

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**ORDER BELOW EXHIBIT 13 (APPLICATION NO.34 OF 2015)
IN ELECTION PETITION NO.2 OF 2014**

Shri. Ratnakar s/o. Manikrao Gutte
Age 55 years, Occ. Agriculture,
R/o. Janabai Nagar, Gangakhed,
Tq. Gangakhed, Dist. Parbhani

..Petitioner
in Election
Petition

Versus

Shri. Madhusudan Manikrao Kendre,
Age 49 years, Occ. Agriculture
and Business, r/o. "Indraprastha",
Bhagya Nagar, Gangakhed,
Tq. Gangakhed, Dist. Parbhani
and others

..Respondent in
Election
Petition

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Mr.V.D.Hon, Senior Advocate h/f Mr.P.D.Bachate, Advocate
for applicant/original respondent no.1 in Election
petition

Mr.V.J.Dixit, Senior Advocate with Mr.S.B.Yawalkar,
Advocate, Mr.M.V.Nagargoje, Advocate and Mr.S.V.Dixit,
Advocate for petitioner in Election petition

Mr.D.Y.Nandedkar, Advocate for respondent no.10

Mr.S.S.Nagthane, Advocate for respondent nos.14 and 18

Mr.V.R.Thorat, Advocate for respondent no.15

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CORAM : M.T. JOSHI, J.
RESERVED ON : DECEMBER 01, 2015
PRONOUNCED ON : DECEMBER 14, 2015

ORDER :

Heard both sides.

2] Pending the Election Petition, present application is filed by the original respondent no.1 for rejection of the petition under the provisions of Order VII Rule 11 of the Code of Civil Procedure.

3] Original petitioner – Ratnakar Gutte has challenged the election of respondent no.1 – Madhusudan Kendre, to the office of the Maharashtra Legislative Assembly from 97-Gangakhed Legislative Assembly Constituency in the State of Maharashtra, declared on October 19, 2014. The petitioner – Ratnakar Gutte was one of the candidates to the election.

4] In nutshell, the allegations of the petitioner was that the affidavit filed by respondent no.1 annexed to the nomination papers did not contain following information and the same has materially affected the result of the election :-

(I) Pendency of the criminal case bearing Summary Criminal Case No.4464 of 2011 then pending on the file of learned Chief Judicial Magistrate, Aurangabad, wherein cognizance was taken by learned Chief Judicial Magistrate and for absence of respondent no.1/present applicant, non-bailable warrant was issued, has not been mentioned in the affidavit.

(II) Respondent no.1/present applicant was a partner of M/s. Janai Construction Stone Crusher. Two electricity meters bills, details of which are given in the petition, were placed in the premises

of the firm. On 26th September, 2014 i.e. on the date of filing of the nomination form, arrears of the electricity bills of Rs.Ten Lakhs Eleven Thousand and odd due to Maharashtra State Electricity Distribution Company was outstanding against one meter, which continued even after filing of the affidavit. The same, however, is not disclosed in the affidavit.

(III) Respondent no.1/present applicant was defaulter in payment of the loan of Indusind Bank Ltd. and various proceedings including the execution proceedings were filed for a total amount of Rs.Seven Lakhs Thirty Five Thousand and odd.

(IV) Further, respondent no.1/present applicant defaulted in making payment of the loan of Jankalyan Sahakari Bank Ltd. and on the date of filing of the nomination papers with the affidavit, Recovery Case No.2063 of 2008 for recovery of

Rs.Twenty Eight Lakhs Sixty Eight Thousand and odd, was pending, still, said information was not included in the affidavit and the form annexed thereto.

. According to the election petitioner, these suppressions and non-disclosure on the part of respondent no.1/present applicant is a serious error of enormous magnitude, which affected the election. Hence, the Election Petition came to be filed.

5] Present applicant/respondent no.1 submitted that the Election Petition is liable to be rejected as it does not disclose any cause of action. According to the applicant/respondent no.1, there is no evidence that the Court has taken cognizance of the criminal case and details of the same are not given.

. So far as arrears of electricity bills of M/s.Janai Construction Stone Crusher is concerned,

it is submitted that the applicant had already retired from the said firm and there was no nexus of the applicant with the said firm on the date of filing of the nomination papers. The Indusind Bank Ltd. and the Jankalyan Sahakari Bank Ltd. are not the public financial institutions and, therefore, the information regarding the liabilities towards these institutions were not required to be furnished in the affidavit.

