supreme Court in the case of **Dr Ramesh Yeshwant Prabhoo (Supra)**, Mr. Patwardhan would submit that the presence of the returned candidate in the

meeting in which the offending speeches were made has been generally recognized as an element of consent.

70. In the case of **Dr Ramesh Yeshwant Prabhoo (Supra)**, the Supreme Court affirmed the decision of the High Court where the consent of Dr. Prabhoo for the offending speeches made by Bal Thackeray was implied from his conduct including his personal presence in all the three meetings.

71. Presence of the returned candidate in a meeting in which the offending speeches were made is undoubtedly relevant. If the offending speech was not made in the presence of the returned candidate, the latter can very well feign ignorance. However, the mere fact that the offending speech was made in the presence of the returned candidate may not be the sole determinative factor.

72. In the case of **Chandrakanta Goyal (Supra)**, on which reliance was placed by Mr Patwardhan, the Supreme Court enunciated the law as under:

"9. As an abstract proposition of law it cannot be held that every speech by a leader of a political party, who is not an agent of the candidate set up by the party, is necessarily with the consent of the candidate set up by that party to make it superfluous to plead and prove the candidate's consent, if that speech otherwise satisfies the remaining constituent parts of a corrupt practice. The act amounting to a corrupt practice must be done by `a candidate or his agent or by any other person with the consent of a candidate or his election agent'. A leader of a political party is not necessarily an agent of every candidate of that party. An agent is ordinarily a person

authorised by a candidate to act on his behalf on a general authority conferred on him by the candidate. Ordinarily, the agent is the understudy of the candidate and has to act under the instructions given to him, being under his control. The position of a leader is different and he does not act under instructions of a candidate or under his control. The candidate is held to be bound by acts of his agent because of the authority given by the candidate to perform the act on his behalf. There is no such relationship between the candidate and the leader, in the abstract merely because he is a leader of that party. For this reason, consent of the candidate or his election agent is necessary when the act is done by any other person. Thus, even in the case of a leader of the party, ordinarily, consent of the candidate or his election agent is to be pleaded and proved, if the election of the candidate is to be declared void under Section 100(1)(b) for the corrupt practice committed by the leader. It is a different matter that the consent may be implied more readily from circumstances such as conduct of the candidate evident from his personal presence at that time and place without any protest.”

(emphasis supplied)

73. The Supreme Court has clarified that a leader of a political party is not necessarily an agent of every candidate of that party. The candidate is held to be bound by acts of his agent because of the authority conferred by the candidate on such agent. However, there is no such relationship between the candidate and the leader. Thus, the consent of the candidate or his election

agent is necessary when the act is done by any other person. Thus, even in the case of a leader of the party consent of the candidate or his election agent is to be pleaded and proved.

74. In the case at hand, as noted above, corrupt practice is on account of the alleged offending speeches made by the persons, who do not appear to be election agent of Respondent No.1. For those speeches, consent is sought to be attributed to Respondent No.1 on the score of his presence in those meeting and nothing more. No overt act or speech in the very same meeting which would demonstrate the consent has been pleaded.

75. On the aforesaid touchstone whether each of the offending speeches *prima facie* constitute corrupt practice under Section 123 of the RP Act, 1951, is required to be examined.

76. On 10th November 2024, one Shafeeque Rana delivered a speech. The translated version of the said speech, as incorporated in paragraph 7(b) of the Petition, is extracted below:

“Vote for Mufti Ismail and help him win with large margin. His symbol is “Kite” No. 5 button. Remember we offer 5 time Namaz. There are 5 Pillars of Islam. Also there is 5 (Panch) – Panjatan. I pray god, oh Allah for the sake of 5 (Panch) Panjatan grant success to Mufti Ismail Sahib... Khuda Hafiz.”

