

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5518 OF 2019

Sarjeraao Baban Khedkar & Ors. ...Petitioners

Vs.

Nilesh Suresh Khedkar & Ors. ...Respondents

Mr. S. V. Sadavarte, for the petitioners.
Mr. Ranjeet Shinde i/b Mr. Ajinkya M. Udane,
for respondent Nos.1 to 5.

CORAM : M. S. SONAK, J.

DATE : MAY 03, 2019

ORAL JUDGMENT :

1. Heard Mr. Sadavarte for the petitioners and Mr. Ranjeet Shinde for respondent Nos.1 to 5.

2. Challenge in this petition is to the order dated 11/3/2019 by which the Ld. Trial Judge trying Election Petition No.04/2018 has granted election petitioner leave to amend the election petition.

3. The operative portion of the order dated 11/3/2019 reads as under:

“ Order

1. Application is partly allowed subject to cost of Rs.100/- to be paid each defendant No.1 to 17.

2. *Applicants are permitted to amend the petition as sought except the pleading in regard to ownership of opponent No.1 over vehicle MH.12.EM.1384 and Active 4 G Honda Motorcycle within 7 days from today.”*

4. Mr. Sadavarte, Ld. Counsel for the petitioners herein submit that the election petition was lodged by urging basically three grounds i.e. defective voters list, bogus voting and double voting. He submits that by amendment the election petitioners seek to raise the entirely new ground which is totally merit-less and in any case relates to the issue of disqualification. He submits that such amendment cannot be allowed, since, they change the entire nature of the election petition. He further submits that such amendment also cannot be allowed because the same would amount to instituting a fresh election petition beyond prescribed period of limitation. He submits that since all these aspects have not been considered, the order warrants interference.

5. Mr. Sadavarte, Ld. Counsel for the petitioners relied upon ***S. M. Banerji Vs. Sri Krishna Agarwal AIR 1960 Supreme Court 368*** in support of his contentions.

6. Mr. Shinde, Ld. Counsel for the respondent Nos.1 to 5 defends the impugned order on the basis of reasoning reflected therein. He submits that in the election petition, the election petitioners are entitled to raise all grounds on basis of which the election returned candidate is required to be set aside. He submits that there is no jurisdictional error in the view taken by the Ld. Election Judge and therefore this petition warrants dismissal.

6. In this case, the election petitioner, has applied for setting aside the election of the petitioners on several grounds. By amendment application, the election petitioner seeks to take some additional grounds. At the stage of deciding whether leave to amend should be granted or not, the Court, is not expected to go into the merits of the matter and to decide whether the grounds proposed to raise are meritless or not. That is ultimately the matter which is required to be decided after the conclusion of the trial.

7. So far as the issue of limitation is concerned, no doubt, the same is a relevant issue. However, on the basis of said issue, it would not be appropriate to interfere with the impugned order. Interests of justice will be met if it is clarified that the issue of limitation is expressly kept open. Therefore, merely because leave to amend is granted, the

same shall not be construed as any waiver on the aspect of limitation if really the issue of limitation does arise in the matter.

8. Similarly, merely because leave to amend is granted that does not mean that the petitioner is deprived of any defences which the petitioner may otherwise have on the merits of the matter. The petitioner is even at liberty to raise the ground that the contention now raised by amending the petition, are not maintainable in an election petition. All such defences will certainly be open and this position, in any case, is now clarified.

9. The decision in the case of S. M. Banerji (supra) will have to be construed in the light of particular provision contained in Section 15(4) of the Village Panchayat Act which inter alia permits any pleadings to be altered or amended unless Election Judge is satisfied that the application for alteration or amendment is malafide or collusive. There is no allegation of malafides and collusion in present case. That apart, since all objections of the petitioners, including the objections on the issue of limitation are kept open, it is not necessary to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of Constitution of India and delay the progress of the election petition.

10. Therefore, with liberty and clarifications as aforesaid, this petition is dismissed. There shall be no order as to costs.

11. All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)