



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

APPLICATION IN ELECTION PETITION NO.35 OF 2024

Smt. Shobha Dinesh Bacchav
Age: 64 years, Occu.: Medical Practitioner,
R/o. Dhanvantri Hospital, Pet Road,
Panchavati, Nashik, Dist. Nashik .. **Applicant**
(Ori. Respondent No.3)

VERSUS

1. Dr. Shri Subhash Ramrao Bhamre,
Age: 71 years, Occu.: Medical Practitioner,
R/o. Plot No.16, Badgujar, Parola Road,
Dist. Dhule (Ori. Petitioner)
2. The Election Commission of India,
Through Chief Election Commissioner,
Nirvachan Sadan, Ashoka Road,
New Delhi
3. The Returning Officer,
Dhule Parliamentary Constituency 02
@ The Collector,
Dhule, Dist. Dhule,
C/o. Collector Office, Dhule, Dist. Dhule
4. Shri Bharat Baburao Jadhav,
Age: 42 years, Occu.: Labour,
R/o. At Pimpri, Po. Vadjai,
Tq. & Dist. Dhule
5. Zahor Ahamad Mohamad Yusuf (Jam Jam)
Age: 54 years, occu.: Agri.,
R/o. 3047/A, Panch Kandil,
Agra Road, Dhule, Dist. Dhule
6. Shafeeque Ahemad Md. Rafeeque,
Age: 44 years, Occu.: Business,
R/o.: Survey No.43, Plot No.2,
Shahid Abdul Hamid Road, Ganesh Nagar,
Malegaon, Dist. Nashik

7. Shri Namdeo Rohidas Yalave,
Age: 52 years, Occu.: Business,
R/o.: At Post Walkheda,
Tq. Shindkheda, Dist. Dhule
8. Shri Sachin Umaji Nikam,
Age: 35 Years, Occu.: Advocate,
R/o.: At Dabali, Post. Kashti,
Tq. Malegaon, Dist. Nashik
9. Shri Raj Chavan,
Age: 55 years, occu.: Agri.,
R/o.22, Jamanagiri Road,
Golibar Tekadi Area, Sushil Nagar,
Dhule, Tq. & Dist. Dhule
10. Mohammad Ismail Jumman,
Age: 64 years, Occu.: Labour,
R/o. House No.10, Lane No.5,
Survey No.209/1, Munshi Shaban Nagar,
Malegaon, Dist. Nashik
11. Shri Suresh Jagannath Brahmanekar,
Age: 67 years, Occu.: Labour,
At Post Jaykheda, Tq. Baglaan,
Dist. Nashik
12. Shri Shivaji Nathu Patil,
Age: 43 years, Occu.: Labour,
R/o. Shivaji Chouk, Aarvi,
Dist. Dhule
13. Shaikh Mohammad Zaid Shamim Ahmed,
Age: 53 years, Occu.: Private Service,
R/o. 201, Aksa Tower, Samrath Colony,
Chalisgaon road, Near Apni Bakery, Dhule
14. Mohammad Aameen Mohammad Faruque,
Age: 45 years, Occu.: Business,
R/o. S. No.92, Plot No.4,
Jafar Nagar, Malegaon, Dist. Nashik
15. Mugeem Meena Nagri,

Age: 43 years, Occu.: Business,
R/o. S.R. No.19, H. 51,
Mominpura, Islampur, Malegaon,
Dist. Nashik

16. Irfan Mo. Ishak (Nadir),
Age: 43 years, Occu.: Social Worker,
R/o. 37 A near Beef Market, Navapura,
Malegaon, Tq. Malegaon, Dist. Nashik
17. Shri Malay Prakash Patil,
Age: 35 years, Occu.: Business,
R/o. "Umed Nivas" Chinchavali Wadi,
Goregaon, Tq. Mangoon, Dist. Rajgad
18. Abdul Hafeez Abdul Haque,
Age: 39 years, Occu.: Labour,
R/o. House No.2536/13,
Maulana Azad Road, Maulavi Ganj,
Dhule, Dist. Dhule

.. Respondents

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Advocate for Applicant :

Mr. V. D. Salunke & Mr. A. V. Deshmukh

Advocate for Non-applicant No.1/ Election Petitioner:

Mr. Mukul Kulkarni & Mr. Umesh G. Mitkari

Advocate for Non-applicants No.2 & 3 :

Mr. Alok Sharma

Advocate for Respondent 10 in EP : Mr. Mohit S. Shah

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WITH

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ELECTION PETITION NO. 2 OF 2024

. Dr. Shri Subhash Ramrao Bhamre

.. Petitioner

Versus

1. The Election Commission of India,
Through Chief Election Commissioner
2. The Returning Officer,

Dhule Parliamentary Constituency (02),
@ The Collector, Dhule, Dist. Dhule

3. Smt. Shobha Dinesh Bacchav
4. Shri Bharat Baburao Jadhav
5. Zahor Ahamad Mohamad Yusuf (Jam Jam)
6. Shri Sanjay Rameshwar Sharma
7. Shafeeque Ahemad Md. Rafeeque
8. Shri Namdeo Rohidas Yelave
9. Shri Sachin Umaji Nikam
10. Shri Raj Chavan
11. Mohammad Ismail Jumman
12. Shri Suresh Jagannath Brahmankar
13. Shri Shivaji Nathu Patil
14. Shaikh Mohammad Zaid Shamim Ahmed
15. Mohammad Aameen Mohammad Faruque
16. Muqeem Meena Nagri
17. Irfan Mo. Ishak (Nadir)
18. Shri Malay Prakash Patil
19. Abdul Hafeez Abdul Haque .. Respondents

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WITH
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APPLICATION IN EP NO. 20 OF 2024 IN EP/2/2024
DR. SHRI SUBHASH RAMRAO BHAMRE
VERSUS

THE ELECTION COMMISSION OF INDIA AND OTHERS

...
WITH

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APPLICATION IN EP NO. 31 OF 2024 IN EP/2/2024

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THE ELECTION COMMISSION OF INDIA AND ANOTHER
VERSUS
DR. SHRI SUBHASH RAMRAO BHAMRE AND OTHERS

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| CORAM | : | ARUN R. PEDNEKER, J. |
| DATE | : | 13.06.2025 |

Judgment:

1. Heard Mr. Mukul Kulkarni along with Mr. Umesh G. Mitkari, learned counsel for the Election Petitioner, Mr. V. D. Salunke along with Mr. A. V. Deshmukh, learned counsel for Respondent No.3 in the Election Petition and Mr. Alok Sharma, learned Standing Counsel for the Election Commission.

