

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

**APPLICATION IN EP NO.15 OF 2021 (Exh.6)
IN
ELECTION PETITION NO.13 OF 2019**

Tanaji s/o. Jaywant Sawant
Age : 57 years, Occu: Member of
Legislative Assembly of State of
Maharashtra, R/o. Mugaon, Post- Sonari,
Tal-Paranda, Dist. Osmanabad. (Org. Respondent No.1)
... APPLICANT

VERSUS

1. Rahul s/o. Maharudra Mote,
Age : 45 years, Occu: Agriculture,
R/o. Girwali, Tal-Bhoom, Dist- Osmanabad. (Org. Petitioner)
2. Mahadev s/o. Shankar Lokhande,
Age : 45 years, Occu: Agriculture,
R/o. Girwali, Tal-Bhoom, Dist- Osmanabad.
3. Gurudas s/o. Sambhaji Kamble,
Age : Major, Occu: Social Work,
R/o. Arangao, Tal-Paranda, Dist- Osmanabad.
4. Revan s/o. Wishwanath Bhosale,
Age : Major, Occu: Social Work,
R/o. It, Tal-Bhoom, Dist- Osmanabad.
5. Suryakant s/o. Chandrakant Kamble,
Age : Major, Occu: Social Work,
R/o. Warud, Post : Ulup, Tal-Bhoom,
Dist- Osmanabad.
6. Aryanraje s/o. Kisanrao Shinde,
Age : Major, Occu: Social Work,
R/o. 19, Aryapath, Tal-Bhoom,
Dist- Osmanabad.
7. Nanasahab s/o. Dnyanoba Padghan,
Age : Major, Occu: Social Work,
R/o. Kandari, Tal-Paranda,
Dist- Osmanabad.
8. Baliram S/o. Shankarrao Chede,
Age : Major, Occu: Agriculture,
R/o. Chede Galli, Washi,
Tal-Washi, Dist- Osmanabad.
9. Sanket s/o. Vikramrao Chede,
Age : Major, Occu: Agriculture,
R/o. Chede Galli, Washi,
Tal-Washi, Dist- Osmanabad.

10. Bhairavnath Sugar Works Limited,
through its Managing Director,
Registered Address: S.N. 84/2E/1/5,
Shop No.11-12, Ground Floor, Sawant CNR,
Pune Satara By Pass High Way Chowk,
Katraj, Pune, MH-411046.
11. Shivaji Jaywant Sawant,
Director, Registered Address: S.N. 84/2E/1/5,
Shop No.11-12, Ground Floor, Sawant CNR,
Pune Satara By Pass High way Chowk,
Katraj, Pune, MH-411046. (Org. Respondent Nos.2 to 11)

... **RESPONDENTS**

...

Advocate for Applicant : Mr. A.R. Devakate

Advocate for Respondent: Mr. R.N. Dhorde Senior advocate i/b. H.T. Gaikwad

...

AND

APPLICATION IN EP NO.23 OF 2021 (Exh.9)

IN

ELECTION PETITION NO.13/2019

Rahul S/o. Maharudra Mote
Age : 44 years, Occu: Agriculture
R/o. Girwali, Tal. Bhoom,
Dist. Osmanabad.

... **APPLICANT**

VERSUS

Tanaji S/o Jayawant Sawant
Age : 55 years, Occu: Business,
R/o. Mugaw, Post. Sonari,
Tal-Bhoom, Dist- Osmanabad and Ors.

... **RESPONDENT**

...

Advocate for Applicant : Mr. R.N. Dhorde Senior advocate i/b. H.T. Gaikwad

Advocate for Respondent: Mr. A.R. Devakate

...

CORAM : MANGESH S. PATIL, J.

DATE : 15.02.2022

ORDER :

The petitioner has filed this Election Petition under the Representation of People Act 1951 (hereinafter the Act) challenging election of the respondent No.1 from 243 - Paranda Legislative Assembly Seat held in

September – October 2019 i.e. General Election 2019 on various grounds including for having indulged in corrupt practices as set out in the petition. The respondent No.1 contests the Election Petition by a detailed written statement.

