

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CIVIL APPLICATION(O) NO.2269/2019
in ELECTION PETITION NO.12/2019

Md. Nafis s/o Shifat Khan

Vs.

The Election Commission of India through Chief Election
Commissioner and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Sunil V. Manohar, Senior Advocate with Shri D.V.Chauhan, Advocate for
applicant/respondent no.4.
Shri S.V. Purohit, Advocate for non applicant/petitioner.

CORAM :- A.S.CHANDURKAR, J.

Date on which the arguments were heard : 05.02.2021

Date on which the order is passed : 26.02.2021

The returned candidate has moved this application (Exhibit 13) under the provisions of Section 86(1) of the Representation of the People Act, 1951 (for short, the Act of 1951) seeking dismissal of the election petition on the ground that page 45 A which contains the affidavit of the election petitioner in support of the election petition though found on the record of the election petition as presented to the Court, a copy thereof has not been served on the returned candidate. In other words, the copy of the election petition served on the returned candidate does not contain page 45 A and hence there is a breach of the provisions of Section 81(3) of the Act of 1951. Further it is stated that the election petition does not comply with the provisions of Section 83(2) of the Act of 1951. Consequently the election petition is liable to be dismissed under Section 86(1) of the Act of 1951. A pursis dated 06.01.2020 (Exhibit 14) has been filed by the returned

candidate to state the aforesaid fact.

Reply has been filed by the election petitioner (Exhibit 17) to the aforesaid application stating therein that the election petitioner had supplied the entire election petition for being served on the returned candidate. Further the defect as alleged is relatable to Section 83 of the Act of 1951 and the defect of such nature is curable. It is further stated that the election petitioner is willing to cure the aforesaid defect by supplying page 45 A to the returned candidate. Reliance placed on the decisions in *Mithilesh Kumar Pandey Vs. Baidyanath Yadav (1984) 2 SCC 1* and *Abdul Rasakh Vs. K.P.Mohammed and others (2018) 5 SCC 598*.

On hearing the learned counsel for the parties and on perusal of the records of the election petition, it is seen that page 45 A is the affidavit of the election petitioner in support of the election petition. The same is part of the original election petition. Assuming the contention that page 45 A was not served upon the returned candidate, the same would be a defect that is curable in nature. The election petitioner has indicated his willingness to supply a copy of page 45 A of the election petition to the returned candidate in his reply. It is thus found that the aforesaid defect being curable in nature, the election petition is not liable to be dismissed summarily on that count under Section 86(1) of the Act of 1951. The observations in *T.M.Jacob Vs. C.Poulose AIR 1999 SC 1359* support the stand of the election petitioner.

Consequently with a direction to the election petitioner to supply a copy of page 45 A of the election petition to the returned candidate within a

period of 10 days from today, the civil application(Exhibit 13) stands rejected. It would be open for the counsel for the election petitioner to serve a copy of page 45 A of the election petition to the counsel for the returned candidate.

JUDGE

Andurkar..