

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11008 OF 2014

Sneha Vinayak Zagade .. Petitioner
vs.
Suman Kashinath Sawal & Ors. .. Respondents

Mr. M. M. Vashi – Senior Advocate with S. M. Sharma i/b. M/s. M. P. Vashi & Associates for Petitioner.
Ms Sushma Singh for Respondent No. 1.
Ms D. S. Mondkar i/b. Mr. S. B. Shetye for Respondent No. 2.
Mrs. M. R. Bhoir i/b. U. H. Deshpande for Respondent Nos. 4 and 5 – MCGM.

CORAM : M. S. SONAK, J.
DATE : 11 FEBRUARY, 2015

P.C. :-

1] Leave to amend in terms of the draft tendered. Amendment to be carried out by tomorrow.

2] This petition, as originally filed, challenged the order dated 26 November 2014 made by the Court of Small Causes at Bombay (Election Court), by which the State Election Commissioner by himself or through any other officer was directed to produce or tender CD or any other electronic record of the video recordings done under its authority, in the matter of nomination form dated 31 January 2012 of the petitioner herein for election as a Corporator to the Mumbai Municipal Corporation at the elections held on 16

February 2012. The State Election Commissioner was also directed to produce two sets of certified copies / certificates in respect of nomination form dated 31 January 2012 of the petitioner which was uploaded on the official website.

3] During the pendency of this petition, the officer from the State Election Commission appeared before the Election Court and stated that all the documents and CDs are in possession of the Municipal Corporation (Election Department). Thereafter, the respondent no. 1 (election petitioner) took out yet another application seeking for similar directions to the officials of the Municipal Corporation (Election Department). By order dated 23 December 2014, the Election Court has issued the following directions:

“Issue summons to Mr. M. A. Jadhav, Assistant Election & Town Duty Officer in Election Department of Municipal Corporation on payment of bhatta and process fees.

Mr. M. A. Jadhav is directed to produce the aforesaid C.Ds. and two certified copies of Nomination form of Sneha Vinayak Zhagde – Respondent No. 2 filled on 31/01/2012 in respect of Ward No. 45 which was uploaded on the Official Website www.mcgmeelection.org and to give evidence.

On production of aforesaid documents including C.Ds. summons be issued to Mr. Udhav Ghuge, Deputy Collector, MIDC, Andheri, Mumbai on depositing bhatta and process fees within two days for evidence.”

4] In this case, the respondent no. 1 has instituted an election petition questioning the election of the petitioner, *inter alia* on the

ground that the declaration with regard to the petitioner's caste, was signed by the petitioner after the time prescribed for submission of nomination papers had expired. The Returning Officer as well as the State Election Commissioner who have been impleaded as parties to the election petition have, in their written statement denied this fact. The petitioner has also denied this fact. In order to prove her case, the respondent no. 1 made applications for production of C.D. and other material, which in her opinion would establish her case. It is upon such applications, that the two impugned orders came to be passed. The challenge to the first order dated 26 November 2014, has by now become merely academic. However, since the reasoning in the order dated 16 November 2014 has virtually been adopted by the Election Court, in the order dated 23 December 2014, leave to amend the present petition has been granted and the challenge to the two orders is considered together.

5] Mr. M. M. Vashi, the learned Senior Advocate for the petitioner submitted that in the election petition as filed there was no reference whatsoever to any video recording or the existence of any C.D. or any such material. Further, the case set out by the respondent no. 1 in the election petition came to be denied by the State Election Commissioner, Returning Officer, as well as the

petitioner. In such circumstances, it was not open to the respondent no. 1 to apply for the State Election Commissioner or for that matter the Municipal Authorities to be summoned as witnesses or be directed to produce any material like C.D. etc. This according to Mr. Vashi, would clearly amount to embarking upon such fishing expedition. Besides, relying upon the decision of the Privy Council in the case of *Mahunt Shatrugan Das vs. Bawa Sham Das & Ors*¹., Mr. Vashi submitted that the practice of calling upon the opposite parties to be witnesses has been deprecated. Mr. Vashi also submitted that the impugned orders record that admittedly some video recording was made at the time of filing of nomination papers, when in fact there is no such admission to be found in the record. For all these reasons, the learned counsel submitted that the impugned orders ought to be interfered with, as otherwise very severe prejudice will occasion the petitioner, who has been returned as a Corporator as per will of the majority.