2. By moving Application No.15/2021 the respondent No.1 has raised some preliminary issues seeking dismissal of the petition under Section 86 of the Act on the ground that the election petition does not comply with Rule 5 of the Bombay High Court Rules framed under the Act and for non-compliance with the proviso to Section 83(1)(c) of the Act for failure to file the affidavit strictly in accordance with the format prescribed under Rule 94A of the Conduct of Elections Rules, 1961 (herein after Central Rules).

3. In addition the respondent No.1 also prays for striking down annexures Exhibit – I and Exhibit – J for want of verification.

4. The learned advocate Mr. Devakate for the respondent No.1 vehemently submits that contrary to the instructions contained in Rule 5 of the Bombay High Court Rules the petition nowhere discloses the facts sufficient to precisely demonstrate that it has been filed within the prescribed time limit of 45 days laid down under Section 81 of the Act. He submits that since the provision uses the word 'shall' it is mandatory.

5. Mr. Devakate would then submit that though the petitioner has filed an affidavit in support of the petition by styling it as having been filed in Form 25 as is required by Rule 94A of the Central Rules, it does not

contain precisely as to which of the corrupt practices the petitioner has been aware of from his knowledge or information. Therefore the affidavit being defective, there is no compliance with the provision of Section 83(1)(c). As a second limb of his argument he would submit that it is expected of the petitioner to disclose the source of his knowledge when he is seeking to challenge the election on the ground of corrupt practice but the affidavit does not disclose it.

6. Mr. Devakate then submits that the election petition and annexures A to R have not been duly verified as is required by the Bombay High Court Rules and annexures I and J, in fact, do not bear any endorsement by the Registrar of this Court to constitute it as a due verification. He would submit that all these defects are incurable in nature and the election petition is liable to be dismissed under Section 86 of the Act. He would also point out that though noncompliance with Section 83 does not result and cannot be made a ground to dismiss an election petition under Section 86 as has been held in the matter of **G.M. Siddeshwar Vs. Prasanna Kumar ; (2013) 4 Supreme Court Cases 776**, there has to be some substantial compliance with the provision of Section 83 and the petition can be dismissed at the threshold even on this ground.

7. Mr. Devakate then submits that even the request by the petitioner now by moving Application 23/2021 is not *bona fide*. In reply to the respondent No.1's Application No.15/2021 the petitioner flatly denied about non-compliance as far as want of verification to the Annexures I and J

is concerned but later on has filed the Application No.23/2021 seeking to cure it which cannot be permitted.

8. The learned Senior advocate Mr. Dhorde for the petitioner submits that as far as the point of limitation contemplated under Section 81 is concerned, the petition and the annexures thereto in clear terms demonstrate that the election result was declared on 24.10.2019 and the petition was filed on 05.12.2019 that is within 41 days when Section 81 expects it to be filed within 45 days. He would therefore submit that Rule 5 of the Bombay High Court Rules is merely directory and when the facts and circumstances clearly indicate that the election petition has been filed within the prescribed time limit, it cannot be dismissed merely because the petition does not specifically contain a statement that it has been filed within 45 days.

9. The learned Senior advocate would then submit that as far as objection regarding compliance with the provision of filing affidavit in support of the corrupt practices alleged as is required by Rule 94A of the Central Rules as contemplated under Section 83 (1)(c), the affidavit has been filed in substantial compliance with the mandate of the law, in prescribed Form 25. Even the petition contains the details as to the source of knowledge of the petitioner regarding corrupt practices alleged in the form of disbursement of cheques worth crores of rupees before and after the model Code of Conduct was enforced by the Election Commission. He would submit that the petition specifically mentions about the petitioner

having acquired the knowledge on the basis of an inquiry report submitted the respondent No.10 Sugar Factory as per the direction given by the Returning Officer regarding the payments made by it to various Bachat Gats. By referring to the decisions in following cases he submits that defect in such verification is not fatal to the maintainability of the petition and the defect can be cured :

