

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10220 OF 2013

Arun Vishwanath Kamble .. Petitioner

vs.

Satish Siddharth Chavan & Ors. .. Respondents

Mr. A. Gole with Mr. A. B. Salve and Mr. Rahul Salve for Petitioner.
Mr. Atul Damle – Senior Advocate and Mr. A. S. Desai for
Respondent No. 1.
Ms Dhanashree M for Respondent No. 2.
Mr. S. D. Rayrikar – AGP for Respondent No. 3.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 01 February 2016

Date of Pronouncing the Judgment : 08 February 2016

JUDGMENT :-

1] The petitioner an elected Corporator of Bombay Municipal Corporation (BMC) challenges order dated 19 September 2013 made by the Small Causes Court at Mumbai, dismissing petitioner's application at Exhibit 43/2013 seeking rejection of election petition no. 58 of 2012 under Order VII Rule 11 of the CPC, *inter alia* on the ground of failure to disclose a cause of action.

2] On 13 November 2013, this Court, whilst issuing Rule and granting interim relief in his petition, made the following order:

"P.C :

Heard learned counsel for the respective parties.

*2. Perused the impugned order as well as judgment of learned Single Judge of this Court in **Narayan Gunaji Sawant versus Deepak Vasant Kesarkar 2011 (2) ALL MR 504 in Application No. 26 of 2010 in Election Petition No. 16 of 2009.** In my view, strong prima-facie case is made out, therefore, **Rule.** Rule is made returnable on **10th February, 2014.***

3. During the pendency of the above petition, further proceedings of Election Petition No. 58 of 2012 are stayed.

4. Affidavit-in-reply tendered on behalf of respondent No. 1 is taken on record.

Sd/-

(RANJIT MORE, J.)"

3] The petitioner has been elected as a Corporator to the (BMC) from Ward No. 138, at the elections held on 16 February 2012. The petitioner, defeated the Respondent No. 1, who is the election petitioner in Municipal Election Petition No. 58 of 2012 instituted before the Small Causes Court at Mumbai, by 352 votes. The petitioner, in all, had secured 2851 votes.

4] If the election petition instituted by the respondent no. 1 is perused, then the only ground raised therein is that the petitioner furnished false information, with regard to pendency of criminal cases against the petitioner, in the affidavit accompanying his

nomination form. In particular, the allegation is that the petitioner, in his affidavit, did not disclose that C.R. No. 10 of 2008 under Section 302, 120 (B) read with Section 34 of the IPC was registered against him at Deonar Police Station for the murder of one Bhante Sanghraj Mahathero and that the petitioner was even arrested and thereafter released on bail, in connection with such offences. The election petition also alleges that the petitioner managed the officers of the State CID who were investigating such offence and the State CID, deliberately, did not file any charge sheet against the petitioner in relation to the C.R. No. 10 of 2008. Instead, the State CID filed 'C' Summary Report before the 45th Metropolitan Magistrate, Kurla, Mumbai. The original complainant has intervened before the Metropolitan Magistrate and is opposing the acceptance of 'C' Summary Report. It is submitted that all these relevant and vital facts were suppressed by the petitioner in the affidavit filed along with the nomination form and that this constitutes a corrupt practice.

5] The learned counsel for the petitioner has submitted that the petitioner filed his nomination papers on 31 January 2012. The affidavit, which is to accompany nomination paper is in the format provided by the Election Commission. Paragraph 1(A) of the affidavit requires disclosure of information with regard to offences punishable upon conviction with imprisonment for two years or more

and where, a charge sheet has been filed before the Competent Court of law. In this case, on the date of filing of the nomination paper, admittedly, no charge sheet had been filed against the petitioner. There is not even any allegation in the election petition that as on the date when the petitioner filed his nomination paper or as on the last date for filing of nomination papers any charge sheet had been filed against the petitioner before the competent court of law in relation to offence, which, was on conviction punishable with imprisonment for two years or more. The learned counsel for the petitioner submits that in the absence of any such averment, there is clear failure to disclose cause of action. The impugned order has glossed over this issue but held that there are other grounds on which the election of the petitioner is challenged. Perusal of the election petition would indicate that there are no other grounds upon which the election of the petitioner is challenged. In these circumstances, the learned counsel for the petitioner submitted that the impugned order is liable to be set aside and the election petition is liable to be rejected for failure to disclose any cause of action. The learned counsel for the petitioner placed reliance upon the decision of this Court in the case of *Narayan Gunaji Sawant vs. Deepak Vasant Kesarkar*¹, to submit that in similar circumstances vague statements in the election petition were ordered to be struck off, as, no elected representative, can be called upon to face an

1 2011 (2) All MR 504

election petition, on the basis of vague allegations.

