

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**APPLICATION NO. 3 OF 2022
IN
ELECTION PETITION NO. 26 OF 2019**

Ghanshyam Prataprao Shelar

... Applicant/
Petitioner

Versus

Babanrao Bhikaji Pachpute

... Respondent

....

Mr. J. R. Shah, Advocate for applicant/petitioner

Mr. R. L. Kute, Advocate for respondent

....

CORAM : R. G. AVACHAT, J.

DATED : 24th AUGUST, 2022

PER COURT :-

. The petitioner has moved this application for re-cast of the issues framed by this Court vide order dated 19.04.2022.

2. Heard. Perused the reply to the application. The petitioner herein has sought for setting aside election of the respondent as a Member of Legislative Assembly, mainly on the grounds :

- (I) The respondent and his family members had held free pilgrimages for citizens/voters of Shrigonda Legislative Assembly constituency in the buses belonging to the trust headed by the respondent.
 - (II) The Returning Officer at the behest of the respondent herein requisitioned the buses of the trust bearing name and logo of the respondent trust for transporting the officers on election duty.
 - (III) At the behest of the respondent, the Polling Officer at booth No.280 at Kashti, permitted the wife of the respondent and her colleagues to perform “Pooja” of Electronic Voting Machine (EVM) at the voting place with a view to send message that the respondent is a staunch observer of Hinduism and thereby influenced the voters.
3. The case of the petitioner has been covered by the aforesaid three issues. The petitioner has still given/submitted draft issues, those are as under :
- i. Whether the Election Petition is within limitation?
 - ii. Whether the Election Petition suffers from Non-Joinder of necessary parties?
 - iii. Does the Petitioner prove that the Respondent has procured the help of the Returning Officer in requisitioning the buses of the “Hon’ble Shri Babanrao Pachpute Vichardhara

Trust”?

- iv. Whether the Respondent proves that on the complaint of the Petitioner the buses were immediately discharged without travelling through the Shrigonda Constituency by the Returning Officer?
- v. Whether the Respondent proves that his name printed on the buses of “Hon’ble Shri Babanrao Pachpute Vichardhara Trust” requisitioned by the Returning Officer were defaced?
- vi. Whether the movement of buses having the name of the Respondent in the Shrigonda Constituency during the period of 4 hours before the polling date amounts to violation of the election code of conduct?
- vii. Does the petitioner prove that the Respondent is guilty of corrupt practices within the meaning of Section 123 (7) of the Representation of People act 1951 of obtaining the assistance of the Returning Officer for requisitioning the buses of “Hon’ble Shri Babanrao Pachpute Vichardhara Trust” and allowing them to travel through the Shrigonda Constituency without defacing the name of the Respondent for furtherance of the election prospects of the Respondent?
- viii. Whether the petitioner proves that the wife of Respondent with the help of booth officers by taking custody of the EVM performed the ceremony of puja of EVM to further the prospects of election of the respondent with the consent of Respondent?
- ix. Whether the petitioner proves that the act of Smt. Pratibha Babanrao Pachpute wife of the Respondent, of performing puja by taking the custody of the EVM amounts to corrupt practice within the meaning of Section 123(7), Section (8) r.w Section 135A (1) (a) and (e) of the Representation of People Act, 1951?

- x. Whether the election of the respondent from 226 Shrigonda Assembly Constituency held on 21st October 2019 is liable to be set aside as it is null and void?”

4. It is to be stated that every fact asserted by one and denied by another does not constitute an issue to be decided in the proceeding. It is only material proposition of law or fact affirmed by one and denied by the other, constitute an issue. Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

5. The proposed issues as regards limitation and necessary parties need not be framed since the petition has been filed within a period of 45 days from the date of the election result was declared.

6. As regards others who were in the fray to be made parties to the petition is concerned, it is to be stated that petitioner has simply sought a relief of setting aside or declaring the election of the respondent No.1 to be void. He has not prayed for any other reliefs such as declaring him to have been a returned candidate etc. In view of Section 83 of the Representation of Peoples Act, the others

who were in the fray, are therefore not necessary parties. As regards other proposed issues are concerned, suffice it to say that the case propounded by the petitioner in his petition, gets duly covered by the issues framed by this Court vide order dated 19.04.2022. Only some minor change is being made in Issue No.(IV) as under:

For the words '*for all or any of the reasons*' be replaced with the words '*for all or any of the aforesaid corrupt practices mentioned in the aforesaid three issues*'.

7. The application thus stands disposed of.

[R. G. AVACHAT, J.]

SMS