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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

ELECTION PETITION NO. 21 OF 2014

Gavit Rajendra Dhedya

Age : 47 years, Occupation : Business

Residing at : A-1, Giriraj Co.Op.Hsg.

Society, Kacheri Road, Palghar,

Taluka – Palghar, District – Palghar.

... Petitioner.

V/s.

Ghoda Krushna Arjun

Age : 63, Indian Inhabitant,

Residing at Ranshet, Taluka – Dahanu,

District – Palghar.

... Respondent.

Mr. Yogesh Naidu i/b. Rupesh K. Bobade for the Petitioner.

CORAM : N.M. JAMDAR, J.

DATE : 11 SEPTEMBER, 2015.

ORAL JUDGMENT :-

The Petitioner has filed the Election Petition under Section 80 of the Representation of the People Act, 1951. The Petitioner questions the election of Respondent to the Palghar (Scheduled Tribe) Assembly Constituency for the Maharashtra

Legislative Assembly General Elections 2014. The Respondent is the returned Candidate from 130 – Palghar (ST) South Assembly Constituency at the Maharashtra Legislative Assembly General Elections held in the month of October 2014.

2. The Election Commission of India vide Notification dated 20 September 2014 published the election programme for general elections to the Maharashtra Legislative Assembly 2014. As per the Notification, last date for filing nominations was 27 September 2014, the date of scrutiny of nominations was 29 September 2014, the last date of withdrawal of candidature was 1 October 2014 and the date before which the election was to be completed was 22 October 2014.

3. The Respondent submitted nomination form bearing No. 7 on 26 September 2014 as a candidate from “Shivsena Party”. The poll for the constituency was held on 15 October 2014. The result of the election was declared on 19 September 2014. The Respondent was declared as having polled the highest number of votes and was elected from the constituency in question.

4. The present Election Petition is filed by the Petitioner on 3 December 2014. In the Election Petition the Petitioner has sought a declaration that the nomination paper of the Respondent was improperly accepted by the Returning Officer, and to hold and declare that the election of Respondent as a Member of the

Maharashtra Legislative Assembly from 130 - Palghar (ST) Assembly, as void. The declaration is sought on the ground that, while filing an affidavit in the form prescribed under Rule 4(a) of the Rules of 1961 and under order dated 27 March 2003 issued by the Election Commission of India, the Respondent did not disclose information regarding the immovable property owned by the Respondent at Village Charoti, Taluka – Dahanu, District - Palghar. The Petitioner has sought to place the documentary evidence regarding the ownership of the Respondent to this particular land. According to the Petitioner, since this information was not disclosed, the nomination form of the respondent was liable to be rejected, in view of Section 36 (2)(a) and Section 33 of the Representation of the People Act, 1951.

5. When the Petition appeared on board on 21 August 2015, it was brought to the notice of the Court that the Respondent had expired on 24 May 2015 and the death certificate issued by the Gram Panchayat was placed on record. Notice was issued on 11 June 2015 under Section 116 of Representation of the People Act, 1950. The Application (Lodg.) No. 25 of 2015 is filed on behalf of the son of the respondent for intervention and to permit him to contest the Petition, which is separately dealt with.

6. In view of the death of the Respondent on 24 May 2015, the question that arises is whether the Petition can be continued any further.

7. In the Petition the Petitioner has challenged the election of the Respondent on the ground that it is null and void under Clause (9) of Section 1 of Section 100 and also under sub-Clause (i) and (iv) and 1(d) of Section 100 of the Representation of the People Act, 1951. The challenge is on the ground that the nomination form of the Respondent was improperly accepted. In paragraph 28 the Petitioner has categorically asserted that the Petitioner has not alleged any corrupt practice against the Respondent or anyone else and therefore, has sought dispensation for filing an affidavit as provided under Section 83 of the Act of 1951. The challenge therefore is restricted to improper acceptance of the nomination paper.

8. Most importantly the Petitioner has not sought a prayer that the Petitioner be declared as elected. The only prayer that is sought is a declaration against the election of the Respondent. Mr. Naidu, the learned Counsel for the Petitioner submitted that the prayer “such further and other orders as the nature and circumstances be passed” be treated as prayer to that effect. This submission cannot be accepted, keeping in mind the rigorous standards of pleadings required in an Election Petition.

9. In the decision of *Loknath Padhan v/s. Birendra Kumar Sahu [(1974)1 SCC 526]* the Apex Court had an occasion to consider a similar situation. In that case the challenge was

levied by the Appellants therein on the ground that the nomination of the respondent was improperly accepted as the Respondent was disqualified under Section 9A of the Representation of the People Act, 1951. The objection raised by the Appellant therein was overruled by the Returning Officer and the nomination of the Respondent was accepted. Thereafter, polling took place and the Respondent was declared elected. An Election Petition came to be filed in the High Court of Orissa challenging the election of the Respondent. The Petition was rejected by the High Court. An Appeal came to be filed under Section 116 of the Representation of the People Act, 1951 in the Apex Court. While the Appeal was pending, the Orissa Legislative Assembly was dissolved and at the hearing of the Appeal, the Respondent took a preliminary objection that it has become academic to decide whether or not the respondent was disqualified. The Apex Court accepted this contention and held that even if it is found that the Respondent is disqualified, it would have no practical consequence in view of the invalidation of the election after dissolution of the Assembly. The Apex Court emphasized that a Court will not engage in a futile exercise, keeping in mind that it would be a needless waste of public time. The Apex Court however made a distinction in the case where the allegations of corrupt practice are made. It held that if the allegations are of corrupt practice, since purity of election is of importance and a disqualification is laid down in the Act, the Election Petition would continue.

10. Corrupt Practices have been defined in Section 123 of the Representation of the People Act, 1951. It is an admitted position that no allegations of corrupt practices are made against the Respondent and the Petition is filed invoking provisions of Section 100 of the Representation of the People Act, 1951.

11. Mr. Naidu sought to contend that though it is the correct case of corrupt practice not alleged, but the Petition is filed under Section 100 of the Representation of People Act, 1951 and if the declaration of the voidness of the election is given, the further consequence that might ensure would not take place. He orally submitted that consequence will be that the family members of the respondent would receive certain financial benefits through schemes of the Government. However, there are no particulars as to the eligibility of the family members and the other details. Mere oral submissions across the bar cannot therefore be accepted. The argument seems to be just a desperate attempt to somehow keep the proceedings pending.

12. In the case of *Loknath Padhan (Supra)* also the allegation was of improper acceptance of nomination paper, yet the Apex Court observed that because the election itself had been set aside by dissolution of the assembly, there will be no practical consequences. The Apex Court has thus clarified, in an identical circumstances, i.e. dissolution of the assembly, in the present case

death of the candidate, the decision at such a stage would not result in any practical consequences and the adjudication would be a fruitless exercise.

13. In nutshell, the Respondent, the elected candidate, has expired. The allegation is of improper acceptance of nomination paper. There is no allegation of corrupt practices. The Petitioner has not sought any prayer to declare himself to be elected. In the circumstances, nothing further survives for adjudication. Nothing is shown by the petitioner as to how the petition survives.

14. The Election Petition cannot be entertained any further. It is disposed off as infructuous.

(N.M. JAMDAR, J.)

C E R T I F I C A T E

Certified to be true and correct copy
of the original signed Judgment.