



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

CIVIL APPLICATION (CAO) NO. 219 OF 2022
WITH
CIVIL APPLICATION (CAO) NO.437/2021
IN
ELECTION PETITION NO. 15 OF 2019

DHANRAJ S/O. RAGHUNATH MUNGLE

....Vs....

THE CHIEF ELECTORAL OFFICER, MAH. GENERAL ADMINISTRATIVE DEPARTMENT, MANTRALAYA, MUMBAI

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

Court's or Judge's orders

Shri I.G.Meshram, Advocate for the petitioner.
Ms. Neerja Choubey, Advocate for respondent nos. 1 to 3.
Shri G.S.Singh, Advocate h/f. Shri S.P.Bhandarkar, Advocate for re-
spondent no. 4.
Shri N.R.Patil, AGP for State.

CORAM: SMT. M.S.JAWALKAR, J.

DATED: 19/07/2024.

The present application is filed by the respondent no. 4 under Order 7, Rule 11 of the Code of Civil Procedure, 1908 read with Sections 81, 83 and 86 of the Representation of People Act, 1951 (hereinafter referred to as "the R. P. Act") for dismissal of the Election Petition in limine.

2. It is the contention of the respondent no.4 that the petitioner miserably fails to disclose any cause of action as to warrant interference with the result of the election to the 74-Chimur Legislative Assembly Constituency seat in which the respondent no. 4 was declared as elected by a substantial margin though the petition is filed on the sole ground of Commission of Corrupt practice (Not by the Returned candidate, but by the respondent nos. 1, 2 and 3, who are the election

officers). However, there are several fatal and incurable defects in the petition. There is no compliance of the mandatory provisions of the R.P. Act. Such a vague and baseless Election Petition cannot be put to trial and deserves to be dismissed in limine. There is no compliance of Section 81(3) of the R.P. Act.

3. The copy of the Petition, Index, Synopsis, Annexures and the contents thereof served upon the returned candidate are not attested to be a “True Copy” as prescribed by Section 81(3) of the R.P. Act.

4. The learned counsel for the respondent no. 4 relied on ***Shishupal Natthuji Patle V/s. Praful Manoharbhair Patel [2010(4) Mh.L.J. 660]***, wherein it is held that “..Copy of Election Petition supplied for service on the respondent was not attested as true copy. Section 81(3) being mandatory, this defect is fatal to the petition.”

5. It is also submitted that as the challenge to the result of election is based on allegation of corrupt practice and for this ground, an affidavit giving material particulars of corrupt practice is mandatory requirement, which is not filed accordingly in prescribed form and format, thereby the petitioner has failed to comply with the Mandatory provisions under Section 83 of the R.P. Act r/w. Rule 94-A of the Conduct of Election Rules, 1961. As the petitioner has not filed an affidavit in the format prescribed i.e. Form No. 25 enumerating the

instances of the events, which amounts to corrupt practice, which is mandatory under Section 83 of the R.P. Act r/w. Rule 94-A of the Conduct of Election Rules, 1961. Form No. 25 requires that, the Affidavit filed in respect of the alleged corrupt practices, shall be not only in prescribed format, but also should be furnished with all details with material particulars in respect of the alleged corrupt practices and with the names of the persons who were actually involved in the corrupt practices. The Affidavit placed on record, is not in prescribed form and there are no details and material particulars of the alleged corrupt practice, on which he challenges to the result of the election revolves. As the Affidavit in respect of the allegations of the corrupt practice is neither verified, nor attested as per the statutory provisions and requirement of the Form No. 25, Rule 94-A of the Conduct of Election Rules, which is most fatal and incurable defect of the said Affidavit. There are no full details and material particulars.

6. The learned counsel for the respondent no. 4 relied on ***Dr. Shipra (Smt.) and ors. V/s. Shanti Lal Khoiwal and ors. [(1996) 5 SCC 181]*** wherein the Hon'ble Apex Court has held that, "*Copy of the affidavit in support of allegations of corrupt practice is required to be accompanied with the copy of the petition required by Rule 94-A of Conduct of Election Rules, 1961 r/w. Proviso to S-83(1) of the R.P. Act to be sworn before a Magistrate of the First Class or a Notary or a Commissioner of Oath and "be in Form-25"*

7. It is contended by the learned counsel for the respondent no. 4 that there is no any document in support of his allegation. There is no allegation that the returned candidate was himself involved in corrupt practice. Moreover, it is alleged that, the petitioner has to plead as to how the alleged corrupt practices have materially affected the result of the election of the returned candidate.

