



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-अ.-04092025-265939
CG-DL-E-04092025-265939

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 38]
No. 38]

नई दिल्ली, बुधवार, सितम्बर 3, 2025/भाद्र 12, 1947
NEW DELHI, WEDNESDAY, SEPTEMBER 3, 2025/BHADRA 12, 1947

भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 2 सितम्बर, 2025

आ.अ. 38(अ).— लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106(क) के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन याचिका सं. 4/2024 में कर्नाटक उच्च न्यायालय (बेंगलुरु खंडपीठ) का दिनांक 07 जुलाई, 2025 का निर्णय/आदेश प्रकाशित करता है।

[फा. सं. 82/केटी-एचपी/4/2024]

आदेश से,

पवन दीवान, सचिव

ELECTION COMMISSION OF INDIA**NOTIFICATION**

New Delhi, the 2nd September, 2025

O.N. 38(E).— In pursuance of Section 106 (a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment/order of the High Court of Karnataka (Bengaluru Bench) dated 7th July, 2025 in Election Petition No. 4/2024.

[F. No. 82/KT-HP/4/2024]

By Order,

PAWAN DIWAN, Secy.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI
ELECTION PETITION NO. 4 OF 2024

BETWEEN:

MR M.G POORNACHANDRATHEJASWI
S/O LATE GOWDE GOWDA M G
AGED ABOUT 49 YEARS
R/AT SUVARNA SOUDHA
KUVEMPU ROAD
OPPOSITE CREIST SCHOOL
VIDYANAGARA
HASSAN 573201

...PETITIONER

(BY SRI. NISHANTH A V., ADVOCATE)

AND:

MR. SHREYAS M PATEL
S/O LATE P. MAHESH
AGED ABOUT 31 YEARS
RESIDING AT NO. 12
RIVER BANK ROAD, HOLENARASIPURA
HASSAN 573211

...RESPONDENT

(BY SRI. PRABHULING K. NAVADGI, SR, COUNSEL FOR
SRI. SHIVACHARAN R., ADVOCATE)

THIS ELECTION PETITION IS FILED UNDER SECTION 81 OF THE REPRESENTATION OF PEOPLE ACT, 1951, PRAYING TO

(A) CALL FOR RECORDS.(B) SET ASIDE THE ELECTION OF THE RESPONDENT TO THE 18TH LOK SABHA PARLIAMENTARY ELECTIONS FROM NO.16-HASSAN PARLIAMENTARY CONSTITUENCY. (C) PASS SUCH OTHER ORDER/S, GRANT SUCH OTHER RELIEF/S AS THIS HON'BLE COURT DEEMS FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE.

THIS PETITION, COMING ON FOR *FURTHER HEARING*,
THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI**ORAL ORDER**

1. I.A. No.2 of 2024 is filed by the original respondent in the Election Petition, seeking rejection of the election petition under the provisions of Order VII Rule 11 of the Civil Procedure Code, 1908.
2. The petitioner has filed an Election Petition seeking a declaration that the election of the Respondent to 18th Lok Sabha Parliamentary Elections from 16- Hassan parliamentary constituency, Karnataka State, be set aside.
3. Brief facts leading rise to the filing of this election petition are as follows:
4. The petitioner is a voter of Hassan Parliamentary Constituency. Wherein, his name is enrolled in Part No.137, Govt. Higher Primary School, Malali at Serial No.272 of 197, Holenarsipura Assembly Constituency. The respondent contested the election from Hassan constituency as an official candidate of the Indian National Congress, a registered political party. The elections were announced on 16/03/2024. In the state of Karnataka, two phase elections was notified by the Election Commission of India. The result of the elections were declared on 04.06.2024, in which the respondent was declared as the elected candidate.
5. The petitioner has raised an objection about the declaration made by the Respondent in the Affidavit i.e., in Form No.26 filed along with the nomination papers by the respondent. It is contended that the respondent has not disclosed three immovable properties i.e., the property bearing Khatha No.172/162, measuring to an extent of 22.10 ft. * 33¼ ft., situated in the limits of Town Municipal Council, Holenarsipura, the land bearing Survey No. 170/2, measuring to an extent of 3 guntas situated at Udduru Hosahalli Village, and the land bearing Survey No. 35-B, measuring to an extent of 4510 sq. mtrs., situated at Doddanekundi Industrial Estate, K.R. Puram taluk, Bangalore South. The disclosure of the aforementioned properties had to be made by the respondent in column No.7(B)(ii) and 7(B)(iii) of Form No.26 affidavit. Non disclosure of the aforementioned three immovable properties in column No.7(B)(ii) and 7(B)(iii) of Form No.26 affidavit is a defect of substantial character. Thus, the nomination of the respondent ought to have been rejected and it was improperly accepted by the returning officer. In view of the improper acceptance of the nomination of the respondent, the result of the election to No.16 Hassan parliamentary constituency has been materially affected, since the respondent is a returned candidate himself. The petitioner has accordingly challenged the election of the Respondent under the provisions of section 100(1)(d)(i) and (d)(iv) of the Representation of the People Act, 1951. (for short, "the Act" or "R.P. Act").

