

IN THE HIGH COURT OF JHARKHAND AT RANCHI
E.P. No. 01 of 2025
With
I.A. No. 12722 of 2025

Hiralal Sankhwar @ Hiralal Mahato, son of Late Bistu Mahato, resident Village Tola Konartand, Bhikharajpur Post and P.S.-Baliapur, District-Dhanbad Petitioner

Versus

Chandradeo Mahato, son of Sri Anand Mahato, resident of Village-Baradaha, Post-Baliapur, P.S. Baliapur, District-Dhanbad

.... Respondent

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioner : Mr. Arvind Kumar Lall, Advocate
 Mr. Shiwam Lath, Advocate

For the Respondent : Mr. V.P. Singh, Sr. Advocate
 Mr. Arshad Hussain, Advocate
 Mr. Rakesh Kumar Samarendra, Advocate
 Mr. Parth Sarthi, Advocate
 Mr. Vishnu Kumar Sharma, Advocate

JUDGMENT

C.A.V. ON: 19.01.2026.

PRONOUNCED ON: 03.02.2026.

Heard learned counsel for the petitioner and learned counsel for the respondent on the interlocutory application for rejection of the election petition.

2. Instant interlocutory application is filed under Order VII Rule 11 of Code of Civil Procedure, 1908 read with Section 86(1) of Representation of People Act, 1951 for rejection of plaint in this election petition.

3. The present election petition is filed under Sections 80 and 81 read with Section 100 (1) (a) (b) (d) (i) (iv) of the Representation of People Act, 1951 (herein after referred to as Act, 1951) challenging the validity of the election of the respondent- Chandradeo Mahato, returned candidate from 38, Sindri Assembly Constituency to the Jharkhand State Legislative Assembly in the election held in October/November, 2024. Respondent was elected with a total **1,05,136** votes, whereas total number of votes cast in favour of the runner was **1,01,688**, who was the official candidate of BJP. Election Petitioner was the official candidate of All India Forward Bloc in whose favour **737** votes were cast in the election.

4. Challenge to the validity of the election, is mainly on the following grounds :-

- a. Deposit of security money of Rs.10,000/- was not made in accordance with the Section 34(2) of Act, 1951 as it was not made with the Returning Officer concerned, nor in the Government treasury, but with the Nazir, who cannot be said to be functionary notified under the Act, 1951.
- b. Respondent submitted his nomination papers in four sets along with the required affidavit. In the affidavit sworn in the office of Shri Ram Prasad Mahato, Notary Public, Dhanbad, the required prescribed stamps were not affixed on the affidavit. The Advocate Welfare Fund Ticket of ₹30 as well as Advocate Clerk Stamp of ₹5 were not affixed. Out of the four sets of affidavits filed along with the nomination papers, only two were in original, whereas other two were xerox copy of the original affidavit.
- c. Voters had been misled during the election campaign as the respondent had claimed himself to be the candidate of भारतीय कम्युनिस्ट पार्टी (माले) (CPI ML), whereas he had filed the nomination paper as official candidate of Communist Party of India (Marxist-Leninist) (Liberation). Objection is to the omission of word 'liberation' in the election pamphlets.
- d. It is also averred in the election petition that declaration with regard to conviction in pending criminal cases was not as per the Act, 1951. As per the instruction and guidelines, all the candidates have to declare about their conviction and pending criminal cases in the nomination paper and also the details thereof was to be published in two leading newspapers. This was not complied with, and the publication with regard to it, made in the daily newspaper, Hindustan (Hindi) was misleading.

5. The grounds of rejection of plaint taken on behalf of the respondent can be summed up as under:

- a. Averments made in the election petition, do not disclose a cause of action for declaring the election to be invalid.
- b. There is failure on the part of the election petitioner to comply with mandatory requirement of Sections 81, 82 and 83 of the Act, 1951. It is contended that there is non-compliance to Section 81(3) of the Act, 1951

as the true copy of the election petition was not served upon the respondent. The copy which has been given as a xerox copy, is not duly attested as provided under Section 86 of the Act, 1951. Non-compliance of Section 83 will by itself entail a rejection of election petition, as Section 83 is couched in mandatory terms by use of "shall" in the said provision. This is further buttressed by Rule 94 (a) of the Conduct of Election Rules, 1961. It is argued that election petition cannot be entertained in a fanciful manner, unless and until averments made disclose the material facts to hold an election as null and void, the same cannot be entertained. These principles have been enunciated in *Kanimozhi Karunanidhi Vs. A. Santhana Kumar* reported in AIR 2023 SC 2366 and followed in *Karim Uddin Barbhuiya Vs. Aminul Haque Laskar & Ors.* reported in AIR 2024 SC 2193. The election petition was held to be fit for rejection on account of non-compliance to the requirement of Section 83(1)(a) of the Act, 1951.