2. General Elections to the 18th Lok Sabha was announced on 16.03.2024 and Election / Voting to the Dhule Parliamentary Constituency was held on 20.05.2024 and Respondent No.3 was declared elected on 04.06.2024. The election petitioner was one of the candidates in the election who had secured the second highest votes. The elected candidates secured 5,83,866 votes while the election

petitioner secured 5,80,035 votes. The difference in votes between the two candidates is 3831 votes.

3. The Dhule Parliamentary Constituency consists of 6 assembly constituencies, which are Dhule (Rural), Dhule (City), Sindkheda, Malegaon (Central), Malegaon (Outer) and Baglan.

In the Malegaon Central Constituency out of 02,05,588 votes polled, respondent no.3 had secured 1,98,869 votes, whereas the petitioner received only 4542 votes and none of the other candidates could pass 100 vote mark.

The Election Petition primarily focuses on this Assembly Constituency (Malegaon Central Constituency) and has filed Election Petition primarily contending that names of large number of dead persons are included in the electoral roll of this assembly constituency and votes are cast in the name of the dead persons and the same is received by Respondent No.3. It is also contended that there are multiple votes cast in the name of same persons in different booths in the said Assembly Constituency as their names are reflected in the Electoral Roll at multiple places of the same assembly constituency.

THE GIST OF THE ELECTION PETITION:

4. In the Election Petition, the relevant pleadings are as under:

“A. The petitioner states and submits that on inquiries the Petitioner came to know from Abhishek Rajgopal Rathi, Rajiya Akbar Shah, Subhash Jagannath Pachpute, Rajendra Jagannath Pachpute, Jayesh Dipak Sonagra, Umesh Ramesh Borwal, Ramesh Tukaram Chaudhari and Shital Ramchandra Pawar, who all are residents of Malegaon and party workers associated with the Petitioner during the election and 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.

B. The Petitioner states and submits that the Petitioner applied to the Malegaon Municipal Corporation and sought details of the register maintained under the Registration of Births and Deaths Act in Malegaon Central Assembly Constituency. It is a matter of record that the said constituency consists of three Prabhags i.e. Prabhag No.2, 3 and 4 formed by the Municipality Corporation. In response to the information sought by the Petitioner, the Corporation has supplied the data containing the register of death maintained in respect of Prabhag No.2, 3 and 4 for the period of 01.01.2016 to 31.05.2024, except for the period of 2020 to 2021 for Prabhag No.4. As per the said register 17,767 persons have died during last 8 years 5 months. It is pertinent to note that entire data as solicited by Petitioner is not supplied to the Petitioner therefore the number stated above is minimum and bound to increase after the Petitioner received the entire data.

C. The Petitioner states and submits that when the Petitioner counter checked the entries in the said register supplied to Petitioner by Municipal Corporation, with the final list of voters, it revealed that as of now the final list of voters, it revealed that as of now the final list of voters contains names of 4,378 dead persons of Malegaon Central Assembly Constituency despite the fact that their deaths are duly recorded in the register of deaths.

D. The Petitioner states and submits that the Petitioner submitted application under the Right to Information Act on 07.06.2024 soliciting the nomination papers, the CCTV footage and the register of voters maintained under Rule 17-A on every booth in Malegaon Central Assembly Constituency and also the details of the calculation of votes on all those booths.

E. The petitioner states and submits that Respondent No.2 replied to the Petitioner on 12.06.2024 and supplied the information mentioned in clause 1 to 7. Respondent No.2 however did not supply the register maintained under Rule 17-A and the calculation of votes on individual booths on the ground that as per the Election Commission handbook the same cannot be supplied.

F. The Petitioner states and submits that Respondent No.2 once again took shelter of the handbook of the Election Commission and refused to supply the information vide communication dated 29.06.2024.

G. The Petitioner states and submits that the further scrutiny of the final voter list from Malegaon Central Constituency revealed that the

names of voters are appearing on multiple occasions in the same voter list. The Petitioner came to know on inquiries from Abhishek Rajgopal Rathi, Rajiya Akbar Shah, Subhash Jagannath Pachpute, Rajendra Jagannath Pachpute, Jayesh Dipak Sonagra, Umesh Ramesh Borwal, Ramesh Tukaram Chaudhari and Shital Ramchandra Pawar that these persons have cast their votes at more than one places using different serial number in different wards in favour of Respondent No.3.

The Petitioner has prepared a computerized chart of all those persons whose names are appearing in the final list of voters at more than one place. The Petitioner has furnished the serial number, page number and ward number wherein such names are repeated. This chart is appended to the present Election Petition and the same may be treated as part and parcel of the present Election Petition. As per the chart prepared by the Petitioner, the persons who have voted in multiple occasions are 3329 in numbers.