8. The learned counsel for the respondent no. 4 relied on ***L.R. Shivaramagowda V/s. T.M.Chandrashekar [1999 (1) SCC 666]***, wherein it is held that, *“in order to declare an election to be void under Section 100(1)(d) (iv), it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the Act or of the Rules. In absence of either averment, it was not open to the appellant to adduce evidence to that effect.”*

9. In view of above settled law position, the respondent no. 4 prayed for dismissal of the Election Petition under Order 7, Rule 11 (a) and (d) of the Code of Civil Procedure, 1908 as the Election Petition does not confirm to the requirement under Sections 81, 83, 86 of the R.P. Act and requirement of Rule 94-A of the Conduct of Election Rules, 1961.

10. In reply, the learned counsel for the petitioner in para 2 submits that, the respondent no. 4 himself

admitted in paragraph no. 3 of the application that “*such a vague and baseless election cannot be put to trial and deserves to be dismissed in limine*”. It clearly admitted by respondent no. 4, the alleged election is vague and baseless and deserves to be dismissed in limine. However, in my considered opinion, he has not reproduced, what is said in paragraph no. 3, it refers to vague and baseless election petition. In paragraph 4 of the reply, he refers that he made representation dated 22/10/2019 to the Returning Officer to close down the mobile phone towers and another representation made on 23/10/2019.

11. The petitioner submitted that he also alleged in paragraph 8 of the petition, how the mal-practice played in favour of the respondent no. 4.

12. In representation at Annexure -3, wherein as per the petitioner, for use of mobile phone, the coverage jammer was declined and alleged the mal-practice in favour of BJP candidate i.e. respondent no. 4. On perusal of Annexure-3, even in joint application also, there is no reference to the action of Returning Officer as alleged has favoured the respondent no. 4.

13. It appears that there is joint representation dated 01/11/2019 to the Election Officer, which was duly replied by the Election Officer vide letter dated 02/11/2019 and duly explained that, how all the directions issued by Hon'ble Chief Justice of India and the provisions of Conduct of Election Rules are followed.

There was pre-scheduled election programme. Accordingly, the representatives of BJP, Vanchit Bahujan Party, Apaksha etc. were present at the time of counting. It is contended that, the petitioner complied the Sections 81, 82 and 83 and Section 117 of the R.P. Act and therefore, the application deserves to be dismissed. However, there is no reply to the contention of respondent no. 4 that, there is no specific facts or particulars given against the respondent no. 4, which demonstrates that the respondent no. 4 is involved in any corrupt practice.

14. For the sake of convenience, Sections 81, 83 and 86 of the R.P. Act and Section 94-A of the Conduct of Elections Rules, 1961 are reproduced as under:-

Representation of the R.P. Act

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 the 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.

[****]

[(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.]

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].

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.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the

respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

Conduct of Elections Rules, 1961

[94A. Form of affidavit to be filed with election petition.—The affidavit referred to in the proviso to subsection (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.]

15. The learned counsel for the petitioner relied on ***A. Manju V/s. Prajwal Revanna Alias Prajwal R and ors. [(2022) 3 SCC 269]*** in support of his contention that, the submission of Affidavit in Form-25 is curable defect and he has removed the same by filing an Affidavit on 03/12/2019. The Hon'ble Apex Court in ***A. Manju*** (supra) relied on the judgment in ***Harcharan Singh Brar V/s. Sukh Darshan Singh [(2004) 11 SCC 196]***, wherein the three judges Bench held that, “*non-compliance with the proviso to Section 83 of the Act did not attract an order of dismissal of an election petition in terms of*

Section 86 thereof. Section 86 sanctions dismissal of an election petition for non-compliance with Sections 81, 82 and 117 of the Act only. Such being the position, the defect if any in the verification of the affidavit filed in support of the petition was not fatal, no matter the proviso to Section 83(1) was couched in a mandatory form.”