6. This Court issued a summons to the respondent. After the service of summons, the respondent appeared in the election petition, and filed his written statement. Additionally, the respondent has filed the present application seeking rejection of the election petition under the provisions of Order VII Rules 11(a) and (d) of the Civil Procedure Code, 1908. The petitioner has filed an affidavit in reply, opposing the said application.
7. The application is called out for hearing.
8. Sri. Prabhuling Navadagi, learned Senior Counsel appearing for the respondents, submits that the election petition does not disclose any cause of action for questioning the election of the respondent. That when averments of the election petition are read as a whole, it is clear that the petition lacks the necessary averments for the purpose of maintaining a challenge to the election of the respondent under the provisions of the Representation of Peoples Act, 1951. The entire election petition is premised on a declaration made by the respondent in his affidavit in Form No.26 in which he did not disclose three immovable properties. He would also rely upon the provisions of Section 83 of the Act in support of his contention that the election petition does not contain a concise statement of material facts on which the petitioner has relied upon. That, there is no averment in the election petition that a non disclosure of the immovable properties in Form No.26 materially affects the results of the election. There is no cause of action disclosed in the petition in support of the contention. So far as the provisions of Sections 100(1)(d)(i) and 100(1)(d)(iv) of the Act are concerned, there is no averment in the petition that the result of the election has been materially affected in any manner. There are no averments in support of the grounds under Section 100(1)(d)(i) of the Act and there is an absence of a pleading about improper acceptance of the nomination. The petition deserves to be rejected. Similar is the position in respect of the ground under Section 100(1)(d)(iv) where non compliance with the provision of the Act or Election Rules has not been borne out by the pleadings in the Election Petition.
9. Sri Prabhuling Navadagi, learned Senior Counsel, accordingly submit that in the absence of necessary averments in the election petition for making out a valid ground of challenge to the election of the respondent under the aforesaid provisions of the Act, the petition deserves to be rejected under the provisions of Order VII Rule 11 of the Civil Procedure Code, 1908. Accordingly, prays to allow the Application. In support of his contentions, Sri Prabhuling Navadagi would rely upon the following citations:
 - i. *Kanimozhi Karunanidhi Vs. A. Santhana Kumar and Ors. Reported in MANU/SC/0533/2023 : AIR 2023 SC 2366*
 - ii. *Manganilal Mandal Vs. Bishnu Deo Bhandari reported in (2012) 3 Supreme Court Cases 314*

- iii. *Karikho Kri V. Nuney Tayang and another, reported in AIR 2024 SUPREME COURT 2121*
- iv. *Tek Chand V.Dile Ram reported in (2001) 3 Supreme Court Cases 290*
- v. *Kalyan Kumar Gogoi V. Ashutosh Agnihotri and Another reported in (2011) 2 Supreme Court Cases 532*
- vi. *Kalyan Singh Chouhan Vs. C.P. Joshi in Civil Appeal No. 870 of 2011 (Arising out of SLP (C) No. 16944 of 2010)*
- vii. *Anil Vasudev Salgaonkar V. Naresh Kushali Shigaonkar reported in (2009) 9 Supreme Court Cases 310*
- viii. *Ram Sukh V. Dinesh Aggarwal reported in (2009) 10 Supreme Court Cases 541*
- ix. *Mairembam Prithviraj v Pukhrem Sharatchandra Singh reported in (2017) 2 Supreme Court Cases 487*
- x. *Satish Ukey Vs. Devendra Gangadharrao Fadnavis and Ors., in Criminal Appeal Nos. 1515-1516 of 2019 (Arising out of SLP (Crl.) Nos. 19-20 of 2019)*
- xi. *Resurgence India Vs. Election Commission of India and Ors., in Writ Petition (Civil) No. 121 of 2008 (Under Article 32 of the Constitution of India)*
- xii. *D Krishna Kumar v H D Ranganath and ors in EP 11/2023 – decided on 21.06.24*
- xiii. *Karim Uddin Barbhuiya vs. Aminul Haque Laskar and Others reported in 2024 SCC OnLine SC 509*
- xiv. *Peoples Union For Civil Liberties and Anr v. Union Of India reported in (2003) 4 SCC 399*
- xv. *Laxmi Devi v State of Bihar reported in (2015) 10 SCC 241.*

