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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.410 OF 2020

Murji Kanji Patel

...Petitioner

Versus

Sandeep Raju Naik and Ors.

...Respondents

Mr. Amogh Singh a/w Mr. B. R. Bhatia, Mr. Abhishek Mishra and Mr. Vatsal Chorera, for the Petitioner.

Mr. B. D. Joshi i/b Mr. V. V. Pethe and Ms. D. S. Pawar, for the Respondent No.1.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th JANUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned two orders dated 16th December, 2019, passed by the learned Additional Chief Judge, Court Room No.18, Small Causes Court, Mumbai, below Exhibits – 51 and 52 respectively in Municipal Election Petition No.34 of 2017. Exhibit – 51 was for recalling the Respondent No.1, for recording his further cross-examination and Exhibit – 52 was filed for seeking issuance of witness

summons to seven witnesses.

3. A few facts leading to the filing of the aforesaid petition are as under:-

On 21st February, 2017, elections were held for the Municipal Corporation of Greater Mumbai, which included the subject – Ward i.e. Ward No.81. The Petitioner and the Respondent No.1 and others contested from the said Ward i.e. Ward No.81. On 23rd February, 2017, the petitioner was declared as the elected candidate with 10,867 votes. The Respondent No.1 secured second highest votes i.e. 7,393 votes and the other candidates lesser than 7,393 votes. In March 2017, the respondent no.1 filed Municipal Election Petition No.34 of 2017 and sought setting aside of the election of the petitioner and for his appointment from Ward No.81. On 21st August, 2017, the Caste Scrutiny Committee vide its order invalidated the caste certificate of the petitioner. There is no dispute that the said order invalidating the caste certificate of the petitioner was confirmed by the High Court as well as the Apex Court and as such has attained finality. Accordingly on 5th April, 2019, the Municipal Commissioner of Bombay disqualified the petitioner as a Councilor. Pursuant thereto, the Election Commission, State of Maharashtra issued a Notification on 1st May, 2019, for holding fresh elections in Ward No.81. The said Notification was

challenged by the Respondent No.1 by filing a writ petition in this Court, which was dismissed by this Court vide order dated 10th June, 2019. The said order was challenged in SLP by the Respondent No.1. The said SLP was disposed of by the Apex Court vide order dated 5th August, 2019 with certain observations. Thereafter, the Respondent No.1 filed an application stating that the petitioner had no locus in the Municipal Election Petition, in view of his disqualification, which application was rejected by the trial Court vide order dated 18th November, 2019. Admittedly, the said order has not been challenged by the Respondent No.1. Thereafter, the trial proceeded and the Respondent No.1 stepped in the witness-box. After the respondent no.1's cross-examination concluded, the Respondent No.1 was discharged. On 16th December, 2019, the petitioner moved an application (Exhibit – 51) and sought recall of the Respondent No.1, for his further cross-examination, in view of certain admissions that had come on record i.e. with respect to criminal proceedings pending against him. The said application (Exhibit – 51) was rejected on the very same day i.e. 16th December, 2019 by the learned Judge.

4. Learned Counsel for the Petitioner submitted that the Respondent No.1 had failed to disclose the criminal cases against him and had also failed to disclose the property i.e. at Gaimukh Nagar, Taluka –

Pusad, District - Yavatmal. The said application (Exhibit – 51) is on page 101 of the aforesaid petition.

5. Learned Counsel for the Respondent No.1 opposed the petition and submitted that no interference was warranted in the impugned order rejecting the petitioner's application (Exhibit – 51) for recall of the Respondent No.1. He submits that the Respondent No.1 had disclosed the criminal case that was pending as against him at the relevant time when he filed his Nomination Form. He submits that the case sought to be brought on record is post the filing of the Nomination Form and hence, has no bearing in the present case, inasmuch as, there is no suppression of any criminal case. He further submits that the property mentioned in the application (Exhibit – 51) has been disclosed by the Respondent No.1 in his Nomination Form. According to the learned counsel for the petitioner, although the respondent no.1 had disclosed the case pending against him at the relevant time, two Sections have not been mentioned in the said Nomination Form i.e. Section 147 of the Indian Penal Code and Section 37 of the Bombay Police Act.