6] Mr. Damle, the learned counsel for the respondent no. 1 i.e. election petitioner submitted that the petitioner is incorrectly interpreting the prescribed format of the affidavit, which was to accompany the nomination form. Mr. Damle pointed out that the format is not statutory but the same is prescribed by the State Election Commission. Upon, correct interpretation of paragraph 1(A) thereof, it is clear that a candidate has to supply information with regard to any pending offences, which upon conviction, is punishable for a term of two years or more, irrespective of whether or not any charge sheet has been filed in the matter. In this case, the petitioner had suppressed this material particulars and the same constitutes a corrupt practice. Mr. Damle pointed out that no cognizance can be taken of the filing of 'C' Summary Report, firstly because the matter is still pending and secondly because such 'C' Summary Report was filed much after the last date for filing of nominations. For all these reasons, Mr. Damle submitted that there is no jurisdictional error in the making of the impugned order and that this petition is required to be dismissed.

7] Rival contentions now fall for determination.

8] Mr. Damle, the learned Senior Advocate appearing for the respondent no. 1 is right in his submission that there is neither any provision under the Act nor is any provision prescribed by the State Election Commission in the matter of disqualification on the ground of pendency of a criminal case. However, in terms of the decisions of the Hon'ble Apex Court rendered from time to time, including *inter alia* the decision in the case of *Union of India vs. Association for Democratic Reforms and Anr.*², *People's Union for Civil Liberties & Anr. vs. Union of India & Anr.*³ and *Shambhu Prasad Sharma vs. Charandas Mahant & Ors.*⁴, the State Election Commission, is empowered to issue instructions in the matters of certain disclosures, which a candidate is required to make at the stage of filing his nomination paper. In pursuance of such decisions, the State Election Commission has issued instructions as also, provided for the format in which the disclosures are required to make on affidavit.

9] The learned counsel for the parties have placed on record the format of the affidavit, which requires the candidate to disclose whether the candidate is accused in any pending case, of any offence punishable on imprisonment for two years or more, and in which charge is framed. Although, the election petition makes

2 (2002) 5 SCC 294

3 (2003) 4 SCC 399

4 (2012) 11 SCC 390

reference to clause 1(B) of the affidavit, it appears that the same is a typographical error. This is because clause 1(B) of the affidavit makes reference to conviction for an offence and sentence for one year or more. Admittedly, it is not even the case of the respondent no.1 that the petitioner was at any stage convicted for an offence and sentenced to imprisonment for a period of more than one year.

10] On the crucial date i.e. the last date for filing nominations or for that matter the date on which the petitioner filed his nomination, there is absolutely no material to suggest that the petitioner was accused in any pending case of any offence punishable on imprisonment for two years or more and in which, charge had been framed or cognizance taken by the Courts of law. If the entire election petition is perused, it is clear that there is no averment to the effect that charge had indeed been framed against the petitioner or that cognizance of his offence had indeed been taken by the competent court of law. This material fact was required to be pleaded, in order to disclose cause of action for questioning the election of the petitioner. In matters of election petitions, the pleading of material facts is vital. In the absence of pleading of material facts, it cannot be said that cause of action has indeed been disclosed. An elected representative cannot, on the basis of a vague pleadings or no pleadings, be compelled to defend an

election petition. The election petitioner, in the first place, is required to allege the material facts relating to the improper acceptance of the nomination papers and further assert that the election of the returned candidate has been materially affected by such acceptance. In the present case, the material facts are itself lacking. There is, accordingly, failure to disclose cause of action.

11] The interpretation suggested by Mr. Damle in the matter of format of the affidavit cannot be accepted. In the case of *Shambhu Prasad Sharma* (supra), the Hon'ble Apex Court, in paragraphs 9 and 10, which are relevant for the purposes of the issues raised in the present petition, observed thus :

“9. This Court recognized the right of the voters in this country to know about the particulars and antecedents of the candidates who would represent them in the Parliament where laws concerning their liberty and property may be enacted, and declared that the right of freedom of speech and expression guaranteed under [Article 19\(1\)\(a\)](#) of the Constitution would include the freedom of the voter to cast his vote, for which purpose the voter was entitled to know everything that would enable him to make the right choice. It was with that salutary object in mind that this Court issued directions to the Election Commission to call for information on affidavit from each one of the candidates seeking election to the Parliament or the State Legislatures as an essential part of his nomination papers furnishing therein information on the following aspects in relation to his/her candidature:

(Assn. for Democratic Reforms case, SCC p. 322, para 48)

“1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.

