

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**REVIEW PETITION NO. 7 OF 2024
IN
APPLICATION (ST) 27786 OF 2024
IN
ELECTION PETITION NO. 2 OF 2024**

Shahaji Nanai Thorat Alias
Shahajirao Dhondiba Thorat
Versus
State of Maharashtra
Returning Officer & Ors.

... **Petitioner**

... **Respondents**

**WITH
APPLICATION (ST) NO. 32011 OF 2024
IN
ELECTION PETITION NO. 2 OF 2024**

Sanjay Dina Patil

... **Applicant**

IN THE MATTER BETWEEN

Shahaji Nanai Thorat Alias
Shahajirao Dhondiba Thorat
Versus
State of Maharashtra
Returning Officer & Ors.

... **Petitioner**

... **Respondents**

Mr. Prosper D'Souza, *for the Petitioner.*

Mr. Shahaji Nanai Thorat, Petitioner in person present.

Mr. Himanshu B. Takke, *AGP for State, Respondent Nos. 1, 2 & 5.*

Ms. Shruti Vyas *a/w Mr. D. P. Singh for Union of India, for Respondent No.4.*

Mr. Tejas Nair *a/w Mr. Sagar Kursija & Mr. Ronak Utagikar, for Respondent No. 6.*

Mr. Vijay Nair *a/w Ms. Rachna Mamnani & Ms. Ritika R. i/b Mr. Prashant P. Kulkarni for Respondent No.7.*

CORAM : SANDEEP V. MARNE, J.

DATE : 10 FEBRUARY 2025.

ORAL JUDGMENT :

1) The Petitioner has filed this Petition seeking review of the judgment and order dated 26 November 2024.

2) At the very outset, this Court raised a query with the Petitioner appearing in person as to how a Review Petition would be maintainable within the framework of the Representation of the People Act, 1950. To assist the Petitioner who used to earlier appear in person, Mr. D'souza, an advocate practicing in this Court was permitted to represent him in the Review Petition.

3) I have heard Mr. D'souza, the learned counsel appearing for Petitioner, Mr. Vijay Nair, the learned counsel appearing for Respondent No.7, Mr. Himanshu B. Takke, the learned AGP appearing for Respondent Nos. 1, 2 & 5-State, Ms. Shruti Vyas, the learned counsel appearing for Respondent No.4-Union of India, Mr. Tejas Deshmukh, the learned counsel appearing for Respondent No. 6.

4) There is no dispute to the position that the Representation of the People Act, 1950 (**Act of 1950**) does not contain a provision for review of order passed by the High Court in an Election Petition. Petitioner has however filed this Petition seeking review of the judgment and order dismissing his Election

Petition by invoking the provisions of the Code of Civil Procedure, 1908 (**Code**).

5) By now, it is well settled position that the Act of 1950 is a self-contained and complete Code in itself. Therefore, all the remedies relating to election would therefore have to be necessarily exercised strictly in accordance with the provisions of the Act. In this regard, reference to the judgment of the Supreme Court in ***Jyoti Basu and others Versus. Debi Ghosal and others***¹ would be relevant, wherein it is held :

8. 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 makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it.

6) Even *qua* a common law remedy, the position in law is that power of review cannot be exercised unless specifically conferred by the Statute. A quick reference to the judgment of the Apex Court in ***Kalabharati Advertising Versus. Hemant Vimalnath Narichania***² would be necessary, wherein it is held that :

12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide *Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar* [AIR 1965 SC 1457] and *Harbhajan Singh v. Karam Singh* [AIR 1966 SC 641] .)

7) An Election Petition is not even a common law remedy and therefore the rigor of provision of remedy within the four

¹ (1982) 1 SCC 691

² (2010) 9 SCC 437

corners of the Act of 1950 would be even stricter. In absence of express power conferred on this Court under the Act to review its order, a petition for review of order dismissing the Election Petition would not be maintainable. Merely because the procedure for deciding an Election Petition by this Court under Section 87 of the Act of 1950 is governed by the provisions of Code, it would not mean that all the remedies provided for in the Code would automatically stand imported in the Act of 1950. The only remedy provided for under the Act of 1950 against decision of the High Court under Section 98 is to file an Appeal before the Supreme Court under Section 116A thereof. After passing of an order dismissing the Election Petition under Section 98 of the Act, no further remedy of review is provided for in the Act.