16. The learned counsel for the petitioner also relied on ***G.M.Siddeshwar V/s. Prasanna Kumar [(2013) 4 SCC 776]*** in support of his contention that, if there is any defect in verification of the Affidavit, the said defect is curable. The learned counsel for the respondent no. 4 invited my attention to para 60 in the said judgment which reads as under:-

“60. What is the consequence of not curing the defect? In Moidutty [R.P. Moidutty V/s. P.T. Kunju Mohammad, (2000) 1 SCC 481] a defect in verification of the election petition was pointed out by raising a plea in that regard in the written statement. Notwithstanding this, the election petitioner did not cure the defect. Under these circumstances it was held that until the defect in the verification was rectified the petition could not have been tried. Additionally, it was held that since there was a lack of material particulars regarding the allegations of corrupt practices, it was a case where the election petition ought to have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings.”

and submitted that there are no particulars given in the Affidavit that what kind of corrupt practice, the respondent no. 4 alleged to have been committed.

17. The Hon'ble Apex Court in para -11 in ***Ravindra Singh V/s. Janmeja Singh & ors. (2000) 8 SCC 191*** has laid down the reasons for making Section 83 mandatory as under:-

“11. Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving inquiry and save the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial the defect being of a fatal nature.”

18. If the Election Petition suffers from a very serious defect of failure to set out material facts of the alleged corrupt practice, the defect invalidates the Election Petition in that regard and the petitioner ought not to have been permitted to adduce any evidence with reference to the same.

19. What is held in ***Udhav Singh V/s. Madhav Rao Scindia [(1977) 1 SCC 511]*** that “All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are

‘material facts’. In the context of a charge of corrupt practice ‘material facts’ would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action are ‘material facts’ which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).” The Division Bench held that, if the petitioner suffers from that of material facts, it is liable to be summarily rejected for want of cause of action.

20. In **Gajanan Krishnaji Bapat V/s. Dattaji Raghobaji Meghe [(1995) 5 SCC 347]**, the relevant passage reads thus:-

“16. The election law insists that to unseat a returned candidate, the corrupt practice must be specifically alleged and strictly proved to have been committed by the returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or by his election agent. Suspicion, howsoever, strong cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence. Since, pleadings play an important role in an election petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts

and particulars provided in the petition itself so as to disclose a complete cause of action.

17. Section 83 of the Act provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must set forth full particulars of the corrupt practice that he alleges including as full a statement as possible of the name of the parties alleged to have committed such corrupt practices and the date and place of the commission of each of such corrupt practice. This Section has been held to be mandatory and requires first a concise statement of material facts and then the full particulars of the alleged corrupt practice, so as to present a full picture of the cause of action.”

21. It is contended by the petitioner in paragraph nos. 6, 8 and 11 of the Election Petition as under:-

6. That, the respondent no. 4 is elected as MLA of 74-Chimur assembly Constituency in General Assembly Election, 2014 and was influence upon the Govt. employees. So he used his due influence to effect the election process against the petitioner. The E.V.M. is more sensible device i.e. it is one type computer system.

8. That, as the EVMs most controversial electronic machine and doubt full faulted fair and transparent election in General Assembly Election, 2019 of 74- Chimur assembly Constituency. The petitioner made another representation to the Returning Officer i.e. respondent no. 3 to count VVPAT slip alongwith counting of votes recorded by EVM's to verify the same also further requested at least use the mobile phone coverage jammer in and near counting centre of votes on

23/10/2019, but again the request of candidate petitioner is declined and allowed to malpractice in favour of BJP candidate elected i.e. respondent no. 4.

11. The counting of the votes by recorded by EVM and physical verification of VVPAT print slips is contradictory to the guidelines of Election Commission of India, therefore, declaration of respondent no. 4 as elected candidate i.e. M.L.A. of Maharashtra Legislative Assembly from 74-Chimur assembly Constituency is illegal and therefore, election of Return Candidate Mr. Kirtikumar Bhagdiya needs to be declared void and fresh fair and transparent election needs. The example of the best corrupt practices adopted on the part of returning officer i.e. respondent no. 3 is opposed by the petitioner as said practice adopted by respondent no. 3 is in contravention to direction of Election Commission of India.