6] Ms Sushma Singh, the learned counsel for the respondent no. 1, on the other hand contended that the impugned orders ought not to be interfered with. This is because there is ample material on record that there was a video recording of the entire election process, including the filing of nominations. Ms Singh submitted that there is no dispute on this aspect, rather this has been admitted

1 A.I.R. 1938 Privy Council 59

by both the State Election Commissioner as also the Municipal Authorities. The respondent no. 1 made efforts to obtain material in the form of C.D. etc., however, the Authorities declined to furnish the same by citing that court's orders are necessary for the purpose. Ms Singh submitted that material which is called for and the witnesses who are summoned are bound to throw valuable light on the controversy involved and viewed from this perspective, there is no error whatsoever in both the impugned orders. The learned counsel placed reliance upon the decision of this Court in the case of *Ramdas Dhondibhu Pokharkar vs. State Bank of India & Anr*².

7] Mrs. Bhoir, the learned counsel for the respondent nos. 4 and 5 submitted that though there is a C.D. which records the process of filing of nominations, the said respondents have denied the case of the respondent no. 1 that the declaration with regard to caste was signed after the prescribed period for filing of nominations.

8] Having heard the learned counsels for the parties, and perused the record, in my judgment, no case is made out to interfere with the impugned orders. In the first place, it has to be noted that neither the State Election Commissioner nor the Municipal Authorities, who are now been summoned have raised any grievance, with regard to the impugned orders. The material on

2 2003 (1) All M.R. 76

record does indicate that the process of election was video-graphed and there is any existence of video C.D. and other material, which may be relevant for the purposes of deciding the issues raised in the petition. In the order dated 26 November 2014, the Election Court has observed that if the video recording or any other electronic record or document is produced it will certainly be helpful to the Court to decide the controversy between the parties. In these circumstances, there is no merit in the contention that the respondent no. 1 has only embarked upon some kind of fishing expedition in the matter.

9] In the present case, the respondent no. 1 applied for production of C.D. and other electronic record on the basis that the same was available with the State Election Commissioner. In compliance with the order dated 26 November 2014, the officer deputed by the State Election Commissioner solemnly stated that such material is presently in the possession of Municipal Corporation (Election Department). Accordingly, the respondent no. 1 applied for summons to the officials from the Municipal Corporation. Upon such application the second impugned order dated 23 December 2014 came to be made.

10] The decision of the Privy Council or for that matter decision in

the case of *Mallangowda & Ors. vs. Gavisiddangowda & Anr.*³, is not very relevant in the facts and circumstances of the present case. In the first place, it cannot be said that this is a case of summoning the opposite parties *per se* for the purposes of tendering evidence. In this case the contest really is between the petitioner i.e. returned candidate and the respondent no. 1 i.e. election petitioner. The other parties have been impleaded to the election petition, perhaps as a matter of requirement of the law or as a matter of abundant caution. The Authorities to whom the directions have been issued are undoubtedly public authorities, who even otherwise are expected to assist the Election Court in resolving the controversies, to the best of their abilities. It is not for such public authorities to either withhold or resist any material which they may have in their possession, particularly when they are impleaded as parties to Court proceedings. Therefore, quite rightly such authorities have not taken any exception to the orders which the petitioner impugns in the present case.

11] In the case of *Ramdas Pokharkar* (supra), this Court noted that there can be no objection whatsoever to summoning of personnel of the plaintiff as a witness for the purposes of identifying the letter which is stated to have been signed by him. In the present case the officials of the Municipal Corporation have been

3 AIR 1959 Kant 194

summoned to produce on record the material in the form of C.D. and other electronic record.

12] In the aforesaid circumstances, there is no reason to interfere with the impugned orders. Petition is dismissed. There shall however be no order as to costs.

(M. S. SONAK, J.)

Chandka