



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ELECTION PETITION NO.6 OF 2019

WITH

APPLICATION IN EP NO. 4 OF 2023

IN EP/6/2019

MOHAN FATTUSING RATHOD

VERSUS

HEMANT SHRIRAM PATIL AND OTHERS

AND

ELECTION PETITION NO. 9 OF 2019

WITH

APPLICATION IN EP NO. 13 OF 2022

IN EP/9/2019

ALAMGIR MOHAMMAD KHAN

VERSUS

SANJAY (BANDU) HARIBHAU JADHAV AND OTHERS

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Advocates for Petitioners : Mr. Sontakke Gajanan K.,
Ms. Sontakke Priyendra G.

Advocates for respective Respondents : Mr. A. M. Hajare a/w
Mr. A. B. Kale, Mr. Swapnil S. Rathi, respectively.

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CORAM : S. G. MEHARE, J.

DATE : 08.02.2024

PER COURT :-

1. Since both applications have similar objections, they are heard together and decided by the common order.

2. The applicants/respondent No.1 filed these applications for rejection of the plaint under Order VII Rule 11 of the CPC on the following grounds :

(i) The plaint does not disclose the cause of action, and there are no triable issues.

(ii) It does not disclose the material facts and particulars.

(iii) There is total non-compliance with Section 83(1)(a) of the Representation of the People Act, 1951 (for short 'the 1951 Act').

(iv) Rule 94-A of the Conduct of the Elections Rules 1961 (for short 'Rules 1961') has not been complied with.

(v) The affidavit sworn in Form No.25 does not mention the corrupt practices committed by a particular person or by respondent No.1, 28 to 30.

(vi) The nomenclature of the petitioners is incorrect.

(vii) There are no pleadings of corrupt practice as defined in Section 123 of the Peoples Act, 1951.

(viii) The difference of 353 votes does not materially affect the election results.

3. In reply affidavit, the respondents denied all the grounds for rejecting the plaint. It has been contended that in paragraph No.24, the cause of action has been pleaded specifically. The material particulars have been pleaded in the petitions. Section 83(1)(a) of the 1951 Act has been complied with by annexing a concise statement of material facts along with the petitions, which is a requirement as per Section 83 of the 1951 Act. Compliance with Section 83 has been done. The pleadings are sufficient to claim the relief of declaring the election of respondent No.1 as null and void. The petitioners have complied with Rule 94-A of the Rules 1961. Respondent No.1 secured 353 invalid votes in his favour by tampering with the electronic device, which affected the election result.

4. Learned counsel for the petitioners has vehemently argued that compliance with the requirements of the Rule and sections mentioned in the application is essential. No specific allegations of corrupt practices have been averred against the applicants. No details of such practices have been given in the plaint. There are allegations of tampering with Electronic Election Machain (EVM for short). However, it is a vague

pleading. Learned counsel for the applicants submits that Section 83(1)(a) of the 1951 Act has not been complied with. The mandatory requirements of the plaint are lacking. Hence, the plaint deserves to be rejected.

5. To bolster her argument, they relied on the case of *Sanjay Sadashivrao Mandlik (In the matter between Dr. Aruna Mohan Mali) Vs. The Election Commission of India and others, Application (Lodging) No.6 of 2020 in Election Petition No.15 of 2019* with other applications, dated 26.02.2022.

6. Learned counsel for the non-applicants/plaintiffs has vehemently argued that the legal requirements have been complied with. She relied on the cases of *Thangjam Arunkumar Vs. Yumkham Erabot Singh and Others ; 2023 DGLS (SC) 912* and *A. Manju Vs. Prajwal Revanna @ Prajwal R. and others; 2021 DGLS (SC) 947* and vehemently argued that the requirement to file an affidavit under the proviso to Section 83(1)(c) is not mandatory. It is sufficient if substantial compliance has been done. As it is a curable defect, an opportunity may be granted to file the necessary affidavit. It is not the case that the affidavit, as required in Form 25, has not been submitted with the petitions. Since the Hon'ble Supreme

Court has laid down the law that any such defect is curable, the plaint could not be rejected for such defects in the plaint.