6. Having heard the learned counsel for the parties with respect to the impugned order passed below Exhibit – 51, no infirmity can be found in

the said order. Admittedly, the Respondent No.1 has disclosed the case that was pending against him at the time of the filing of the Nomination Form. In the Nomination Form, the pending case i.e. C.R. No.387 of 2011, registered with the Santacurz Police Station, has been mentioned. The offences i.e. Sections 452, 143, 149, 323, 504 and 506 of the Indian Penal Code have also been mentioned. Thus, the object of disclosure of any criminal case is to bring to the notice of the public the cases pending against the candidate, which has been done. As far as the subsequent cases are concerned, post filing of the Nomination Form, the question of suppression of the said cases does not arise.

7. As far as acquisition of a property at Gaimukh Nagar, Taluka – Pusad, District - Yavatmal, which according to the petitioner has not been disclosed is concerned, a perusal of the Nomination Form shows that the said property has also been disclosed alongwith other properties mentioned in clauses – III and IV of the application (Exhibit – 51). As far as the document mentioned at clause – V in the said application (Exhibit – 51), is concerned, for bringing on record, the petitioner's application dated 27th January, 2017 along with the documents made to the Caste Certificate Scrutiny Committee, Yavatmal, the said document was available with the Petitioner at the time of the cross-examination of the respondent no.1.

Even, otherwise, the said document has no relevance in the said proceedings. Neither, is it necessary to recall the witness i.e. Respondent No.1 on the other documents mentioned in the application (Exhibit – 51).

8. Accordingly, no interference is warranted in the impugned order dated 16th December, 2019, passed by the learned Additional Chief Judge, Court Room No.18, Small Causes Court, Mumbai, below Exhibit – 51.

9. As far as the application filed by the petitioner for issuance of witness summons to seven witnesses is concerned, the said application (Exhibit – 52) was also filed on 16th December, 2019. The learned Judge rejected the said application also on the very same day, after hearing the parties on 16th December, 2019. A perusal of the application (Exhibit – 52) shows that the petitioner sought to examine seven witnesses. The list of said witnesses is as under:-

1. Sub-divisional officer, Pusad, district – Yavatmal, State of Maharashtra.
2. District Caste Certificate Committee, Mumbai, M-2, Maharishi Valmiki Marg, Panchsheel Nagar, Matunga Labour Camp, Matunga, Mumbai, Maharashtra – 400 019.

3. Mr. Sankhe, office of the Education officer, Brihanmumbai Municipal Corporation, Next to Tarabai Modak High School at Hindu Colony, Dadar East, Mumbai.
 4. Jyoti Madhukar Birje, E-202, Yojana Society, Natwar Nagar Road no.5, Jogeshwari (East), Mumbai – 400 060.
 5. Santosh Giri residing at Shanti Nagar, Mahakalika Caves Road, Andheri (East), Mumbai – 400 093.
 6. Mr. Vishal Jaywant Nichite residing at Room no.2/3, Ram Lakhanchawl, Mulgaon Dongri, Andheri Kurla Road, Andheri (East), Mumbai – 400 093.
 7. The Secretary, Kailash Prabhat CHS, 173, CST Road, Kolivery Village, Vidya Nagari, Kalina, Santacruz East, Mumbai, Maharashtra 400098.
10. Learned Counsel for the Petitioner submits that although the relevancy of the said witnesses have not been mentioned in the said application, it is necessary in the facts and circumstances to examine the said witnesses.

11. Learned Counsel for the Respondent No.1 strongly opposed the Petition and submits that no interference is warranted even in the said order passed below Exhibit - 52. It was submitted that the Petitioner can challenge the caste validity certificate of the Respondent No.1 before the appropriate forum and not in the present proceedings, filed by the Respondent No.1. A perusal of the impugned order passed below (Exhibit – 52) shows that the said application was rejected on merits. The learned Judge has also observed that the petitioner is filing application one after the other only to delay the case. As far as the examination of the Sub-Divisional Officer, Pusad, District - Yavatmal, State of Maharashtra is concerned, it is sought to be urged by the learned counsel for the petitioner that the respondent no.1 does not come under the Other Backward Category but comes under the Nomadic category. The proceedings are instituted by the respondent no.1 challenging the election of the petitioner. It is always open for the petitioner to challenge the caste validity of the respondent no.1 before the appropriate authority/forum. Thus, the question of examining the said witness in the present proceeding does not arise. As far as witness no.2 – District Caste Certificate Committee, Mumbai and witness no.3 – Mr. Sankhe are concerned, as mentioned in the aforesaid lists, they are authorities, who rejected the caste claim of the petitioner. As noted above, the caste validity certificate of the petitioner is already rejected and has

