

(2013) 09 BOM CK 0033

In the Bombay High Court

Case No : Application No. 3 of 2013 in Election Petition No. 1 of 2012

Shivaji Laxman Sahane

APPELLANT

Vs

Jaywantrao Pundlikrao Jadhav

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Representation of the People Act, 1951 — Section 100, 100(1)(d), 81, 87, 97

Citation : (2013) 6 ABR 233 : AIR 2014 Bom 23 : (2014) 1 ALLMR 178 : (2014) 4 BomCR 652 : (2013) 6 MhLj 560

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : C.M. Korde, Mr. Vijay Nair instructed by and Mr. Bhushan Mahadik, for the Appellant; Mahesh Jethmalani, Mr. Pravin B. Gole, Ms. Chaitra Pawar and Mr. S.S. Deshmukh, for the Respondent

Judgement

Anoop V. Mohta, J.—Not on board. Mentioned. Taken on board. By consent, heard finally. The Election Petition u/s 100(1)(d) iii and iv of the Representation of People Act, 1951, (for short RP Act) is pending since 19 June 2012. The Biennial Election of Nashik Local Authorities constituency of 25 May 2012, is under challenge.

2. Pursuant to order dated 30 August 2013, the Election Petition is listed today for hearing, as agreed. The learned senior counsel appearing for the Applicant-Original Respondent moved an Application/Chamber Summons dated 6 September 2013 for an amendment to the Written Statement already filed on 16 February 2013 along with the documents. The Election Petition summons was served upon the Applicant on 17 January 2013. He seeks to amend the Written Statement to paragraph Nos. 17A, 17B and 17C, which are basically revolving around prayer clause (e) of the Election Petition which is as under:-

(e) that this Hon'ble Court be pleased to Order for recount and re-verification/scrutiny of the 23 invalidated ballot papers in the Election to the Legislative Council of the State of Maharashtra in the Biennial Election from the Nashik Local

Authority Constituency for the year 2012;

3. One another Application (Lodging) No. 8 of 2013 is filed by the Applicant with prayer to dismiss the Election Petition for want of alleged non-compliances of the mandatory provisions of Section 81 of the RP Act, by referring to the various lacunas, such as no signatures and the defect in affirmation by the Petitioner on various pages of the Election Petition, after order on the Petitioner's amendment Application No. 7 of 2012, dated 26 July 2013. Time is granted, as sought for, to file reply to this Application.

4. The learned Senior counsel appearing for the Petitioner, on instructions of the Petitioner-Mr. Shivaji Laxman Sahane, who is present in the Court, makes statement that they are not pressing prayer clause (e) of the Election Petition. As the amendment so sought, revolved around the same and even otherwise, in view of the settled principle of law revolving around Sections 97, 100 and 101-A of the RP Act and as there is no Recrimination Petition survives of the Applicant to claim such reliefs. The Court will not be in a position to pass any order as prayed for in the Application. The learned senior counsel appearing for the Election Petitioner has opposed this amendment Application on various other grounds including delay, latches, inconsistency and/or addition of impermissible material on record, in view of the rejection of their Recrimination Petition on 16 August 2013. The hearing of the Election Petition is already commenced. Issues are framed. The matter is listed after two preliminary issues are decided, against which two separate Special Leave Petitions filed by the Applicant-Respondent in the Supreme Court against the order passed in Recrimination Petition by this Court and those were also dismissed on 27 August 2013. The submission is therefore, also made that once the Recrimination Petition is dismissed, the amendment so sought, just cannot be granted as it amounts to putting the material for the first time, which is not permissible at such late stage, though the provisions of CPC (for short, CPC) are applicable, as contemplated u/s 87 of the RP Act.

5. The learned senior counsel appearing for the Applicant has relied upon Section 87 of the RP Act and the Supreme Court Judgments in support of the contention that there is no total bar under the RP Act to file an Application for amendment of written statement/reply. The provisions of CPC are applicable including all aspects of the grant of amendment even in Election Petition. The Supreme Court Judgment Kailash Vs. Nanhku and Others, has been relied upon, whereby the Apex Court has considered to grant extension of time to file Written Statement beyond the period of 90 days. The Supreme Court permitted to file Written Statement, subject to costs.

6. There is no serious opposition so far as the applicability of CPC, in view of Section 87 of the RP Act and even otherwise, including for conducting the trial of Election Petition. The Court, therefore, needs to consider the basic principles of grant of amendment, as contemplated under the CPC. We have to consider the amendment Application in the Election Petition. The time mandate of RP Act and

the Rules made thereunder, since the inception of filing of the Election Petition including its service to the other side and/or the Respondent and filing of Recrimination Petition within the prescribed period, just cannot be overlooked, merely because there is no specific provisions and/or rules referred and/or pointed out which mandate and/or require the Respondent-Applicant to file Written Statement within prescribed period. In the present case, we are concerned with the present Application which the Applicant wants to press it, though the Election Petitioner, as recorded above, not pressing prayer clause (e) which is the foundation for the present amendment Application. The scope of amendment principles for Written Statement cannot be enlarged, in such circumstances, in such Election Petition. The Petitioner if bound by mandate of the RP Act, the Respondent/the Appellant cannot be permitted to file such amendment Application in view of above circumstances. The mandate applies to both.

