

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

29 ELECTION PETITION NO. 13 OF 2014
WITH EPAP/27/2016 IN EP/13/2014 WITH EPAP/36/2016 IN
EP/13/2014 WITH EPAP/38/2016 IN EP/13/2014

ANNARAO S/O GOVINDRAO PATIL
VERSUS
AMIT S/O VILASRAO DESHMUKH AND OTHERS

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Advocate for Petitioner : N.V. Gaware, G.K. Sontakke, Mrs.P.G.
Sontakke

AGP for Respondent/State : S.P. Sonpawale
Advocate for Respondent 1 : V.D. Hon, Sr. Counsel i/b. A.V. Hon

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CORAM : T.V. NALAWADE, J.
DATED : 18th July, 2016.

ORDER :

1. Respondent No. 1, the returned candidate has filed application for rejection of plaint under Order VII, Rule 11 of Civil Procedure Code (hereinafter referred to as 'C.P.C.' for short). Both the sides are heard.

2. The election to Constituency of Maharashtra Legislative Assembly bearing No. 235 (Latur) of respondent No. 1 in the General Election of 2014 is challenged in the Election Petition. Declaration is claimed that the election of respondent No. 1 is void as he indulged in corrupt practices. The petitioner had also contested the election as a candidate of one registered political party. Respondent No. 1 was candidate of Congress I

party and he received 1,19,656 votes out of 2,03,453 polled votes. Respondent No. 6, a candidate of other national level political party secured second number of votes viz. 70,191. The petitioner secured 403 votes in the election.

3. The petitioner is an advocate and he also claims to be a social activist. It is the case of petitioner that respondent No. 1 is influential person as he is son of Ex-Chief Minister of Maharashtra and he used his influence in election process. Allegations are made that respondent No. 1 spent amount more than permissible limit of Rs. 28 lakh in the election and so, he indulged in corrupt practices. Allegation is made that respondent No. 1 did not show expenditure of many events in the returns and he concealed his expenditure. It is the case of petitioner that due to influence of respondent No. 1, the Election Commission did not take action against respondent No. 1.

4. It is the case of petitioner that the Returning Officer had asked the candidates to submit the details of expenditure at various stages and in accordance with that requirement, respondent No. 1 had submitted returns of expenditure, but only of Rs. 21,69,370/-. It is contended that the Returning Officer was not satisfied with these returns and atleast three notices were

issued to respondent No. 1 to call him to explain the things. It is the case of petitioner that respondent No. 1 did not comply with these notices and discrepancies were not removed. It is contended that the observer were appointed by Election Commission to make video recording of events involving expenditure of each candidate and accordingly, video recording was done of all the events of election campaign of respondent No. 1. It is the case of petitioner that respondent No. 1 had certainly spent more amount than Rs. 28 lakh and so, his election is liable to be set aside.

5. The petitioner has quoted one specific incident dated 22.9.2014 (by mistake the petitioner has given this date as 22.10.2014 in the petition). It is the case of petitioner that on that day, a mammoth rally was taken by the respondent No. 1 up to the office of Returning Officer for filing nomination and on that rally, respondent had spent Rs. 4 to 5 lakh. It is contended that this amount was not shown in the returns filed by respondent No. 1 and on that ground also, the election is liable to be set aside.

6. It is the case of petitioner that he had submitted representation to Returning Officer on 28.9.2014 and he had

requested to supply him copies of C.Ds. of video recording done by the officers of Returning Officer and by observers, but such record was not supplied. It is contended that on 7.10.2014 he had moved an application and had again asked for supply of C.Ds. and details of expenditure submitted by respondent No. 1, but such record was not supplied. It is contended that in correspondence dated 14.10.2014, the Election Commission refused to supply the C.Ds. On this ground, prayer was made to set aside the election of respondent No. 1 under the grounds given in section 100 (1) (d) (iv) of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act' for short).

7. Respondent No. 1 has filed written statement. On the basis of pleadings, issues are already framed. On the request made on behalf of learned Senior Counsel for respondent No. 1, some issues are treated as preliminary issues. Then request came to be made to decide the objection under provision of Order VII, Rule 11 of C.P.C. Respondent No. 1 has raised following points.

