

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Misc. Civil Application No.167 of 2022 (For Review)

In
Writ Petition No.2688 of 2021 (D)

Adv. Ram Khobragade

Versus

Shri Narendra Damodhardas Modi and others

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

Applicant in person.

CORAM : SUNIL B. SHUKRE & ANIL S. KILOR, JJ.

DATE : 10th JUNE, 2022

1. Heard the applicant appearing in person.
2. The applicant is aggrieved by the order passed by this Court on 6-8-2021, whereby this Court dismissed Writ Petition No.2688 of 2021 filed by the applicant under Article 226 of the Constitution of India. In the said Writ Petition, the applicant had sought the following reliefs :

“i) It is, therefore prayed that this Hon’ble Court may be pleased to grant this petition passing the order declaring Respondent No.1 guilty of corrupt practices under Sections 123(3), (3A) (7) and 125 of the Representation of People Act, 1951 and accordingly declare him disqualified, as provided in the above sections; and

(ii) to declare Respondent No.2 also disqualified under sections 123(3) and 123(3A) of the Representation of the People Act, 1951; and

(iii) to issue direction to the Election Commission of India to publish all those Dissenting Notes of Shri Ashok Lawasa, Second Seniormost Election Commissioner, alongwith copies of clean chits given to Respondent No.1 & 2 to prove the

honesty and integrity of Commission's orders in respect of these two leaders of Bhartiya Janta Party; and

(iv) Finally any other direction/order in the best national interests of the transparent democratic process in Election Commission of India and save the country from further erosion of democratic values, enshrined in the Preamble of the Constitution of India, by the founding Fathers of the Indian Independence movement and scarified their lives to restore and uphold democratic values devoid of Communal hatred and communal disharmony for the betterment of secular demarcation process in the country and all around development of the countrymen."

3. The reliefs so sought by the applicant were founded upon the contention of the applicant that the respondent No.1 in the petition, who is also the respondent No.1 here, had indulged in corrupt practice under Sections 123(3), (3A), (7) and 125 of the Representation of the People Act, 1951. The applicant, upon such basic ground, sought disqualification of the respondent No.2 in the petition and also in this application. On this ground, the applicant also sought a direction to the Election Commission of India to publish all the dissenting notes of Shri Ashok Lawasa, the then Election Commissioner, alongwith the copies of favourable findings given by the respondent Nos.1 and 2 and to prove the honesty and integrity of the orders passed by the Election Commission of India in respect of the respondent Nos.1 and 2.

4. The Writ Petition filed by the applicant, as stated earlier, was founded on the premise of the respondents indulging in corrupt practice. Whenever such an objection is raised, the person, who is a voter, has a right to question the election of the elected representative on the ground that he has indulged in corrupt practice and such a petition can be filed under Section 80 of the Representation of the People Act, 1951. The applicant takes an exception to such a finding

recorded by this Court.

5. According to the applicant, the petition filed by the applicant is not an election petition and it is a petition which seeks to declare disqualification of the respondent Nos.1 and 2 on the ground of the respondent No.1 indulging in corrupt practice and is also a petition which seeks to move the Election Commission of India for taking appropriate action against the respondent Nos.1 and 2, in particular the action relating to proving the honesty and integrity of the orders passed by the Election Commission of India in respect of the respondent Nos.1 and 2. Thus, the applicant also does not deny that the reliefs sought by him in the petition were based upon the allegation of indulging in corrupt practice by the respondent No.1 or by both the respondents.

6. If the applicant is seeking disqualification of the respondents on such an allegation, the appropriate remedy for him would be the one as provided under Section 80 of the Representation of the People Act, 1951. In fact, indulging in corrupt practice is one of the grounds available for an aggrieved person for seeking declaration of the election to be void under Section 100 of the said Act.

7. The applicant submits that this Court has power to declare both the respondents disqualified on the ground that they have indulged in corrupt practice and this power is conferred upon this Court under Section 99 of the Representation of the People Act. Section 99 of the said Act deals with the power of the High Court trying an election petition. This proposition of law pertains to the nature of the orders that may be passed by the High Court trying an election petition. A writ petition is not an election petition and, therefore, the power of declaring a returned candidate to be

disqualified cannot be exercised by this Court under Article 226 of the Constitution of India. Even otherwise, whether a person has indulged in corrupt practice is a matter of evidence and unless the evidence is brought on record, and that too in accordance with the procedure prescribed by law, nothing can be done by this Court in exercise of its writ jurisdiction.

8. The applicant further submits that he was not given any hearing by this Court. With due respect, we must say that proper hearing was afforded to the applicant. Therefore, it is not correct to say that no hearing has been granted to the applicant. Granting of hearing to the applicant is also a fact which is prominently noted in the order which is sought to be reviewed here.

9. The applicant further submits that some 'satirical' remarks have been passed by this Court. Again, with due respect, we beg to differ. Close perusal of the order in question would demonstrate this fact.

10. We thus find that no case has been made out by the applicant for reviewing the order in question.

11. The review application stands dismissed with the costs of Rs.500/- (Rupees Five Hundred) which shall be deposited in the account of the High Court Legal Services Sub-Committee, Nagpur, within a period of four weeks from the date of this order.

(ANIL S. KILOR, J.)

(SUNIL B. SHUKRE, J.)