10. The application is opposed by Sri. Nishanth A.V, the learned counsel for the petitioner. He would submit that the Election petition contains the necessary averments for maintaining a valid challenge to the election of the respondent. He would submit that the election petition must be read as a whole and upon holistic reading of the averments in the election petition, it can barely be contended that the petition does not disclose the cause of action for challenging the election. He would also submit that the averments in Para No. 10 of the Memorandum of Election petition contain necessary averments of the respondent making a false statement in his nomination papers/form. The Returning officer ought to have returned the nomination form of the respondent after noticing the non disclosure of the immovable properties owned and possessed by the respondent. Since the form was defective, it warranted outright rejection. That once the acceptance of nomination itself is found to be erroneous and improper, it is not necessary for the election petitioner to additionally prove that the result of the election was materially affected by such improper acceptance of the nomination. The election petition contains necessary averments for taking the election petition to trial. The petitioner must be given an opportunity to lead evidence to substantiate, and prove the averments made in the memorandum of Election Petition. The requirement under Section 83 is only to make a concise statement of facts and it is unnecessary to plead every possible details. That once an averment is made that the declaration made in the nomination form is false, the petitioner must be given an opportunity to prove the said allegation by leading evidence.
11. In support of his contention, he has relied upon the following judgments, and he would pray for the dismissal of an application filed by the respondent:

- a) *Thangjam Arunkumar v Yumkham Erabot Singh and others reported in 2023 SCC Online SC 1058;*
- b) *Bhim Rao Baswanath Rao Patil v. K Madan Mohan Rao and ors, reported in 2023 SCC Online SC 871;*
- c) *Ashraf Kokkur v. K V Abdul Khader and others reported in 2015 (1) SCC 129;*
- d) *Ram Sukh v Dinesh Aggarwal reported in (2009) 10 SCC 541;*
- e) *Ponnala Lakshmaiah v Kommuvi Pratap Reddy and Ors reported in (2012) 7 SCC 788;*
- f) *Vashist Narain Sharma v Dev Chandra and Ors, reported in (1954) 2 SCC 32;*
- g) *Mairembam Prithviraj V. Pukhrem Sharatchandra Singh reported in (2017) 2 SCC 487;*
- h) *Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy and ors reported in (2018) 14 SCC 1;*
- i) *Arjun Panditrao Khotkar v. Kailash Kushanrao Goryantyal and Ors reported in (2020) 7 SCC 1;*
- j) *K. Shivakumar v. N A Haris and Ors, in E.P.No.09/2023 decided on 12.02.2024;*
- k) *K. M. Thimmarayappa V. H V Venkatesh, in E P No. 06/2023 decided on 01.03.2024.*

12. Rival contentions of the parties now fall for my consideration.

13. The petitioner filed a petition challenging the respondent's election from No-16 Hassan parliamentary constituency by raising grounds under Sections 100(1)(d)(i) and 100(1)(d)(iv) of the Act. It would therefore be necessary to reproduce the provisions of Section 100 of the Act, which enumerates the grounds on which the election can be declared to be void. Section 100 of the Act provides thus:

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

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

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-
 - (i) by the improper acceptance or any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

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

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

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;
- (b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
- (c) 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. ”

14. Section 83 of the Act deals with the contents of the Election Petition, and provides thus:

“83. Contents of petition.—

(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

15. The combined reading of the provisions of Sections 100 and 83 of the Act would mean that the Election Petition needs to contain a concise statement of material facts, based on which the grounds enumerated under Section 100 of the Act are sought to be made out. When an allegation of corrupt practice is raised, the Election Petition needs to include a full statement of the names of the parties alleged to have committed such a corrupt practice, along with the date and place of commission of each such practice. Therefore, an election petition which does not comply with the provisions of Section 83 of the Act, by not disclosing either the concise statement of material facts or full particulars of the corrupt practice necessarily attracts the provision of Order VII Rule 11 of the Code of Civil Procedure, under which the election petition can be rejected. This is because the election petition is a statutory remedy, and not an action in equity or a remedy in common law. Since the Act is a complete

and self-contained Code, strict compliance with the provision of the Act is a mandatory requirement while exercising the remedy under the said Act. Reference in this regard can be made to the Hon'ble Apex Court Judgment in the case of *Jyoti Basu v. Devi Ghosal* reported in (1982) 1 SCC 691, wherein it is held in **Para 8** as under:

“8. ... An election petition is an action at a common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply, but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it.”

