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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3102 OF 2019

Rakhi Harishchandra Jadhav	..Petitioner.
V/s.	
Ajay Sadanand Bagarl & Ors.	..Respondents.

Mr. P.K.Dhakephalkar, learned Senior Advocate with Vijay Nair, Prashant Kulkarni, Weasim Ansari and Abhijeet Desai for the petitioner.

Mr.Vaibhav Sukdhare with Ashish Ghadge i/b. Amit Potnis for respondent No.1.

Mr. Rishin Mantri i/b. S.B.Shetye for respondent No.16.

CORAM : M.S.SONAK, J.

DATE : MARCH 19, 2019

ORAL JUDGMENT

Heard Mr.Dhakephalkar, learned senior counsel for the petitioner, Mr.Sudkhare, learned counsel for respondent No.1 and Mr.Mantri, learned counsel for respondent No.16.

2. Challenge is to the order dated February 8, 2019 by which learned trial Judge has dismissed the petitioner's application under Order 7 Rule 11 of the Code of Civil Procedure seeking rejection of the election petition instituted by respondent No.1.

3. Mr.Dhakephalkar, learned senior counsel pointed out that it is mandatory that an election petition should be accompanied by an

affidavit in support. He referred to the affidavit at page 46 of the paper-book and pointed out that the said affidavit has no nexus with accompanying petition. Mr.Dhakephalkar submits thus there absolute non compliance of the above mandatory requirement of filing affidavit in support of the petition. On this ground, the petition was required to be rejected.

4. Mr.Dhakephalkar relied upon the ruling of the Hon'ble Apex Court in the case of *Regu Mahesh Alias Regul Maheshwar Rao V/s. Rajendra Pratap Bhanj Dev and another*¹. He submits that this is a case where respondent No.1 justified the affidavit and did not even seek any leave of the Court to clear the defect at the earliest instance. In the said circumstances, he points out that Apex Court has held that no leave can be granted to create such defects and the election petition has to be rejected.

5. Mr.Dhakephalkar points out that this is a case where corrupt practice was taken as a ground for questioning the election of the petitioner. He points out that there are no material pleadings in support of these ground of corrupt practice and, therefore, this is again a fit case where the petition warrants rejection without necessity of having to go for trial.

6. Learned counsel for respondent No.1 defends the impugned

¹ (2004) 1 Supreme Court Cases 46

order on the basis of reasoning reflected therein.

7. The election petition in the present case is on the premise that there was improper rejection of the nomination papers of respondent No.1. From the reading of the election petition in its entirety, it cannot be said that this is a case where the election of the respondent is questioned on the ground of any corrupt practice.

8. The averments of paragraph 25 upon which reliance was placed by Mr.Dhakephalkar, learned senior counsel for the petitioner read thus :-

“The Petitioner states that, the Respondent No.1's election be set aside since, the nomination form of the Petitioner was illegally and malafidely rejected by the Returning Officer and the said election of the Respondent No.1 be declared as null and void.”

9. From the aforesaid averments, it cannot be said that the election petition was founded on the ground of corrupt practice of the petitioner. Accordingly, learned trial Judge has quite correctly rejected the contention based upon the absence of material pleadings.

10. The observations in *Regu Mahesh Alias Regul Maheshwar Rao (supra)* were mainly in the context of election petition in which there were allegations of corrupt practices. Once allegations of corrupt practices are made, then, verification on affidavit is of utmost importance. In the present case, as noted earlier, the election petition is

not founded upon the corrupt practices of the petitioner but the election petition is founded on the basis that there was improper rejection of the nomination papers of respondent No.1. Accordingly, the decision in *Regu Mahesh (supra)* is not applicable.

11. In so far as the first ground raised by Mr.Dhakephalkar is concerned, upon perusal of the affidavit in support of the petitioner at page 46, it is clear that incorrect affidavit was filed by respondent No.1 in support of election petition. The affidavit makes no reference to the averments in the election petition.

12. However, it is necessary to note that the election petition was duly verified. The verification clause makes specific reference to the averments in the election petition. Thus, it can be regarded as a case of irregularity and not illegality. Now the trial in the election has also commenced, it would not be appropriate to reject the election petition on the basis of irregularities by invoking the jurisdiction of Article 227 of the constitution of India.

13. For the aforesaid reasons, there is no case made out to interfere with the impugned order. The petition is, therefore, dismissed.

14. There shall be no order as to costs.

(M.S.SONAK, J.)