1	Whether the Election Petition is maintainable as it does not contain any of the ground contemplated under Section 100 of Representation of Peoples Act, 1951 ?
2	Whether the Election Petition suffers on the count of non compliance of provisions of Sections 81, 82 and 83

	of Representation of Peoples Act, 1951 ?
3	Whether the Election Petition suffers on the count that there are no full particulars of any corrupt practice which the petitioner alleges and full statement of names of parties alleged to have committed the corrupt practice ?
4	Whether the Election Petition is maintainable, as it does not contain concise statement of material facts on which the petitioner relies as contemplated by the provisions of the Representation of Peoples Act, 1951 ?

8. Opportunity was given to the petitioner to file reply to the aforesaid application of respondent No. 1 and opportunity was given even to show the material which can be considered in view of the pleadings in the petition. On the request made by the learned counsel for petitioner, this Court had made order and C.Ds. of video recording done of events of election campaign of respondent No. 1 are taken in custody. The transcript of the recording is prepared.

9. The provisions of Order VII, Rule 11 of C.P.C. show that the plaint shall be rejected where it does not disclose the cause of action. A petition under the Act is governed by the special procedure given in the Act itself. The relevant provisions are being quoted at proper place. Due to the special provisions, the pleadings in the petition need to comply with the conditions

laid down in the Act. So, it needs to be ascertained as to whether the petition has disclosed cause of action as provided in special provisions of the Act.

10. In the petition, the provision of only section 100 (1) (d) (iv) is mentioned with the contention that the case falls under this provision (para No. 25 of petition). During arguments, the learned counsel for petitioner submitted that from the pleadings of petition, other grounds like grounds given in section 100 (1) (b) and 100 (1) (d) (ii) are made out and so, these grounds also need to be considered. The relevant portions of section 100 for the present purpose are as follows :-

"100. Grounds for declaring election to be void.- (1) Subject to the provisions of sub-section (2), if the High Court is of opinion --

(a)

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c)

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected --

(i)

(ii) by any corrupt practice committed in

the interest of the returned candidate by an agent other than his election agent, or

(iii)

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void."

11. It appears that by mentioning only one provision of the Act quoted above, the petitioner wanted to prove that the returns of complete expenditure were not filed by respondent No. 1 and due to that, election can be set aside. In the petition, vague contention is made that respondent No. 1 incurred expenses of more than Rs. 28 lakh. There is allegation that the amount of Rs. 5 to 6 lakh allegedly spent on the rally dated 22.9.2014 was not accounted in the returns and this expenditure also needs to be considered as election expenses of respondent No. 1. In the pleading, allegations are directly made against respondent No. 1 that he himself spent the amount and there are no allegations that he spent the amount through his election agent or other agent.

12. The provision of section 100 (2) of the Act reads as

under :-

"(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice, but the High Court is satisfied--

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent of the candidate or his election agent;

[(b)omitted]

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void."

13. These provisions show that the petitioner needs to first make out the case that the returned candidate is guilty of corrupt practice. Only after making out case that agent other than election agent indulged in corrupt practice, when the Court forms the opinion as mentioned in section 100 (2) of the Act, the

returned candidate is expected to have his say and in the say, he can take the defences available in section 100 (2) of the Act. In the case reported as **AIR 1977 SC 813 [Amolak Chand Chhazad Vs. Bhagwandas Arya (dead) and Anr.]**, the Apex Court has made observations with regard to the standard of proof of guilt in such election petition. It is observed that, "Election petitions alleging corrupt practices are proceedings of quasi-criminal nature and the onus is on the person who challenges the election to prove the allegations beyond reasonable doubt." So, these provisions need to be kept in mind while deciding the application filed under the provisions of Order VII, Rule 11 of C.P.C.

14. The provision of section 80 of the Act runs as under :-

"80. Election Petitions.- No election shall be called in question except by an election petition presented in accordance with the provisions of this Part."

This provision shows that election can be challenged only in accordance with the provisions of part VI of the Act. This part contains in all five chapters, but for the present purpose only some provisions of Chapter II and III are relevant. Though these

provisions are with regard to the procedure, they being special provisions for the trial of election petition, they need to be considered while making any order including the order under provision of Order VII, Rule 11 of C.P.C. Further, in section 87 of the Act, it is made clear that provisions of C.P.C. and Evidence Act are applicable to the trial of election petition, but they will be applicable subject to provisions of the Act.