H. *The Petitioner states and submits that the result of the election of Dhule Parliamentary Constituency is materially affected since there is discrepancy in the number of votes polled and the number of votes counted and also due to the fact that 4,378 votes polled in the name of dead persons. In addition to this the multiple voting by 3329 persons names in the chart referred above also has an effect of materially altering the results of the election. As large number of votes have been cast in the name of dead persons and that too in favour of the present Respondent No.3, it has affected sanctity and purity of election. The number of votes polled illegally at Malegaon Central Assembly constituency would*

unequivocally demonstrate that Respondent No.3 is the only beneficiary of all such votes.

I. The Petitioner states and submits that Respondent No.3 is elected by margin of 3,831 votes. This margin includes 4,378 votes polled in the name of dead persons in favour of Respondent No.3. In addition to this there are 3329 entries of persons enrolled in the final list of voters at multiple places which have gone in favour of Respondent No.3. These illegally tendered votes, if are excluded from the votes received by Respondent No.3 then the total votes secured by her will be less than the total votes secured by the Petitioner. In further addition to this the votes unaccounted for are taken into consideration then it is clear that the Petitioner is the recipient of highest number of legitimate votes in the Parliamentary constituency and hence is entitled to be declared as a returned candidate. The Respondent No.3 is the only beneficiary of all illegally tendered votes and hence all the votes should be excluded from the votes received by her.

J. The Petitioner states and submits that the cause of action for filing the present Election Petition arose on 04.06.2024 when the result of Dhule Parliamentary Constituency (02) was declared by present Respondent No.2. The cause of action further arose when the copy of the death register maintained by Malegaon Municipal Corporation received by the Petitioner and then it was noticed that the names of dead persons were included in the final list of voters.”

Application for dismissal of Election Petition

Application in Election Petition No.35 of 2024[Exhibit-16]

5. On notice being issued, Respondent No.3 appeared and filed an application for rejection of the Election Petition under Order 7 Rule 11 of Code of Civil Procedure read with Sections 81, 82 and 86 of the Representation of People Act, 1951.

6. The Respondent No.3 has sought dismissal of the Election Petition on the following grounds:

A. That the petitioner has alleged corrupt practice in the original Election Petition. However, along with the original Election Petition, the petitioner has not filed an affidavit in form no. 25, which is a mandatory requirement under Section 83(1) of the Representation of People Act, 1951 (for brevity referred to as the "*said Act*"). Therefore, for the above referred non-compliance of a mandatory requirement, the original Election Petition is liable to be dismissed at its threshold.

B. The original election petition has been filed based on following baseless and bald allegations;

[I] Respondent No.3 in her affidavit filed along with the nomination form has allegedly not disclosed registration of Crime No.0283 of 2019 at the Niphad Police Station under Sections 409 and 406 of the Penal Code.

[II] In Malegaon Central Assemble constituency, some ladies in Burkha whose names allegedly did not feature in the list of voters, have allegedly cast their votes in favour of Respondent No.3.

[III] About 4378 votes in the name of dead persons have been allegedly polled in favour of Respondent No.3.

[IV] Names of about 4378 dead persons remained in the list of voters allegedly at the behest of Respondent No.3.

[V] About 1998 legally tender votes have allegedly not been counted.

[VI] Above 3329 persons have allegedly cast their votes on more than one occasion only to benefit Respondent No.3.

C. The petitioner has challenged the election in issue do not fall within the purview of Sections 100 and 101 of the said Act and, therefore, on this ground alone the original election petition is liable to be dismissed in limine.

D. The pleadings in original election petition are not the averments of material facts but are based upon speculation and, hence, do not disclose any

triable issue. The original election petition do not disclose as complete cause of action.

E. The original election petition does not disclose any source of information to allege that the ladies wearing Burkha have cast their votes, even though their names did not feature in the list of voters. Further, the original election petition also does not disclose the basis to allege that the ladies wearing Burkha, whose names did not feature in list of voters, have voted to increase the vote share of Respondent No.3. The original election petition also does not refer to any such incident to show that ladies wearing Burkha have votes even though their names did not feature in the list of voters. Therefore, such a baseless and bald allegation does not disclose any cause of action to set aside election of a democratically elected candidate i.e. Respondent No.3.

F. The Election Petition does not refer to any basis to allege that about 4378 votes have been polled in the name of dead persons and, that too, in favour of Respondent No.3. The petitioner has not disclosed any source of information for alleging that 4378 votes have been polled in the name of dead persons. The original election petition does not disclose a single instance, where a vote has been polled in the name of a dead person. The said

allegation is nothing but just a speculation based upon incomplete and distorted contentions.

G. The allegation of the petitioner that about 1998 legally cast votes have not been counted is merely based upon statement of votes polled published on 21.05.2024 and election result published on 04.06.2024. There is no basis and or source of information disclosed in the original Election Petition to contend that 1998 votes have not been counted. Moreover, without admitting, even if the aforesaid allegation that about 1998 votes have not been counted is taken at it's face value, still the same will not materially affect the result of election in issue as Respondent No.3 has been declared elected by margin of about 3831 votes.

H. The original election petition does not disclose the source of information from where the election agent of petitioner received information that votes from about 6 Electric Voting Machines have not been counted.

I. The original Election Petition does not disclose basis and / or source of information to allege that about 3329 persons have voted at more than one place by using more than one serial number. The petitioner has merely referred to the names of his supporters to allege that the petitioner

has received information from his said supporters about multiple voting by 3329 persons. However, the petitioner has not disclosed the source of information from where his so called supporters became aware of multiple voting.

J. Respondent No.3 submits that by merely stating that the result of election in question has been 'materially affected' is not sufficient to satisfy the mandatory requirement under Section 100(1) (d) of the said Act. The Election Petition should clearly make out as to how the result of election has been materially affected by the alleged acts and / or omissions. Therefore, the original Election Petition suffers from several patent defects and, hence, the same is liable to be rejected.