77. The afore-extracted version of the speech, in essence, contains an appeal to vote for Respondent No.1. The Petitioner has asserted that the

repeated reference to number “5” in the aforesaid speech was to emphasise the Sr. No. (5) of Respondent No.1 on the EVM. The purported connection even if considered to be correct and intentional does not travel beyond the appeal for votes for Respondent No.1. Simply put, the speech of Shafeeqe Rana does not fall foul of soliciting the votes on the ground of religion of Respondent No.1, which is the substratum of the Petitioner’s case.

78. On 16th November 2024, Abdul Malik Yunus delivered a speech. The translated version of which is extracted by the Petitioner in paragraph 7(c). It reads as under:

“Prophet Mohammad used to select the head of any clan on the basis of Quran. He prefers the person to be head, who has Quran within himself. We also have to follow the way of prophet. We also have to elect our candidate on the basis of Quran. Don’t vote on the basis of caste and religion but on the basis of Quran. Vote for “kite” on 20th November 2024 on the basis of Kalma (one of the pillars of Islam).”

79. The assertion of Petitioner that Abdul Malik Yunus appealed to the voters to cast their votes in favour of Respondent No.1 on the ground of his religion is belied by the emphatic statement in the aforesaid speech that audience should not vote on the basis of caste and religion but on the basis of Quran. By inference, it was sought to be suggested by the Petitioner, that the

appeal was to vote on the ground that Respondent No.1 should be chosen as he is religious leader because he has imbibed Quran.

80. At this stage it would be contextually relevant to note that the speeches delivered, during the course of the surcharged election campaign, are neither in serene atmosphere nor after careful deliberation. It would, therefore, be impermissible to read into the words used in the speech, something which is not apparent. Ultimately it is the impact on the persons to whom the speeches were addressed that has to be gauged.

81. In the case of **Kultar Singh (Supra)**, the Supreme Court, *inter alia*, enunciated that in considering the question as to whether a particular appeal made by a candidate falls within the mischief of Section 123(3) of the RP Act, 1951, the Court should not be astute to read into the words used in the appeal anything more than can be attributed to them on its fair and reasonable construction. The Supreme Court further cautioned that, while reading the offending document, it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language, or the adoption of metaphors, and the extravagance of expression in attacking one another are all a part of the game, and so, when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued

in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light.

82. This being the anvil on which the offending speech is to be tested, this Court finds it rather difficult to read into the speech of Abdul Malik Yunus anything which would fall within the mischief of the corrupt practice.

83. Sufi Anees Qadri allegedly delivered a speech on 8th November 2024, the translated version of which read as under:

“Mufti Ismail (Respondent No.1) is Imam of Eidgah (camp) and I know 1.5 lakh (Approximately) offer Namaz behind him. It is true or not? Tell me.. raise your hands.. When you offer Namaz behind him, you consider him your Imam. I swear on god we are followers of Gaus-e-Azam we can sacrifice our life on his name. The Mufti of the city lead your namaz and 1.5 lakh people offer namaz and he comes and pleads for vote, shame on you, shame on you, shame on you.

84. Dear Muslims of Malegaon you offer namaz behind him, you consider him your imam. Today swear god you will vote for Mufti Mohammad Ismail on Kite Symbol.. on kite.. kite.. raise your hands and ensure me, don't accept him imam in air, he is imam so accept him. I am sunni and I am accepting him as my Imam, my leader.

If his party wins, surely it will not win because 1.5 lakh Muslims offer Namaz behind him (speaker is referring to respondent no.1 Mufti Md. Ismail) so there is no question of winning, but if he (speaker is referring to the petitioner) wins I swear god you are not true muslim, note my words...”

85. Mr. Patwardhan submitted that the afore-extracted speech threatens the Muslims to cast vote in favour of Respondent No.1 as he is the Imam of Jama Masjid and leads the prayer (Namaz). He gave a further threat that if the Petitioner wins in the election, then the persons who attended the said election meetings, were not true Muslims. Mr. Patwardhan submitted that Sufi Anees Quadri clearly appealed for votes on the basis of religion.