15. Section 81 of the Act reads as under :-

"81. Presentation of petitions.- (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.- In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

[(2) omitted]

(3) Every election petition shall be accompanied by as many copies thereof as there are

respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

In this section, the period of limitation is given as 45 days from the date of election of returned candidate and so, the petition containing specific grounds of challenge need to be filed in the High Court within the prescribed time.

16. In section 83 of the Act, further conditions are laid down and this section reads as under :-

"83. Contents of petition .- (1) An election petition--

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings :

Provided that where the petitioner alleges 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.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

In section 83, it is made clear that in petition material facts relating to the grounds need to be pleaded and full particulars of corrupt practice in relation to specific corrupt practice need to be given. Thus, the allegations of corrupt practice made in the petition should be such that they are sufficient to describe complete picture of corrupt practice. It is already mentioned that standard of proof is "beyond reasonable doubt" and so, the basic facts which are necessary as ingredients of corrupt practice need to be pleaded. (Reliance placed on the case reported as **AIR 1972 SC 1302 [Raj Narain Vs. Smt. Indira Nehru Gandhi and Anr.]**).

17. In view of the aforesaid provisions and the interpretation done by the Apex Court, the date, place of corrupt practice and the names of persons, who committed corrupt practice need to be mentioned in the pleadings. Petition can result in setting aside election of returned candidate and so, the

provisions of the Act need to be complied strictly. If the provisions of sections 81 and 83 of the Act read together, it can be said that petitioner cannot be allowed to give more incidents of corrupt practice at subsequent stage, after completion of period of 45 days already mentioned. The importance of provisions of sections 81 and 83 and the requirement of the strict observance is again discussed by the Apex Court in **AIR 1983 SC 558 [M. Karunanidhi Vs. H.V. Handa and Ors.]**. The facts of this reported case show that the allegation were based on photograph, but copy of photograph was not supplied to other side and it was held by the Apex Court that photograph was integral part of the petition and so, there was violation of provision of section 81 (3) of the Act.

18. The relevant portion of provision of section 86 is as under :-

"86. Trial of election petitions.- (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.- An order of the High Court dismissing an election petition under this subsection shall be deemed to be an order made under clause (a) of section 98.

(2)

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition."

This provision again shows that no scope is left by the Act to add more events in the election petition of corrupt practice. Only if the corrupt practice is already pleaded, its particulars can be allowed to be amended under this provision. The amendment can be allowed only if it is necessary for fair and effective trial of the petition and it does not cause prejudice to the other side.

19. The provisions of sections 86 and 87 of the Act have replaced the old provisions of section 86 to 92 with effect from 14.12.1966. So, the new provisions need to be considered for the present matter and the interpretation of these new provisions need to be applied in the present matter.

20. In view of the facts and circumstances of the present

matter, the provisions of section 123 (6) and section 77 of the Act also need to be considered and applied. The provision of section 123 (6) runs as under :-

"123. Corrupt practices.-- The following shall be deemed to be corrupt practices for the purposes of this Act :-

(1)

(6) The incurring or authorizing of expenditure in contravention of section 77."

The relevant portion of provision of section 77 is as under :-

"77. Account of election expenses and maximum thereof.— (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

*Explanation 1.—*For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section;

(b) any expenditure incurred in respect of any

arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.—For the purpose of clause (a) of Explanation 1, the expression “leaders of a political party”, in respect of any election, means,—

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new

name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.]

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

21. The aforesaid discussion and particularly the provisions show that it was necessary for the petitioner to specifically mention the expenditure incurred by the returned candidate between the date of his nomination and the date of declaration of result, both dates inclusive. Admittedly, the limit given of this expenditure was Rs. 28 lakh and corresponding notification is produced on the record.

22. There are two parts in section 77 of the Act :-

- (i) The candidate should keep a separate and correct account of all expenditure (expenditure made by the persons mentioned in section 77 of the Act), and
- (ii) the total of this expenditure should not exceed such amount (Rs. 28 lakh) as may be prescribed.