- **Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Ors.; AIR 1964 Supreme Court 1545,**
- **T.M. Jacob Vs. C. Poulose and Ors.; 1999 AIR SCW 1156,**
- **G. Mallikarjunappa and Anr. Vs. Shamanur Shivashankarappa and Ors.; 2001 AIR SCW 1599,**
- **Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and Ors.; 2004 AIR SCW 6205,**
- **Saritha S. Nair Vs. Hibi Eden ; AIR 2021 Supreme Court 483,**
- **A. Manju Vs. Prajwal Revanna @ Prajwal R & Ors.; (Supreme Court) Civil Appeal No.1774/2020 dated 13.12.2021**

10. As far as the verification under annexures I and J is concerned Mr. Dhorde would submit that it was a sheer *bona fide* mistake of the petitioner as also the officer of this Court. He would submit that it was a sheer human error in as much as the Registrar had failed to sign below these two annexures and that is why by separate Application No.23/2021 request has now been made to cure the defect.

11. I have carefully considered the submissions and perused the record.

12. Taking up the first objection regarding want of specific pleading

as is contemplated under Rule 5 of the Bombay High Court Rules read with Section 81 of the Act, it would be appropriate to refer to the provisions:

“Rule 5. Every election petition shall, in addition to the contents required by the Act, contain information as to the date of election of the returned candidate or if there be more than one returned candidate at the election and the dates of their election are different that later of the two dates and shall also show the election petition is within time as prescribed in section 81 of the Act.”

“Section 81. Presentation of petitions.- (1) An election petition calling in question any election may be presented on one or more of the grounds specified in [sub-section (1)] of section 100 and section 101 to the (High Court) by any candidate at such election or any elector [within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.- in this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) *Sub-Section 2 omitted...*

(3) *Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”*

13. There cannot be any debate as regards the period of limitation provided under Section 81 for presentation of an election petition. It has to be presented within 45 days from the date of election of the returned candidate. As has been fairly conceded by advocate Devakate his objection is not on the ground that the petition has been filed beyond such period but is on the ground that the petition does not contain the statement as to the

date of election of the returned candidate that is the respondent No.1 and does not mention that it is filed within the prescribed time.

14. A careful reading of the provision would demonstrate that what is expected by Rule 5 is that the election petition should contain information with reference to the date of election and date of filing of the petition to demonstrate that it has been filed within the stipulated period of 45 days provided under Section 81. By no stretch of imagination can this be treated as a Rule of pleading. It only expects 'information' to be disclosed in the petition, sufficient enough to demonstrate that it has been filed strictly in accordance with the mandate of Section 81.

15. In paragraph No.9 of the petition it has been specifically mentioned that the result of the election was declared on 24.10.2019. There can also be no dispute that the election petition was presented on 05.12.2019 under the signature of Registrar (Judl.) of this Court and not only this but even apart from the verification it was annexed with the affidavit of the petitioner, filed on the same day i.e. 05.12.2019. Therefore, in my considered view there is no violation of the provision of Rule 5 of the Bombay High Court Rules read with Section 81 of the Act, going to the root of maintainability of the petition. This ground being put forth by the respondent No.1 is not sustainable.

16. So far as the objection regarding non-compliance with the provision of Section 83 (1)(c) and the proviso annexed thereto read with Rule 94A of the Central Rules it would be appropriate to reproduce the

provisions at the inception:

“83. Contents of petition.—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

CHAPTER III.—Trial of Election Petitions

86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

17. To begin with it needs to be reiterated that Section 86 of the Act prescribes that an election petition can be dismissed for non-compliance of Section 81, 82 and 117. The conspicuous absence of Section 83 shows that an election petition cannot be dismissed for want of compliance with that provision which *inter alia* requires the petition and the annexures to be signed and verified in the prescribed manner. Still, a petition can very well be struck off at the threshold for non-compliance with this provision. This is

what precisely has been considered elaborately by the Supreme Court and concluded in paragraph No.52 in the case of **G.M. Siddeshwar** (supra) in following words:

“52. The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions therefore. However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold.”