attained finality and therefore the question of examination of the said two witnesses i.e. witness no.2 – District Caste Certificate Committee, Mumbai and witness no.3 – Mr. Sankhe, also does not arise. As far as witness no.4 - Jyoti Birje is concerned, she is a candidate who had contested the said Ward and had initially filed Election Municipal Petition No.67 of 2017. The said witness has thereafter withdrawn her election petition. Therefore, the question of again examining her does not arise. As far as witness no.5 - Santosh Giri is concerned, he is one of the candidates, who had contested from the said Ward. Learned counsel for the petitioner states that he intends to examine the said witness on the point of non-disclosure of one asset which is shown to this Court. As far as witness no.6 – Vishal Nichite, is concerned, the said witness is also sought to be examined on the point of non-disclosure of the same asset by the respondent no.1.

12. Learned Counsel for the petitioner relies on a document to show that the said asset has not been disclosed by the respondent no.1 in his Nomination Form. As far as witness no.5 - Santosh Giri and witness no.6 – Vishal Nichite are concerned, the petitioner is permitted to examine the said two witness, as their witnesses. As far as witness no.7 i.e the Secretary of the Society, where the respondent no.1 has a shop, is concerned, it appears that the said shop has been disclosed in the

Nomination Form by the Respondent No.1 and therefore it is not necessary to examine the said witness.

13. Learned Counsel for the Respondent No.1 submitted that the petitioner is trying to delay the case by filing applications after applications. He submitted that there is no Corporator in Ward No.81 from 5th April, 2019. He requests that the Election Petition be directed to be heard and disposed of expeditiously. Learned Counsel for the Respondent No.1 further states that since the caste validity certificate of the petitioner has been invalidated, the question of examining any witnesses also does not arise. At this stage, learned counsel for the petitioner submits that the petitioner's wife who had also contested the elections from Ward No.76 and elected, despite her caste certificate having been invalidated, the Apex Court permitted the petitioner's wife to examine a voter from her Ward as well as a candidate from her Ward. Learned Counsel relied on the order dated 30th September, 2019, passed by the Apex Court in Special Leave to Appeal (SLP) No.23203 of 2019.

14. Having regard to what is stated hereinabove, the petitioner is permitted to examine only two witnesses i.e. witness no.5 - Santosh Giri and witness no.6 - Vishal Nichite. As far as other witnesses are concerned,

for the reasons set out aforesaid, no ground is made out for issuing witness summons to the said witnesses.

15. Accordingly, the impugned order dated 16th December, 2019, passed by the learned Additional Chief Judge, Court Room No.18, Small Causes Court, Mumbai, below Exhibit – 52 in Municipal Election Petition No.34 of 2017, is partly allowed on the aforesaid terms i.e. the order inasmuch as, it rejects the petitioner's prayer for issuing witness summons to witness nos.1 to 4 and 7 is confirmed, and as far as it rejects the prayer of the petitioner for issuing witness summons to witnesses nos.5 and 6, is concerned, the same is quashed and set aside.

16. Learned Counsel for the Petitioner, on instructions of the petitioner, undertakes to keep witnesses nos.5 and 6 i.e. Santosh Giri and Vishal Nichite, present before the trial Court on Monday, 20th January, 2020 at 11.00 a.m. along with a copy of their affidavit of evidence. The same to be filed on the same day i.e. 20th January, 2020. The learned Judge to conclude with the evidence of the said two witnesses, as expeditiously as possible and in any event by 23rd January, 2020. If for any reason the petitioner fails to keep their witnesses present on 20th January, 2020 or fails to file evidence of the said witnesses or the witnesses fail to appear on the

date and time given, the trial Court is at liberty to pass appropriate orders thereon.

17. The Writ Petition is accordingly partly allowed in the aforesaid terms.

18. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.