(5) The educational qualifications of the candidate.”

10. As a sequel to the above directions the Parliament amended the [Representation of People Act, 1951](#) to introduce [Sections 33-A and 33-B with Representation of People \(Third Amendment\) Act 2002](#). [Section 33-A](#) made it obligatory for every candidate to furnish information whether or not he has been accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court and whether he has been convicted of an offence other than those referred to in sub-section (1) or sub-section (2) or covered in sub-section (3) of [Section 8](#) and sentenced to imprisonment of one year or more. Sub-section (2) of [Section 33-A](#) required a candidate or his proposer to deliver to the Returning Officer an affidavit sworn by the candidate in the prescribed form along with

nomination papers in which the information specified above is set out. Section 33-B, however, purported to neutralise the effect of the directions issued by this Court in [Union of India v. Association for Democratic Reforms and Anr](#) (supra) and declared that no candidate shall be liable to disclose or furnish any information, in respect of his election, which is not required to be disclosed or furnished under the Act or the Rules made thereunder.”

[Emphasis supplied]

12] From the aforesaid, it is quite clear that the requirement proposed was that the candidate must disclose whether he is accused in any pending case, of any offence punishable with imprisonment for two years or more and in which charge is framed or cognizance is taken by the Courts of law. Section 33A of the Representation of the People Act, 1951, which though not directly applicable to the present case which concerns elections to the BMC, has also made it obligatory for every candidate to furnish information whether or not he he has been accused of any offence with imprisonment for two years or more in a pending case, in which the charge has been framed by the Court and whether he has been convicted of an offence other than certain specified offences and sentenced to imprisonment for one year or more. In view of this position, it is not possible to accept the contention of Mr. Damle that there was requirement of disclosing the circumstances concerning

C.R. No. 10 of 2008, even though, on the relevant date, the case may not have been pending before the Court of law or even though, a charge may not have been framed by the Court against the petitioner.

13] In somewhat similar circumstances, the learned Single Judge of this Court in the case of *Narayan Gunaji Sawant* (supra) ordered the striking of the vague pleadings in the election petition, in the context of allegations that the returned candidate had failed to disclose material particulars in the affidavit accompanying the nomination paper. In the said case also, the election petitioners had merely stated that the returned candidate had made false statements in the affidavit accompanying the nomination paper, without giving any material particulars as to how the statements made in the affidavit were indeed false or that there was any material suppression. The learned Single Judge of this Court, relied upon the decision of the Hon'ble Apex Court in the case of *Azhar Hussain vs. Rajiv Gandhi*⁵, in which it is held that the election petition can be summarily dismissed if it does not disclose cause of action and there is omission to disclose even a single material fact. The relevant observations from the judgment of *Azar Hussain* (supra) as quoted by the learned Single Judge in the case of *Narayan Gunaji Sawant* (supra), read thus :

5 AIR 1986 SC 1253

"In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by [Section 83](#) of the Act to incorporate the material facts in the election petition are not complied with. This Court in [Samant N. Balkrishna & Anr. v. George Fernandez & Ors.](#), [1969] 3 S.C.C. 239, has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in [Udhav Singh v. Madhav Rao Scindia](#), [1977] 1 S.C.C. 511, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of [Section 83\(1\)\(a\)](#). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail."

14] In the case of *Narayan Gunaji Sawant* (supra) at paragraph 10, the learned Judge of this Court has transcribed the clause 1 of the affidavit, in the format prescribed by the State Election Commission. The relevant clause, with which we are concerned with, reads thus “

“I am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge(s) has/have been framed by the court (s) of competent jurisdiction.”

15] In the facts and circumstances of the present case, there is not even any allegation in the election petition that the returned candidate i.e. the petitioner herein, was accused of any offence punishable with imprisonment for two or more years in a pending case in which a charge has been framed by the court of competent jurisdiction. The material on record also does not suggest this to be the position. therefore, this is a case of failure to disclose cause of action. The impugned order is obviously incorrect when it states that the election of the petitioner has been challenged upon other grounds as well. Perusal of the election petition would indicate that there is no other ground for challenge.

16] For the aforesaid reasons, the impugned order is set aside. The petitioner's application at Exhibit '43' is allowed. Municipal

Election Petition No. 58 of 2012 is rejected for failure to disclose cause of action. Rule is made absolute in terms of prayer clauses (a) and (b). There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka