

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

1 ELECTION PETITION NO. 15 OF 2014
WITH EPAP/32/2016 IN EP/15/2014

CHAUDHARI NOORUDDIN M. YOUNUS S/O. M. IDRIS
VERSUS
MOTE RAHUL MAHARUDRE AND OTHERS

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Advocate for Petitioner : Mr. S.S. Kazi
Advocate for Respondents : Mr. R.N.Dhorde, Senior Counsel i/b.
Mr. H.T. Gaikwad
Advocate for Respondent 2 : Mr. A.S. More
Advocate for Respondent 5 : Mrs. Shubhangi D. More.
Advocate for Respondents 10 to 13 : Mr. Alok Sharma

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CORAM : T.V. NALAWADE, J.
DATED : 20th February, 2017.

**ORDER BELOW EXH. 10 [E.P. APPLN. NO. 32/2016] IN
ELECTION PETITION NO. 15/2014**

1. The application is filed under Order VII, Rule 11 of Civil Procedure Code (hereinafter referred to as 'C.P.C.' for short) for rejection of petition. Both the sides are heard.

2. In the election petition, the election to Maharashtra Legislative Assembly Constituency No. 243- Paranda Assembly Constituency, District Osmanabad, in which respondent No. 1 is declared as elected candidate, is under challenge. Declaration is claimed that respondent No. 1 indulged in corrupt practice like making false representation to the people that the petitioner,

who was candidate of Congress I Party, was dummy candidate of political party Shivsena. It is contended in the petition that main candidates amongst whom there was contest, were candidates of Congress I Party, Nationalist Congress Party (N.C.P.) and Shivsena Party. Respondent No. 1, who is elected candidate, contested the election as a candidate of N.C.P. and respondent No. 2 contested the election as a candidate of Shivsena Party. Allegations are made that during the election campaign, wrong message, rumour was spread both by respondent Nos. 1 and 2 that petitioner was dummy candidate of Shivsena Party. It is contended that in one election meeting dated 6.10.2014, respondent No. 1, during his address to large gathering at Paranda, District Osmanabad, in the presence of the then Deputy Chief Minister of the State Shri. Ajit Pawar, said that the present petitioner is a dummy candidate of Shivsena Party and if votes are given to the petitioner, then there will be division of secular votes, which will help the candidate, to whom secular votes may not go. It is contended that video recording of this speech of respondent No. 1 was done at the instance of Returning Officer and the petitioner has obtained D.V.D. of the said recording. It is contended that on 13.10.2014, respondent No. 2 also spread a wrong message that only due to intervention of respondent No. 2, the petitioner was given ticket of Congress I

Party. There are some other contentions made against respondent No. 2 that he had made some religious speech by taking the name of colour and ultimately, in the speech, he had said that there was support of Jahed Choudhary, brother of petitioner, to him. It is the case of petitioner that due to such information spread by respondent No. 2 among the voters, the voters did not give votes to him and this conduct of respondent No. 2 amounts to corrupt practice.

3. Respondent No. 1, the elected candidate, secured 78548 votes, respondent No. 2, the candidate of Shivsena got 66159 votes and present petitioner, who was candidate of Congress I Party, got only 7760 votes. Respondent No. 3 - Balasaheb Bhagwatrao Patil, who was the candidate of Rashtriya Samaj Party, secured 37324 votes.

4. In the present application, it is contended for respondent No. 1, the elected candidate that no cause of action for election petition is shown and material particulars are not provided and no material is produced along with the petition and so, the petition is liable to be rejected under provision of Order VII, Rule 11 of C.P.C. In the written statement filed by respondent Nos. 1 and 2, both of them have denied the aforesaid allegations

made against them by the petitioner.

5. During arguments, the learned Senior Counsel for the Returned candidate, for respondent No. 1 submitted that the petition was not presented by the petitioner and necessary procedure for filing the petition was also not followed. Though such contention is made in the written statement, in the present application, the main contention is only the absence of cause of action.

6. In view of the aforesaid allegations made in the petition, first it needs to be ascertained as to whether the grounds given in section 100 of the Representation of People Act, 1950 and the Representation of People Act, 1951 (hereinafter referred to as 'the Act' for short] are there in the petition. Relevant portion of section 100 for the present purpose is 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."

7. In view of the nature of allegations and the pattern of voting quoted above, the provision of section 100 (2) of the Act also needs to be kept in mind and that provision runs as follows :-

"(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."

8. The aforesaid provisions show that first it is necessary for petitioner to make out the case that the Returned Candidate is guilty of corrupt practice. Only after making out such case and when the Court forms opinion as mentioned in section 100 (2) of the Act, the Returned Candidate will be expected to have his say. The aforesaid provisions show that it is always open to the Returned Candidate to take defence available in section 100 (2) of the Act and also to contend that due to alleged corrupt practice, the result of election as it concerns Returned Candidate is not materially affected.

