



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

ELECTION PETITION NO.12/2019

Md. Nafis s/o Shifat Khan .Vs. The Election Commission of India, thr. Chief Election
Commissioner and Others

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

Court's or Judge's orders

Mr. S. V. Purohit, Advocate for petitioner.
Ms N. Chaubey, Advocate for respondent No.1.
Mr. I. Damle, A.G.P for respondent – State.
Mr. S. V. Manohar, Senior Advocate Assisted by Mr. Y. N. Sambre,
Advocate for respondent No.4.

CORAM : ANIL L. PANSARE, J.

DATE : NOVEMBER 21,2025

This Court, vide order dated 26.02.2021, partly allowed the application filed by respondent – returned candidate in following terms:

“25. As a result of the aforesaid discussion, it is found that the averments in paragraphs 7(i) Point No.1, 7(iv) Point No.4, 7(v) Point No.5 to 7(vii) Point No.7, 7(viii) Point No.9, 23, 24, 27, 28 and 30 are liable to be struck off under the provisions of Order VI Rule 16 of the Code for the reasons indicated hereinabove. However the averments in paragraphs 7(ii) Point No.2 and 7(iii) Point No.3 of the election petition are not liable to be struck off under the provisions of Order VI Rule 16 of the Code as they disclose material facts and give necessary cause of action to challenge the election of the returned candidate. As a result of this adjudication the prayer made in Civil Application No. 12/2021 seeking rejection of the election petition cannot be granted. The election petition consequently would proceed for trial on the basis of the averments that remain after the paragraphs as directed to be struck off are so struck off.”

2. As could be seen, averments made in some paragraphs are struck off. However, the averments made in two paragraphs were retained. Mr. Manohar, learned Senior Counsel submits that the paragraphs which are struck off relate to corrupt practices and

paragraphs which are retained relate to nomination papers and not to corrupt practice. Further, the averments made in paragraphs of the petition, which are retained, cannot be gone into in terms of what Hon'ble Supreme Court has said while deciding civil appeals arising out of the order passed by this Court, mentioned above. The Supreme Court, in paragraph 5 held thus:

“5. The first averment that has been struck off by the High Court as contained in para 7 of the Election Petitions pertained to Khasra No.264 at village Dhapewada. The allegation was that the returned candidate, in his affidavit, declared the property as Hindu Undivided Family (HUF) whereas he owned the same in his personal capacity. The High Court, in para 9 of the impugned order dated 26.02.2021, has explained that the Trust Deed was executed in respect of the subject property on 29.10.1958 followed by a Correction Deed executed on 01.08.1975. The property is mutated in the name of the returned candidate, but he has always been claiming it to be an HUF property. The question as to whether the subject property constitutes HUF or not, cannot be gone into in the Election Petition proceedings, as rightly held by the High Court.”

3. Thus, the Supreme Court held that the question as to whether the subject property constitutes HUF property or not, cannot be gone into in the Election Petition proceeding. There is no dispute that the averments in the paragraphs retained in the petition will require inquiry about status of property viz. whether HUF or not. That being so, it will be difficult for this Court to render a finding of disqualification on the basis of the paragraphs retained in the petition. The election petition, if continued, will not, therefore, extend any benefit to the petitioner.

4. Mr. Manohar, learned Senior Counsel for respondent No.4 submits that in these circumstances, if at all the petitioner succeeds,

the same will be only for academic purpose, without yielding any advantage to the petitioner.

5. This submission is made because the petitioner intends to take benefit of result, if it favours them, to contend that since the respondent is disqualified, he will not be entitled to continue to retain Lok Sabha Constituency where he has been subsequently elected.

6. Mr. Manohar submits that this benefit is available to the petitioner only if the election is set aside on the ground of 'corrupt practice' which, in the present petition, cannot be, considering the subsequent development viz. deletion of paragraphs in the petition pertaining to corrupt practice.

7. Thus, the election, if at all is to be set aside, will be on account of rejection of the nomination papers. As such, setting aside election, on this count, will not culminate into the petitioner's disqualification to contest subsequent election and, therefore, will have no bearing on his retaining the constituency by virtue of election held in the year 2024.

8. That being so, I am of the view that continuing with the petition is a mere formality, without achieving any fruitful result for either party.

9. The petition is accordingly disposed of as rendered infructuous.

(Anil L. Pansare, J.)