

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

CIVIL APPLICATION (O) NO. 211/2022 IN CIVIL APPLICATION (O) NO. 754/2020 (D)

IN

ELECTION PETITION NO. 10/2019

(NANA FALGUNRAO PATOLE & ANOTHER **VERSUS** NITIN JAIRAM GADKARI & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Ravi Jadhav with Shri S.I. Khan, counsel for the applicants/petitioners.
Shri S.V. Manohar, Senior Advocate with Shri D.V. Chauhan, counsel for the
non-applicant no.1/respondent no.1.

CORAM : A. S. CHANDURKAR J.

DATE ON WHICH ARGUMENTS WERE HEARD : 16TH SEPTEMBER, 2022.

DATE ON WHICH ORDER IS PRONOUNCED : 30TH SEPTEMBER, 2022.

By this application the applicants seek review of the order dated 17.12.2021 passed in Civil Application (O) No. 754 of 2020. By that order the application preferred by the non-applicant no.1 under provisions of Order VI Rule 16 of the Code of Civil Procedure, 1908 (for short, 'the Code') was partly allowed and paragraphs 7 (i), (iv), (iv-a), (v), (vi), (vii), (viii), (ix), (ix-a), (ix-b), (x), (xi) and (xii) were directed to be struck off as they did not indicate any material fact to seek the reliefs sought in the election petition. Similarly, the pleadings in paragraphs 7(iv-A), (ix) and (ix-a) alleging commission of corrupt practice by the returned candidate were also directed to be deleted since the source of information of the election petitioners on the basis of which such pleadings had been made had not been disclosed therein.

2. The learned counsel for the applicants submitted that this Court committed an error in appreciating various annexures filed alongwith the election petition which indicated the source of information on the basis of which averments were made in the election petition. Since there was *prima-facie* material available on record in the form of such annexures they supported the relevant pleadings. By failing to take into consideration the effect of those annexures the aforesaid paragraphs were directed to be deleted on the premise

that the source of information was not disclosed. It had resulted in an error apparent on the face of record and hence review jurisdiction had been invoked. In support of the aforesaid submissions, reliance was placed on the decisions in *Ajay Arjun Singh Versus Sharadendu Tiwari & Others* [AIR 2016 SC 4087], *Harkirat Singh Versus Amrinder Singh* [(2005) 13 SCC 511] as well as copy of Form 26 under Rule 4A of the Representation of People Rules, 1951.

3. The learned Senior Advocate for the returned candidate at the outset raised an objection to the tenability of the review application on the ground that under the provisions of the Representation of People Act, 1951 (for short, 'the Act of 1951') there was no power conferred on the Court trying the election petition to review its own order. Referring to the provisions of Section 87 of the Act of 1951 it was submitted that under sub-Section (1) thereof every election petition was required to be tried by the High Court "as nearly as may be" in accordance with the procedure applicable under the Code to the trial of suits. In view of aforesaid provision, it was only the procedure prescribed under the Code that was applicable in a trial of an election petition. The right to invoke the review jurisdiction was not inherent and the same required conferment of power in that regard. In absence of any substantive provision in the Act of 1951 conferring the power of review on the Court while trying an election petition, a review application seeking review of an order passed in such proceedings was not maintainable. The only exception to the aforesaid principle was when the jurisdiction under Article 226 of the Constitution of India was exercised. Since the present proceedings were purely governed by the provisions of the Act of 1951 and there being absence of any power of review the application itself was not maintainable. In that regard, the learned Senior Advocate placed reliance on the decisions in *Jyoti Basu & Others Versus Debi Ghosal & Others* [AIR 1982 SC 983], *Narayan Yeshwant Nene Versus Rajaram Balkrishna Raut & Another* [AIR 1961 Bombay 21], *Brijmohan Lal Versus Election Tribunal Allahabad & Others* [AIR 1965 Allahabad 450] and *Ram Sahu (Dead) through L.Rs. Versus Vinod Kumar Rawat* [AIR 2020 SC (Supp) 1017]. Without prejudice to the aforesaid it was submitted that there was no error apparent on the face of record and the

applicants were infact seeking re-consideration of the original application under the garb of review. The application was therefore liable to be dismissed.

In response it was submitted by the learned counsel for the applicants that the review application was maintainable. Review jurisdiction could be invoked in view of provisions of Section 87(1) of the Act of 1951 read with Sections 114 and 151 of the Code.

