

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

LEAVE PETITION NO.102 OF 2015
IN
ELECTION PETITION NO.3 OF 2014

Ms.Anindita Dey

... Petitioner

Vs.

Shri Gopal Shetty

... Respondent

Petitioner-in-person, preent

Ms.Anjali Helekar a/w Mr.Amarendra Mishra for Respondent

CORAM: **MRS.MRIDULA BHATKAR, J.**

ORDER RESERVED ON: **JULY 16, 2015**
ORDER PRONOUNICED ON: **JULY 28, 2015**

ORDER:

1. This Petition is filed by the petitioner party in person for leave to file Appeal before the hon'ble Supreme Court. The petitioner has filed Election Petition No.3 of 2014 and it was taken up for the first time on 4.8.2014. Learned Counsel for the respondent prayed for a permission to take inspection of the proceedings prior to filing of their written statement. It was allowed. It was objected to by the petitioner. However, the objection was overruled and the respondent was allowed to take inspection of the proceedings prior to filing of the written statement. So the petitioner wants to challenge the said permission in appeal before the hon'ble Supreme Court.

2. The petitioner argued that though notice of this Leave Petition was served on the respondent on 30.4.2015, the respondent did not file reply within 8 days under Rule 913 of the High Court (Original Side) Rules. The petitioner pointed out that on page 17, paragraph 6.5, she has raised three substantial questions of law of general importance. They are reproduced as follows:

1. Whether in the facts and circumstances as elucidated above, it was justified for the High Court to reject the request for privilege on the noting given to the Honourable Court, thereby allowing the respondent of the election petition EP/3/2014 to refer to the said noting when he has no locus standi in the matter and especially when a pure and undiluted reply as referred in the law, is yet to be received from the same respondent as above mentioned and above named?
 2. And Whether it violates the provisions of Section 124 and 128 of the Indian Evidence Act, 1872?
 3. And whether it is justified for the Court to use its inherent power without any application or request from respondent and thereby not only denying privilege, but also diverting the direction of the trial of the election petition away from the mandate of Representation of People Act, 1951, the solemn Constitution of India, the Civil Procedure Code, 1908 and the Bombay High Court (Original Side) Rules, 1980 and in the process destroying my right to get a free and fair reply?
3. While elaborating these three questions, she argued that the notings made by the Master and Assistant Prothonotary on the Petition or any other applications are privileged. There is correspondence between the petitioner and the registry on the matter of registration of the petition and

other applications. The objections raised by the Registry are secret and they are not to be shown. However, this Court allowed the respondent to take inspection of the proceedings which included the notings and the objections and compliance of the objections. She submitted that the Court has committed error in allowing to take certified copies of the documents to the respondent. It was further argued that the petitioner's right to justice and fair trial assured under Article 21 of the Constitution of India is denied to her. She submitted that because of the inspection, the respondent had access over her secret or confidential communication with the Registry, and thus, the documents did not remain privileged. She further submitted that this is an official communication. Hence, sections 124 and 128 of the Evidence Act are also breached. The Court ignored her right under section 124 and 128. On query of the nature of privileged documents by the Court, she classified the privileged documents as under:

- i) Original documents submitted to the Registry by the petitioner for registration of election petition;
- ii) Notings pertaining to the registration of the subsequent application and;
- iii) Review petitions and communication made to Shri S.S. Agate, the Master and Assistant Prothonotary (Judl.) and the affidavit filed by him.

4. On query, the petitioner gave the details of the documents which according to her are privileged, as under:

- A) Election Petition No.3 of 2014
 - i) Page 99A
 - ii) Letter dated 28.6.2014
- B) Review Petition No.38 of 2015
 - i) Objection on the last page
 - ii) Compliance sheet.
- C) Leave Petition No.102 of 2015
 - i) Last Page
- D) Review Petition No.39 of 2015
 - Objections and Compliance Sheet
- E) AEP/6/2015
 - Objections and Compliance Sheet
- F) AEP/7/2015
 - Objections and Compliance Sheet

She submitted that these are substantial questions of law for which she seeks certificate to move the Supreme Court.

5. The respondent did not file reply . However, the respondent's Counsel has mentioned that inspection was taken by seeking permission of the Court.

6. While dealing with Leave to file appeal in the Supreme Court, the High Court has to consider the application within the ambit of Articles 132, 133 and 134A of the Constitution of India. The present petition is in the civil matter; hence, is filed under Article 133 of the Constitution of India. Article 133 reads thus:

133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters -

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134A

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court

(2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court

7. She submitted that it involves a substantial question of law of general importance. Whether the points raised by her amount to substantial questions of law of general importance or not, can be considered later but at the outset, it is necessary to see the order passed in this election petition which the petitioner intends to challenge in appeal before the hon'ble Supreme Court is final in nature or not? Under section 133 an appeal lies in the Supreme Court against any judgment, decree or final order in a civil proceeding of a High Court. In Election Petition No.3 of 2014, neither the judgment nor a decree is passed as well as no order which amounts to final order under the Article is passed. No provision

under the Representation of People Act is shown to file appeal to challenge any order.