8) It appears that maintainability of application for review in an Election Petition has been dealt with in some of the judgments rendered in the past. The Division Bench of this Court in **Narayan Yeshwant Nene Versus. Rajaram Balkrishna Raut**³, has dealt with permissibility to entertain a review against order withdrawing the Appeal filed under Section 116A of the Act of 1950 filed against order dismissing the Election Petition by the Election Tribunal. This Court held :

5. In support of the application, it is urged that an order of the Court permitting withdrawal of the appeal and ordering disposal thereof is not a decision within the meaning of s. 116B. It is contended that the decision contemplated templated by s. 116B is an adjudication on the merits of the dispute between, the parties before the Tribunal, and an order of disposal without adjudication of the merits of the dispute by the High Court in appeal, is not a decision within the meaning of s. 116B. We are unable to accept that contention. The expression 'decision' is not defined in the Act, and there is nothing in the context in which that expression occurs, which justifies the submission that a final order disposing of the appeal though not on the merits is not a decision. Even a casual examination of the

³ AIR 1961 Bom 21

argument is likely to present numerous difficulties against its acceptance. If an appeal is permitted to be withdrawn and a notice of the intended withdrawal is published in the Official Gazette, and if, thereafter, no party comes before the Court, on the argument advanced by the learned Advocate General, the appeal may still not be regarded as disposed of by a decision, and may permanently remain on the file of the Court. Similarly, if the appellant dies and no one comes forward to prosecute the appeal, if the argument is accepted, the appeal will remain undisposed there being no decision of the Court. In our view, the expression "decision of the High Court" means the final order of the High Court disposing of the appeal on merits or otherwise. If that be the true effect of s. 116B, in our Judgment, the order disposing of the appeal on withdrawal by the original appellant, must be regarded as a decision of the High Court, which is final and conclusive. **The Act does not provide for review of judgment of this Court on any ground, and it is well settled that a Court is not invested with a power of review unless such power is expressly conferred. The Legislature has not only not conferred a power of review upon this Court to review decisions in appeal under the Representation of the People Act, but has declared the decision final and conclusive.**

(emphasis added)

9) In **Brijmohan Lal Versus. Election Tribunal Allahabad & Ors.**⁴ the Division Bench of Allahabad High Court has dealt with the issue of maintainability of review petition against order passed by the Election Tribunal constituted under Section 86 of the Act of 1950 and has held in paragraph 8, 9 and 10 of its judgment as under :

8. The next question is whether the order of 9th February is without jurisdiction. It is common ground and conceded by counsel for the respondent before us (petitioner in the election petition) that the Tribunal by this order reviewed and set aside its earlier orders and rejected the application of the winning candidate (petitioner before us) to amend and amplify his statement accompanying the notice of intention to recriminate. **The simple question is whether an Election Tribunal constituted under Section 86 of the Act has the power to review an earlier decision After hearing learned counsel for both sides at some length and reviewing the case law on this point we have come to the conclusion that it has not.**

9. **An Election Tribunal constituted under Section 86 of the Act is not a Court: it is a creature of statute.** "An election contest is not an action at law or a suit in equity but is a purely statutory proceeding un-known to common law and the Court (the Tribunal)

⁴ AIR 1965 ALLAHABAD 450

possesses no common law power"--K. Kamaraja Nadar v. Kunju Thevar, AIR 1958 S C 687 (693). **Therefore an Election Tribunal has only such powers as are conferred on it by statute--expressly or by necessary implication. It has none of the inherent powers of an ordinary Court.**

10. Learned counsel for the respondent Shankar Lal (petitioner in the election petition) contended that Section 90 of the Act enjoins that "every election petition shall be tried by the Tribunal, as nearly as may be in accordance with the procedure applicable under the Civil P. C. to the trial of suits", and therefore it confers on the Tribunal by implication all the powers of a Court under that Code, including the power under Section 114, Order 47, Rule 1 and Section 151, Civil P. C. to review in the interest of justice any previous order or decision. This argument is based upon a failure to distinguish between procedure and power. The Supreme Court in Inamati Mallappa Basappa Vs Desai Basavaraj Ayyappa, AIR 1958 S C 698 emphasised this distinction and pointed out that Section 90 of the Act provides for the procedure for the trial of election petition by the Tribunals. To quote the exact words of the Supreme Court:

"It provides for the examination of witnesses, the rules of evidence to be followed, the joinder of candidates not already respondents as respondents and the amendment or amplification of particulars of a corrupt practice already alleged in the petition. The powers of a Tribunal are, however, separately dealt with in Section 92 which enacts that the Tribunal shall have the powers which are vested in a Court under the Civil P. C. when trying a suit in respect of the following matters : (a) discovery and inspection; (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses; (c) compelling the production of documents; (d) examining witnesses on oath; (e) granting adjournments; (f) reception of evidence taken on affidavit; and (g) issuing commissions for the examination of witnesses, and may summon and examine *suo motu* any person whose evidence appears to it to be material; and shall be deemed to be a civil court within the meaning of Sections 480 and 482 Criminal P. C. It will be noticed that the procedure for trial before the Tribunal and the powers of the Tribunal are treated separately thus distinguishing between the procedure to be followed by the Tribunal and the powers to be exercised by it."

(emphasis added)

10) Division Bench of this Court in **Hamibrrao Bhauroo Patil Versus. Balisha Ganpat Kamble**⁵ has dealt with the issue of maintainability of application for review against an order passed

⁵ 1959 AIR 479

under the provisions of the District Municipal Act, 1901. The Division Bench held as under:

For the right of review like the right of appeal is a substantive right and not a matter of procedure. The District Municipal Act has not provided for an appeal from the decision or order of the Judge nor has it provided for a review of the decision. On the other hand, the decision or order passed is made conclusive. Therefore, a party to the election petition cannot claim a right of review of the decision or order made by the Judge on the petition under s. 114 and O. XLVII, r. (1), of the Civil Procedure Code. We are, however, of the opinion that the election Tribunal, which is a Judicial Tribunal, in the absence of express provisions defining and limiting its jurisdiction in the Act, which has constituted it, must be deemed to possess as inherent in its constitution as a Judicial Tribunal all such powers as are necessary in the interest of justice. Such powers as are referred to in ss. 151 and 152 of the Civil Procedure Code are in our view possessed or must be deemed to be possessed by all Judicial Tribunals whether they are Courts or not. Thus every Judicial Tribunal must possess the power to correct arithmetical or clerical mistakes or accidental slips or omissions in its judgment or order or to correct its orders so as to bring them in conformity with their decision or to correct such glaring or manifest errors as might have crept in it order through oversight or inadvertance. The existence of such power is all the more necessary in the case of Tribunals whose decision or order is final and no appeal or revision is provided therefrom. The order passed by the learned Assistant Judge is clearly within the ambit of these powers. In passing he order, which is the subject-matter of the present Special Civil Application, the learned Judge has neither sat in appeal over the decision previously given by him nor has he indulged in any reconsideration of the facts or law relating to the matter nor arrived at conclusions on merits other than those to which he had formerly arrived. All that he has done is that he has corrected a manifest and palpable error which had crept in through oversight in the final declaration of the result of the election, which his order had made. The order previously passed was clearly and hopelessly wrong inasmuch as it had declared a candidate elected for a seat which he was not qualified to contest and had not contested The correction of this obvious mistake was clearly called for in the interest of justice and the learned Assistant Judge was, in our opinion, clearly entitled to and justified in exercising his inherent powers as a Judicial Tribunal in correcting the mistake We do not agree with Mr. Sukthankar that the order passed by the learned Assistant Judge in the present case is an order passed without jurisdiction nor do we agree with him that he was *functus officio* after he gave his earlier decision and no power was left in him whatsoever in respect of the decision or order given by him.

Even if we were to accept Mr. Sukthankar's argument that the Assistant Judge was *functus officio* and had no jurisdiction to entertain the application, which was made to him, and pass the present order, we would have had no hesitation in exercising our

jurisdiction under art. 227 of the Constitution in respect of the first order passed by the learned Assistant Judge, which is also before us in the present proceeding and we would have ourselves corrected the said order or directed the learned Assistant Judge to do so in accordance with law. The result in that case would have been the same as is obtained under the present order of the Assistant Judge. Since, however, we have taken the view that the present order passed by the learned Assistant Judge is with jurisdiction and also just and proper, we do not propose to adopt that course.