4. In the light of the objection to the tenability of the review application, the question to be considered in the light of aforesaid contentions is whether the Court trying an election petition under Section 86 of the Act of 1951 has the power to review its own order? It is well settled that the power to review is not an inherent power and the same must be granted by the statute under which such order is sought to be reviewed. Such power can be exercised only when the same is conferred on the Court. It is also to be borne in mind that an election petition is not an action at common law nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute has made applicable would apply. This has been so held in *Jyoti Basu & Others* (supra). Therein the question as to whether the provisions of the Code could be invoked to do something that the Act of 1951 did not permit, was considered. It was held that the provisions of the Code apply subject to the provisions of the Act of 1951 and any Rules made thereunder. Admittedly, there is no such provision in the Act of 1951 that confers the power of review on the Court. Section 87 prescribes the procedure to be followed by the Court while conducting a trial of an election petition. Under Section 87(1) of the Act of 1951 every election petition is required to be tried by the High Court “as nearly as may be” in accordance with the procedure applicable under the Code to the trial of suits.

5. Under the Code, Section 114 is the substantive provision that confers power of review on a civil Court. Order XLVII of the Code prescribes the procedural conditions that are required to be taken into consideration as well as the scope thereof while exercising the power of review. In *Ram Sahu Through L.Rs.* (supra), the Hon’ble Supreme Court has held that while the substantive

power of review is conferred by Section 114 of the Code an order can be reviewed only on the prescribed grounds mentioned in Order XLVII Rule 1 of the Code. The powers of review cannot be exercised as an inherent power. It is thus clear from the aforesaid that in the absence of any express conferment of the power of review in the Act of 1951, such power cannot be resorted to by relying upon the provisions of the Code.

6. The Division Bench of this Court in *Narayan Yeshwant Nene* (supra) considered the very same question as regards the power of the Court trying an election petition to review its own order. The facts therein indicate that the election of the returned candidate was challenged on the ground that he was guilty of corrupt practices that had vitiated the election. That application was dismissed by the Tribunal constituted under the Act of 1951. An appeal was preferred to the High Court under Section 116A of the Act of 1951 as it then stood. That appeal was allowed to be withdrawn by the Court. Subsequently a review of that order was sought. The Division Bench held that the Act of 1951 did not provide for any review of the judgment of the High Court on any ground. It observed that it was well settled that a Court is not invested with the power of review unless such power is expressly conferred. The Legislature had not conferred a power of review upon the High Court to review its decisions rendered in an appeal under the Act of 1951 but had declared the order to be final and conclusive. This decision clearly holds that there is no provision for review under the Act of 1951.

In *Brijmohan Lal* (supra), the Division Bench of the Allahabad High Court considered the question as to whether a Tribunal constituted under Section 86 of the Act of 1951 as it then stood had the power to review its orders like a civil Court under Section 114 read with Order XLVII Rule 1 of the Code or Section 151 thereof. It was held that the power of review either by the appellate Court or the Court which made the decision must be conferred by the Statute. It was concluded that an Election Tribunal constituted under Section 86 of the Act of 1951 had no power to review its earlier decision and it did not possess any

inherent powers of an ordinary Court. This decision too supports the objection as regards the tenability of the review application in the present case.

7. Reference can also be made to the decision of the Hon'ble Supreme Court in *Inamati Mallappa Basappa Versus Desai Basavaraj Ayyappa & Others* [AIR 1958 SC 698] wherein it is held that an election contest is a purely statutory proceeding unknown to common law and the Court possesses no common law power. Under the Act of 1951 the procedure for trial before the Tribunal as well as the powers of the Tribunal trying an election petition are treated separately.

The provisions of Section 87 of the Act of 1951 have been considered by the Hon'ble Supreme Court in *Dr.Rajendra Kumari Bajpai Versus Ram Adhar Yadav & Others* [(1975) 2 SCC 447]. The point considered was whether the provisions of Order XI of the Code could be applied to the trial of election petitions in the High Court by virtue of Section 87 of the Act of 1951. It was held that Order XI of the Code was as much a part of the procedure as Order X of the Code relating to trial of suits in matters relating summoning of witnesses, documents, etc. In paragraph 13 of the said decision, it was held as under:-

“13. In these circumstances it cannot be said that Section 87 of the Act either expressly or impliedly excludes the application of Order XI of the Code of Civil Procedure. In fact we are clearly of opinion that Section 87 of the Act is of the widest amplitude so as to cover the entire procedure mentioned in the Code of Civil Procedure with only two exceptions – (i) where the Act contains express provision for certain matters which are inconsistent with the procedure prescribed by the Code; and (ii) where a particular provision of the Code of Civil Procedure is either expressly or by necessary intendment excluded by the Act. Subject to these two exceptions, Section 87 is very wide in its connotation.”

8. The judgment of the Division Bench of this Court in *Narayan Yeshwant Nene* (supra) clearly holds that the Act of 1951 does not provide for any review of any order/judgment of the High Court in proceedings under the Act of 1951. The said decision binds this Court. As a result of the foregoing discussion, the preliminary objection as raised to the tenability of the review application deserves to be upheld. It is accordingly upheld and the review application is dismissed as not maintainable. Order accordingly.

(A. S. CHANDURKAR, J.)

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