86. I am afraid to accede to this submission unreservedly. The correct reading of the afore-extracted speech, in the considered view of this Court, would indicate that the suitability of Respondent No.1 to be elected was sought to be highlighted, albeit with reference to the fact that the Respondent No.1 was Imam (who leads the prayers). Sufi Anees Quadri asserted that, being the Imam of the Muslims, it was shame that he was required to seek votes. Sufi Anees Quadri exhorted the audience to accept Respondent No.1 as their Imam by their deeds and not in the air. Sufi Anees Quadri was, thus, appealing to the emotions of the gathering. However, the said appeal did not amount to soliciting votes on the ground of religion of Respondent No.1.

87. It is necessary to note, in the petition itself, the Petitioner has asserted that almost 90% of the voters in the constituency were Muslims by religion. The Petitioner was secular by thought. Respondent No.1 had religious bent of mind. Thus, the appeal to vote for Respondent No.1 on account of his

position as Imam was in reference to his personal qualification and attributes rather than religion.

88. The last part of the afore-extracted speech where the speaker appeals to the voters by asserting that if the Petitioner wins, they are not true Muslims, appears to be a part of rhetoric. The said part does not in terms, imply that the failure to vote for Respondent No.1 or the cast of the vote in favour of the Petitioner will render the voter an object of divine displeasure or spiritual censure. Thus, the aforesaid speech does not fall within the mischief of corrupt practice.

89. During the course of campaigning, Asaduddin Owaisi addressed a meeting on 16th November 2024 and delivered a speech, which the Petitioner asserts constitutes a clear corrupt practice. The translated portion of the offending speech extracted in paragraph 7(e) of the Petition, reads as under:

“You made drugs common in Malegaon. What is his name? Yes. No there is one more name. Yes. What do they call drugs. There are many names. One of them is Auto (speaker is referring to the petitioner's election symbol). You can see in Malegaon, who is making drugs common. The police also know who is involved in the business of drugs. Spoiling the life of children. The person who failed to support in Namos-e-Risalat (in honour of Prohphethood) is now behaving like a YAZIDI. The person who is supporting those who are shooting. The person is supporting those who are destroying the properties of Waqf.”

90. In paragraphs 8 and 9 of the Petition again a reference is made to the aforesaid statements to assert that those statements were calculated to prejudice the prospects of the Petitioner in the election from the said constituency.

91. Mr. Patwardhan was extremely critical of the aforesaid speech delivered by Asaduddin Owaisi. It was submitted that by comparing the Petitioner with the Yazid, the Petitioner's personal character was vilified with a view to prejudice the prospects of the Petitioner's election. There can be no worse spiritual indignation than comparing a believer with Yazid. Mr. Patwardhan further submitted that, completely false and wholly unjustified statements were made in relation to the personal character of the Petitioner to the effect that he was involved in heinous offences like drug peddling.

92. The first part of the speech pertains to alleged illegal and criminal activities. *Prima facie*, it appears to be in the nature of expression of the concern on account of prevalence of drugs and its disastrous ramifications on the youth of Malegaon. The reference to the Petitioner therein is inferential. The speech is required to be read in the light of the dictum enunciated by the Supreme Court in the case of **Kultar Singh (Supra)**.

93. In the latter part of speech the speaker has alleged that the person who failed to support the 'Honour of the Prophet' was behaving as Yazid. Again, the reference to the historical context appeared to show the unsuitability of a

particular candidate rather than to demonize the Petitioner, even if one were to assume that the said reference was to the Petitioner only. Reference to Abrohamic, mythological or historical characters to highlight the human vices and frailties is required to be appreciated in the context of accusations and conter-accusations in the political campaign. The use of metaphors to highlight the suitability or unsuitability of the candidates is required to be seen through the said prism.