9. It is settled law that election petitions in which

corrupt practice is a ground are quasi-criminal in nature, the onus is always on the person, who challenges the election, to prove the allegations made by him beyond doubt. This circumstance is important for consideration of the prayer made in the present application as the ingredients of so called corrupt practice need to be mentioned in the petition and further, in view of the other provisions of the Act, the necessary supporting material needs to be produced along with the petition.

10. For consideration of application like present one, the provisions of section 80, 81 and 83 of the Act need to be kept in mind. 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."

In section 87 of the Act, it is made clear that the provisions of C.P.C. and the Evidence Act are applicable to the trial of election petitions, but those provisions are applicable, subject to the provisions of the Act.

11. The provision of 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."

This provision shows that period of limitation is fixed 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 Court within the prescribed time.

12. In section 83 of the Act, further conditions are laid down for such proceeding and the provision runs 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."

The provision of section 83 shows that the allegations of corrupt practice made in the petition should be such that the allegations are sufficient to describe the complete picture of corrupt

practice. (Reliance placed on the case reported as **AIR 1972 SC 1302 [Raj Narain Vs. Smt. Indira Nehru Gandhi and Anr.]**).

13. The election petition can result in setting aside the election of elected candidate, so the provisions of the Act need to be complied strictly. If the aforesaid provisions are read together, it can be said that in the election petition itself, the corrupt practice needs to be described sufficiently and material needs to be mentioned which can support the allegations. In the case reported as **AIR 1983 SC 558 [M. Karunanidhi Vs. H.V. Handa and Ors.]**, the Apex Court has laid down that the material, which is available in support of the allegations of corrupt practice needs to be supplied along with the petition and if it is not supplied, it will be violation of the provisions of section 81 (3) of the Act. In the reported case, copy of photograph was such material as the allegations were based on the photograph, but copy of photograph was not produced along with the petition. The Apex Court held that such material needs to be treated as integral part of the petition and so, subsequent production of such material is not possible. In the present matter, though there is contention that the video recording of the election campaign meeting arranged for respondent No. 1 on 6.10.2014 was done by the Election Commission and its copy

was supplied to the petitioner, such copy is not annexed with the petition. This single circumstance is sufficient for rejection of the present petition. Though there are allegations made against respondent No. 2 that he was spreading similar message, the allegations made against him in para Nos. 8 and 9 of the petition are very vague. The nature of contentions made against respondent Nos. 1 and 2 show that petitioner has no personal knowledge with regard to so called spreading of wrong information by respondent Nos. 1 and 2 and he wanted to rely on the material, which, according to him, is collected by him.

14. With the Election Petition, the affidavit in form No. 25 as required by Rule 94-A of the Rules of Conduct of Election Rules, 1961 is required to be filed. The form shows that the information mentioned in the petition, which is in accordance with the personal knowledge of the petitioner, needs to be mentioned specifically in the affidavit and the information which was not within his personal knowledge needs to be specifically mentioned and for that, the material available needs to be mentioned. Admittedly, the petitioner has no personal knowledge about the information which was allegedly spread by respondent Nos. 1 and 2 and the material which he wants to use to prove such corrupt practice is not produced along with the

petition. Further, in the affidavit, the specific corrupt practice is required to be mentioned, but in the present matter such corrupt practice is not at all mentioned in the affidavit. For these reasons also, the trial of the Election Petition is not advisable.

15. The provisions of section 86 of the Act deals with trial of the Election Petition and it runs 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 sub-section 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."

It is already observed that along with the petition, necessary material ought to have been produced. Now the petitioner cannot be allowed to produce the material and make the correction in the affidavit. The strict compliance of provisions of sections 81 and 82 of the Act is not there and for this reason also, the petition is liable to be rejected.

16. The learned counsel for petitioner submitted that the alleged corrupt practice would fall under provision of section 123 (4) of the Act. This portion runs as under :-

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

(1)

(4) The publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

This Court has already quoted the pattern of voting, which is

found in the present constituency. The petitioner secured 4th number of votes in the election and he was nowhere near the elected candidate or even the candidate, who secured 2nd number votes. In view of this circumstance, the contention that due to the so called false representation, false statement, the voters were misled and the voters, who would have voted in favour of petitioner, voted in favour of respondent No. 1 cannot be accepted.

17. The learned Senior Counsel for respondent No. 1 placed reliance on the observations made by the Apex Court and and High Courts in various cases, which are as under :-

(i) Order made by this Court in Election Petition No. 13/2014 [Annarao Govindrao Patil Vs. Amit Vilasrao Deshmukh and Ors.] dated 18.7.2016,

(ii) AIR 2015 SUPREME COURT 16 [C.P. John Vs. Babu M. Palissery and Ors.],

(iii) AIR 2012 SUPREME COURT 2648 [Shambhu Prasad Sharma Vs. Charandas Mahant and Ors.],

(iv) AIR 2010 SUPREME COURT 1227 [Ram Sukh Vs. Dinesh Aggarwal],

(v) AIR 2012 SUPREME COURT 2784 [P.A. Mohammed Riyas Vs. M.K. Raghavan & Ors.],

(vi) AIR 2011 SUPREME COURT 146 [M. Chandra Vs. M. Thangamuthu & Anr.],

(vii) 2009 (5) Bom.C.R. 535 [Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar],

