

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 13 OF 2014

Ashok Satyavan Ijgude .. Applicant

vs.

Milind Jeevandhar Doshi & Ors. .. Respondents

Mr. Amit Borkar for Applicant.

Ms Rekha Musale with Mr. Nitin Rajguru for Respondent No. 1.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 07 April 2015

Date of Pronouncing the Judgment : 10 April 2015

JUDGMENT :-

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This civil revision application challenges order dated 12 November 2013 made by the District Judge, Baramati, rejecting the applicant's application below Exhibit 132, objecting to the maintainability of election petition no. 1 of 2012 upon the following grounds:

(A) That no election petition is maintainable under Section 21 of The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 ('said Act') on

grounds of alleged disqualification under Section 44 of the said Act;

(B) That the election petition had not been verified in accordance with Section 21(2)(c) of the said Act.

3] Mr. Borkar, the learned counsel for the applicant, at the outset has stated that the challenge in so far as the first ground as aforesaid, is not being pressed in the present civil revision application. Mr. Borkar however submitted that the election petition in the present case was not verified in the manner laid down in the Code of Civil Procedure, 1908 ('CPC') , for verification of pleadings and this being the requirement under Section 21(2)(c) of the said Act, the civil revision application was required to be dismissed at the threshold. Mr. Borkar submitted that whilst a defect in verification may be cured, this being a case where there was no verification at all, there is no question of any cure. The petition, in such circumstances, was required to be dismissed at the threshold. Mr. Borkar, in this regard, placed reliance upon the decision of the Hon'ble Apex Court in the case of *P. A. Mohammed Riyas vs. M. K. Raghavan & Ors.*¹

4] *Per contra*, Ms Rekha Musale, the learned counsel for the respondent no. 1 i.e. the election petitioner submitted that the

¹ (2012) 5 SCC 511

election of the applicant has been questioned on the ground that the applicant had more than two children on the date of nomination. In terms of Section 16(1)(k), no person who has more than two children shall be qualified to become a councillor. Further, in the present case the election petition did contain a verification clause which was duly signed by the respondent no. 1. In addition, the election petition was accompanied by a detailed affidavit, verifying the contents of the election petition and such affidavit was duly sworn before the Superintendent of the Court. In such circumstances, Ms Musale submitted that the election petition was duly signed by the respondent no. 1 and verified in the manner laid down in the CPC, for verification of pleadings. Further, Ms Musale submitted that even assuming that there was some irregularity in the form of verification, the same was always curable and in any case not a ground for summary dismissal of the election petition. Ms Musale pointed out that the entire purpose of the present civil revision application is to delay the proceedings in the election petition, particularly since the substantial portion of the evidence has already been recorded in the matter. In the past, the applicant had instituted two more petitions, out of which one petition has already been dismissed. Accordingly, it was submitted that this Court may not interfere with the impugned order dismissing the applicant's application under Exhibit 132.

5] Rival contentions now fall for determination.

6] At the outset, it is to be noted that perhaps the only ground urged in the election petition is the purported disqualification of the applicant under Section 16(1)(k) of the said Act i.e. having more than two children on the date of nomination. This is not a case where the election of the applicant has been questioned on the grounds of corrupt practices. Therefore, the contention of the applicant shall have to be appreciated, keeping in mind this position. Further, at the foot of the election petition, there is a verification clause which is signed by the respondent no. 1. However, at least the verification clause, does not bear any endorsement that the same was made before any officer of the court as mentioned in Section 139 of the CPC. The election petition, however, is accompanied by a detailed affidavit, verifying substantially the contents of the election petition. In fact, the contents of the election petition have been substantially transcribed in the said affidavit. This affidavit has been solemnly affirmed by the respondent no. 1 before the Superintendent, Additional District and Sessions Court, Baramati, and there is no dispute that the Superintendent is one of the officers mentioned in Section 139 of the CPC. In such circumstances, the question is whether the

provisions contained in Sections 21(2)(c) of the said Act stand complied with.