94. I, therefore, find it rather difficult to accede to the submission of Mr. Patwardhan that the said reference constitutes the corrupt practice which would fall within the ambit of sub-Clause (4) of Section 123 of the RP Act, 1951.

95. An endeavour has also been made by the Petitioner to make out a case for corrupt practice within the meaning of sub-Section (3A) of Section 123 of the RP Act, 1951. It was averred in the paragraph 10 of the Petition that Respondent No.1/his agents/campaigners were also guilty of promoting enmity between the classes in Islam itself namely “Dakhni Muslims” and “Momins”. They also created divide between Hindus and Muslims of the constituency.

96. The assertions in paragraph 10 are plainly bald and vague. General statements are made that Respondent No.1 and his agents and campaigners were guilty of promoting enmity between the classes of Muslims as well as

creating divide between the Hindus and Muslims. The assertions are bereft of any facts much less material facts. Nor, there is any disclosure of the particulars of the alleged acts promoting enmity between the classes and religion. Pleading on the said ground is, thus, clearly in breach of the mandate contained in Section 83 of the RP Act, 1951.

97. The next offending act is attributed to Ms. Rafea Abdul Khalique – sister of Respondent No.1. The Petitioner asserts, during 16 to 18 November 2024, Ms. Rafea who claims herself to be a religious scholar, has circulated several pamphlets in the constituency, and, thereby influenced the voters. The english translation of the first pamphlet extracted in paragraph No.12 of the Petition, reads as under :

“He (Speaker is referring to Respondent No.1) is the Imam of Jama-Masjid, Speaker of Eidgah, President of Rabta Madaris Islamia, Maharashtra. He (speaker is referred to Respondent No.1) is also the member of Executive Board of Jamiyat-e-Ulma and the Member of Advisory Board of Darul-Uloom, Deoband. He (speaker is referring to respondent No.1) is the real leader of people. He is ready to attend your problems day and night. He (speaker is referring to respondent No.1) is the person who represents Muslims with is Islamic attire and he is the sound of Islam in the Assembly Hall.”

98. I have read the pamphlet of which the afore-extracted portion forms part. The pamphlet is titled “Mufti Ismail – an introduction” (Exh.G-1). The

pamphlet attempts to describe the persona of Respondent No.1 in the esteem of Ms. Rafea. What were the Respondent No.1's qualification. What was his personal character. What Respondent No.1 did during the crisis situation. The pamphlet attempts to highlight how the Respondent No.1 would attend to the problems of the voters.

99. It is trite, the document would be required to be read as a whole. Few sentence therein cannot be read in isolation and torn out of context as is done in the afore-extracted portion. Therefore, reference to the religion and religious organizations in the aforesaid pamphlet with which Respondent No.1 is associated per se, did not render the campaigning activity foul of sub-section (3) of Section 123 of the RP Act, 1951.

100. In the case of **Dr. Ramesh Yashwant Prabhoo (supra)**, the Supreme Court exposted that for soliciting the votes for the candidate, the appeal prohibited is that which is made on the ground of religion of the candidate for whom the votes are sought; and when the appeal is to refrain from voting for any candidate, the prohibition is against an appeal on the ground of the religion of that other candidate.

101. Referring to the clarification given by the Law Minister for adding the word "his" in sub-section (3) of Section 123, the Supreme Court observed that the clarification clearly shows that a speech for the protection of fundamental rights, preservation of own language, religion and culture, etc. are not

forbidden by sub-section (3) of Section 123. The observations in paras 16 and 18 are material, and, hence, extracted below :

“16. It cannot be doubted that a speech with a secular stance alleging discrimination against any particular religion and promising removal of the imbalance cannot be treated as an appeal on the ground of religion as its thrust is for promoting secularism. Instances given in the speech of discrimination against any religion causing the imbalance in the professed goal of secularism, the allegation being against any individual or any political party, cannot be called an appeal on the ground of religion forbidden by sub- section (3). In other words, mention of religion as such in an election speech is not forbidden by sub-section (3) so long as it does not amount to an appeal to vote for a candidate on the ground of his religion or to refrain from voting for any other candidate on the ground of his religion. When it is said that politics and religion do not mix, it merely means that the religion of a candidate cannot be used for gaining political mileage by seeking votes on the ground of the candidate's religion or alienating the electorate against another candidate on the ground of the other candidate's religion. It also means that the state has no religion and the State practises the policy of neutrality in the matter of religion.