K. The election petition cannot be based upon mere conjectures and surmises, riding on a chance to prove the allegations based on record maintained by the Returning Officer. The election petition should disclose a complete cause of action based upon all relevant material facts.

L. The allegations in the original election petition about many Burkha clad women voting in favour of Respondent No.3, votes polled in the name of dead persons to increase vote share of Respondent No.3 and multiple voting by same persons in favour of Respondent No.3 is not only

baseless, but also illegal as the same breaches the fabric of secrecy of voting. Therefore, on this ground alone the original election petition is liable to be dismissed with exemplary costs.

M. The original election petition does not contain concise statements of all the material facts and is also bereft of full particulars of so called corrupt practices alleged by the petitioner against respondent No.3.

N. The petitioner has not signed and verified the original election petition as is required by the provisions of the Code of Civil Procedure, 1908. The petitioner has verified the pleadings and annexures of the original election petition as if the same are within his personal knowledge. However, petitioner has not given the source of information on which his pleadings and annexures are based. Moreover, petitioner has relied upon incidents of corrupt practice, which are witnessed by informants of petitioner that forms sole basis of original election petition. However, the petitioner has verified said annexures as well as pleadings based thereupon as if the facts mentioned therein are within petitioner's own personal knowledge. Hence, the petitioner has erred by verifying the pleadings based thereupon as if the same are within petitioner's own personal knowledge. The form of affidavit submitted in support of original election

petition is not in accordance with the Conduct of Election Rules, 1961.

O. Respondent No.3 states that in order to challenge the election of 1st Respondent who has received public mandate by a democratic process, the petitioner should have taken extra care and should not have left any room for doubt while making allegations. The petitioner should have come forward with a definite plea, which should have been supported by legally acceptable material evidence without an iota of doubt. Hence, the petitioner by making vague, baseless and frivolous allegations has unnecessarily dragged respondent no.3 to this Court.

P. The original election petition is supported either by a primary document or reliable source of information. The pleadings in original election petition are not the averments of material facts but are facts based upon speculation and, hence, do not disclose any triable issue. The original election petition do not disclose a complete cause of action.

Q. Subject to correction, Respondent No.3 states that this Court has framed Rules with respect to conduct of Election Petitions filed under the said Act. Rule 4 of the High Court Rules provides for territorial jurisdiction of High Court benches to try election petitions.

R. Respondent No.3 states that even though judicial district of Dhule is attached to the Hon'ble Aurangabad Bench of this Hon'ble Court for appellate and criminal matters, however, it can be seen that Rule 4 of the High Court Rules with respect to conduct of Election Petitions has not been suitably amended to include Judicial District of Dhule within the jurisdictional limits of the Hon'ble Aurangabad Bench of this Hon'ble Court. Therefore, as per Rule 4 of the High Court Rules dealing with Election Petitions, as they stand today, the Hon'ble Aurangabad Bench of this Hon'ble Court may not have territorial jurisdiction to try the original election petition.

Reply of the Original Election Petitioner to the Application under Order 7 Rule 11 of CPC read with Sections 81, 82 and 86 and other provisions of the Representation of the People Act:

7. In the election petition there is no allegation of any corrupt practice and, hence, there is no need and requirement to file the affidavit in Form No.25.

8. In paragraph no.8 of the application, the applicant has tried to summaries the challenges raised in the election petition. It is, however, pertinent to note that the said challenges do not cover all the grounds raised in the election petition.

9. The learned counsel for the election petitioner submits that the Election Commission and the Returning Officer have filed an application at Exhibit 13 [Election / Civil Application No.31 of 2024 in Election Petition No.2 of 2024], wherein for the first time the election commission has brought on record that 2028 legally tendered votes are not at all counted. If these figures are added to the total number of votes polled and votes counted then the difference is more than the victory margin of the present applicant – respondent no.3 in the election petition.

10. The learned counsel for the election petitioner submits that the allegations made in the election petition are on the basis of official documents prepared and supplied by the Election Commission itself. In respect of other allegations, foundation is laid in the pleading and the evidence part will be a matter of trial.

11. The election petitioner submits that in the election petition it is pointed out on the basis of the final list of voters and the entries taken in birth and death registers by the competent authority that names of dead persons continued in the final list of voters. The petitioner has placed on record a

detailed chart containing details of all such instances and the number quoted in the petition is as per the said chart.

12. The election petitioner submits that in respect of 1998 illegal multi casting of votes, again the petitioner has furnished the details of all such persons in the chart annexed to the petition which again is not disputed by the applicant – respondents no.3.

13. The election petitioner submits that an application at Exhibit-5 is filed by the petitioner seeking direction to the election commission to supply the details contained in Register of Voters under Rule 17-A and 17-C along with CCTV footage. The application was necessitated since the election commission and the returning officer had refused to supply the same to the petitioner vide communications dated 12.06.2024 and 29.06.2024. In view of this, it will be a matter of trial wherein it could be tested as to whether the petitioner could prove his case or not.

14. The election petitioner submits that it is a matter of record that affidavit and verification is filed along with the election petition disclosing the source of information. Even in

the present application, it is stated in paragraph no.15 that names of supporters are furnished as the persons who supplied the information to the petitioner. Thus, the source of information and details of the said source are specifically pleaded and, hence, there is no defect in the election petition.

15. The election petition has to be read as a whole for arriving at a conclusion that uncontroverted contentions of the petitioner constitute material pleadings seeking trial of the election petition. The present application does not state that the entire petition does not contend the grounds. As a matter of fact some of the grounds are summarized by the applicant herself and, hence, it is apparent that the election petition does not suffer from any defect of lack of any material particular.