8. The words - 'judgment', 'decree', and 'final order' is a compendious expression and each one of the parts of this expression bars the same connotation and demands the same requirement i.e., there is a final adjudication by the Court upon the rights of the parties who appear before it. If there is no determination of the rights finally, then, it is not a final order. Therefore, when the rights of the parties are either not determined finally or the order by its own force is not capable of disposing of the rights of the parties, then the order is interlocutory. The order of allowing inspection is not at all a final order. It was argued that as soon as that inspection is given, she lost her right of secrecy and right to have a fair trial. In order to substantiate her contention, it is necessary for the petitioner to show a provision under the High Court (Original Side) Rules or under the Representation of People Act under which she is contesting the petition that the respondent shall not be allowed to take inspection of the proceedings unless and until written statement is filed. Her main grievance is that respondent has not filed written statement and therefore he should not have taken inspection.

9. Time was given to the petitioner to show such a provision. However, neither she nor I could come across any provision of putting restriction on

the respondent of taking inspection of the proceedings. I am of the view that to take inspection of the proceeding after service of the matter is a right of a party respondent who should know what he/she has to defend and what is a material against him/her and whether there is compliance of all the requirements under the Representation of People Act by the petitioner. Under such circumstances, I fail to understand as to how there is denial of a fair trial to the petitioner if the respondent is allowed to take inspection of the proceedings before filing the written statement. The order of granting permission if would have been passed either in favour of the petitioner or in favour of the respondent that would not have decided the issue finally. Thus, it is an interlocutory order against which the appeal cannot lie under Article 133 in the Supreme Court.

10. Thus, the very foundation of the leave petition is completely hollow and, therefore, no need to go into further points as to whether the question raised in this petition are substantial questions of law. The petitioner being a party in person, has been accommodated and is given full opportunity of audience, which is completely exhausted by the petitioner. Therefore, I think it is fair to deal with those three points raised by her in paragraphs 17 and 18 of the Leave Petition. The three substantial questions which are raised are in fact interlinked and they rotate around one common preposition that the notings in the election petition and other applications which are made by the Registry and the answer given to that by the

petitioner is a privileged communication between the registry and the petitioner. The objections raised by the Registry on any petition cannot be considered privileged document and/or a privileged communication. Once a suit is filed, the Registry is supposed to take objections if there is no compliance of the High Court Rules. The respondent being a party concerned is required to know the nature of the allegations and the proceedings. If the inspection of the proceedings would have been allowed to third party, then petitioner's right to have secrecy, might have been violated. As stated earlier, such provision of placing bar on inspection of the documents unless written statement is filed under the High Court (Original Side) Rules or under the Representation of People Act, is not shown to me. These are not substantial questions of law. In support of her submissions, the petitioner relied on **Sir Chunilal V. Mehta And Sons, Ltd vs The Century Spinning And Manufacturing co., Ltd., 1962 SCR Supl. (3) 549; Sastri Yagnapurushdasji vs Muldas Bhuradas Vaishya, (1959) 61 Bom.L.R. 1016.**

11. Section 109 of the CPC pertains to appeals to the Supreme Court and the section voices the same requirements which are contemplated under Article 133 of the Constitution of India. In the case of **Sastri Yagnapurushdasji vs Muldas Bhuradas Vaishya (supra)**, the Supreme Court has set aside the order of the High Court and granted leave under section 109C of the CPC r/w Article 133(1C) of the Constitution of India.

The issue in that case was of a general importance as two religious groups had dispute on the point of right to entry in the temples. The Supreme Court considered the issue whether the followers of Swami Narayan Sampraday are Hindus by religion or not and held that it depends not only on the appreciation of oral evidence but also on the interpretation of sacred scriptures of the sect and other evidence on record and, therefore, it was held that the issue was of general importance of public and therefore leave was granted.

12. In the case of **Sir Chunilal V. Mehta And Sons, Ltd vs The Century Spinning And Manufacturing co., Ltd. (supra)**, the Supreme Court considered the proper test for determining as to which is the substantial question of law and whether it is of general public importance or whether it directly or substantially affects the right of the parties and if so, whether it is an open question in the sense that it is not finally settled by the Supreme Court and/or it calls for discussion of alternative views. In the said appeal, there was a question of law. It raised interpretation of certain clauses of the managing agency agreement upon which the claim of the suit was founded and it held that it was well settled that a construction of the document of title or of a document, which is the foundation of the rights of the parties, necessarily raises a question of law. In the present case, no such issue is involved.

13. She raised claim in respect of statutory privilege under sections 124 128 of the Indian Evidence Act. This claim is not at all sustainable as the provisions of section 124 and 128 are made for different purpose. Sections 124 and 128 are covered under chapter IX of the Evidence Act which is in respect of witnesses. Sections 124 and 128 read thus:

124. Official communications –

No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

128. Privilege not waived by volunteering evidence – If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in Section 126, and if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

14. Section 124 states about the privilege enjoyed by the public officer, who is a witness, that he cannot be compelled to disclose communications if at all he has received the same in official capacity and public interest would suffer due to the disclosure made so. Thus, this section cannot be attracted to the privilege which she claims at the time of filing of election petition. When the public officer is giving evidence in the Court, then, he is protected on certain grounds. The position of the Master and Assistant Prothonotary is totally different. He is not a witness before any Court and no public interest would suffer by such disclosure. So, he does not enjoy

any immunity. The sections 124 and 128 of the Evidence Act cannot be invoked. Thus, there is no substantial question of law of general importance involved in these proceedings. The submissions are in fact absurd and cannot be entertained.

15. In the circumstances of the case, no certificate can be issued. Hence, the leave petition is rejected.

(MRS.MRIDULA BHATKAR, J.)