

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

**ELECTION PETITION NO. 18 OF 2009**  
**WITH**  
**ELECTION APPLICATION No. 28 OF 2010**

Chandrakant Genu More. ..Petitioner.

*Versus*

Kripashankar R. Singh. ..Respondent.

Mr. R. V. Govilkar for the Petitioner.

Mr. C. G. Gavnekar i/b G. S. Hiranandani for the Respondent.

Coram : RANJIT MORE &

Date : **October 7, 2016.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties.

2. By the present election petition, the Petitioner is challenging the Respondent's election to the Maharashtra Legislative Assembly from Legislative Assembly Constituency No. 175 – Kalina, Mumbai for the period 2009-2014. The term of Respondent as a member of the legislative assembly was over in the year 2014.

3. The only ground on which election of the Respondent is challenged is that the Respondent has filed incomplete and wrong affidavit by not disclosing immovable assets of his spouse. Thus, election has been challenged on the

ground of improper acceptance of nomination of the Respondent.

4. The question whether in case of the dissolution of assembly the issue regarding disqualification of the winning candidate becomes academic, fell for consideration before the Apex Court in Loknath Padhan v. Birendra Kumar Sahu [(1974) 1. SCC 527]. The Apex Court has observed thus in paragraph Nos. 3 and 4 :

“In the present case, the Orissa Legislative Assembly being dissolved, it has become academic to consider whether on the date when the nomination was filed, the respondent was disqualified under s. 9A. Even if it is found that he was so disqualified, it would have no practical consequence, because the invalidation of his election after the dissolution of the Orissa Legislative Assembly would be meaningless and ineffectual. it would not hurt him. The disqualification would only mean that he was not entitled to contest the election on the date when he filed his nomination. It would have no consequences operating in future. It is possible that the respondent had a subsisting contract with the Government of Orissa at the date of nomination, but that contract may not be subsisting now. The finding that the respondent was disqualified would be based on the facts existing at the date of nomination and it would have no relevance so far as the position at a future point of time may be concerned, and therefore, in view of the dissolution of the Orissa Legislative Assembly, it would have no practical interest for either of the parties. Neither would it benefit the appellant nor would it affect the respondent in any practical sense and it would be wholly academic to consider whether the respondent was disqualified on the date of nomination.

4. The position might be different if the allegation against the respondent were of corrupt practice. Then it would not be academic to consider whether or not the respondent was guilty of the corrupt practice charged

against him, because a finding of corrupt practice has serious consequences. If the respondent is found guilty of corrupt practice during the election, not only his election would be declared void, but he would also incur certain electoral disqualifications. Sec. 8A provides that a person found guilty of a corrupt practice by an order under s.99 shall be disqualified for a period of six years from the date on which, that order takes effect. The purity of elections is of utmost importance in a democratic set up and the law has, therefore, taken serious note of practice in elections and laid down a disqualification for a period of six years on an order being made by the High Court recording a finding of corrupt practice at the time of disposing of the election petition. It is, therefore, obvious that when a corrupt practice is charged against the respondent in an election petition, the trial of the election petition must proceed to its logical end and it should be determined whether the corrupt practice was committed by the respondent or not."

5. The above observations of the Apex Court show that invalidation or setting aside of the election of winning candidate after dissolution of the assembly would be meaningless especially when election is challenged on the ground of improper acceptance of nomination. The Apex Court, however, separated the cases where election is challenged on the ground of corrupt practices.

6. In the present case, election of the Respondent is challenged on the ground of wrongful acceptance of nomination. In that view of the matter and in view of the fact that the terms of Respondent is already over in the year 2014, election petition is rendered infructuous and the same is accordingly disposed of.

7. In view of the disposal of main election petition, application taken out in this election petition, does not survive and same is accordingly disposed of.

**[RANJIT MORE, J.]**