7. She further argued that the plaint averments show a concise statement. Therefore, it has been complied with. The objection about a concise statement is unfounded.

8. Section 83(1)(a) of the People Act 1951 provides that it shall contain a concise statement of the material facts on which the petitioner relies. Rule 94-A of the Rules, 1961 provides that the affidavit referred to in the proviso to sub-section (1) of Section 83 shall be sworn in before a Magistrate of the First Class or a notary or a Commissioner of Oaths and shall be in Form 25.

9. The plaintiff in E.P.6/2019 pleaded that after 32 rounds, excluding postal 6572 votes, the total votes were 11,52,195. As per Rule 64 of the Rules 1961, the declaration of the results and return of the election have to be declared by the Returning Officer in Form 21-C and 21- E. Form E, dated 23.05.2019 as provided by the Returning Officer, reveals the total number of valid votes was 11,53,274. There was a difference in the total number of valid votes in Form No.21-E. There was also a

difference in valid votes in Form 20 and Form 21-E. The Returning Officer failed to maintain the record of the total number of valid votes. There was a difference in the total number of votes of polling votes and the final sheet Form-20. Thus, there was a difference of 353 votes. There has been a tampering in counting the votes. Respondent No.1, in connivance with respondent Nos.28 to 30, was indulged in the tampering with the voting machines. He is a man of muscle and power. He manipulated the voting machine, which resulted in victory towards him. Respondent No.1 and the Returning Officers were hand in glove with each other and successful in securing the victory for respondent No.1. He has also alleged that tampering with the electronic device resulted in a difference in invalid votes. By tampering with the devices, the election of 15-Hingoli Parliamentary constituency is materially affected. He has pleaded in detail about the supply of VVPAT. However, the Returning Officer failed to comply with the manual of electronic voting machines and VVPAT (July 2018). Respondent No.1 successfully managed the respondent authorities to earn the victory.

10. Except for the Constituency and difference of votes, the pleadings of the plaintiff in E.P No 9/2019 are identical. Hence it is not reproduced.

11. On the basis of the above pleadings, the learned counsel for the plaintiffs submits that a concise statement of the material facts has been made in the petitions. She referred to page No.24 of the plaint and argued that a concise statement had been made. She relied on the case of *Harkirat Singh Vs. Amrinder Singh ; 2006 AIR (SC) 713*. In this case, the case of *S. N. Balakrishna etc. Vs. George Fernandez and others etc. ; (1969) 3 SCC 238*. has been referred to in paragraph No.27, referring to the relevant provisions of the Act, the Hon'ble Supreme Court held that Section 83, which provides that the election petition must contain a concise statement of material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as a full 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 is mandatory. The word material shows that the facts necessary to formulate a complete cause of action must be stated. The omission of a single material fact leads to

an incomplete cause of action, and the statement of claim becomes bad.

12. She has further vehemently argued that the petitioners never levelled the allegations of corrupt practice against the respondents. She has referred to the definition of “Corrupt Practices” under Section 123 of the People Act 1951 and submitted that the plaint averments are not about the corrupt practice. The plaint averments are the concise and material statement of the grounds for declaring the election to be void under Section 100(d)(iii) of the 1951 Act. She has vehemently argued that the material and concise statements have been made in the plaint to indicate that respondent Nos.1, in collusion with the Returning Officer, has received the vote improperly and there was a difference in the votes counted and declared in Form 20 and 21-E. Respondent No. 1 has improperly received the votes, i.e., the ground for filing petitions. Therefore, the details about when and how the corrupt practice has been played are not grounds for consideration before this Court.

