

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10654 OF 2014

Juber Ibrahim Choudhary	..	Petitioner
vs.		
Ajit Narayan Dorkar & Ors.	..	Respondents

Mr. M. L. Patil for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 05 JANUARY 2015

P.C. :-

1] This petition is directed against the orders dated 11 March 2014 and 22 July 2014, which in effect rejects the petitioner's applications for striking of paragraphs 3, 5 and 7 of the election petition questioning the petitioner's election as a Councillor of the Sangli Miraj and Kupwad City Municipal Corporation.

2] At the outset, it must be noted that the impugned order dated 11 March 2014 is not at all happily worded, in as much as it merely states that the prayer of striking out pleadings cannot be considered as the allegations are the grounds on which the election is challenged. This is by no means a satisfactory manner with which to deal with applications for striking out of pleadings. The order dated 22 July 2014 merely declines to entertain a review against the order dated 11 March 2014.

3] Mr. Patil, the learned counsel for the petitioner took me through the pleadings in the election petition, laying particular emphasis on the averments made in paragraphs 3, 5 and 7. Mr. Patil submitted that the averments in the said paragraphs concern the petitioner's father and brother who are alleged to have been involved in distribution of money for procuring votes and securing an elected post on the basis of certain certificates, which were later on discovered to be false or fabricated. Mr. Patil submits that there is no averment in the election petition that the petitioner's father or his brother were the agents of the petitioner and consequently indulging into corrupt practices by them, would also vitiate the petitioner's election as a Councillor. In absence of such crucial averment, Mr. Patil contends that the averments in paragraphs 3, 5 and 7 are nothing but scandalous, defamatory and intended to embarrass the proceedings in the election petition. Mr. Patil also contended that the allegations are extremely vague and therefore deserve to be struck off. In this regard, Mr. Patil relied upon the provisions contained in Order 6 Rule 16 of the Civil Procedure Code as also the decisions of the Supreme Court in the case of **Ram Sukh v. Dinesh Aggarwal**¹ and two decisions of the Orissa High Court in the cases of **Prasanna Kumar Patasani v. Janaki**

1 (2009) 10 SCC 541

***Ballav Pattnaik*² and *Sk. Illias v Co-operative for American Relief Everywhere, India & Ors.*³.**

4] Having heard Mr. Patil and perused the record, I am not inclined to interfere with the conclusion recorded by the Election Judge, notwithstanding the manner in which the Election Judge has come to the said conclusion. No doubt, the provisions contained in Order 6 Rule 16 of the CPC empower a court, at any stage of the proceedings to strike down pleadings which may be unnecessary, scandalous, frivolous, vexatious or which may tend to prejudice, embarrass or delay the fair trial of proceedings and/ or which otherwise constitute an abuse of the process. However, in order to exercise such power, it is necessary that pleadings are considered as a whole. It is also necessary to consider the context in which certain pleadings find place in the petition or the suit.

5] In the present case, upon an overall consideration of the pleadings in the election petition, it is clear that the case set out by respondent no. 1 – election petitioner is that the petitioner has indulged into corrupt practices, which *inter alia* include offer of money to voters with a view to influence or induce them to vote in favour of the petitioner. The circumstance that phrases like '*agent*'

2 AIR 1997 Orissa 115

3 AIR 2007 Orissa 9

or '*in connivance with the candidate*' have not been expressly used in the pleadings, is of no serious avail. All that is necessary to be seen at this stage is whether, a case of the returned candidate having involved himself in corrupt practices is pleaded. The veracity or otherwise of such allegations is not at all of concern, at this stage. If the averments in the election petition are viewed in this context, then it cannot be said that the allegations made in paragraphs 3, 5 and 7 are scandalous or totally irrelevant to the cause of action pleaded. This is also not a case where allegations have simply been made in the air. In the paragraphs with which we are concerned, it is pleaded that the petitioner's father was seen in the video recording in a sting operation in distribution of money at the very election from which the petitioner has been returned as the successful candidate. Further, there is reference to some prosecution and conviction by the Courts. The same is the position with regard to the allegations against the petitioner's brother. If such allegations are considered cumulatively along with the other allegations in the election petition, it cannot be said that the averments contained in paragraphs 3, 5 and 7 are totally irrelevant, scandalous and therefore deserve to be struck off.

6] In the case of *Ram Sukh* (supra), the Supreme Court was concerned with the election petition under the Representation of

People Act, 1951. That was a case where the Apex Court found that the pleadings lacked in material facts, notwithstanding the specific mandate of Section 83 of the Representation of People Act, 1951. In the said case, the reference was made to the provisions contained in Section 86 which mandated that the election petition which did not comply with the provisions of Section 83 should be dismissed. Further, the Apex Court, relying upon Section 87 of the Representation of People Act, 1951 also ruled that the provisions of CPC and consequently those contained in Order 7 Rule 11 and Order 6 Rule 16 thereof are applicable to the trial of election petitions. In my opinion, the said judgment is not at all relevant for the issue with which we are concerned in the present petition.

7] Similarly, the two decisions of the Orissa High Court, in the peculiar facts which obtained therein were pleased to strike down certain pleadings which were irrelevant to the main issue raised. In the present case, I do not find that the averments in paragraphs 3, 5 and 7 are irrelevant to the issues raised in the main election petition. The decision of the Orissa High Courts are therefore clearly distinguishable.

8] In view of the aforesaid, no case is made out to exercise the extra ordinary jurisdiction under Article 227 of the Constitution of

India. The conclusion recorded by the Election Judge is neither in excess of jurisdiction nor can the same be said to be vitiated by any error apparent on the face of the record. For the aforesaid reasons, I am not inclined to entertain the present petition, the same is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

9] It is clarified that the observations made in the present order are only *prima facie* and for the purpose of deciding as to whether any case was made out striking of the pleadings. The Election Judge to decide the election petition on its own merits and in accordance with law. All issues are kept expressly open.

10] The petition is accordingly dismissed with no order as to costs.

(M. S. SONAK, J.)