23. The aforesaid provision shows that the expenses incurred by recognized party, organisation in furthering the interest of party will not form part of election expenses. Though such expenditure may directly or indirectly increase the prospect of winning of the candidate of the political party, such expenses of his political party cannot be treated as expenses of the candidate. Similarly, voluntarily expenditure made by friends, relatives, sympathizers without any reason or authorization by candidate cannot be deemed to be the expenses by candidate himself. The candidate is not expected to maintain account of the expenditure made by such other persons. (Reliance place on the case reported as **AIR 1975 SC 2299 [Raj Narain Vs. Smt. Indira Nehru]**).

24. In view of the aforesaid provisions of the Act, if there is no specific pleading that a particular event was arranged by the candidate for his election campaign and the expenses in the event were incurred by the candidate himself or were made under his authorisation by a particular person as provided in section 77 of the Act, there will be no compliance of provision of section 83 of the Act. When there is no such pleading, no evidence can be allowed to be given. Only because, some more amount appears to be spent by persons not authorised by

candidate, for furthering prospect of the candidate, inference cannot be drawn that the candidate must have spent for that event.

25. The aforesaid provision, provision of section 123 (6) of the Act also shows that not mentioning some expenditure in the return does not amount to corrupt practice. So, when there are allegations of that nature, such allegation can be considered as the ground available for challenging the election under section 100 (1) (d) (iv) of the Act.

26. If the aforesaid law is applied to the present matter, it can be said that only one incident of so called rally dated 22.9.2014 is mentioned in the pleading. There is specific contention that this rally is taken to file nomination paper by respondent No. 1 and for that, he spent Rs. 4 to 5 lakh. The record produced by the petitioner himself subsequent to the presentation of the petition on 7.3.2016 shows that on 22.9.2014 there was no such rally, but there was meeting of Congress Party (Youth Wing) in one hall. The record of nomination filed by petitioner shows that he first time filed the nomination on 25.9.2014. Thus, on one hand, the so called event was arranged by the political party of the candidate and on other

hand, this expenditure was in respect of period previous to the date of nomination.

27. The learned counsel for respondent placed reliance on the case reported as **AIR 1999 SC 252 [L.R. Shivaramagowda Vs. T.M. Chandrashekar]**. In this case, provision of section 77 as amended in the year 1975 is considered by the Apex Court and it is laid down that as per the provision amount spent before the date of nomination cannot be considered in calculating the total expenses of successful candidate and there is no need to returned candidate to give account of such expenditure. There cannot be dispute over the proposition in view of the provision already quoted. On the other hand, the learned counsel for petitioner placed reliance on the case reported as **AIR 2002 SC 599 [Kamalnath Vs. Sudesh Warma]**. In this case, at one place [para No. 4(2)] the Apex Court has specifically mentioned that the expenditure of the candidate which he incurred after filing of the nomination paper needs to be considered. In the other para [Para No. 4(3)], there is mention that the expenditure from the date of notification needs to be considered. This point was not at all involved in the said matter and it is clear that no ratio as such is laid down by the Apex Court in this regard.

28. Even if the allegations made in the petition are accepted as they are, it can be said that the so called expenditure of 22.9.2014 cannot be considered in law as the election expenses of the candidate. If the amount mentioned by Returning Officer in three show cause notices is considered against the returned candidate, it can be said that the Returning Officer had suspicion about the amount of Rs. 5,71,301/-. After issuing of these notices, which were issued prior to 15.10.2014, the election result came out on 19.10.2014. If the amount mentioned in the show cause notices is added to the amount which was initially shown by the candidate which was around Rs. 21,69,370/-, the total of the two amounts comes to Rs. 27,40,771/- and it was less than Rs. 28 lakh. It can be said that only due to the notices issued by the Returning Officer to respondent No. 1, in the pleadings suspicion is expressed by the petitioner about the expenses. No steps were taken by petitioner when the expenditure was published as per the procedure laid down in the Rules. The Election Commission also did not take action against respondent No. 1 in respect of the discrepancies noticed by Returning Officer and which are mentioned in the three show cause notices. Thus, not only the pleading is vague, but the specific incident quoted cannot be considered due to

position of law already quoted and so, there was no compliance of provision of section 83 of the Act. The learned counsel for the petitioner submitted that on the basis of video recording done by the Officer of Election Commission, petitioner can prove that more amount was actually spent. Such liberty cannot be given to the petitioner in view of the provisions of law already quoted. Further, such material was not made available along with the petition and also to the other side by the petitioner as per the requirements of the provisions already quoted. It can be said that the petitioner ought to have collected all the relevant material prior to filing of the petition and if the Returning Officer or Election Commission was not cooperating, it was open to him to take proper steps. Even when he is an advocate, he did not take such steps. At this stage, the petitioner cannot be allowed to add more events in the petition. Thus, there is no other alternative before this Court than to reject the petition under the provision of Order VII Rule 11 of C.P.C.