13. As against this, the learned counsel for respondent No.1 has vehemently argued that there are no details as to how and

when respondent No.1 was in collusion, and tampered with the electronic voting machine. Such are the serious allegations. Therefore, the material particulars should have been pleaded specifically. However, the plaint is silent about such serious allegations. The EVMs were not under the control of respondent No.1. Therefore, it does not complete the cause of action. The allegations levelled against respondent No.1 do not materially affect the election. Considering the difference in votes between the petitioners and respondent No.1, there was a large margin. In any way, the result of the election of respondent No.1 has not been materially affected. Therefore, it cannot be said that respondents have received improper votes, and the election is void. In the case of Sanjay Sadashivrao Mandlik (*supra*) in paragraph No.18, this Court has observed that in Sub Clause (d) of Section 100, the important wording therein is the result having been “materially” affected. Therefore, it has to be pleaded that such non-compliance had materially affected the result of the election. It has also been observed that there was a vast difference between the votes polled for respondent No.3 and those for the petitioners. Therefore, it cannot be said that such violation, if any, has materially affected the result of the election.

14. Learned counsel for the plaintiff, further referring to the observations on material facts in the case of *Harkirat Singh (supra)* has argued that the material facts have been pleaded to comply with the requirement of Section 100(d)(iii) of the 1951 Act. The plaint averments satisfied the disclosure of the cause of action in specific paragraphs. In the said case, it has also been observed that the expression ‘material facts’ is neither defined in the Act nor in the Code. It may be stated that the material facts are those facts upon which the parties relies for his claim or defence. In other words, ‘material facts’ are facts upon which the plaintiff’s cause of action or the defendant’s defence depends. What particulars could be said to be ‘material facts’ would depend upon the facts of each case, and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts that must be proved at the trial by the parties to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the parties.

15. Even if it is assumed that the plaint is not filed on the allegations of the corrupt practice as defined under Section 123 of the 1951 Act, there should be a complete pleading to establish that respondent No.1, in collusion with the Returning

Officer has received the votes improperly and such improper reception of the votes must materially affect the result of the election of a return candidate. The plaint averments reveal that there was a difference between votes mentioned in Form 20 and 21-E. The concise statement, as pointed out by the learned counsel for the plaintiff on page No.24, revolves around the failure of the Returning Officer to perform his duties. The said concise statement is totally silent as to how respondent No.1 has received the votes improperly, materially affecting the election result. However, in the plaint there are allegations in paragraph No.12 that there has been tampering in counting the votes. Respondent No.1, in connivance with respondents Nos.28 to 30 had indulged in tampering with the machine. He is a man of power and muscle who manipulates the voting machines. However, the plaint is lacking how, when and the manner in which the EVMs were tampered with collusion with respondent Nos.28 to 30. There is a vast margin of votes between the plaintiff and respondent No.1. Reading the plaint as a whole, the Court is of the opinion that it is not complete to believe that it is a concise statement of material facts affecting the result of the election. Furthermore, considering the vast difference in the margin of votes between the plaintiff and defendant No.1, the observation of this Court in the case of

Sanjay Mandlik (supra) that the vast difference between the votes polled for respondent No.3 and the petitioner, it cannot be said that such violation, if any has materially affected the result of the election squarely applies to the case in hand.

16. Though the arguments of the learned counsel for the plaintiff revolve around, no allegations of corrupt practice, the plaintiff is not exempted from making the concise statement of the allegations seeking the election of defendant No.1 void and null. The cause of action is a bundle of facts. The allegations were in the nature of doing something wrong. Collusion with someone requires pleading to believe that the Returning Officers were working under the influence of respondent No.1. Bare allegations are not sufficient to prove the charges of securing improper votes. It does disclose the cause of action. The case laws relied upon by the plaintiff do not support him.

17. For the above reasons, this Court is of the view that the concise statement made in the plaint is not on material facts and does not have any material effect on the election of defendant No.2. Hence, both applications in election petitions deserve to be allowed.

ORDER

- (i) Both applications in election petitions are allowed.
- (ii) The complaints stand rejected under Order 7 Rule 11(d) of the CPC.

(S. G. MEHARE, J.)

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vmk/-