# IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 2nd OF APRIL, 2025

ELECTION PETITION No. 15 of 2024

*P C SHAMRA ( PRAKASH MANGILAL SHARMA)*

*Versus*

*SHRI BHAGWANDAS SAHBNANI*

Appearance:

*Shri Manoj Sharma - Senior Advocate with Shri Rajmani Mishra - Advocate for petitioner.*

*Shri Gyanendra Singh Baghel - Advocate with Ms. Krishna Singh Chandel - Advocate for respondent.*

ORDER

Petitioner has filed this election petition under Section 80 and 81 of the Representation of People Act, 1951.

2. Respondent has filed an application under Order 7, Rule 11 of C.P.C. for dismissal of election petition in limine.

3. Counsel appearing for petitioner submitted that only allegations made against respondent is in para 6 and 7 of election petition. It has been stated that battery of EVM Machine was showing charging at 99% and few EVM Machines battery were showing charging at 80%. It is pleaded that after full day of running, EVM Machine could not have battery of 99%. It is also argued that respondent in connivance with State Machinery has access

to the battery. It is submitted that tampering has been done with EVM Machines. Corrupt practice was adopted by respondent. On said ground, petitioner has filed this election petition.

4. It is submitted by counsel appearing for respondent that material particulars has not been given. Petitioner is required to plead particulars as mentioned in Section 83 of the Representation of People Act, 1951. Full material particulars of corrupt practices has not been mentioned. Only general allegations are made. Petition is defective and same deserves to be dismissed.

5. Counsel appearing for petitioner submitted that election petition can be dismissed if there is non-compliance of Section 81, 82 and 117. It is submitted that power of dismissal of petition under Section 86 is given only for non-compliance of Section 81, 82 and 117 and Section 83 is not included in Section 86, therefore, election petition cannot be dismissed on ground that full material particulars of any corrupt practice has not been pleaded. It is submitted that batteries of EVM Machine cannot be charged during election process. EVM Machines are sealed and no one could have access to EVM Machine component or battery, which shows that corrupt practices has been adopted by respondent. In these circumstances, application filed by respondent be dismissed.

6. Heard the counsel for the parties.

7. On going through the pleadings which has been made in election petition, it is found that no particular allegations of corrupt practice is made

against any particular person, who was having access to EVM Machine. During course of argument, it is argued that entire State Machinery was in connivance with respondent. Allegations are general and particulars of corrupt practices are missing in pleadings. It is orally argued that EVM Machines are sealed and no one has assessed to it, but however no such pleadings has been made in the election petition.

8. On going through provision of Sections 81, 82, 83, 86, 100 and 101 of the Representation of the People Act, 1951, it is found that election petition is to be presented in accordance with Section 81. Grounds specified in sub-section (1) of Section 100 and section 101 is to be mentioned at the time of presentation of petition. Section 81, 86, 100 and 101 of the Representation of People Act, 1951 is quoted as under:-

> *"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 8 [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 the dates of their election are different, the later of those two dates].*
>
> *[86. **Trial of election petitions**.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.*
>
> *Explanation.—An order of the High Court dismissing an election*

*petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.*

*(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.*

*(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.*

*(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.*

*Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.*

*(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of*

*the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.*

*(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.*

*(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.]*

***100. Grounds for declaring election to be void.****—[(1) Subject to the provisions of sub-section (2) if [the High court] is of opinion —*

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

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

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

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

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

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

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

*(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, [the High Court] shall declare the election of the returned candidate to be void.]*

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

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

*[* * * ]*

*(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt [***] practices at the election; and*

*(d) that in all other respects the election was free from any corrupt [***] practice on the part of the candidate or any of his agents,*

*then [the High Court] may decide that the election of the returned candidate is not void.*

*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 2[***] 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."*

9. The Hon'ble Apex Court in para 13 of the judgment passed in case of ***Karim Uddin Barbhuiya v. Aminul Haque Laskar and others, reported in 2024 SCC OnLine SC 509*** held as under:-

"13. It hardly needs to be reiterated that in an Election Petition, pleadings have to be precise, specific and unambiguous, and if the Election Petition does not disclose a cause of action, it is liable to be dismissed *in limine*. It may also be noted that the cause of action in questioning the validity of election must relate to the

grounds specified in Section 100 of the RP Act. As held in *Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi* and in *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi,* if the allegations contained in the petition do not set out the grounds as contemplated by Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the pleadings are liable to be struck off and the Election Petition is liable to be rejected under Order VII, Rule 11 CPC."

10. Petitioner is required to mention the grounds in Section 100 and 101 in election petition and while mentioning the grounds, full material particulars of the grounds which is mentioned by petitioner in election petition for declaring election to be void is to be mentioned. Petitioner has not mentioned material particulars who was having access to EVM Machines. How State Machinery is involved with respondent is also not mentioned. There is no whisper of any act on part of State Machinery in tandem with respondent which affected the result. There is no whisper that EVM cannot be charged during the election process. It is also not mentioned that EVM Machines are sealed. It is found that petitioner failed to mention full particulars required for making of the case under Section 100 and 101. Said particulars cannot be supplied at the time of pleadings.

11. Counsel appearing for petitioner has relied upon judgment passed by M.P. High Court in Election Petition No.7/2009 order dated 11.01.2010. It is submitted by him that application under Order 7, Rule 11 is to be filed

immediately after issuance of summons. Application has been filed after delay of four months. Petitioner has also relied upon judgment reported in *(2015) 8 SCC 331 (P.V. Guru Raj Reddy vs. P. Neeradha Reddy and others)* . Relying on said case, counsel for petitioner submitted that averments made in plaint have to be accepted as correct for the purposes of consideration of application under Order 7, Rule 11 of C.P.C.

12. I found that application was filed after four months. Election petition is still at preliminary stage. Issues are yet to be framed in the case, therefore, it cannot be said that there is delay in filing application under Order 7, Rule 11 of C.P.C. Pleadings made in election petition is only being relied for passing orders on application under Order 7, Rule 11 of CPC.

13. Petitioner has further relied upon a judgment passed by Apex Court in case of *Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar and others;* reported in *(2005) 2 SCC 188.*

14. In said case, issue was supplying of true copies. Said issue is not involved in the case, therefore, this judgment is not attracted in this case.

15. As per Section 81 election petition can be filed on grounds mentioned in Section 100(1) and 101 of the Representation of the People Act, 1951. Election petition is filed on grounds under Section 100(1) (b) i.e. corrupt practice has been committed by returned candidate or his agent or other person with consent of returned candidate. Section 83 lays down full particulars of corrupt practice is to be mentioned. Therefore, Section 81, 83

and 100 is to be read together and non-compliance of Section 83 and 100 will also lead to dismissal of petition under Section 86.

16. In view of the above, application filed under Order 7 Rule 11 is **allowed** and election petition is **dismissed**.

**(VISHAL DHAGAT)**
**JUDGE**

sp/-