.....

18. It cannot be doubted that an election speech made in conformity with the fundamental right to freedom of religion guaranteed under Article 25 to 30 of the Constitution, cannot be treated as anti-secular to be prohibited by sub- section (3) of Section 123, unless it falls within the narrow net of the prohibition indicated earlier. It is obvious that a speech referring to religion during election campaign with a secular stance in conformity with the fundamental right to freedom of religion can be made without being hit by the prohibition contained in sub-section (3), if it does not contain an appeal to vote for any candidate because of his religion or to refrain from voting for any candidate because of his religion. When it is said that politics and religion do not mix, it obviously does not mean that even such permissible political speeches are forbidden. This is the meaning and true scope of sub-section (3) of Section 123 of the Act.”

102. The Supreme Court has, thus, enunciated in clear and explicit terms that the mention of religion in an election speech is not forbidden by sub-section (3) so long as it does not amount to an appeal to vote for a candidate on the ground of his religion or to refrain from voting for any other candidate on the ground of his religion. An election speech made in conformity with the fundamental right to freedom of religion guaranteed under Articles 25 to 30 of the Constitution, cannot be treated as anti-secular to be prohibited by sub-

section (3) of Section 123, unless it falls within the narrow net of the prohibition. When it is said that politics and religion do not mix, it obviously does not mean that even such permissible political speeches are forbidden.

103. In the pamphlet referred to above, an appeal to vote Respondent No.1 on the ground of his religion is conspicuous by its absence. What it suggests is that the Respondent No.1 would be a better representative for the supposed qualifications he has.

104. The second pamphlet purportedly circulated by Ms. Rafea, reads as under :

“The people who elect women as their leader can never prosper”. “A Muslim woman is not supposed to deliver a speech without ‘veil’ (Hijab) and accompany man and wander with them and be the leader of people”, My Allah, safeguard us from this evil disrespect.”

105. Mr. Patwardhan submitted that the aforesaid pamphlet quoting a Hadees of Bukhari Sharif was actuated by a design to influence the voters on the ground of religion. Religious belief and tenets which Ms. Rafea followed and attempted to propagate could be legitimately criticized. In a constitutional democracy based on rule of law, such misogynistic views may not have any place. However, the pamphlet does not make reference to a candidate in particular. It is in the nature of a general statement, which refers to the perceived role of women, according to the religious tenets. Though, liable to

be denounced, the statements in the pamphlet do not amount to corrupt practice, as it would not fall within the ambit of either sub-section (3) or sub-section (4) of Section 123. To put it in other words, the statements in the pamphlet do not indicate that they were in relation to the personal character or conduct of any woman candidate.

106. In paragraph No.13 of the Petition, the Petitioner refers to the prayer meet allegedly organized by Ms. Sarah Mufti Ismail, daughter of Respondent No.1 for the speedy recovery of Respondent No.1 from illness. In the said prayer meet, Ms. Sarah allegedly made, inter alia, the following speech :

“O God Safeguard us from all evils and problems. O God prevail peace in the city and bring back the days of peace and tranquility. O God put an end of hooliganism from this city and make Malegaon a peaceful city. Oh God, bring people in government who love Muslims and well-wishers of Muslims. O God decide good for Muslims. O God Succeed all MLA contestants of Majlis Ittehadul Muslimeen. Make Majlis Ittehadul Muslimeen strong and give Majlis a grand success so that our rival gets astonished. O god succeed all candidates (of Majlis) with peace and great happiness.”