(viii) AIR 2012 BOMBAY 7 [Khalil Ahmed Shaikh Mannu Chaudhary Vs. Election Commissioner of India and Ors.],

(ix) 2012 (Supp.1) Bom.C.R. 457 [Manohar Babarao Dhonde Vs. Shankar Ganeshrao Dhondge & Anr.],

(x) 2011 (2) Bom.C.R. 266 [Singh Shamsher Rambahal Vs. Election Commisioner and Ors.],

(xi) AIR 2010 SUPREME COURT 133 [G.V. Sreerama Reddy and Anr. Vs. Returning Officer and Ors.],

(xii) Order made by the Delhi High Court in Election Petition No. 1/2015 [Manoj Kumar Shokeen Vs. Raghuinder Shokeen].

In the case of **C.P. John Vs. Babu M. Palissery** cited supra, there are some observations with regard to corrupt practice mentioned in section 123 (4) of the Act. Though facts were little bit different, for the interpretation of the provision, observations are made in para No. 45 and 46. In para 45, the relevant observations made by the High Court are quoted and in para 46, the Apex Court has observed that the Apex Court fully concurs with the observations made by the High Court. The relevant observations are as under :-

"45.

19. It is clear that in order to attract sub-section

(4) of section 123, there should be a publication by a candidate or his agent or by any other person with the consent of the candidate or his election agent. The statement of fact in the publication must be false. The candidate should either believe it to be false or does not believe it to be true. The statement must be in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate. The statement must be reasonably calculated to prejudice the prospects of that candidate's election. Even if the statement is false and the candidate did not believe the statement to be true or believe it to be false, unless the statement is in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, it is not a corrupt practice. Even if the statement is in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, unless it was reasonably calculated to prejudice the prospects of that candidate's election, it will not amount to a corrupt practice. Each of the ingredients in the section has its own importance. The omission to plead any one of the ingredients is fatal. In the absence of any of the ingredients, it will not constitute a complete cause of action to challenge the election on the ground of corrupt practice under section 123 (4) of the Act."

46. On reading of the above discussion made by the High Court with which we fully concur, we do not find any scope to take a different view. The said conclusion of the High Court in the context of Section 123 (4) is the only way to understand the implication of the Annexure IV-pamphlet alleged to have been distributed by the Second Respondent at the instance of the First Respondent. Therefore, on this ground, as well, we do not find any scope to interfere with the impugned judgment of the High Court."

In the case of **P.A. Mohammed Riyas Vs. M.K. Raghavan and Ors.**, cited supra, there are observations made with regard to the procedure, which needs to be followed in respect of the election petition in relation to provisions of sections 81, 83, 86 and 101 etc. It is already observed that unless there is proper verification of the pleading, the contentions made in the petition cannot be considered and such petition needs to be treated as incomplete. In the present matter, the learned Senior Counsel for respondent No. 1 submitted that the pleading was not signed by the petitioner, though his signature appears under the verification. On this point, the learned counsel for petitioner submitted that in the margin of the pleading on every page, there is signature of the petitioner and so, there was sufficient

compliance of the provisions of the Order VI, Rule 14 and Order VI Rule 15 of C.P.C. As there are signatures of the petitioner on the every page of the petition, this Court holds that it is not desirable to adopt too much technical approach. In the case of **Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar** cited supra, the Apex Court has again discussed the importance of the provisions of sections 83 and 123 of the Act and it is observed that material facts must be pleaded in the petition as the petition needs to be filed within prescribed period of limitation and failure to state even a single material fact will entail dismissal of election petition.

18. The learned counsel for petitioner placed reliance on following reported cases :-

(i) (2005) 2 SCR 670 [Raj Kumar Yadav Vs. Samir Kumar Mahaseth and Ors.],

(ii) AIR 2004 SCW 6858 [Mahadeorao Sukaji Shivankar Vs. Ramaratan Bapu and Ors.], and

(iii) AIR 1978 SC 840 [M. Kamalam Vs. Dr. V.A. Syed Mohammed].

In one matter, cited supra, copies of documents produced along with the petition were not properly authenticated. The Apex Court held that the signature at one place was sufficient. In one

matter, cited supra, the meaning of 'material fact' is discussed by the Apex Court. But, it is also laid down that what amounts to 'material fact' would depend upon the facts of each and every case and there cannot be universal application of the rule in this regard. In one more matter, cited supra, point of limitation was involved and in that regard, the procedure which was adopted as per the Rules made by one High Court is discussed. The facts were totally different.

19. This Court has already quoted the relevant facts of the present matter. In view of the nature of allegations made in the petition, this Court holds that the petition is not complete and there was no compliance of provisions of sections 81 and 82 of the Act and so, nothing can be achieved by the trial of the election petition. This Court holds that the petition needs to be rejected under Order VII, Rule 11 of C.P.C. So, the following order is made.

O R D E R

The application, Exh. 10, [Election Petition Application No. 32/2016] is allowed. The plaint/petition is rejected.

[T.V. NALAWADE, J.]

ssc/