22. I have gone through the contents of the petition, in view of the Affidavit filed separately by the petitioner showing that it is as per Form-25. He made omnibus statement. In affidavit alleged to be in Form-25, the statement made that in paras 1 to 17 of the said petition, it is about the commission of corrupt practice of respondent nos. 3 and 4 and the particulars of such corrupt practice are given in paras 1 to 17 of the petition. Therefore, I deem it appropriate to go through the contents of the petition para-wise. Paras 1 and 2 are giving information of the petitioner. Paras 1 to 5 are formal paras. In para 6, it is alleged that respondent no.

4 is elected as MLA of 74-Chimur assembly Constituency in General Assembly Election, 2014 and was influence upon the Govt. employees. So he used his due influence to effect the election process against the petitioner. There is no specific facts or particulars given, in what way, he influenced the Government employees. There is no allegation of corruption in para 7. In para 8, the allegation made against the respondent no. 3 is that, he declined to use the mobile phone jammer near counting center and alleged the mal-practice in favour of BJP candidate elected. There is no specific mention that how the respondent no. 3 was favouring the BJP candidate. In para 9, it is alleged that there is violation of Section 100(1) & (iv) of the said Act and it can only the basis that the election of respondent no. 4 as the returned candidate becomes void. There is no charge of corruption against the respondent no. 4. In para 10, there is no allegation of corruption against the respondent no. 4. In para 11, it is alleged that the practice adopted by respondent no. 3 is in contravene to the direction of Election Commission of India which is best example of corrupt practice. However, there is no any allegation against the respondent no. 4. There is no allegation of corrupt practice in paras 12, 13 and 14. In para 15, it is alleged that the respondent no. 3 has not verified VVPAT printed slip as per guidelines and therefore, the declaration by respondent no. 3 that the respondent no. 4 is an elected candidate of 74-Chimur Assembly Constituency is illegal, null and void. There is no allegation of corrupt practice in para 17. Thus, in view of

the above factual position, the affidavit filed by the petitioner dated 03/12/2019 is lacking in providing the complete facts and particulars of corrupt practice or to made out any cause of action. In paras 1 to 17, only mentioning about the commission of corrupt practice of respondent nos. 3 and 4 are given. However, as seen in petition, in what way the respondent no. 4 indulged in corrupt practice, is not specifically given nor pleaded. The communication by Election Officer dated 25/10/2019 and 02/11/2019 are clear enough to demonstrate that the elections were conducted as per the direction of Election Commission. In representation made to the respondent no. 3, there is no allegations against the respondent nos. 3 and 4 that they have indulged in corrupt practice. Only on the basis of suspicious, without any supporting facts, the respondent no. 4 cannot be put to trial. As such, even if it is held that defect in the Affidavit are curable in the present, there is no facts and particulars given in the Affidavit nor specifically pleaded in the petition. Thus, there is no cause of action to file the petition nor it can be said that the Affidavit is filed as per the provisions of the R.P. Act. As such, the Civil Application needs to be allowed. Accordingly, I proceed to pass the following order:-

ORDER

- (1) The Civil Application is allowed.
- (2) The Election Petition No.15/2019 does not confirm to the requirement under Sections 81, 83 and

86 of the Representation of People Act, 1951 and requirements of Rule 94-A of the Conduct of Election Rules, 1961 under Order 7, Rule 11(a) and (d) of the Code of Civil Procedure, 1908.

(3) The Election Petition No. 15/2019 is dismissed as it does not plead the material facts to disclose any cause of action under Order 7, Rule 11 (a) and (d) of C.P.C.

(4) Civil Application (CAO) No.437/2021 is allowed. The EVMs and VVPATs be returned to respondent Nos.2 and 3.

(5) The Civil Applications stand disposed of.

(SMT. M.S.JAWALKAR, J.)

Khapekar