16. The Hon'ble Apex Court in the case of *Kanimozhi Karunanidhi v. A. Santhana kumar and Ors*, reported in **2023 SCC Online SC 573**, has summarised the legal position in paragraph 28 of the Judgment by examining various judgments rendered in the past as under:

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

- i) Section 83(1)(a) of RP Act mandates that an election petition shall contain a concise statement of material facts on which the petitioner relies. If the 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 petitioner to prove, if traversed in order to support his right to the judgment of the court, omission of a single material fact would lead to an incomplete cause of action and the statement of the plaint would become bad.
- iii) Material facts means 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 R.P. Act, the Election Petitioner must aver that on the 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 a 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 the 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 of the code of civil procedure read with mandatory requirements enjoyed by Section 83 of the R.P. Act”.

17. The Hon'ble Apex Court thereafter held that mere bald and vague allegations would not constitute sufficient compliance of the requirement of stating material facts in the election petition. The Hon'ble Apex Court held in paragraphs 31 and 32, as under:

“31. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition. As well settled not only positive statement of facts, even a positive statement of a negative fact is also required to be stated., as it would be a material fact constituting a cause of action. The material facts which are primary and basic facts have to be pleaded by the election petitioner in support of the case set up by him to show his cause of action and omission of a single material fact would lead to an incomplete cause of action, entitling the returned candidate to pray for dismissal of election petition under Order VII Rule 11(a) of Code of civil procedure read with Section 83(1)(a) of the R.P. Act.

32. It is also significant to note that an affidavit in Form 26 along with the nomination paper, is required to be furnished by the candidate as per Rule 4A of the said Rules read with Section 33 of the said Act. The Returning officer is empowered either on the objections made to any nomination. or on his own motion, to reject any nomination on the grounds mentioned in Section 36(2), including on the ground that there has been failure to comply with any of the provisions of Section 33 of the Act. However, at the time of scrutiny of the nomination paper and the affidavit in the form 26 furnished by the returned candidate, neither any objection was raised, nor the Returning Officer had found any lapse or non compliance of Section 33 or Rule 4A of the Rules. Assuming that the petitioner did not have the opportunity to see Form No. 26 filled in by the appellant- returned candidate, when she submitted the same to the Returning Officer, and assuming that the Returning Officer had not properly scrutinized the nomination paper of the appellant, and assuming that election petitioner had a right to question the same by filing the election petition under Section 100(1)(d)(iv) of the said Act, then also there are no material facts stated in the petition constituting the cause of action under Section 100(1)(d)(iv) of the R.P. Act. In the absence of material facts constituting cause of action for filing election petition under Section

100(1)(d)(iv) of the said Act, the election petition is required to be dismissed under Order VII Rule 11(a) CPC read with Section 13(1)(a) of the R.P. Act.”

18. The Hon'ble Apex Court in the case of **Ravindra Dattaram Waikar v. Amol Gajanan Kirthikar** reported in **2024 SCC OnLine Bom 3828** examined the requirements of pleadings for maintaining an election petition and held that the concise statement of material facts must constitute a complete cause of action. Failure on the part of the election petitioner to raise necessary pleadings to make out a case of existence of ground under section 100(1)(d)(iii) and (iv) of the RP Act would necessarily result in dismissal of the election petition by invoking the powers under order VII Rule 11 of the CPC.
19. Having set out the legal position governing the strict requirements of a pleading in the memorandum of Election Petition, I now proceed to examine whether the petitioner has raised the requisite pleadings as required under Section 83 of the Act. The petitioner has sought a declaration of election of the respondent to be void by invoking the provisions of Section 100(1)(d)(i) and Section 100(1)(d)(iv) of the Act. This is clear from the following pleading in paragraph 10 of the Election Petition, which reads as follows:

