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

ELECTION PETITION NO.4/2019

Baliram s/o Bhagwan Shiraskar,
aged 56 years, Occ. Farmer,
r/o Paras, Bailjodi Chauk, Tq. Balapur,
Dist. Akola – 444 103 .....PETITIONER

...V E R S U S...

1. The Election Commission of India,
through its Chairman having o/a
Nirvachan Bhavan, Ashoka Bhavan,
New Delhi.

2. Returning Officer, having his
office at Collectorate, Buldhana.

3. Prataprao alias Ganpat Jadhav,
r/o Madani, Tq. Mehkar,
Dist. Buldhana. ...RESPONDENTS

Mr. Nihalsingh Rathod, Advocate for petitioner.
Ms Neerja Choubey, Advocate for respondent no.1.
Mrs.K.R.Joshi, Incharge Government Pleader for respondent no.2.
Mr. N. B. Kalwaghe, Advocate for respondent no.3.

CORAM:- V. M. DESHPANDE J.
DATE:- AUGUST 20, 2021

JUDGMENT (Per: V. M. Deshpande, J.)

1. After elections for 17th Lok Sabha were held in April-2019, various election petitions were filed in the High Court.

2. The preset election petition pertains to Lok Sabha election for Buldhana Constituency. The petitioner was sponsored

by duly registered political party by name; 'Vanchit Bahujan Aghadi.' In the said election, respondent no.3, who was sponsored by Shiv Sena was declared as returned candidate by the Returning Officer. According to the election petitioner, he polled 1,72,627 votes whereas respondent no.3 polled 5,21,977 votes. Paragraphs 5 and 6 of the petition, which are relevant, read thus:

> *"5. In the loksabha constituency of Buldhana Loksabha 05, there were 19,08,555 registered voters. Of which 11,19,776 polled their votes. Petitioner, according to the respondent no.2 fared 1,72,627 votes, whereas the respondent no.3 sponsored by Shivsena fared 5,21,977 votes. However, the final tally of the votes does not match and there is serious discrepancy in the grant total. There is difference of 583 votes in totality between the votes polled and votes counted.*
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> *6. In such circumstances, it was mandatory for the respondent no.2 to match the tally between the votes recorded in accordance with form 17C and votes counted. Only after such tally matches without any error, could the respondent no.2 have proceeded further. However, without following the specific orders of respondent no.1, respondent no.2 issued certificate to the respondent no.3, leaving behind serious lacunae which makes the whole election redundant and vitiated."*

3. After notices were issued, respondent no.3 appeared and filed an application under Order VII Rule 11 (a) of the Code of Civil Procedure, 1908 read with Section 81 and 83 (1) (a) of the Representation of People Act, 1951 for rejection of this petition. The said application was Civil Application (CAO) No.2024/2019 (Exh.-9). Copy of the said was furnished to the counsel for the petitioner. Roznama of this election petition would show that in spite of time granted, reply was not filed to the application Exh.-9. On 16.07.2021, Mr. Rathod, learned counsel for election petitioner submitted that he was having instructions from the election petitioner that election petitioner does not wish to file any reply to the application, Exh.-9 and accordingly the said was noted in the order dated 16.07.2021 and thereafter the matter was fixed for oral arguments.

4. When on 20.08.2021, the application was taken up for hearing, it was pointed out to this Court, not only by the learned counsel for respondent no.3 but also by learned counsel for the election petitioner that Election Petition Nos.6/2019, 9/2019 and 7/2019 are dismissed by different benches of this Court by

allowing applications filed on behalf of the returned candidate under Order 7 Rule 11(a) of the Code of Civil Procedure and Sections 81 and 83 (1) (a) of the Representation of People Act.

5. At the time of hearing of this application, Mr. Rathod, learned counsel for the petitioner submitted that except the number of votes as mentioned in paragraphs 5 and 6 of the election petitions, which were filed by him only, all other pleadings made in all election petitions are identical.

6. Mr. Rathod, learned counsel for the election petitioner also submitted that none of the election petitioners whose election petitions have been dismissed by various benches of this Court by uphoding the objections raised by filing application under Order VII Rule 11(a) of the Code of Civil Procedure, none approached before the Hon'ble Apex Court. Mr. Rathod further submitted that the allegations made in this petition since are identical with the other petitions except the votes polled by the petitioner and the returned candidates, he submitted that this election petition also can be disposed of.

7. From the submissions made by both the parties before me, it appears that facts constituting cause of action as contemplated by sub clause (a) of Order VII Rule 11(a) of the Code of Civil Procedure are same. It is undisputed that all other election petitions have been dismissed for non disclosure of cause of action. Therefore, I found myself bound by the reasons, dismissing those other election petitions.

8. In that view of the matter, there is no other option for this Court but to allow application Exh.-9. Consequently, following order is passed.

ORDER

(i) Civil Application (CAO) No.2024/2019, under Order VII Rule 11(a) of the Code of Civil Procedure read with Section 81 and 83 (1) (a) of the Representation of People Act (Exh.-9) filed by the returned candidate is hereby allowed.

(ii) In view of allowing of application Exh.-9, Election Petition No.4/2019 stands dismissed.

JUDGE

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