After referring to catana of decisions it has been further laid down that any defect in compliance with the provision of Section 83 can be allowed to be rectified before a petition is dismissed at the threshold.

18. Bearing in mind the above proposition if one examines the verification endorsed at the bottom of the petition the petitioner has filed the affidavit styled as one filed in ‘Form 25 (Rule 94A)’. In paragraph No.1A he has specifically mentioned as to which of the paragraphs from the election petition touching the allegations of corrupt practices are true to his knowledge and which other paragraphs are according to his information. The basic objection of Mr. Devakate is to the fact that this affidavit does not disclose the source of knowledge touching the allegations of corrupt practices and that this affidavit in addition to paragraph No.1A and B contains many other paragraphs repeating the allegations in the petition. Suffice for the purpose to observe that it is not the form but the substance which should always weigh in such matters. In catana of decisions of the

Supreme Court (supra) it has been consistently laid down that there has to be substantial compliance with requirement of filing an affidavit under 83(1)(c) read with Rule 94A. Merely because the petitioner has additionally included by way of repetition several other facts, when otherwise this affidavit is clearly in the prescribed Form 25 showing as to which of the contents of the petition the petitioner has the knowledge about and which of them he is making on the basis of his information, the submission of advocate Devakate cannot be accepted.

19. In the petition itself the petitioner has disclosed the source of knowledge as to how the respondent No.1 could manage to issue several cheques to different Bachat Gats before and after the Code of Conduct was notified by the Election Commission and when this affidavit is an integral part of the election petition which has been verified and sworn on the same day, it cannot be said that it does not comply with the provision of Section 83(1)(c) and the proviso thereto.

20. So far as the Annexures I and J are concerned, those are at page No.909 and 912. Admittedly, a rubber stamp in the usual proforma has been endorsed below the verifications with these annexures wherein rest of the contents have been filled in like, the name of the affiant, age, occupation, address and the name of his advocate. Even a date has been mentioned in hand and signature of the petitioner affiant appears below it but the place of signature of Registrar (Judl.) is vacant. Bearing in mind the fact that these annexures I and J were not filed independently but were part

of the entire compilation annexed to the election petition and when it can be seen that various other annexures were also accompanied by similar statements of verification bearing a similar endorsement in the rubber stamp filled with the contents in hand and bear the signature of the Registrar (Judl.) in the space provided, absence of such signature of Registrar (Judl.) on these two annexures is clearly be a human error. When the Registrar (Judl.) seems to have endorsed on the annexures at serial number which occur before and after annexures I and J, though it is a defect, an opportunity needs to be extended to the petitioner to cure it as has been repeatedly laid down by the Supreme Court in the aforementioned decisions. This is what has been precisely claimed by the petitioner by filing Application No.23/2021. He has requested to cure such defect by placing these annexures before the Registrar (Judl.) for proper verification once again. In my considered view , therefore, there is no substance even in this ground being put forth by the respondent No.1 to dismiss the petition at the threshold.

21. The Application No.15/2021 is rejected. The Application No.23/2021 is allowed. Let the petition be placed before Registrar (Judl.) to enable the petitioner to verify the Annexures I and J.

(MANGESH S. PATIL, J.)

After pronouncement of the order, the learned advocate Mr. Devakate for the respondent No.1 submits that the order to the extent it

allows the Application No.23/2021 permitting the petitioner to rectify the error may be suspended for a period of three weeks to enable him to challenge it.

2. The learned advocate for the applicant strongly opposes the request on the ground that already much time has been lost and a term of two years only now remains.

3. Considering the nature of the dispute and particularly the challenge being put up by the respondent No.1, operation of the order to the extent of allowing the Application No.23/2021 stands stayed for a period of three weeks with a specific understanding that no extension shall be granted thereafter.

(MANGESH S. PATIL, J.)

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