107. If appraised through the prism of the test which falls foul of sub-section (3) of Section 123 of the RP Act, 1951, the aforesaid speech, even if taken at par, does not transgress the arena of invocation of the help and blessings of

the God and success of the candidates of AIMIM in the election, a clearly permissible political activity.

108. In paras 16 and 17, the Petitioner has referred to the support extended by the religious organizations, namely, Jamiyat-e-ulma and Jamaat-e-Islami Hind Malegaon to the candidature of Respondent No.1. The Petitioner asserts that the Respondent No.1 is the President of the religious organization Jamiyat-e-ulma and the appeal made by Respondent No.1 to voters through the religious organization constitutes a corrupt practice under the RP Act, 1951.

109. It is to be mentioned at the cost of repetition that the reference to religion in the political discourse itself is not completely prohibited. Nor the religious organizations absolutely debarred from participating in the electoral process. In the case of **Kultar Singh V/s. Mukhtiar Singh (supra)**, the Constitution Bench of the Supreme Court adverted to the prevalence of a political parties which have their support base confined to a particular communities or religion. The Supreme Court observed, so long law does not prohibit the formation of such parties and in fact recognises them for the purpose of election and parliamentary life, it would be necessary to remember that an appeal made by candidates of such parties for votes may, if successful, lead to their election and in an indirect way, may conceivably be influenced by considerations of religion, race, caste, community or language.

This infirmity cannot perhaps be avoided so long as parties are allowed to function and are recognised, though their composition may be predominantly based on membership of particular communities or religion. That is why in considering the question as to whether a particular appeal made by candidate falls within the mischief of s.123(3), courts should not be astute to read into the words used in the appeal anything more than can be attributed to them on its fair and reasonable construction.

110. If the appeals made by the religious organizations, are considered in the light of the aforesaid position in law, the support extended by the religious organizations to the candidature of Respondent No.1 would not amount to corrupt practice.

111. One of the grounds on which the Petitioner seeks to annul the election of Respondent No.1 is the alleged improper reception of votes which were void. The Petitioner avers, as many as 1082 persons who were dead were included in the voters list of the constituency and as those persons were shown to have cast their votes in the election held on 20 November 2024, the election of Respondent No.1 was void under the provisions of Section 100(1) (d)(iii) of the RP Act, 1951. The Petitioner has prepared a report which mentioned the names of 1082 persons who have allegedly expired. The Petitioner has obtained death certificates of 9 persons from Ward No.3 who have been shown to have cast their votes in the said election.

112. Mr. Farasat, learned Senior Advocate for Respondent No.1, submitted that, an identical challenge was repelled by this Court in the case of **Shobha Dinesh Bacchav (supra)**, in respect of the very same constituency in the Parliamentary elections. In para 15 of the Petition, there is a solitary assertion that the persons who are dead have also been shown to have cast their votes in the election. No other material is placed on record to make out a prima facie case that the votes were cast in the name of dead persons. Neither an affidavit of the polling agent that they had noticed that the votes were cast in the name of dead persons is filed, nor any other material in the form of disputes having been raised at the time of the polling that the votes were cast in the name of the dead persons, is placed on record. The pleading in regard to the alleged improper reception of void votes is scanty and does not satisfy the threshold of Section 83 of the RP Act, 1951.

113. In the case of **Shobha Dinesh Bacchav (supra)**, a learned Single Judge of this Court elaborately considered the ground of improper reception of void votes on account of votes being cast allegedly in the name of dead persons and cast of multiple votes in the name of same persons in respect of the Malegaon Central Constituency itself. The observations in paras 49 to 53 are material, and, hence, extracted below :