The result, therefore, is that the Special Civil Application fails and must be dismissed. The rule is to costs. accordingly discharged. There will be no order as to costs.

(emphasis added)

11) The Judgment of the Division bench in ***Hamibrrao Bhaurao Patil*** (supra) is followed by the Division Bench of Gujarat High Court in ***Somabhai Kacharadas Patel Versus. Patel Becharbhai Shambhubhai And Ors.***⁶ while dealing with the issue of availability of power in Election Tribunal to pass an order of injunction. It is held in paragraph 9 as under:

9. It must be pointed out that in the instant case, the appellant before us was seeking for an injunction not against any elected candidate but against the Collector and the State of Gujarat, seeking to restrain the State of Gujarat from convening the first meeting of the newly elected municipality as provided under Section 32 and was also seeking to restrain them from publishing the names of elected councillors pursuant to the election held on October 26, 1980. Thus the two reliefs which the appellant before us was claiming in his application, Exhibit 5, before the Election Tribunal did not refer to the question of any injury likely to be caused to him if the relief sought for was not granted to him. The substantive right of claiming injunction is not only not invested in the petitioners challenging the validity of the election but on the contrary the Gujrat Municipality Act has made all the orders of Tribunal final and, therefore, also there would be no right of appeal against such orders if any. **We are, however, of the view that the Gujrat Municipality Act has neither invested the petitioners challenging the validity of the election with the substantive right to claim injunction or correspondingly conferred the power to grant injunction in Tribunal. The right to claim injunction under Order 39 Rules 1 and 2, Civil Procedure Code, is a substantive provision and, therefore, would not, on the authority of the Division Bench of Bombay High Court in Hambirrao Bhaurao's case (supra) or of**

⁶ 1980 2 GLR 1

Bhagwati J. in Barot Jaganath Maganlal's case (supra) accrue to a petitioner challenging the validity of the election under the Municipality Act since it is not merely a matter of procedure.

(emphasis added)

12) A Single judge of this Court (A. S. Chandurkar J.) has followed the judgment in *Narayan Yeshwant Nene* and has held in *Nana Falgunrao Patole & Anr. Versus. Nitin Jairam Gadkari & Ors*⁷ that review petition is not maintainable in an Election Petition. This Court has held as under :

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 (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

⁷ 2022 SCC Online Bom 3038

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.

7. 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.

8. Reference can also be made to the decision of the Hon'ble Supreme Court in Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa [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.

9. The provisions of Section 87 of the Act of 1951 have been considered by the Hon'ble Supreme Court in Dr. Rajendra Kumari Bajpai v. Ram Adhar Yadav [(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.”

10. 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.

13) In my view, since the Act of 1950 is complete and self-contained code in itself, absence of remedy of review under the said Act would clearly bar this Court from entertaining Petitioner’s application for review merely on account of the fact that procedure under the Code is required to be followed while deciding the Election Petition under Section 87 of the Act.

14) Mr. Nair is right in contending that this Court becomes *persona designata* for trial of the Election Petition under Section 80A(2) of the Act of 1950 on account of assignment of the Election Petition by the Hon’ble Chief Justice. Therefore the moment the Election Petition is dismissed under provisions of Section 98 of the Act, the authority of this Court under provisions of Section 88A(2) would come to an end and this Court would cease to have any jurisdiction to decide any further application in relation to the Election Petition dismissed under Section 98 of the Act. On this principle as well, this Court cannot entertain application for review of order dismissing the Election Petition.

15) Even if the objection of maintainability of the present Review Petition was to be momentarily ignored, in my view, the present Review Petition is filed as an appeal in disguise. It is sought to be strenuously contended by Mr. D'souza that the Petitioner had in fact impleaded all the contesting candidates to the Election Petition and their names were deleted on account of advice given to him by the Registry. This contention was raised before me while deciding the Election Petition and the same has already been recorded in paragraph 3 of the judgment under review. In my view, therefore, no case is otherwise made out for review of the judgment and order dated 26 November 2024. In absence of any error apparent on face of record, the judgment and order dated 26 November 2024 can otherwise not be reviewed.

16) The Review Petition is accordingly **rejected**.

[SANDEEP V. MARNE, J.]