

(2017) 11 BOM CK 0066

BOMBAY HIGH COURT

Case No: 4 of 2014

Shaikh Chandpasha
Shaikh Jani

APPELLANT

Vs

Election Commission
of India, & Ors.

RESPONDENT

Date of Decision: Nov. 24, 2017

Acts Referred:

- Constitution of India, Article 19(1)(a) - Protection of certain rights regarding freedom of speech, etc
- Code of Civil Procedure, 1908, Order 6 Rule 2, <a href=3

Hon'ble Judges: T.V. Nalawade

Bench: SINGLE BENCH

Advocate: S.S. Thombre, A.B. Kale, V.D. Sapkal, P.A. Bhosle, P.M. Shah, Aditya Sikchi, M.V. Thorat, V.S. Deshmukh

Final Decision: Dismissed

Judgement

1. The petition is filed for relief of declaration that the election of respondent No. 4 - Arjun Panditrao Khotkar, Returned Candidate (hereinafter referred to as "RC" for short) from Maharashtra Legislative Assembly 101-Jalna Constituency of which result was declared on 19.10.2014 is void. The proceeding is filed on the ground that the petitioner - Shaikh Chandpasha Shaikh Jani had filed nomination form for this election, but his nomination form was improperly rejected.

2. The programme of the election was as follows :-

20th September 2014 to 27th September 2014 (Saturday)	The period prescribed for filing of the nominations
27th September, 2014	Till 3 p.m. the time to deliver the nomination paper
29th September 2014 (Monday)	The date fixed for scrutiny of nominations
15th October 2014 (Wednesday)	The date of polling
19th October 2014 (Sunday)	The date of counting of votes and declaration of the results.

3. It is the case of petitioner that in pursuant to the aforesaid programme, he submitted the nomination form on 26.9.2014. It is his contention that he has filed nomination form along with affidavit in Form No. 26 as per Rule 4-A of the Conduct of Election Rules, 1961. It is his contention that he had completed the formalities like making payment of deposit etc. and some discrepancies were pointed out by the Returning Officer (hereinafter referred as to "RO" for short) in respect of Form No. 26. It is his contention that as he was supposed to file fresh Form No. 26 with affidavit up to 27.9.2014, he presented such form on 27.9.2014 within prescribed time, before 3.00 p.m. before RO. It is contended that without considering circumstance that he had taken the steps to remove the discrepancies and he had filed another Form No. 26 for compliance of the provisions of the law, the RO rejected his nomination form during scrutiny which took place on 29.9.2014. He has made RC and all other candidates who had contested the election as party respondents to the present proceeding. It is his contention that no candidate had taken objection to his nomination form, but the RO has illegally rejected his nomination form and so, the election is liable to be set aside. Along with the present proceeding, necessary affidavits were filed and procedure required to be followed for filing such proceeding is followed by the petitioner. Copies of nomination form and Form No. 26 filed by him firstly on 26.9.2017 and then on 27.9.2017 are produced along with the order of rejection made by RO.

4. Respondent No. 4 has filed written statement and has contested the matter. It is the case of RC that the nomination form of the petitioner was not complete and even after pointing out the deficiencies, the deficiencies were not removed by the petitioner and so, the RO has rightly rejected the nomination of the petitioner.

5. Respondent No. 7 - Kailash Kishanrao Gorantyal, who had secured second highest votes has filed written statement and he has supported the petitioner.

6. This Court had asked both the sides to propose the issues and both the sides

were heard on the point of framing issues. The issues are framed on the basis of rival pleadings and the submissions made before this Court at Exh. 28 on 18.7.2016 and they are as under :-

Sr. No.	Issues		Findings
1	Whether the Election Petition suffers on the count of non compliance of Sections 81, 82 and 83 of the Representation of People's Act ?	-	Negative
2	Whether the necessary particulars mentioned in Section 83 (a) and (b) are mentioned in the petition and if not what is its effect ?	-	Affirmative

3	Whether the petitioner proves that he had taken steps and he had removed the objections recorded by the Returning Officer on the nomination form of the petitioner viz. Form No. 26 ?	-	Negative
4	Whether the petitioner proves that on 27/09/2014 the Returning Officer had observed and had held that the discrepancies in the nomination form of the petitioner were removed ?	-	Negative

5	Whether the petitioner proves that the Returning Officer committed error in holding that Form No. 26 of the petitioner was incomplete and rejection of his nomination paper was wrong and illegal?	-	Negative
6	Whether on the ground of improper rejection of nomination of petitioner in view of provision of Section 100(1)(c) of the Representation of People's Act, the election is liable to be set aside, liable to be declared as void?	-	Negative

7	Whether respondent No. 1 is entitled to compensatory costs ?	-	Does not survive.
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REASONS

7. The petitioner has given his own evidence and he has examined RO - Manjusha Mutha.

8. Before framing of issues, applications were filed in the present proceeding and other two proceedings by RC under the provisions of Order VII, Rule 11 of Civil Procedure Code (hereinafter referred to as "CPC" for short). While deciding those applications, this Court had considered the pleadings in the petitions and the provisions of sections 81 to 83 of Representation of People Act, 1951. This Court had rejected the applications and the order was taken to Supreme Court for challenging it by RC. The Hon"ble Apex Court has dismissed that proceeding filed by the RC.

