

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CIVIL APPLICATION NO. 1723 OF 2015

IN

ELECTION PETITION NO. 2 OF 2014

(Shareef Khan Vazir Khan and others ..vs..Raju Narayan Todsam and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 14-02-2017

The respondent No.1 has sought dismissal of the election petition under Section 86 of the Representation of the People Act, 1951 (hereafter referred to as the "Act of 1951") on various grounds including that the petitioners had not supplied as many copies of the petition as there are respondents, which are attested by the petitioners in their own signatures to be true copy of the petition.

The parties have led evidence and cross-examined the witnesses. The petitioners have examined the petitioner No.3 Vishnu Ukandrao Lonkar. In cross-examination, Vishnu Ukandrao Lonkar has admitted that the copies of election petition (Exhibit No.23 L3, Exhibit No.23 M2 and Exhibit No.23 J3) are the copies which were deposited by the petitioners with the registry alongwith the election petition on 03-12-2014. This witness has admitted that original signatures of the

petitioners are not there on these three copies. The relevant portion of the cross-examination is as follows :

“When I filed the election petition, the copy of affidavit was there alongwith the copy of petition. The affidavit alongwith the petition Exhibit No.23 J3 is sworn by me. The petition Exhibit No.23 J3 also contains copies of affidavits of other petitioners. The signatures in the left hand margin on the petition Exhibit No.23 J3 are of the petitioners. I had deposited this copy with the registry. The copy of petition Exhibit No.23 L3 was also deposited with the registry by me and it contains the signatures of all the petitioners. The copy of petition Exhibit No.23 M2 was also deposited in the registry by me and it contains the signatures of all the petitioners. The signatures on the copies Exhibit No.23 J3, Exhibit No.23 L3 and Exhibit No.23 M2 are the photocopies and does not contain the original signatures of the petitioners. The numbering on the index to the copy of petition Exhibit No.23 J3 is done by our Advocate. This numbering on the index is original as it is in handwriting of our Advocate. Similarly the numbering on the index of the copy of petition Exhibit No.23 M2 is in the handwriting of our Advocate.”

Thus it is clear that at least three copies supplied by the petitioners alongwith the election petition on 03-12-2014, to be served on the respondents, cannot be said to be attested by the petitioner/ petitioners under his/their signature/ signatures, to be true copy of the petition. The defect is fatal and because of the non-compliance of mandatory provision of Sub-section (3) of

Section 81 of the Act of 1951, this Court has no option but to dismiss the election petition under Section 86(1) of the Act of 1951.

The learned Advocate for the petitioners has submitted that the registry of this Court had verified that the petition is filed by the petitioners in compliance with the requirements of the Act of 1951 and after the registry found that there were no objections/defects, the petition was placed before the Court and then this Court after getting satisfied that five copies of election petition were filed in addition to the original petition and the amount of costs as per Section 117 of the Act of 1951 was deposited, directed issuance of summons and therefore, the objection raised by the respondent No.1 cannot be considered at this stage. However, the petitioners have not been able to point out anything from the record that either the Court while directing issuance of summons to the respondents, or the registry of this Court has examined that the five copies of petition supplied by the petitioners in addition to the original petition are attested to be true copies in their own signatures. In view of the admission given by the petitioner No.3 in his cross-examination, the general submissions made on behalf of the petitioners as above cannot be accepted.

Hence, the following order :

- (i) The Civil Application No.1723/2015 (Exhibit No.13) filed by the respondent No.1 is allowed.
- (ii) The Election Petition No.2/2014 is dismissed.
- (iii) The amount of Rs.2,000/- deposited by the petitioners as security of costs as per Section 117 of the Act of 1951 be given to the respondent No.1.

JUDGE

adgokar