“10. It is submitted that, the voters of No.16- Hassan Parliamentary Constituency have a Fundamental Right under Article 19(1)(a) of Constitution of India to know about the candidate(s) contenting the Elections and this casts a solemn obligation on the Respondent to furnish information regarding assets and liabilities held by the candidate (Respondent), in terms of Section 33-A of the Representation of People Act, 1951. It is on this basis, not only Election Commission of India has issued orders under Article 324 of the Constitution of India, but also prescribed under Rule 4A of the Rules, the Affidavit(s) has to be filed. In the present case, the Affidavit dated 01.04.2024 filed by the Respondent, *inter alia*, has failed to disclose 3 properties namely:

(1) Property bearing Khatha No.172/162, situate at River Bank Road, measuring to an extent of 22.10 Feet X 33 14 Feet situate in the limits of Town Municipal Council, Holenarasipura, Ward No.11. Authenticated copies of the Demand Tax Registrar, Tax Paid Receipt and Encumbrance Certificate is herewith marked and produced as ANNEXURE-G, ANNEXURE-G1 and ANNEXURE-G2, respectively. Translated copies of ANNEXURE-G, ANNEXURE-G1 and ANNEXURE-G2 are also furnished herewith. The said documents are obtained by the petitioner under the provisions of the Right to Information Act, 2005.

(2) Land bearing Sy.No.170/2 measuring to an extent of 3 Guntas, situate at Udduru Hosahalli Village, Hall Mysore Hobli, Holenarasipura

Taluk, Hassan District. Copies of the Mutation Registrar, Record of Rights and Encumbrance Certificate is herewith marked and produced as ANNEXURE-H, ANNEXURE-H1 and ANNEXURE-H2, respectively. Translated copies of ANNEXURE-H, ANNEXURE-H1 and ANNEXURE-H2 are also furnished herewith. The said documents are obtained by the petitioner under the provisions of the Right to Information Act, 2005

(3) Land bearing Sy.No.35-B measuring to an extent of 4510 Square Meters situate at Doddanekkundi Industrial Area, K.R.Puram Taluk, Bengaluru South Taluk. The said property has fallen to the share of the Respondent by virtue of the will registered on 16.06.2006 by Late Mr. G.Puttaswamy Gowda. Certified copy of the Will dated 17.06.2006 and Possession Certificate dated 04.12.1995 is herewith marked and produced as ANNEXURE-J and ANNEXURE-J1 respectively. Translated copy of Annexure-J is also furnished herewith. Annexure-J is obtained by the petitioner through Court in OS No. 2189/2008, pending in City Civil Court, Bengaluru, since the said document is marked as Ex.D1 and Annexure-J1 is obtained by the petitioner under the provisions of the Right to Information Act, 2005.

The disclosure of the aforementioned properties had to be made by Respondent in Column No. 7(B) (ii) and 7(B) (iii) of the Form No. 26 affidavit. Non disclosure of aforementioned three immovable properties in Column No. 7(B) (ii) and 7(B) (iii) of the Form No. 26 Affidavit, is a defect of substantial character, thus, the nomination of the Respondent ought to have been rejected. It is submitted that, the Nomination of Respondent has been improperly accepted by the Returning Officer. The Respondent has not disclosed all his assets as mandatorily required and further, has sworn to a false Affidavit and thus, Nomination Paper of Respondent ought to have been rejected by the Returning officer in terms of Section-36 of the Representation of People Act, 1951. In view of the improper acceptance of the nomination of the Respondent, the result of the election to No.16- Hassan Parliamentary Constituency has been materially affected, since the Respondent is a Returned Candidate himself.”

20. The objection of the petitioner is about the non disclosure of three immovable properties owned and possessed by the respondent.
21. The respondent, on the other hand, has defended his action by contending that he has made a true and honest disclosure in the Affidavit about the properties owned, and possessed by him and he has provided sufficient information to the members of a democratic society by the candidates. The relevance is the position that a mere demonstration of violation of the provisions of the Constitution / Act / Rules is not sufficient, and that it is not mandatory for them to disclose concise statement of the material facts to demonstrate as to how the election of the returned candidate has been materially affected by such violation. There is no pleading in the entire election petition to demonstrate, how the election of the respondent is materially affected on account of the alleged violation of Rule 4A of the Election Rules

by him. To maintain a valid election petition, a linkage must be established between the alleged violation and the election being materially affected. Thus, to get an election declared as void under the provisions of the Act, the Election Petitioner must aver that on the account of non compliance with the provisions of the Constitution or of this Act or of any Rules, Order made under the Act, the result of the Election in so far as it concerns a returned candidate was materially affected. Here, it is the Petitioner's case that the Returned Candidate has not disclosed three immovable properties. As observed above there is no averment in the pleadings that the election of the returned candidate was materially affected. Therefore, in the absence of a link between the alleged violation of the model of Code of Conduct, and the victory of the returned candidate, however, the petitioner could assert that because of the alleged violation of the model of Code of Conduct, the voters have cast their vote to the returned candidate. In fact, the petitioner has, except pleading, that here the returned candidate has not disclosed three immovable properties, has not placed any material to the effect that the election of the returned candidate has been materially affected.