Issue Nos. 1 and 2 :-

9. These issues involve compliance of provisions of sections 81 to 83 of the Act. This Court while deciding the applications filed under Order VII, Rule 11 of CPC had an occasion to consider the requirements of provisions of sections 81 and 82. This Court has held that in view of the grounds given in section 100 (c)(d)(i) of the Act, which are mentioned in the present petition, the objections of absence of ground was not tenable. Some observations with regard to the necessary particulars were also made to reject the contention that necessary particulars were not there in the petition. Now, the issues are framed on the basis of rival pleadings. The pleadings disclose cause of action and the particulars which can be called as "material facts" are there in the pleadings. They are already quoted. For the purpose of provisions of Order VI, Rule 2 and Rule 9, these particulars are sufficient and these particulars do give RC the reasonable opportunity to defend the charge/allegations. In view of the nature of charge levelled and the grounds relied upon, this Court has no hesitation to observe again in the present proceedings that the "material facts" are there in the petitions.

10. The petitioner is claiming that his nomination form was wrongfully rejected. Due to these circumstances, it cannot be said that there are no material particulars in the petition. Thus, there are triable issues and the petition cannot be dismissed on the

count of non compliance of provisions of sections 81 to 83 of the Act. Thus, issue No. 1 is answered in negative and issue No. 2 is answered in affirmative, as there is compliance and on that ground the petition cannot be dismissed.

Issue Nos. 3 to 7 :-

11. It is admitted by the petitioner in his substantive evidence that discrepancies were pointed out by RO, which was in respect of form No. 26. At Exh. 31, there is check list showing that the discrepancies were pointed out to him. He has given evidence that on 27.9.2014 he filed fresh affidavit in Form No. 26 and on that RO made endorsement that it was filed and so, the discrepancies were removed.

12. The nomination form was filed by petitioner as independent candidate. He had given particulars that he was having cash in hand as Rs.20,000/-, but he had not given particulars like his accounts in any bank, which may be current account, saving account or fixed deposit. He had shown is property as motorcycle bearing No. MH-21/6092, having value of Rs.25,000/-. He had informed that he had no immovable property at any place. He had informed that he had completed B.Com. degree and he is B.P.Ed., but the names of the institution from where he received education and the years of passing was not mentioned. He had informed that he was married and his wife was housewife. The total value of his movable property as mentioned above was Rs.25,000/-. In the column of dependents in Part I of Form No. 26, he had shown that he only was having PAN number. The name of wife was not mentioned and nothing was mentioned in respect of dependent Nos. 1, 2 and 3. In Part II, he had mentioned the name of University as Dr. Babasaheb Ambedkar Marathwada University, Aurangabad. In the check list handed over to the petitioner, it was mentioned that page No. 11 was incomplete and documents at Sr. Nos. 1 to 6 were not annexed. He was advised to file fresh Form No. 26 before the time fixed for filing the nomination form.

13. In the fresh form of affidavit filed as Form No. 26, he gave similar information which was given in the previous Form No. 26.

14. In the substantive evidence, the petitioner has deposed as per the aforesaid contentions made in the petition. In the cross examination made by the learned counsel for RC, the petitioner has admitted that he is resident of House No. 16, Indira Nagar, Old Jalna. He has admitted that this house was owned by his father and his father is dead. He has tried to say that the house now stands in the name of his mother. But the reason for the same is not given by him. He is Muslim and as a son of previous owner, he has share and so, he has vested interest in the property. This property was not mentioned in Form No. 26 by him.

15. In the cross examination, the petitioner has admitted that he has wife and son. His wife is one of the proposer. The name of wife and son were not mentioned by him in Form No. 26. The circumstance that he has son, one dependent, was also not mentioned and that column was filled by using word "Nil".

16. In the cross examination, the petitioner has admitted that on the date of nomination, he was doing part time job with one newspaper. However, in the cross examination, he avoided to give the name of that newspaper. He admitted that he is making income from coaching classes and even his wife is making income from coaching classes. He admits in cross examination that at the relevant time, he was getting Rs.3,000/- p.m. by way of salary from the owner of the newspaper. These circumstances were not mentioned in Form No. 26 by the petitioner. In the cross examination, the petitioner has admitted that he has accounts in various banks. He has admitted that he had accounts in Marathwada Gramin Bank, Jalna Branch; Nagari Sahakari Ban, Beed, Jalna Branch; Jalna People's Co-operative Bank, Jalna Mondha Branch and Jalna Merchant Co-operative Bank. The petitioner had not supplied information in respect of these accounts in Form No. 26. In the cross examination, he has admitted that he had taken loan of Mahindra Finance Company for purchasing two wheeler in the year 2007. Till the date of deposition, some amount was due against that transaction. But, this transaction was not mentioned by him in Form No. 26.