16. The election petitioner submits that as per alleged defect in verification, it is specifically denied that there is any defect in verification of the petition or the annexures. The entire application does not point out any specific instance of defective verification. In absence of specific and pin pointed objection there is no substance in the said contention of the applicant. Moreover, in case, there is any defect in verification,

the same is a curable defect and the election petition cannot be dismissed for the same.

17. The election petitioner submits that the objection based upon Rule 4 of the High Court Rules is not sustainable as the said Rules will not override Section 80, 80-A and 81 of the Representation of People Act, which provides that the election petition has to be filed and tried by the High Court. Moreover, after filing of the present election petition, the same was placed before The Hon'ble The Chief Justice for assigning a Judge for hearing of the petition and, accordingly, the election petition is assigned to this Hon'ble Court. To the best of the knowledge of the answering respondent - election petitioner, the said order is not assailed by the applicant herein and she has submitted to the jurisdiction of this Court by appearing through advocate without any protest. In view of this, no prejudice is caused to her in case the petition is tried and decided by this Court.

18. The Notification of amendment dated 22.01.1996, issued under the States Reorganisation Act in the year 1996, when the territorial jurisdiction in respect of Dhule district was withdrawn from the Hon'ble Principal Seat at Bombay and conferred the same on this Hon'ble Bench. It is pertinent to

note that since this date the matters arising from Dhule district are filed, entertained and decided by this Bench of the High Court.

19. The election petitioner submits that, since, the aforesaid date, all the matters including the election petitions arising out of Dhule district are presented, filed and tried by this Hon'ble Court.

20. The election petitioner submits that it is a matter of record that this Bench was established in the year 1982 for catering the needs of litigants from Marathwada area. Subsequently, in the year 1988, jurisdiction of Ahmednagar and Jalgaon district was transferred to the Aurangabad Bench from the Principal Seat at Bombay. It is only in the year 1996, when the jurisdiction of Dhule district is transferred to the Aurangabad Bench.

21. The election petitioner submits that the applicant (Original Respondent No.3) in the election petition has not raised any dispute about the territorial jurisdiction of this Bench to entertain and decide the present election petition on merits. The objection of the applicant is only in respect of

presentation of election petition before this Bench. The applicant herein has relied upon Rule 4 of the Rules framed for the purposes of Representation of Peoples Act for challenging the presentation of the election petition.

22. The election petitioner submits that it is a matter of record that Sub-rule (4) of Rule 4 provides for presentation of election petition from the rest of the areas of Maharashtra and other Union Territories to the Principal Seat at Bombay provided the matters therein lies to the Principal Seat. Thus, an election petition can be presented before the Prothonotary if the matter from the said area lies to the Principal Seat. In the present case it is not the case of the present applicant that matters from Dhule district lie to the Principal seat and, hence, there is no question of presenting the election petition to the Prothonotary at Bombay.

23. The election petitioner submits that even otherwise, presentation of a proceedings is always before the Registrar / Section Officer of the court having territorial jurisdiction to try and decide the proceedings. In the present case, admittedly the jurisdiction to try the present election petition is with this Bench and, accordingly, this court is

assigned with the same under the order of The Hon'ble the Chief Justice. In this view of the matter, in absence of any prejudice to the respondents and, also, in absence of any officer specifically assigned for receiving the election petition from Dhule district, there is no merit in hyper technical objection raised by the applicant herein.

24. The Counter affidavit is also filed by the respondent no.3 i.e. the applicant in Application No.35 of 2024 (Exhibit-16) to the additional affidavit in reply filed by respondent no.1 / Original Petitioner.

JURISDICTION TO ENTERTAIN ELECTION PETITION:

25. Having considered the rival pleadings and submissions advanced by the learned counsel for respective parties, the preliminary legal issue that arises for consideration is, whether the election petition is correctly presented before the Aurangabad Bench of High Court of Bombay and, if not, whether the petition becomes liable for dismissal ?

26. The relevant statutory provisions relating to the presentation of the Election Petition are noted below:-

Section 81 of the Representation of the People Act, 1951 deals with the presentation of the election petition and provides that an election petition shall be presented to the High Court, and reads as under:

“REPRESENTATION OF THE PEOPLE ACT, 1951

Section 81 - Presentation of petitions

(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.-In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

*(2) * * **

(3) ...”

Section 80A of the Representation of the People Act deals with the jurisdiction of the High Court to try an election petition, which read as under:

“REPRESENTATION OF THE PEOPLE ACT, 1951

Section 80A - High Court to try election petitions

(1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) ...

(3) ...”

The word “High Court” means that the High Court within the local limits of whose jurisdiction the election to

which the election petition relates has been held. Section 79(e) of the RP Act reads as under:

“79(e) “High Court” means the High Court within the local limits of whose jurisdiction the election to which the election petition relates has been held;”

27. It is also to be noted that in exercise of powers under Section 51(2) of The States Reorganisation Act, 1956, the President by order / notification dated 26.06.1984 established the permanent bench at Aurangabad, as under:

“1. Short title and commencement.-

(1) This Order may be called the High Court of Bombay (Establishment of a Permanent Bench at Aurangabad) Order, 1984.

(2) It shall come into force on the 27th day of August, 1984.

2. Establishment of a Permanent Bench of the Bombay High Court at Aurangabad.- *There shall be established a permanent bench of the High Court of Bombay at Aurangabad and such Judges of the High Court of Bombay, being not less than four in number, as the Chief Justice of that High Court may, from time to time, nominate, shall sit at Aurangabad in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the districts of Aurangabad, Beed, Jalna, Latur, Nanded, Osmanabad and Parbhani:*

Provided that the Chief Justice of that High Court may, in his discretion, order that any case or any class of cases arising in any such district shall be heard at Bombay.”