22. After considering the oral prospectus of the case, I am of a view that the Election Petition lacks concise statement of the material facts as required under Section 83(1)(a) of the Act for establishing grounds under Section 100(1)(d)(i) and Section 100(1)(d)(iv) of the Act.
23. So far as the grounds, there are no pleadings to establish any statement made by the respondent in the pleadings to establish that any statement made by the respondent in his affidavit is false and there are no pleadings to establish an undue influence on the voters with their free exercise of electoral right on the account of non disclosing the three immovable properties. Therefore, the petitioner has failed to disclose the real cause of action for challenging the election of the respondent by making out either of the grounds under Section 100(1)(d)(i) or Section 100(1)(d)(iv) of the Act. Even a singular omission of a statutory requirement must entail dismissal of the election petition by having recourse to the provision of Order VII Rule 11 of the Civil Procedure Code.
24. The learned counsel for the petitioner has relied on the following authorities, praying for the dismissal of the present application:
 1. In the case of **Thangjam Arunkumar v Yumkham Erabot Singh and others reported in 2023 SCC Online SC 1058**, question involved in this case was whether the election petition is liable to be dismissed by allowing an application filed under order 7 Rule 11 of CPC for non compliance of Section 83(1)(c) of the RP Act. In this case the Hon'ble court has made it very clear that, the requirement to file an affidavit under the proviso to Section 83(1)(c) of the RP Act is not mandatory. It is sufficient if there is a substantial compliance and the defect is curable. In this case even though the petitioner did not file separate and independent affidavit regarding the corrupt practice, though there was an affidavit sworn by him stating that allegations of corrupt practice are true, it was held that there was a substantial compliance with the requirements of Section 83(1)(c) of the RPA. The High court's order dismissing the application under order 7 R. 11 was upheld.
 2. In the case of **Bhim Rao Baswanath Rao Patil v. K Madan Mohan Rao and ors, reported in 2023 SCC Online SC 871**, the Hon'ble Apex court at Para 23 held that, any material brought on record by the successful candidate who is the respondent in the election petition ipso facto cannot be considered within the framework of Order 7 Rule 11 of the CPC to reject the plea altogether. At Para 29, it was held that, even if the allegations regarding non disclosure of cases where the appellant has been arrayed as an accused are ultimately true, the effect of such allegations has to be considered after the full trial. The admission of certain facts by the election petitioner cannot be sufficient for the court to reject the Election Petition. The alleged non compliance with the statutory and election

commission mandated regulations, and their legal effect cannot be examined under Order 7 Rule 11 or even under Order 12 Rule 6 of the CPC (Para 29).

