

jsn

Digitally
signed by
JITENDRA
SHANKAR
NIJASURE
Date:
2024.08.03
16:25:51
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ELECTION PETITION NO.3 OF 2024

Rajan Baburao Vichare

...Petitioner

Versus

Naresh Ganpat Mhaske & Ors.

...Respondents

Darius Khambata, Senior Counsel, Munir Ahmed, Sushma Mishra,
and Shreenandini Mukhopadhyay i/b. Sanjay Gawde for the
Petitioner.

CORAM : R.I. CHAGLA J.
DATE : 1ST AUGUST, 2024.

ORDER :

1. The Election Petition has been presented under Section 81 of the Representation of People Act, 1951 ("the Act") challenging the election result dated 4th June, 2024 of the 25 – Thane Parliamentary Constituency – 2024 and seeking declaration of the Respondent No.1's election from the constituency as void under Section 100(1) (b), 100(1), (d) (i) and / or 100(1) (d) (ii) and / or 100(1) (d) (iv) of the Act.

2. Mr. Darius Khambata, the learned Senior Counsel appearing for the Petitioner has taken this Court through the relevant

provisions of the Act and in particular Section 86 which provides for trial of the Election Petition and which requires compliance of Section 81 or Section 82 or Section 117 of the Act. Non compliance thereof would result in the Election Petition being dismissed.

3. Mr. Khambata has taken this Court through the provisions of Section 81, 82 and 117. He has referred to the grounds in the Election Petition which impugnes the nomination filed by the Respondent No.1 in respect of the aforementioned election. He has submitted that the nomination form required inter alia the Respondent No.1 to disclose whether Respondent No.1 has been convicted for any criminal offence. He has submitted that the Respondent No.1 falsely disclosed that he has not been convicted for any criminal offence.

4. Mr Khambata has relied upon the decision of the Chief Judicial Magistrate, Thane dated 29th February, 2016 which convicted Respondent No.1 under Section 248 (2) of the Code of Criminal Procedure to the offences punishable under Section 147 including therein offence punishable under Sections 143, 323 r.w 149 and 506 r.w 149 of IPC. This was carried in appeal and the Appeal

Court by an order dated 9th February, 2017 dismissed the Appeal.

5. Mr. Khambata has submitted that the Petition has made out the grounds specified in sub Section 1 of Section 100 and Section 101 of the Act for declaring the election of Respondent No.1 to be void and for the Petitioner to be declared as having been elected.

6. Mr. Khambata has further referred to paragraph 8 of the Petition wherein it is stated that the polling in the said election was conducted in the Thane constituency on 20th May, 2024 and the result was declared on 4th June, 2024. The Petition has been filed on 12th July, 2024 i.e. within 45 days from the date of election of the returned candidate. He has submitted that the Election Petition clearly meets the requirement of the Section 81(i) Act. There is also compliance of the requirement under 81(3) of the Act as the Election Petition has been accompanied by as many copies thereof as there are Respondents mentioned in Petition and there is no objection raised by the department on the filing of the Election Petition.

7. Mr. Khambata has also submitted that the requirement under Section 82 of the Act has also been complied with by the

Petitioner as the Petitioner has joined all the contesting candidates as Respondents in the Petition particularly considering that the Petitioner has sought a declaration that the election of the returned candidates is void and a further declaration that the Petitioner be declared as duly elected.

8. Mr. Khambata has further submitted that, the Election Petition also meets the requirement under Section 117 of the Act as at the time of presenting the Election Petition, the Petitioner has deposited in this Court, in accordance with Rules of this Court, a sum of Rs.2,000/- as security for the costs of the Petition.

9. Mr. Khambata has accordingly submitted that all requirements under Section 86(1) of the Act have been complied with and the Election Petition may proceed for trial. Further, the Election Petition has been referred to this bench by the Hon'ble the Chief Justice for trial of the Election Petition under Section 86(2) of the said Act.

10. Mr. Khambata has submitted that under Rule 9 of the Rules framed by this Court with regard to the Act, summons is

required to be issued and served through Sheriff in Greater Mumbai to the Respondents for filing written statement and settlement of issues.

11. Having considered the submissions, it does appear that the present Election Petition has complied with all the requirements under Section 86(1) of the said Act as the Election Petition is presented on one or more of the grounds specified under sub Section 1 of Section 100 and 101 of the Act and is within the time prescribed as required under Section 81(1) of the Act, and there is compliance with Section 81(3), 82 and 117 of the said Act. Accordingly the Election Petition has been properly presented in this Court for trial.

12. The Hon'ble the Chief Justice has assigned the above Election Petition to this bench under Section 88(2) of the Act.

13. Accordingly, issue summons to the Respondents for filing written statement and settlement of issues which shall be served on the Respondents through the Sheriff's Office, returnable on 4th September, 2024.

14. In addition to Court service summons, the Petitioner is at liberty to serve by way of private notice, the Interim Application along with Election Petition which shall be served within a period of four weeks from today and Affidavit of Service shall be filed prior to the next date.

15. Stand over to 4th September, 2024.

[R.I. CHAGLA J.]