c. Validity of an election must relate to the grounds specified in Section 100 of the Act, 1951 as held by Hon'ble Apex Court in *Bhagwati Prasad Dixit (Ghorewala) Vs. Rajeev Gandhi (1986)* 4 SCC 78 and in *Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi* reported in 1987 supplementary SCC 93. By referring to these authorities, it is argued that unless the pleadings of the election petition are precise, the courts cannot enter into a fishing expedition where factual assertions have not been made as per the requirement mandated by the Act, 1951.

d. Averment made in para-26 of election petition is a false statement given on affidavit that the respondent had been convicted on 12.02.2020 in U.R. Case No.1177 of 2014 in Cr. Appeal Case No.39 of 2020, which was pending in the Court of A.D.J.-VIII, Dhanbad. The certified copy of the judgment delivered in U.R. Case No. 1177 of 2014 is filed today which is kept on record. By referring to this judgment, it is contended that the respondent was not even an accused which will be apparent from the cause title of the judgment. Knowing full well about the falsity of charge, para 23 to 26 of the election petition were not deliberately verified. A false averment made in election petition is itself a ground for rejection of plaint as held by the Apex Court in *C.P. John Vs. Babu M. Palissery & Ors.*,

(2014) 10 SCC 547, wherein pleadings with respect to the two criminal cases were found to be incorrect, which among other reasons became grounds for rejection of a plaint.

e. It is submitted that election petitioner in effect seeks to make out a case of corrupt practice as defined under Section 133 of the Act, 1951 and in order to make out such a case, the imperative requirement as mandated under Section 83(1b) of the Act 1951 read with Rule 94(A) of the Conduct of Election Rules, 1961 is that a separate affidavit should be sworn before a Magistrate of the First Class or a Notary or a Commissioner of Oaths in Form-25. This mandatory requirement has not been followed in the present election petition. As per Rule 94(A) of the Conduct of Election Rules in Form-25, this affidavit does not answer the requirement of Form-25.

6. Lastly, it is contended that the plea of omission of 'liberation' in the campaigning, wherein the returned candidate has been shown to be candidate of भाकपा (माले) (CPI ML) Communist Party of India (MALE) and not CPI (Marxist-Leninist) (**Liberation**), has neither caused any prejudice to the election petitioner nor it has misled the public at large and, therefore, will have no bearing. It cannot be said that the publication can be attributed to the respondent personally and this aspect has been considered by the Hon'ble Apex Court in the case of *C.P. John* (supra) in para 44, wherein it has been held that the statement of fact in the publication must be false and it should be related to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate. Statement must be reasonably calculated to prejudice the prospects of that candidate's election. The said omission, which is urged, did not compromise or prejudice the prospect of the election petitioner for declaring the election as invalid. Statement must be reasonably calculated to prejudice the prospects of that candidate's election. The said omission, which is urged, did not compromise or prejudice the prospect of the election petitioner.

7. Sum and substance of the argument advanced on behalf of the respondent is that averments made in the pleadings do not *prima facie* disclose that the returned candidate or his candidate had committed any corrupt

practice or there were any substantive ground for rejection of his nomination. Omission of word 'liberation' in the pamphlet was superficial and did not in any way materially affect the result of the election. Security deposits were made and quibbling over the authority with which it was deposited does not go to the root of the matter. They do not disclose any corrupt practice on the part of respondent. It is also not in dispute that two original affidavits were filed in support of the nomination paper and rest of two were photocopies. There is no allegation of false affidavit made. In the absence of prejudice to the election petitioner, the election petition cannot be entertained. Reliance in this regard is placed on *Ajhar Hussain Vs. Rajiv Gandhi, (1986 Suppl. SCC 315)* Para 25.

8. It is argued by learned counsel for the Election Petitioner that the factual averments made in para 26 of the election petition are with regard to the newspaper publication in the daily newspaper (Hindustan) on 03.01.2024 with regard to conviction in criminal case against the respondent. This is a fact which cannot be ascertained at the present stage and can only be decided after the parties get an opportunity to lead evidence. It was incumbent on the part of the respondent/returned candidate, who made correct paper publication.

9. It is contended that under Section 34 of the Act, 1951 the mandate is specific that the security deposit is to be made with the returning officer in cash. In *Charan Lal Sahu Vs. Fakaruddin Ali Ahmad & Ors., (1975) 4 SCC 832*, wherein the security deposit was tendered by the candidate in the presidential election by way of cheque that became the ground of rejection of his candidature and was upheld by the Hon'ble Apex Court.

10. It is argued that in almost similar matter, for rejection of claim filed in *Santosh Hembram Vs. Ravindra Nath Mahto* in **Election Petition No. 06/2020**, the petition for election was rejected by the co-ordinate Bench of this Court and was upheld by the Hon'ble Apex Court in Special Leave to Appeal No. 4574/2024.

11. Lastly, it is argued that the rejection of plaint for election petition under Order VII Rule 11 of the CPC will be warranted only where the petition fails to disclose the cause of action. In the instant case, the averment disclose the cause of action and raise triable issue, which cannot be decided at this stage.