17. Smt. Manjusha Mutha, RO is examined by the petitioner as his witness. She has deposed in the cross examination that Part III of Form No. 26, which was filed second time was also not complete as the portion which was not applicable from B1 and B2 was not scored. She has given evidence that other discrepancies which were mentioned in the check list and her version shows that she had formed opinion that it was not complete information and discrepancies pointed out by her were not removed.

18. The learned counsel for petitioner placed reliance on the case reported as AIR 2011 MADRAS 195 [Vanathi Srinivasan Vs. Chief Electoral Officer, Chennai and Ors.]. In this case, the nature of inquiry which can be done by RO at the time of scrutiny is discussed and it is observed that the scrutiny should be summary in nature. However, it is also observed that ultimately, it is the Court where it is required to ascertain as to whether the form was complete or it was invalid.

19. The learned counsel for RC placed reliance on the observations made by the Apex Court in various cases with regard to nature of information which must be supplied by candidate in view of the provisions of section 33-A of the Act and the Rules made for seeking such information. The cases include the landmark case reported as 2002 CJ (SC) 1227 [Union of India Vs. Association For Democratic

Reforms] and the other cases, reported as 2003 CJ (SC) 792 [People's Union For Civil Liberties (Delhi) Vs. Union of India], (2014) 14 SCC 162 [Kisan Shankar Kathore Vs. Arun Dattatray Sawant and Orss], (2014) 14 SCC 189 [Resurgence India Vs. Election Commission of India and Anr.] and (2017) 2 SCC 487 [Mairembam Prithviraj alias Prithviraj Singh Vs. Pukhrem Sharatchandra Singh].

20. In the first case of Association for Democratic Reforms cited supra, which is landmark case, a direction was given by the Hon"ble Apex Court to Election Commission to call information in the form of affidavits on the assets, qualifications, involvement in offences of the candidates for judging their suitability. Rights of the electorals were considered by the Election Commission. In view of the directions given by the Apex Court, the provision of section 33-A was added in the Act. The second case of People's Union For Civil Liberties need not be discussed in the present matters. In the case of Kisan Kothore cited supra the aforesaid landmark decision was referred by the Apex Court and observations are made that it would depend upon facts and circumstances of the each case as to whether the non disclosure of the information called by the Election Commission would amount to material lapse or not. If the non disclosure of material information as to his assets, and assets of spouse is there, the order of setting aside the election can be made as in view of the Article 19 (1) (a) of the Constitution of India voters have right to know assets and liabilities of contesting candidates. The Apex Court has discussed the guidelines of 2006, and also the provisions of sections 33 to 36 of the Act and section 100(1)(d) (i) (iv) and section 116-A of the Act for making these observations. It is made clear by the Apex Court that at the stage of scrutiny of the nomination itself, the RO can reject the nomination on any of the grounds stated in section 36 (2) of the Act and likewise nomination can be rejected where blanks are left in the affidavit (Form No. 26) by the candidate. The Apex Court has, however, expressed that the RO, at the stage of scrutiny of nominations, may not be able to conduct detailed examination on objections as to misinformation or suppression of material information in nomination and it is not permitted. It is observed that when election petition is filed, the detailed inquiry on such objections can be made by High Court and it can be determined whether nomination was properly accepted by Returning Officer or it was case of improper acceptance. It is laid down that the required information as per the format has to be given by the candidate. Similar observations are made in the case of Resurgence India cited supra.

21. In view of the observations made in the cases cited supra, it becomes duty of RO to find out whether information required is furnished, though the RO is not entitled to make detailed inquiry at this stage. The observations show that the blank affidavit renders the affidavit nugatory. If blanks are left, that gives power to RO to reject the nomination itself as such omission, blanks will make it impossible for RO to exercise powers given under the Act. However, at that time, if the RO is satisfied that the necessary information as required by the aforesaid provision is supplied, he may not

reject the nomination.

22. If the aforesaid position of law is kept in mind and this law is applied to the present matter, it can be said that even after pointing out all the discrepancies by RO, the petitioner had not removed discrepancies and so, the RO was entitled to take proper decision due to aforesaid things. Further, now the matter is before this Court. This Court has considered the provisions of law with regard to nature of information which needs to be supplied by the candidates and this Court holds that the petitioner had not supplied the necessary information and so, his form could not have been treated as complete form in all respect. Thus, the form was not complying with the necessary requirements of law and the rejection of nomination was proper. This Court holds that it is not possible to interfere in the decision given by RO against the present petitioner and so, issue Nos. 3 to 6 are answered in negative and issue No. 7 is answered as does not survive. In the result, following order is made.

O R D E R

(I) The petition is dismissed.

(II) The costs shall be cost in cause.