

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 38 OF 2015
IN
ELECTION PETITION NO. 13 OF 2014

Amit Vilasrao Deshmukh

....Applicant.

Versus

Annarao Govindrao Patil & Ors.

....Respondents.

Mr. V.D. Hon, Senior Counsel i/b. Mr. A.V. Hon, Advocate for applicant.

Mr. N.V. Gaware, Advocate for respondent No. 1.

CORAM : T.V. NALAWADE, J.

DATED : 4th September, 2015.

ORDER :

1. The application is filed by respondent No. 1, elected candidate for making order of treating some issues as preliminary issues and for making further order like dismissal of the proceeding. During arguments, it was submitted that after treating these issues as preliminary, respondent No. 1 will be arguing for rejection of the proceeding as provided in order VII Rule 11 of Civil Procedure Code. This Court has already framed issues and prayer is made to treat issue Nos. 5 to 8 as preliminary issues. Those issues are as under :-

5	Whether the Election Petition is maintainable as it does not contain any of the ground contemplated under Section 100 of Representation of Peoples Act, 1951 ?
6	Whether the Election Petition suffers on the count of non compliance of provisions of Sections 81, 82 and 83 of Representation of Peoples Act, 1951 ?
7	Whether the Election Petition suffers on the count that there are no full particulars of any corrupt practice which the petitioner alleges and full statement of names of parties alleged to have committed the corrupt practice ?
8	Whether the Election Petition is maintainable, as it does not contain concise statement of material facts on which the petitioner relies as contemplated by the provisions of the Representation of Peoples Act, 1951 ?

2. The petitioner has strongly opposed the application by filing reply. It is mainly contended that the application is not tenable. It is contended that there is no question of jurisdiction involved and so, the proceeding cannot be dismissed. It is also contended that when issues on all the rival pleadings are framed, at this stage, objections as contended in the application cannot be considered. It is contended that the pleading is in accordance with the provisions of Representation of the People Act.

3. Both the sides are heard. Respondent No. 1 is

elected to Maharashtra State Legislative Assembly from Latur City Constituency. The margin of victory is around 1.90 lakhs. No relief of declaration that any other candidate be declared as elected is claimed in the election petition. There were 22 candidates in fray and the present petitioner was contesting from State level political party viz. Maharashtra Vikas Aaghadi. Atleast four parties of national level were contesting the election and respondent No.1 belongs to Congress-I party.

4. The main ground for challenging the election is exceeding of expenditure fixed for election which is Rs. 28 lakh. It is contended that the election can be set aside as provided in grounds mentioned in section 100 (1) (d) (iv) of the aforesaid Act and the spending of excess amount amounts to corrupt practice as defined in section 77 of the this Act.

5. The learned counsel for respondent No. 1 took this Court through the provisions of aforesaid section and also the provisions of sections 80, 81, 82, 83 (a) (b) and proviso of section 83 and also the provision of Order VII Rule 11 of C.P.C. He submitted that from the pleadings, it can be said that no particulars are given as required by the aforesaid provisions and so, no cause of action is made out for filing the petition. He

submitted that along with the pleadings, there was no separate affidavit as provided in aforesaid provisions and the particular incidents in which particular amount was spend are not quoted. He submitted that the petitioner will be relying mainly on the show cause notices issued by Election Commission regarding the expenses of respondent No. 1 and in that case, it can be said that when the Election Commission has accepted the final returns submitted by the candidate and no action is taken by Election Commission, this record of Election Commission cannot make out any cause of action.

6. The learned counsel for respondent No. 1 took this Court through the relevant paragraphs like paragraph Nos. 7 to 17 of the petition and also through the notices and the record like returns submitted by the elected candidate.

7. Though in the petition, only one section like section 101 (1) (d) (iv) is mentioned, it can be said that section 100 (1) (b) can also be there in view of the nature of allegations made in the petition. This Court has gone through the aforesaid provisions pointed out by the learned counsel for the respondent No. 1 and the rival pleadings.

8. The provision of section 83 of the Act shows that the full particulars of alleged corrupt practices need to be given i.e. the names of the concerns, places of incidents etc. The proviso also shows that separate affidavit need to be filed along with the petition and there need to be separate concise statement in respect of the particulars. It was also submitted that though as per the directions of this Court, affidavit was filed subsequent to the filing of the petition by the petitioner, copy of it is not supplied and these circumstances need to be considered.

9. On the other hand, the learned counsel for petitioner submitted that the petitioner was hampered as he could not get the particulars of the incidents and the expenditure as compact disks (CD), which were prepared from video recording done by the Election Commission. It was submitted that it was not possible for the candidate like petitioner to collect all the information on his own. Whether such circumstances can be considered while considering the aforesaid provisions also need to be considered at the initial stage. Whether the compliance of the aforesaid provisions is mandatory in nature and due to non compliance of the provisions of the aforesaid Special Act, the petition can be rejected, needs to be considered. As the election is challenged, the Court needs to go with the presumption that

necessary particulars ought to have been given and so, there is prima facie case for framing of preliminary issues. Both the sides placed reliance on many reported cases. The learned counsel for respondent No.1 placed reliance on the following cases:-

(i) AIR 1987 (SC) 1926 [Samar Singh Vs. Kedar Nath Alias K.N. Singh],

(ii) AIR 1986 (SC) 1253 [Azhar Hussain Vs. Rajiv Gandhi],

(iii) AIR 1987 (SC) 1577 [Dhartipakar Madanlal Agarwal Vs. Rajiv Gandhi],

(iv) AIR 2000 (SC) 694 [V. Narayanaswamy Vs. C.P. Thirunavukkarasu],

(v) AIR 1961 (SC) 1691 [Shipra : Jhammakal Vs. Shanti Lal Khoiwal : Laxminarayan Pande],

(vi) Unreported Order made by this Court [Coram : V.R. Kingaonkar, J.] in Election Petition No. 6/2009 dated 3.3.2010.

The learned counsel for petitioner placed reliance on the following cases :-

(i) 1999 (0) BCI 71 (SUPREME COURT) [D. Ramchandran Vs. R.V. Janakiraman],

(ii) AIR 1964 (SC) 497 [S.S. Khanna Vs. F.J. Dillon],

(iii) AIR 2006 (SC) 3672 [Ramesh B. Desai & Ors. Vs. Bipin Vadilal Mehta and Ors.],

(iv) Unreported case decided by Supreme Court of India between Jeet Mohinder Singh Vs. Harminder Singh Jassi dated 26.10.1999

in Appeal (Civil) No. 154 of 1999.

10. The facts and circumstances of each and every case are always different. In the cases cited by the learned counsel for respondent No. 1, the importance of the procedure given in aforesaid provisions is discussed and the use of provision of Order VII Rule 11 of C.P.C. is also discussed. This Court holds that the preliminary issues as requested by the learned counsel for respondent No. 1 need to be framed.

11. In the result, the application is allowed. The aforesaid issues will be treated as preliminary issues.

[T.V. NALAWADE, J.]

ssc/