3. In the case of **Ashraf Kokkur v. K V Abdul Khader and others reported in 2015 (1) SCC 129**, the Hon'ble Apex court held at para No.12 that, the requirement under section 83(1)(a) of the RP Act in contradistinction to Sec. 83(1)(b) of the RP Act is that the election petition need contain only a concise statement of material facts and not material particulars. At para 22, it is held that the enquiry under Order 7 Rule 11(a) of the CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. It is limited to see whether the petition should be thrown out at a threshold. The requirement U/s 83 is to provide a precise and concise statement of material facts. "Material facts" plainly means facts pertaining to subject matter.
4. In the case of **Ram Sukh v Dinesh Aggarwal reported in (2009) 10 SCC 541**, the Hon'ble Apex court held at para 10 that the requirement of disclosure of material facts and full particulars as stipulated in section 83 of the RPA is mandatory. At para 12, it is held that the question revolving around this case is whether the election petition had set out "material facts" in his petition?. Material facts depends on the facts of each case. All the basic facts necessary to prove the cause of action are the material facts. On the other hand, particulars are the details in support of material facts. Particulars are to be stated to ensure that the opposite party is not taken by surprise (para 15).
5. In the case of **Ponnala Lakshmaiah v Kommuvi Pratap Reddy and Ors reported in (2012) 7 SCC 788**, the Hon'ble Supreme court at para 16 held that the burden which lies on the election petitioner to prove the allegations made by him in the election petition, whether the same relate to commission of any corrupt practice or proof of any other ground urged in support of the petition has to be discharged by him at a trial. At para 17, it is held that the courts need to be cautious in dealing with requests for the dismissal of the petition at the threshold and exercise their power of dismissal only in cases where even, on plain reading of the petition, no cause of action is disclosed. At para 31, it is held that the petition that raises a triable issue need not be dismissed simply because the affidavit filed by the petitioner is not in a given format, no matter the deficiency in the format has not caused any prejudice to the successful candidate and can be cured by the election petitioner by filing a proper affidavit.
6. In the case of **Vashist Narain Sharma v Dev Chandra and Ors, reported in (1954) 2 SCC 32**, at para 9, it is held that the onus of proving that the result had been materially affected rests heavily on the petitioner. The questions can arise in one of these ways:
 - a. Where the candidate whose nomination was improperly accepted secured less votes than the difference between the returned candidate and the candidate securing the next highest votes.
 - b. Where the person referred to above, secured more votes, and
 - c. Where the person whose nomination has been improperly accepted, is the returned candidate himself.
7. In the case of **Mairembam Prithviraj V. Pukhrem Sharatchandra Singh reported in (2017) 2 SCC 487**, at para 23 it is held that if the nomination of a candidate other than the returned candidate

is found to have been improperly accepted, it is essential that the election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate there is no necessity of proof that the election has been materially effected as the returned candidate would not have been able to contest the election if nomination was not accepted.

8. In the case of ***Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy and ors reported in (2018) 14 SCC 1***, it is held that if the improper acceptance of nomination is of returned candidate, it is not necessary to prove that it has been materially affected. Because, a candidate whose nomination is not acceptable but is elected, itself materially affects election results.
9. In the case of ***Arjun Panditrao Khotkar v. Kailash Kushanrao Goryantyal and Ors reported in (2020) 7 SCC 1***, it is held at para 72 that if the person whose nomination has been improperly accepted is the returned candidate himself, it may be readily conceded that the conclusion has to be that the result of election would be materially effected without there being any necessity to plead and prove the same.
10. In the case ***K. Shivakumar v. N A Haris and Ors, in E. P. No. 09/2023 dated 12.02.2024 (KHC)*** it is held that there would be no further requirement of making any further averment or pleading as to how such improper acceptance has materially effected the election results of the returned candidate and the general averment that the improper acceptance of nomination of returned candidate has materially affected the result of the elected candidate is sufficient.
11. In the case of ***K. M. Thimmarayappa V. H V Venkatesh, in E P No. 06/2023 dated 01.03.2024 (KHC)*** it is held that the petitioner has categorically asserted that the nomination of the respondent was improperly accepted despite the respondent not disclosing the two immovable properties and also not furnishing the particulars of partnership firm, which gave rise to a cause of action to file the election petition. Therefore, the petitioner not having asserted in what manner the result of the election of the respondent, who is a returned candidate, was materially affected, is not a ground for dismissing the Election petition under Order 7, Rule 11 of the CPC R/w 38(i)(a) of the RP Act, 1951.
25. The judgments relied upon, by the learned counsel for the petitioner state that if the improper acceptance of nomination is of returned candidate, it is not necessary to plead and prove that it has been materially affected. Since, in the instant election petition, the petitioner has failed to plead, as to how the result of the election of the Respondent was materially affected by the improper acceptance of the nomination. The cases does not apply to the case on hand.
26. The learned senior counsel Sri. Prabhuling Navadagi, has placed reliance on the following authorities, praying to allow the application:
 1. In the case of ***Kanimozhi Karunanidhi Vs. A. Santhana Kumar and Ors reported in AIR 2023 SC 2366***, it is held at para 50 that the position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code 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. At para 31, it is held that, Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition.
 2. In the case of ***Manganilal Mandal Vs. Bishnu Deo Bhandari reported in (2012) 3 Supreme Court Cases 314***, it is held at para 10 that, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned

candidate has been materially affected by such breach or non observance. At para 11 it is held that, for the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected.