29. The learned counsel for petitioner placed reliance on the following cases :-

(i) AIR 2014 SC 3102 [Ashok Shankarrao Chavan Vs. Madhavrao Kinhalkar and ors.],

(ii) AIR 1960 SC 770 [Balwan Singh Vs. Lakshmi Narain and Ors.],

(iii) AIR 2006 SC 713 [Harkirat Singh Vs. Amrinder Singh],

(iv) 1956 DGLS (SC) 18 [Bhagwan Shastri Vs. Ram Gupta],

(v) AIR 2013 SC 1549 [G.M. Siddeshwar Vs. Prasanna Kumar],

(vi) 2003 (11) SCC 448 [Bidesh Singh Vs. Madhu Singh],

(vii) 1999 (0) BCI 71 [D. Ramchandra Vs. R.V. Janakiraman],

(viii) AIR 1964 SC 497 [S.S. Khanna Vs. F.J. Dillon],

(ix) 1994 (3) Bom. C.R. 264 [Dinkar Irani Vs. Kshirsagar Construction Co. Pvt. Ltd.],

(x) 1999 (1) Bom.C.R. 107 [Meher Singh Vs. Deepak Sawhny & Anr.],

(xi) AIR 2015 SC 2006 [Foreshore Co-operative Housing Society Ltd. Vs. Praveen D. Desai],

(xii) AIR 1996 SC 1599 [P. Puthunainaralhithan Vs. Ph Pandian],

(xiii) AIR 1974 SC 405 [Baburao Bagaji Karemore Vs. Govind],

(xiv) (1982) 1 SCC 691 [Jyoti Basu Vs. Debi Ghosal],

(xv) 2013 (1) Bom.C.R. 585 [Madhavrao Kinhalkar Vs. Ashok Shankarrao Chavan]

This Court has carefully gone through the facts of the reported cases and the observation made by the Apex Court. Similarly, the learned counsel for respondent No.1 placed reliance on

some other reported cases which are as follows :-

(i) AIR 1987 SC 1926 [Samar Singh Vs. K.N. Singh],

(ii) AIR 1986 SC 1253 [Azhar Hussain Vs. Rajiv Gandhi],

(iii) AIR 1987 SC 1577 [Dhartipakar Madanlal Agarwal Vs. Rajiv Gandhi],

(iv) AIR 2000 (SC) 694 [V. Narayanaswamy Vs. C.P. Thirunavukkarasu],

(v) Appeal (Civil) 154/1999 decided by Supreme Court dated 26.10.1999 between Jeet Mohinder Singh Vs. Harminder Singh Jassi],

(vi) AIR 2006 SC 3672 [Ramesh B. Desai Vs. Bipin Mehta],

(vii) Unreported Order made by this Court [Coram : V.R. Kingaonkar, J.] in Election Petition No. 6/2009 dated 3.3.2010.

(viii) AIR 1996 SC 1691 [Shirpa : Jhammaklal Vs. Shanti Lal Koiwal],

(ix) AIR 2010 SC 1227 [Ram Sukh Vs. Dinesh Aggarwal],

(x) AIR 1985 SC 1133 [P. Nalla Thampy Terah Vs. Union of India].

This Court has gone through the facts of the aforesaid reported cases and the observations made therein. Relevant provisions of law are already quoted by this Court. This Court has already observed that the provisions as amended need to be applied and the discussion of the allegations made in the petition is made

accordingly. There is no dispute over the propositions made in the cases cited by both the sides.

30. In the result, the application filed for rejection of plaint is allowed. Election Petition is rejected. All other applications are disposed of.

[T.V. NALAWADE, J.]

ssc/