. In the circumstances, present applicant/respondent no.1 wanted that the Election Petition be rejected.

6] Vide Application No.35 of 2015 at Exhibit 14, the election petitioner sought production of documents in addition to the documents already filed by him as annexures to the petition.

7] The copy of the affidavit along with the information given in the annexed form by the

present applicant/respondent no.1 at the time of filing of the nomination form, would show that under clause 5(1)(C) thereof, present applicant has not mentioned about pendency of the summary criminal case as detailed supra.

. Annexure-I would show that said proceeding was for the offence punishable under Section 138 of the Negotiable Instruments Act wherein, process was issued and as the present applicant remained absent after service of the summons during filing of the nomination form, a non-bailable warrant was issued against him.

. It was submitted on behalf of the applicant/respondent no.1 that lateron, learned Chief Judicial Magistrate has returned the complaint for want of territorial jurisdiction.

8] As regards the arrears of the electricity bills, the petitioner has filed copies of the bills

at Annexure-P, which would show that present applicant/respondent no.1 personally was in arrears of Rs.Seven Lakhs Seven Thousand and odd towards electricity consumption charges during the relevant period.

. The necessary documents regarding the default in payment of the loan and recovery proceedings carried by the Indusind Bank Ltd. and the Jankalyan Sahakari Bank Ltd are also filed on record.

9] Mr.V.D.Hon, the learned Senior Counsel i/b. Mr.Bachate, for applicant/respondent no.1 submitted before me as well as in the written notes of arguments that the summary criminal case was lateron returned for want of jurisdiction. The Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) is not a Government or a department of the Government and the applicant being retired from the firm nothing was due against present

applicant on the date of filing of the affidavit. Lastly, the Indusind Bank Ltd. and the Jankalyan Sahakari Bank Ltd. are not the public financial institutions and only the liabilities, as regards public financial institutions are required to be furnished in the affidavit. Hence, Mr.Hon submitted that since no cause of action to file the petition is disclosed the petition may be rejected.

. Learned counsel for the applicant/ respondent no.1 has relied over fifteen authorities annexed to the written notes of arguments.

10] Upon hearing both sides, in my view, present application deserves to be dismissed for the reasons to follow.

R E A S O N S

11] The provisions of Section 100(1)(d)(i) of the Representation of the Peoples Act, 1951, provides that if the result of the election has

been materially affected due to improper acceptance of the nomination, the election can be declared as void.

. Rule 4(1) of the Conduct of Elections Rules, 1961 provides for filing an affidavit in a form to be filled-in at the time of delivery of the nomination papers by the candidate. This Form no.26 provides that the candidate is required to furnish not only the information about the criminal case in which the charge is framed, but also the criminal case in which cognizance has been taken by the court.

. Further, the information about the liabilities like loan of any bank/financial institution are also required to be given as per the Clause 8 Serial No.(i) thereof. Not only this information is required but also loan or dues to any other individuals/entity is also required to be detailed.

12] What would be the effect of returning of the complaint for want of territorial jurisdiction by the learned Chief Judicial Magistrate, Aurangabad, of which cognizance was taken by him earlier and particularly, at the time of filing of the affidavit; whether the present applicant/respondent no.1 continued to be a partner of M/s.Janai Construction Stone Crusher; and whether, the Indusind Bank Ltd and/or the Jankalyan Sahakari Bank Ltd, can be called as a bank/financial institution, and further effect of non-disclosure of loan/dues of an other entity will have to be decided by this Court on merit upon receiving evidence from both the sides or at least, the issues will have to be settled on the basis of the pleadings and the documents to be examined at the time of settlement of the issues.

. It is trite to say that the plaint/Election Petition is to be rejected under the provisions of Order VII Rule 11 of the Code of

Civil Procedure only when it does not disclose any cause of action.

. The true test is, as to whether, even after admitting of the facts, as pleaded in the plaint, or petition, no decree or relief, as prayed for, can be granted and then and then only the plaint/Election Petition is required to be rejected.

13] Considering all the aspects, as detailed supra, in my view, for the reasons furnished herein-above, examination of the material on merit is required.

14] Hence, the following order :-

. The application is hereby rejected without any order as to costs.

[M.T. JOSHI, J.]

kbp