28. Thereafter by order / notification dated 22.01.1996 the President in exercise of powers under Section 51(2) of The States Reorganisation Act, 1956 included districts of Beed and Dhule into the jurisdiction of the permanent bench at Aurangabad {District Beed is also mentioned in the Original Order dated 26.06.1984}, as under:

“...

(1) This Order may be called the High Court of Bombay (Establishment of a Permanent Bench at Aurangabad) Amendment Order, 1996.

(2) It shall come into force on the 26th day of January, 1996.

2. In paragraph 2 of the High Court of Bombay (Establishment of a Permanent Bench at Aurangabad) Order, 1984, the word “Beed”, the word “Dhule”, shall be inserted.”

29. **The Rules Framed By The High Court Of Judicature At Bombay In regard to Election Petitions Under The Representation of The People Act, 1951** (for brevity “High Court Presentation of Election Petition Rules”) provides for presentation of an election petition and the relevant Clause 4, reads as under:

“4. Election Petitions arising from areas constituting Judicial Districts of Akola, Amravati, Bhandara, Buldhana, Chandrapur, Gadchiroli, Nagpur, Wardha and Yeotmal shall be presented either in person or by an Advocate duly authorised in that behalf by the party concerned to the Additional Registrar of the Nagpur Bench or to such other officer as the said Additional Registrar may, by general or special order issued from time to time, appoint in this behalf.

Election Petitions arising from the areas constituting Judicial District of Aurangabad, Beed, Jalana, Latur, Nanded, Osmanabad and Parbhani shall be presented either in person or by an Advocate duly authorised in that behalf by the party concerned to the Additional Registrar of the Aurangabad Bench or to such other officer order issued from time to time, appoint in this behalf.

Election Petitions arising in the State of Goa which lie in the High Court at Bombay shall be presented either in person or by an Advocate duly authorised in that behalf by the concerned to the Special Officer of the Panaji Bench, Goa, or to such other Officer as the Special Officer may, by general or special order issued from time to time, appoint in this behalf.

Election Petitions arising from the rest of the areas of the State of Maharashtra or arising in the residuary Union Territory of Daman and Diu, and the Union Territory of Dadra and Nagar Haveli which lie to the High Court of Bombay shall be presented to the Prothonotary and Senior Master, High Court, Bombay, or such other Officer as the Prothonotary and Senior Master may, by

special or general orders passed from time to time appoint in this behalf."

30. Considering the provisions noted above, it is to be noticed that the permanent bench at Aurangabad was established on 26.06.1984 and, thereafter, Dhule district was included in the jurisdiction of the Aurangabad Bench, on 22.01.1996. Considering the aforesaid legal provision, it is apparent that after inclusion of district Dhule in the jurisdiction of Aurangabad Bench, the cases arising from Dhule district are to be presented before the Aurangabad Bench of the High Court of Bombay. However, as regards the High Court Rules for Presentation of Election Petition is concerned, there is no corresponding amendment to include the filing of the Election Petition from 'Dhule' judicial district before the Aurangabad Bench of the High Court of Bombay.

As regards the High Court Presentation of Election Petition Rules are concerned, Rule 4 of the High Court Presentation of Election Petition Rules do not included Dhule as one of the judicial districts from where the Election Petition is to be filed before the Aurangabad Bench. The residual clause of Rule 4 of the High Court Presentation of Election Petition Rules provides for filling the Election Petition for rest of the Maharashtra before the Principal Seat at Bombay and Election

Petition needs to be presented before the Prothonotary and Senior Master, High Court, Bombay.

31. The question is, whether the present Election Petition arises out of a cause of action that has accrued in Dhule district and, whether such petition is correctly presented at the Aurangabad Bench or, whether in terms of residual clause of Rule 4 of the High Court Presentation of Election Petition Rules, the Election Petition for Dhule Parliamentary Constituency has to be presented only before the High Court of Bombay at the Principal Seat.

32. The Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Narayan Shamrao Puranik and others**, Civil Appeal No.3379 of 1981, dated 25.10.1982, AIR 1983 SC 46: **MANU/SC/0045/1982**, has observed that conferment of exclusive jurisdiction to such permanent Bench to hear cases arising in districts falling within its jurisdiction brings about a territorial bifurcation of the High Court.

33. The Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Narayan Shamrao Puranik and others** (*supra*), while considering the power of the Chief Justice to

establish benches *vis-a-vis* power of the President to establish a permanent bench, has observed at paragraph no.25 as under:

“25. It is clear upon the terms of Section 51 of the Act that undoubtedly the President has the power under Sub-section (1) to appoint the principal seat of the High Court for a new State. Likewise, the power of the President under Sub-section (2) thereof, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, pertains to the establishment of a permanent Bench or Benches of that High Court of a new State at one or more places within the State other than the place where the principal seat of the High Court is located and for any matters connected therewith clearly confer power on the President to define the territorial jurisdiction of the permanent Bench in relation to the principal seat as also for the conferment of exclusive jurisdiction to such permanent Bench to hear cases arising in districts falling within its jurisdiction. The creation of a permanent Bench under Sub-section (2) of Section 51 of the Act must therefore bring about a territorial bifurcation of the High Court. Under Sub-section (1) and Sub-section (2) of Section 51 of the Act the President has to act on the advice of the Council of Ministers as ordained by Article 74(1) of the Constitution. In both the matters the decision lies with the Central Government....”

34. So also, the Division Bench of this Court in the case of Prakash Kavathekar Vs. Bajrang Sonavane, Review Petition (St.) No.34389 of 2018 in Writ Petition No.13766 of 2018, dated 21.12.2018, has by relying upon the Judgment of the Hon'ble Supreme Court in the case of Monet Ispat and Energy Limited, 2013 10 SCC 574 observed that every Bench of the High Court should scrupulously follow the relevant rules and should not violate statutory provisions specifying its jurisdiction, else the sanctity of the rules relating to

distribution of cases between the Single, the Division Bench and larger Benches will be lost.