7. Apart from delay, latches and not placing any averments and/or material to justify the reason for filing such amendment Application, even after the rejection of Recrimination Petition on 16 August 2013, there is no averments to show that the material which they sought to be placed on record, was not available at the relevant time and/or earliest point of time when they moved and/or taken out the earlier Applications and at the time of filing of Written Statement.

8. The earlier background and the reasons in the orders passed by this Court dated 26th July 2013 in Election Petition and dated 30 November 2012 in Application No. 5 of 2012, are also relevant and cannot be overlooked while considering the case of grant of amendment so sought for.

9. The mandate of 30 days and/or 90 days in filing the Written Statement itself is now a matter of discussion. The parties must file Written Statement within a period so prescribed. The Election Petition, if required to be adjudicated at the earliest and the trial has already commenced, as recorded, in the present Election Petition itself, the filing of this amendment Application, at this stage, in my view, is nothing but an attempt to delay the proceedings as contended by the Election Petitioner, by changing even the earlier advocate.

10. The submission is made by the learned senior counsel appearing for the Applicant is that this amendment Application is nothing but to place on record the supporting material, in view of the averments already made in the Written Statement in paragraph Nos. 7 and 11, which read as under:-

7. With reference to paragraph 3 a. of the Election Petition, this Respondent submits that ballot papers which were invalidated from which 7 invalidation was of this Respondent's name and only 4 were of the Petitioner. It is stated that the Returning Officer has also declared additionally one vote invalid of Baglan and one vote invalid of Nandgaon.

11.This Respondent submits that it has been validly rejected and on the contrary, 7 votes of this Respondent have also been invalidated.....

11. This submission is also not accepted and even as opposed by the learned senior counsel appearing for the Election Petitioner, as the amendment so sought, changes and enlarges the original case so made out by the Respondent in the Written Statement already filed on 16 February 2013. It is not the case that they were not aware of the prayer clause (e) and/or related averments made in the Election Petition in paragraph 3(a) which is as under:-

3-a. The total number of voters casted their votes in the said Election was 467 in numbers. The 23 ballot papers were invalidated till last round of counting and scrutiny on different grounds and the said action in invalidation is also challenged by the Petitioner in the present Petition.

12. Once prayer clause (e) is not pressed, the submission still to grant the amendment Application revolving around the same, in my view, is not acceptable. As those issues revolving around prayer clause (e) if not necessary and/or relevant as per the Election Petitioner, and therefore, there is no question to add and/or enlarge the scope of Election Petition by granting such amendment Application, as prayed, revolving around the same and the related action of invalidation. It will multiply and definitely delay the proceedings. Strikingly though the Election Petitioner is not pressing prayer clause (e) but, the Respondent-Applicant, by this amendment Application still insisted that "he has no objection to the grant of prayer (e) of the Election Petition" and further averred "to pass an order for re-count and re-verification/scrutiny of the 23 invalidated ballot papers". This, in my view, is also unacceptable at this stage of the proceedings in the above background. The prayer so withdrawn, cannot be retained only at the instance and insistence of the other side. The prayer goes so also the related inquiry and connected aspects.

13. In the Court for the first time not pressed prayer clause (e) of the Election Petition, therefore, this is not permissible, was the Appellant's case. However, the fact of moving this Application directly in the Court, but in view of dismissal of the Recrimination Petition, the Court, in this background cannot deny and/or reject the statement made, on instructions of not pressing prayer clause (e). The same is accepted at the risk of the Election Petitioner. The submission still to insist for amendment, in my view, is an additional factor to accept the case that the whole intention is to postpone and delay the early result of the Election Petition.

14. Both the learned senior counsel appearing for the parties have relied upon various Judgments to show the effect of non-filing of Recrimination Petition and as in the present case, the Recrimination Petition itself is dismissed, though on the ground of delay, but in view of confirmation of the order passed by the Apex Court dated 27 August 2013, the fact remains that there is no Recrimination Petition on the ground for the purpose of consideration of the situation, as well as, the related aspect of recrimination at the instance of the Applicant-Respondent. The issues, even if any, revolving around Sections 97, 100 and 101-A of the RP Act, referring to Recrimination Petition, need no further discussion at

this stage, as it would be considered at the time of final hearing of the Election Petition. This is also not necessary as I am deciding amendment Application in view of above noted reasons.

15. The submission is also made that an opportunity be given and/or this technicality should not come in a way to grant the amendment in the interest of justice, which would be in a way nothing but granting an equal opportunity to both the parties to contest and/or raise appropriate defence in the Election Petition. This, in my view, in the present facts and circumstances, and in view of the orders so passed and when the trial is already commenced and no case is made out, including no reasons whatsoever in support of such amendment Application for delay, latches and apart from the mandate of disposal of Election Petition at the earliest, no case is made out to grant such amendment Application, at this stage of Election Petition.

16. The learned senior counsel appearing for the Applicant prayed for stay of this order also and requested to postpone the hearing of the two issues as fixed. The learned senior counsel appearing for the Election Petitioner opposed the same. However, as both the counsel requested to fix the matter on agreed dated i.e. on 25 September 2013, no case is made out for any stay of this order, as prayed. Resultantly, the present amendment Application is rejected. There shall be no order as to costs.