“49. Considering the pleading of the Election Petitioner it is to be noted that there is no prima-facie material to indicate that votes are cast in the name of dead persons. The data is

asked from the Election Petitioner from the Election Commission i.e. Register maintained under Form 17-A and 17-C of the Conduct of Election Rules, 1961 with CCTV footage so as to verify, whether votes are cast in the name of dead persons and multiple votes are cast in the name of same persons at different booths. There is no affidavit by polling agents that they have noticed votes being cast in the name of dead persons or that the polling agent had raised objection to the casting of the votes in the name of dead persons. It is also not stated that the polling agents have noticed casting of votes in the name of dead persons, however, have not objected to the casting of the votes in the name of dead persons as they were unaware of the demise of the voter at the relevant time. The polling agents seats with voters list in the polling station and are aware of the voters casting votes. There is no material to show that voting has taken place in the name of dead person. Thus there is an element of speculation and inquiry by this court at the instance of the Election petitioner. The Election Petitioner has placed on record the names of dead persons, whose names continues to be on the electoral roll, so also, has placed names of voters at multiple places. However, there is no evidence that voting has taken place in the name of dead persons or that voting has taken place at multiple places by the same voter. This data is called for from the Election Commission by the Election Petitioner and only after the data that may be made available by the Election Commission further case of the Petitioner will either be substantiated or refuted. However, by merely having names of dead persons on the electoral roll this court will not

presume that votes are cast in their names. The polling agents in the booth are aware of the votes cast by persons and an affidavit of polling agents present in the polling station stating that votes are cast against the dead persons would at least indicate that voting has taken place against the name of dead persons.

50. Rule 13 of The Conduct of Elections Rules, 1961 provides for appointment of the polling agents, whereas Rule 35 provides for identification of electors, wherein the presiding officer when an elector enters the polling station, the presiding officer or the polling officer authorised by him in this behalf shall check the elector's name and other particulars with the relevant entry in the electoral roll and then call out the serial number, name and other particulars of the elector.

Thereafter, the polling agent present may challenge of identity in terms of Rule 36. The polling agent may challenge 42 Appln.EP35.2024 the identity of a person by first depositing a sum of two rupees. On such challenge being made by the polling agent, the presiding officer has to follow a procedure and take decision of permitting the voter either to vote or reject the same.

Rule 37 provides for safeguards against impersonation.

51. Presently, there is no material before the court to indicate that large number of persons have cast votes against the names of dead persons so as to materially affect the election and this court would not enter in to inquiry of the same.

52. The election petitioner has mentioned the names of persons, who are residents of Malegaon and party workers associated with the Petitioner and has submitted that during the election they have noted that votes were polled in the name of persons who were already dead and that these votes are polled in favour of Respondent No.3. These pleadings are not sufficient to enter into inquiry as to, whether votes are cast in the names of dead persons as these are bald assertions. Only the polling agents, who were present in the booth with the Electoral Roll and having knowledge of the casting of votes in the names of dead persons can possibly make such an assertion.

53. Thus, this court finds that the ground raised in Section 100(1)(d)(iv) of the Representation of the People Act is not substantiated by material particulars. This court would not undertake an inquiry to ascertain, whether voting has been cast in the name of dead persons or that there is multiple voting in the name of same persons without supporting pleadings and material in the Election Petition.”

114. The aforesaid reasons apply with equal force to the facts of the case at hand. Plainly, the pleadings are not adequate to embark upon an inquiry as to whether the votes were cast in the name of dead persons. As noted above, there is a bald assertion that the persons who are allegedly dead have also been shown to have cast their votes in the election. Therefore, no triable issue in regard to the ground of improper reception of void votes, thereby

materially affecting the election of the returned candidate arises for consideration.

115. The conspectus of aforesaid consideration is that the election petition fails to make out a complete cause of action to merit trial. Resultantly, the application deserves to be allowed and the election petition is liable to be rejected.

116. Hence, the following order :

ORDER

- (i) Interim Application (L) No.28990 of 2025 stands allowed.
- (ii) Election Petition No.7 of 2025 stands rejected.
- (iii) In the circumstances of the case, there shall be no order as to costs.

(N.J.JAMADAR, J.)