3. In the case of **Karikho Kri V. Nuney Tayang and another reported in AIR 2024 SUPREME COURT 2121**, it is held at para 45 that, So far as the ground under Section 100(1)(d)(iv) of the Act of 1951 is concerned, the provision requires that the established non- compliance with the provisions of the Constitution or the Act of 1951 or any rules or orders made thereunder necessarily has to be shown to have materially affected the result of the election insofar as it concerns the returned candidate.
4. In the case of **Tek Chand V. Dile Ram reported in (2001) 3 Supreme Court Cases 290**, it is held at para 14 that, in an election petition where an election of a returned candidate is impeached under Section 100(1)(d) (i) of the RPA, it is not enough only to establish that the nomination of a candidate was improperly accepted. In addition, it has to be further established that such wrong acceptance of nomination paper has materially affected the result of the election insofar it concerned the returned candidate.
5. In the case of **Kalyan Kumar Gogoi V. ASshutosh Agnihotri and Another, reported in (2011) 2 Supreme Court Cases 53**, it is held at para 50 that, the heads of substantive rights in Section 100(1) are laid down in two parts: the first dealing with situations in which the election must be declared void on proof of certain facts and the second in which the election can only be declared void if the result of the election, insofar as it concerns the returned candidate, can be held to be materially affected on proof of some other facts. The appellant has totally failed to prove that the election of Respondent 2, who is a returned candidate, was materially affected because of non-compliance with the provisions of the Representation of the People Act, 1951, or Rules or Orders made under it.
6. In the case of **Kalyan Singh Chouhan Vs. C.P. Joshi in Civil Appeal No. 870 of 2011 (Arising out of SLP (C) No. 16944 of 2010)**, it is held at para 14 that, during the trial of an election petition, it is not permissible for the court to permit a party to seek a roving enquiry. The party must plead the material fact and adduce evidence to substantiate the same so that the court may proceed to adjudicate upon that issue.
7. In the case of **Anil Vasudev Salgaonkar V. Naresh Kushali Shigaonkar reported in (2009) 9 Supreme Court Cases 310**, it is held at para 57 that, Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of "material facts" on which the petitioner relies. At para 61 it is held that, "material facts" which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act.

8. In the case of **Ram Sukh V. Dinesh Aggarwal reported in (2009) 10 Supreme Court Cases 541**, it is held at para 18 that, undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can and in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail. At para 21 it is held that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate was materially affected.
9. In the case of **D Krishna Kumar v H D Ranganath and ors in E. P. No. 11/2023 decided on 21.06.24**, it is held at 58 that it is also pertinent to mention here that a particular fact is material or not is depend upon the nature of the allegation made in the petition under the circumstance of each case on merits Therefore, it is required for the petitioner in the present case to narrate the essential facts with complete cause of action to be pleaded and failure to plead even a single material fact is contrary to the requirement of Section 83(1)(a) of the RP Act, 1951. It is also to be considered that the allegations of corrupt practice as narrated in the election petition are in the nature of criminal charges against the respondents and therefore, there should not be vagueness in making allegation so that, the respondents may know the case that they have to meet the allegations in the petition. The charge of corrupt practice being quasi-criminal in nature and as such, the Court has to insist on strict compliance with the provisions of law. Therefore, it is equally essential that the particulars of a charge of allegations are clearly and precisely stated in the petition. The burden, is on the petitioner who challenges the election which has been concluded. It is also to be noted that the provision under Section 83(1)(a) of the RP Act, 1951 requires that, while challenging the election of the returned candidate, the election petitioner should take extra care, leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate [See (2014)10 SCC 547].
10. In the case of **Karim Uddin Barbhuiya V. Aminul Haque Laskar and Others reported in 2024 SCC OnLine SC 509**, it is held at para 22 that though it is true that the Election Petitioner is not required to state as to how corrupt practice had materially affected the result of the election, nonetheless it is mandatory to state when the clause (d)(i) of Section 100(1) is invoked as to how the result of election was materially affected by improper acceptance of the nomination form of the Appellant. At para 24 it is held that 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 Sections 83 and 87 of the Representation of Peoples Act.

27. There is no dispute regarding the authorities relied upon by the learned senior counsel for the Respondent. They are applicable to the case on hand as the petitioner, in the instant election petition, has not pleaded in the petition, as to how the result of the election of the Respondent was materially affected by improper acceptance of the nomination. In my view, therefore, the Application deserves to be allowed, and the Election Petition is liable to be dismissed.

28. In view of the above discussion, I proceed to pass the following order:

ORDER

- (i) I.A. No. 2 of 2024 is **allowed**.
- (ii) Consequently, the Election Petition is dismissed.

Sd/-
Judge