35. This court in the case of **Prakash Kavathekar Vs. Bajrang Sonavane** (*supra*) has observed as under:

*“34. The Hon’ble Supreme Court in case of **Monnet Ispat and Energy Limited** (*supra*) has held that every Bench of the High Court should scrupulously follow the relevant rules and should not violate statutory provisions specifying its jurisdiction, else the sanctity of the rules relating to distribution of cases between the Single, the Division Bench and larger Benches will be lost. In my view the principles of law laid down by the Hon’ble Supreme Court in case of **Monnet Ispat and Energy Limited** (*supra*) would apply to the facts of this case. Since the cause of action in this case had arisen within the territorial jurisdiction of the Aurangabad Bench and Rule 2 of Chapter XXXI of the Bombay High Court Appellate Side Rules clearly provides that the writ petition arising out of such district could be filed only before the Aurangabad Bench, the Principal Bench cannot entertain such petition falling within the territorial jurisdiction of the Aurangabad Bench unless the Hon’ble Chief Justice exercises its discretionary power. This court cannot violate the statutory provisions relating to distribution of cases between different Benches.”*

36. Similar issue was raised before this court i.e. the authority of the Registrar of the benches of this court to administer oath in Election Petition de-horse the Rules framed by the High Court for presentation of Election Petition. This court in the case of **Bhagwan Rambhau Karankal Vs. Chandrakant B. Raghuvanshi and others**, Election Petition No.2 of 1998, dated 07.04.2000, 2000 SCC OnLine Bom. 221, at paragraphs no.25 & 28, has observed as under:

“25. The question, however, that needs consideration is as to whether can this Rule 9 of the Bombay High Court Appellate Side Rules be made applicable to the present election petition which has to be dealt with strictly in accordance with the Rules framed by the High Court in regard to the election petitions under the Representation of People Act, 1951 and in the absence of any provision therein making aforesaid rule applicable to election petition, whether above Rule 9 can be stretched for application under the Original Side Rules of the Bombay High Court.”

...

28. In view of this, it is clear that the officer authorised by the High Court has to see that the affidavits are done as per the rules before him. However, the question would be as to whether can these Appellate Side Rules be brought into operation for the Original Side Rules. The election petition before the High Court is said to be an Original-Side work and the Judges at the Benches, who are dealing with the election petitions can be said to be doing Original-Side work at Benches as those cases are specially assigned to those Judges. Generally, at the Benches of Aurangabad, Nagpur and Goa there is no Original-Side Bench except such specially assigned work of election petitions and that appears to be the reasons as to why the name the Additional Registrar or any other officer in that behalf authorised by the High Court does not appear in Rule 197 of the Original Side Rules. That does not mean that if such an affidavit is done before the Additional Registrar of the High Court, that would be totally illegal....”

37. The Hon'ble Supreme Court in the cases of Vijay Laxmi Sadho Vs. Jagdish, Appeal, (Civil) 2720 of 2000, dated 05.01.2001, AIR 2001 SC 600 has held that the rules formulated by the High Court under Article 225 of the Constitution of India are much of procedural in nature and the rules are not substantive law in themselves and the rules shall apply so far as it is not inconsistent with the Representation of the People Act.

Thus, after the state reorganisation and inclusion of Dhule in the States Reorganisation Act all matters arising from Dhule are to be filed before the Aurangabad Bench unless the Hon'ble The Chief Justice in it's discretion after presenting the petition may place the same before any other bench in exercise of power under Section 51(3) of the States Reorganisation Act.

38. AS regards the rules framed by the High Court for trial of election petitions under Article 225 of the Constitution of India, the Hon'ble Supreme Court in the case of **Vijay Laxmi Sadho Vs. Jagdish** (*supra*), at paragraph no.14 and 18, has observed as under:

“14. The Madhya Pradesh High Court has framed Rules for trial of election petitions under Article 225 of the Constitution. Under Rule 9 thereof it is provided that the Rules of the High Court shall apply, in so far as they are no inconsistent with the Representation of the People Act, 1951 or the rules, if any, made thereunder or the Civil Procedure Code in respect of all matters. The import of Rule 9 (supra) was considered in Prabhu Narayan Vs. A. K. Srivastava, (1975) 3 SCR 552 and this Court opined:

*“Moreover, it appears to us that the provisions of Rule 9 of the Madhya Pradesh High Court Rules regarding the election petitions framed by the Madhya Pradesh High Court by reference to Rule 7 of the Madhya Pradesh High Court Rules found in Chapter III regarding affidavits cannot be made use of for this purpose. The former set of rules are made under Article 225 of the Constitution and cannot make any substantive law and the rules themselves on a perusal of them would show that they relate merely to procedural matters unlike rules made under Section 122 of the Code of Civil Procedure.”
(Emphasis supplied)”*

18. Rules framed by the High Court relating to trial of election petitions are only procedural in nature and do not constitute “substantive law”. Those Rules have to be read alongwith other statutory provisions to appreciate the consequences of noncompliance with the High Court Rules. Article 329(b) mandates that no election to either House of Parliament or to either House of the State Legislature can be called in question except through an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature. Section 81 of the Act deals with the presentation of an election petition while Section 82 deals with parties to the election petition and Section 83 with contents of such a petition.”