7] Section 21(2) of the said Act, reads thus :

“21. Disputes in respect of election nomination of Councillors.

(1)

(2) *Any such petition -*

(a)

(b)

(c) *shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verification of pleadings.”*

8] Since the aforesaid Section makes reference to verification in the manner laid down in the CPC, reference shall necessarily have to be made to the provisions contained in Order 6 Rule 15 of the CPC, which read thus :

“15. Verification of pleadings. - (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information

received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleadings shall also furnish an affidavit in support of his pleadings.”

9] The Bombay High Court Amendment adds a proviso at the end of sub rule (1), which reads thus :

“ Provided that in respect of pleadings to be filed in the Bombay City Civil Court such verification shall, within the local jurisdiction of the Court, be made before one of the officers of the said Court empowered to administer oath, and elsewhere, before any officer mentioned in section 139 of the Code of Civil Procedure, 1908.”

10] In this case, there is a verification clause at the foot of the pleadings in the election petition. However, the verification is not endorsed as having been made before one of the officers mentioned in Section 139 of the CPC. The election petition is also accompanied by an affidavit, substantially verifying the contents of the election petition, which affidavit is duly sworn and affirmed before one of the officers mentioned in Section 139 of the CPC. In such circumstances, to my mind, it is clear that this is not a case of total absence of verification, as contended by Mr. Borkar. Rather, at the highest, this is a case of some defect in the form of verification. Such defective verification, which really does not go to the

substance of the matter, can always be cured and in any case, it is not a ground for summary rejection of the election petition.

11] In the case of *P. A. Mohammed Riyas* (supra), the Hon'ble Apex Court was concerned with the provisions contained in Section 83 of the Representation of the People Act, 1951, including in particular the proviso thereto. Section 81(1)(c) of the Representation of the People Act, 1951 provides that an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 for verification of pleadings. The proviso provides that where the petitioner urges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. In the case before the Hon'ble Apex Court, the allegations of corrupt practice had been made but the verification was not in the manner specified in Order 6 Rule 15 of the CPC and various statements made by the returned candidate, giving inference to plea of corrupt practice were not supported by affidavit. Further, in the said case, the election petitioner, despite opportunity of curing the defect had failed to do so. The decision in the case of *P. A. Mohammed Riyas* (supra) is therefore inapplicable to the fact situation of the present case. As noted earlier, this is not a case where any allegations of corrupt practice have been made against the applicant. Further there is no proviso akin to the one under Section 83(1)(c) of the Representation of

the People Act, 1951 to the provisions contained in Section 21(2) (c) of the said Act.

12] In a situation with which we are concerned, the defects, if any, in the verification of pleadings in the election petition are curable and election petition cannot be summarily rejected on this core. The election petition and the affidavit accompanying the same have to be construed in their entirety. The affidavit, in the present case virtually reiterates and restates the case set out in the election petition. There is no dispute that the affidavit has been sworn before the Court Superintendent and the Court Superintendent is one of the officers mentioned in Section 139 of the CPC. In such circumstances to say the least, there is substantial compliance of the provisions contained in Section 21(2)(c) of the said Act. The defect, if any, in the verification, is clearly curable and the election petition cannot be dismissed summarily, without afford of any opportunity to the respondent no. 1 to cure the defect.

13] Accordingly, it cannot be said that there is any jurisdictional error in the making of the impugned order or that the court, in exercise of its jurisdiction has acted illegally or with material irregularity.

14] Rule is accordingly discharged. The interim order granted on 7 April 2015 is vacated. Considering that the election petition is of the year 2012,

the learned District Judge is directed to dispose of the same on its own merits as early as possible and in any case within a period of three months from today.

Chandka

(M. S. SONAK, J.)

15] At this stage, the learned counsel for the applicant seeks extension of the interim order granted on 7 April 2015. Considering that the election petition is of the year 2012 and this is virtually the third petition instituted by the applicant during the pendency of the election petition, such relief cannot be granted.

Chandka

(M. S. SONAK, J.)