ANALYSIS

12. Grounds under which an election petition may be dismissed has been summed up in *Kanimozhi Karunanidhi v. A. Santhana Kumar, (2024) 18 SCC 592* as under,

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

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

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

27.4. *In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any Rules or Orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected.*

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

27.6. *An election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under clause (a) of Rule 11 of Order 7CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.*

Grounds on which election of a returned candidate can be declared void is provided in Section 100 of the Act which is as under: -

(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 of any nomination, or*

- ii. by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
- iii. by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
- iv. by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

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

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

13. From the above provision, it is apparent that for declaring election void, grounds must conform with requirements of Section 100 of the Act, 1951. On the date of scrutiny of nomination, candidate must be qualified and must not have incurred disqualification under Articles 84 and 102 of the Constitution of India or there must not have been non-compliance with Section 33 or Section 34 of the Act. In order to make out a case under Section 100(1)(d)(iv) of the Act, 1951, it was necessary for petitioner to specifically plead that election was materially affected by non-compliance with provisions of the Act, 1951 or Rules made thereunder that the candidate indulged in corrupt practice. It is not open to an election petitioner to simply raise an allegation of corrupt practices; it is as much necessary that averment made with respect to practice should be specifically supported by an affidavit.

14. Having set out the principles while considering an election petition, matter for consideration before this Court is whether the averments made in the pleading are sufficient to launch the trial or the election petition is fit to be dismissed at the threshold. It is trite law that while considering a petition under Order VII Rule 11 of the CPC, defence is not to be considered, and it is

only to be seen whether cause of action is made out on the averments made in the plaint.

15. As discussed in the foregoing paragraphs, averment do not state about the security money having not been deposited, but is confined to the allegation that it was made with the Nazir and not with the Returning Officer. This is something very peripheral and cannot be a ground to declare the election to be invalid. During course of argument, it has not been denied by the election petitioner that security money had been deposited by him in the same mode and manner.

16. The second plea of Advocate Welfare Fund Ticket or Advocate Clerk Stamp having not been affixed on the affidavit, is equally flippant. In any case, the omission to affix such stamp was on the part of the Notary and the returned candidate, cannot be held liable for the same.

17. The other ground is omission of 'liberation' in the election pamphlets, although the returned candidate was an official candidate of CPI (ML) Liberation. This omission cannot by any stretch of imagination be said to mislead the voters to the detriment of the election petitioner. Each and every discrepancy in election campaign, cannot by itself be said to come within meaning of corrupt practice so as to make it a ground to declare the election as invalid. Discrepant statement during election campaign should have the effect or potential to qualitatively influence the election result. It is difficult to comprehend how this omission did materially affect the election result. In order to call it a discrepant and misleading statement so as to be called corrupt practice under Sub-section 4 of Section 123 of the Act, 1951, it should be reasonably calculated to prejudice the prospects of the other contesting candidates in the election, by misleading the voters. This Court is of the view that the omission was inconsequential and cannot be said to have in any way influenced the election result. This plea even if it is accepted, is not sufficient for the relief claimed in the election petition.

18. Coming to the last plea of misleading notification in daily newspaper with regard to conviction of the returned candidate, there is no averment whatsoever to show that the returned candidate had been convicted of an offence, which was concealed while nomination paper was filed or in the

publication made in the daily newspaper. On the contrary, the certified copy of judgment passed in U.R. Case No.1177 of 2014 filed during the course of hearing, goes to shows that returned candidate had not even been made an accused in this case. The statement as given in para 26 of the election petition, *ex-facie* is false. It substantiates the argument advanced on behalf of the petitioner that for this reason paragraphs 23 – 26 were not verified. Such a false statement is itself a ground for dismissal of the election petition in view of the ratio laid down in by the Apex Court in *C.P. John Case* (supra).

19. The pleadings raised in the instant election petition, does not disclose a cause of action for the relief claimed so as to lead the election petition to any meaningful result. There is no assertion of fact on which a *prima facie* inference can be drawn that the petitioner had given a false statement on affidavit or that corrupt practice has been committed by him or by Election Agent or by any other person with his consent or that there was non-compliance of provisions of Constitution or this Act within the meaning of the Representation of People Act, 1951 For the reasons discussed above, this Court is of the view that this is a fit case for rejection of plaint under Order VII Rule 11(a) of the CPC. Election petition is a serious matter and elected candidate cannot be dragged into a litigation on such sketchy pleadings.

20. Interlocutory application for rejection of plaint (I.A. No. 12722 of 2025) is allowed and the plaint of the election petition is rejected.

Election petition stands dismissed with cost. Cost assessed to Rs.50,000/- (Rupees Fifty Thousand). Pending Interlocutory application, if any, stands disposed of.

(Gautam Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi.

Dated 03.02.2026

Anit

Uploaded
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