39. In the instant case, the parliamentary elections are held of Dhule constituency, which consists of six assembly constituency of which three Assembly Constituencies are of Nasik district from where the matters are filed before the Principal Seat. Although, some of the assembly constituencies of Nasik district are included in the parliamentary constituency of Dhule, the Election Petition arising from the district of Dhule after the Presidential Order of 1996 under the States Reorganisation Act, 1956 will lie before the Aurangabad Bench of the High Court of Bombay notwithstanding that there is no corresponding amendment made in the High Court Rules for presentation of election petition as the High Court rules framed under Article 225 of the Constitution of India are only procedural in nature and cannot override the substantial law i.e. the States Reorganisation Act. The elections are conducted from Dhule of Dhule Parliamentary Constituency. The Election

Petition arises from Dhule Parliamentary Constituency, and, thus, after the inclusion of district Dhule in the Presidential Order of 1996 to the Aurangabad Bench, the Election Petition is rightly presented before the Aurangabad Bench of High Court of Bombay.

OBJECTION AS TO COUNTING OF VOTES:

40. The Election Petitioner has stated that six EVM machines were not counted. No further ground is raised that non-counting of the votes of 6 EVM machines have materially affected the elections.

Objection raised by the election petitioner to the counting was rejected by the Niwadnuk Nirnay Adhikari, Dhule Matdar Sangh / Returning Officer by holding that the counting was verified at 3 stages and that there is no technical mistake found. Every vote made and counted are same and that there is no mistake in the same.

The election authority has filed an application **Exhibit-13** for release of the counting machines in which they have specifically stated “*That in the present case as there was the non deletion of the mock data from the control unit therefore, the counting from the four EVM machine was not*

done / required. The details of the those four machines are as under:

| <i>Sr. No.</i> | <i>Assembly Constituency</i> | <i>Polling Station No.</i> | <i>Total Votes</i> |
|----------------|------------------------------|----------------------------|--------------------|
| 1. | 08-Shindkheda | 26 Parsole | 590 |
| 2. | | 145 Shindeda | 377 |
| 3. | 115 - Malegaon outer | 40-Kankrale | 587 |
| 4. | | 239-A- Malegaon Camp | 474 |
| | | <i>Total</i> | <i>2028</i> |

41. The Election Commission has stated that votes of these machines are not included and the same does not materially affect the election.

42. Prima faice, no case is made out for setting aside of the Election for the reason of non counting or irregular counting. No such, specific ground with particulars is also raised in the Election Petition.

OBJECTION AS TO ILLEGAL CASTING OF VOTES:

43. The next issue that arises for consideration relates to illegal casting of votes in the name of dead persons and multiple casting of votes in the name of same person at different booths and, whether the Election Petition is pleaded with all material particulars on the issue of illegal casting of votes, so as to meet the requirement under Section 80(1) of

the Representation of the People Act or the Election Petition needs to be dismissed under Section 86 of the Representation of the People Act for non compliance of provision of Section 81 of the Representation of the People Act.

44. Primarily, the issue raised in the Election Petition pertains to the illegal casting of votes, particularly, in the Malegaon Assembly Constituency i.e. casting of large number of votes in the name of dead persons and multiple casting of votes in the name of same persons.

45. The difference between the winning candidate and the election petitioner is 3831 votes. The election petition has also stated that in the Malegaon Central Constituency out of 02,05,588 votes polled respondent no.3 has secured 01,98,869 votes and the petitioner has received only 4,542 votes while other candidates could not pass even 100 votes mark in the said constituency.

46. He has also stated that the final voters list contains at least 4378 dead persons from Malegaon Central Assembly Constituency and the Death Register has shown the persons to be dead and yet votes are cast in their names.

47. The Election Petitioner has also stated that around 3329 entries of persons enrolled in final voters list are at multiple places in the Malegaon (Central) Assembly Constituency and in all these places they have casted votes at multiple places.

48. The Election Petitioner has stated that an application at Exhibit-5 is filed by the petitioner seeking direction to the election commission to supply the details contained in Register of Voters under Form 17-A and 17-C along with CCTV footage. The application was necessitated since the election commission and the returning officer had refused to supply the same to the petitioner vide communications dated 12.06.2024 and 29.06.2024. The Election Petitioner has submitted that, on evidence being produced before this court, it will be a matter of trial and it could be tested as to whether the petitioner could prove his case or not as regards the illegal casting of votes in large numbers.

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

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.

NON-FILING OF AFFIDAVIT IN FORM 25:

54. The election petitioner has not raised ground of corrupt practice, as such, the requirement of an affidavit in Form 25 is not necessary. At para 7 of the Election Petition the Petitioner has narrated that Criminal Case i.e. Crime No.0283 of 2019, registered against Respondent No.3 at Niphad Police Station under Sections 409, 406 read with Section 34 of the Indian Penal Code and the same is pending against the Returned Candidate (Respondent No.3). It is stated that Respondent No.3 is aware of the crime registered against her but has deliberately and intentionally suppressed it in her affidavit. However, there is no pleading in the Election Petition

that non mention of the criminal case has resulted in undue influence on the voters and in turn constituted corrupt practice under Section 123 of the Representation of The People Act. The Election Petitioner has also not contended that this case is covered within Section 100(1)(b) and / or 100(1)(d)(ii) read with Section 123 [Corrupt Practice] of the Representation of the People Act, rather a positive assertion is made before me that the Election Petitioner does not make out a case of 'Corrupt Practice' and, as such, affidavit in Form 25 is not filed. The Election Petition is supported by a verification clause. The Hon'ble Supreme Court has held that non filing of affidavit in Form No.25 is a curable defect **{A. Manju Vs. Prajwal Revanna Alias Prajwal R and others, (2022) 3 SCC 269}**. However, as the ground of corrupt practice is not raised nor asserted before me, the Election Petition, thus, cannot proceed on this ground also.

55. In the 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 Code of Civil Procedure.

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 Representation of the People Act.

56. Therefore, the Application in Election Petition No.35 of 2024 (Exhibit-16) is allowed and, consequently, Election Petition No.2 of 2024 stands dismissed.

57. All pending applications also stand dismissed.

[ARUN R. PEDNEKER, J.]

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