

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

**APPLICATION NO.1 OF 2019
IN
ELECTION PETITION NO.24 OF 2014
WITH
ELECTION PETITION NO.24 OF 2014**

Sandeep Ganesh Naik ... Applicant/Respondent No.1 in E.P.

In the matter between :

Vijay Laxman Chougule ... Petitioner

Versus

Sandeep Ganesh Naik

And Others

... Respondents

.....

Mr. Abhishek R. Singh a/w Addi A. Gautam for the Petitioner.

Mr. R.S. Datar a/w Mr. D.S. Pagare for Respondent No.1/Applicant in
Application No.1 of 2019.

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CORAM : S.C. GUPTE, J.

DATE : 7 FEBRUARY 2019

P. C. :

. Heard learned Counsel for the parties.

2 This application is made by Respondent No.1 for striking off certain portions of the Petitioner's pleadings. The application is made in pursuance of liberty granted by the Supreme Court in its order dated 10 August 2018. The portions sought to be struck off concern the Petitioner's allegations regarding (i) distribution of booklets/brochures/pamphlets, etc. contained

in paragraph-10 and ground 13(f) and (ii) setting up of another candidate of the same name as the Petitioner contained in paragraph-10 and ground 13(g) of the election petition. It is submitted that these matters are not only unnecessary, but tend to prejudice, embarrass and delay the fair trial of the election petition.

3 Respondent No.1 to the application is the election petitioner. In the petition, he seeks to challenge the applicant's election to Maharashtra Legislative Assembly General Elections, 2014, from the Legislative Assembly Constituency of Airoli. The allegations referred to above form part of the Petitioner's challenge to the election. It is submitted that the applicant indulged in distributing booklets/brochures/pamphlets without names and addresses of printers and publishers thereof and this act was in contravention of Section 127A of the Representation of the People Act, 1951 ("Act"). This is also made a ground of challenge under clause (f) of paragraph-13. The main objection of the Applicant to this allegation is that there are no particulars concerning the same in the petition; no concise statements of material facts on which the allegation is based including particulars, such as names of parties or agents involved in the allegation or date or place of commission of the act complained of, are to be found in the petition. What the Election Law requires is that the cause of action ought to be set out with a concise statement of material facts. The omission of any material fact would lead to an incomplete cause of action. Such incomplete cause of action would not sustain an election petition. Material facts are those primary facts, which must be proved at the trial by the party to establish existence of the cause of action. If such material facts are not pleaded, the cause of action is said to be incomplete and any proof

of pleaded primary facts tendered at the trial would not make out a case for setting aside the opponent's election. Whether any particular fact is material or not or is required to be pleaded, is a matter which would depend on the nature of the charge levelled. Section 127A of the Act mandates that no person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof. The allegation in the election petition is that the Applicant (Respondent No.1) through his agents distributed booklets/brochures/pamphlets, etc. in breach of this mandate. The booklets/brochures/pamphlets, which are said to be so published, are even annexed to the petition. If the very booklet/brochure/pamphlet, which is said to be published or distributed in breach of Section 127A is produced in support of the pleaded case, it would be sufficient compliance with the requirement of concise statement of material facts within the meaning of Section 83 of the Act. Anyway, this allegation cannot appropriately form the subject matter of application for striking off pleadings. There is nothing to indicate that any allegation sought to be struck off in this behalf is either unnecessary or can be said to prejudice, embarrass or delay any fair trial. As for the submission that the allegation does not make out a case for setting aside of the Applicant's election, the matter has already been considered by this Court in the Applicant's earlier application under Order VII Rule 11 of the Code of Civil Procedure 1908 and there has been no liberty reserved by the Supreme Court so far as this allegation is concerned for applying for striking off the allegation. There is, thus, no merit in the application so far as this allegation is concerned.

4 Coming now to the other allegation, which concerns the alleged corrupt practice of placing another candidate of the same name as that of the Petitioner in order to confuse the electors, learned Counsel for Respondent No.1 (original Petitioner) could not point out any provision of the Act, under which such allegation can sustain an election petition. Learned Counsel submits that under Section 123 of the Act, setting up of a candidate so as to cause confusion amongst electors is a corrupt practice. There is nothing in the section to indicate so. Learned Counsel relies on the expression “inducing a person to stand or not stand as a candidate at an election”, appearing in clause (a) of Section 123 (1) of the Act, in this behalf. Inducing a person to stand or not to stand as a candidate at an election does not by itself amount to the corrupt practice of 'bribery' described in clause (a) of sub-section (1) of Section 123 of the Act. It is only when such inducement is offered to a person through any gift, offer or promise by a candidate or his election agent or by any other person with the consent of a candidate or his election agent of gratification, that it amounts to bribery described as corrupt practice under sub-section (1) of Section 123 of the Act. The allegation referred to above by itself does not amount to any corrupt practice within the meaning of Section 123 of the Act.

5 Learned Counsel for Respondent No.1 (original Petitioner) submits that he should be allowed to furnish particulars of corrupt practice, which he has alleged in the present petition, but which unfortunately cannot be termed as a complete allegation. This request is purportedly made under sub-section (5) of Section 86 of the Act. Sub-section (5) of Section 86 itself makes it clear that what can be allowed under it is to amend or amplify

particulars of any corrupt practice in such manner as may be necessary for ensuring fair and effective trial of the petition and not amend the petition so as to have an effect of introducing particulars of a corrupt practice not previously alleged in the petition. If any allegations of inducement by gift, offer or promise of gratification are now allowed to be introduced under sub-section (5) of Section 86 of the Act so as to introduce particulars of the corrupt practice of 'bribery' or to complete the charge of bribery, it would be contrary to sub-section (5). That obviously cannot be permitted. Accordingly, so far as this allegation is concerned, the Applicant has made out a case for its being struck off. The allegation is wholly necessary; even if it is established at the trial, it would not make out a case of corrupt practice entitling the Petitioner to have the Applicant's election set aside. This allegation would tend to prejudice or the delay the fair trial of the election petition, since a lot of unnecessary evidence might be sought to be introduced to support the allegation, which would unnecessarily delay and prejudice the trial of the election petition.

6 Accordingly, the application is partly allowed in terms of prayer clause- (a) to the extent it relates to the pleading of setting up another candidate of the same name as the Petitioner contained in paragraph 10 and ground 13(g) of the election petition. Costs to be costs in the cause.

(S.C. GUPTE, J.)