

**(1996) 06 BOM CK 0009**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 850 of 1996**

Shri Narayan Jotiba Shelke

APPELLANT

Vs

Ramesh Manikrao Bhongade and Others

RESPONDENT

---

**Date of Decision :** 20-06-1996

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Representation of the People Act, 1951 — Section 83

**Citation :** (1997) 99 BOMLR 311

**Hon'ble Judges :** V.S. Sirpurkar, J

**Bench :** Single Bench

**Final Decision :** Allowed

---

## Judgement

V.S. Sirpurkar, J.—By this writ petition, the judgment passed u/s 428 of the City of Nagpur Corporation Act (hereinafter referred to as "the Act") by the 8th Additional District Judge, Nagpur setting aside the election of respondent No. 3 Narayan Jotiba Shelke is called in question. Election to the post of a Councillor was held on 25.2.1992. The petitioner herein and respondent No. 3 in the original election petition was one of the candidates contesting from Ward No. 28. There were number of other candidates in the field. The election notification was published on 25.1.1992. The polling and counting was held on 25th and 26th February, 1992 and the result was declared on 27.2.1992. It was also published in the gazette. In this election, the present petitioner Narayan Jotiba Shelke was declared to have been elected he having secured the maximum number of votes.

2. This election was challenged by way of an election petition for which a provision is made in Section 428 of the Act wherein such election petitions are tried by the District Court. There are number of grounds on which the election was challenged. This election was challenged by one Ramesh Manikrao Bhongade - the petitioner in the original election petition and respondent No. 1 in the present writ petition. He had challenged the election on number of grounds. He alleged mainly that there was non-compliance with the Rules framed for the

elections to the post of Councillors of the Nagpur Municipal Corporation. He alleged that contrary to the Rules, common symbols were allotted to some candidates merely because they were recommended by a particular political party. This, according to him, was illegal. His further contention was that one Satish Chatuirvedi who was husband of a contesting candidate from Ward No. 41 had influenced the entire process and the results. The election petitioner made a grievance that he should have been allotted "Masha" (torch) as the electoral symbol but that was not given to him wrongly. He also alleged irregularities in allotment of the symbol. He also alleged that there was irregularity in the voters list also. On that count also, he alleged that there was a possibility of bogus voting since more voters were shown than the inhabitants residing in that particular area. So also according to him some names were found commonly in more than one wards. He also complained about the polling stations and the list of voters who cast their votes in a particular polling station. In paragraph 19 he alleged that the ballot papers used for the elections were illegal since there were no counter-foils to the ballot paper for obtaining signatures and for reconciliation. According to him, ballot papers were also not signed by the Polling Officers and, therefore, the ballot papers were liable to be rejected. According to him, further the total number of ballot papers found in the ballot box did not tally with the ballot papers issued. Some ballot papers were found missing and, therefore, according to him the entire process of conducting the election was illegal and, therefore, the result of the election of Ward No. 28 was liable to be set aside. He also found fault with the counting process and alleged that since there were 8 tables, his agents could not remain present at all the tables. In paragraph 22, he alleged that respondent No. 2 the elected candidate had on 24.2.1992 started the work of boring well in the ward. There is no further allegation made in this paragraph. Paragraph 23 is rather important for the purposes of this petition, which is being quoted as under:

It is further submitted that the respondent No. 3 contested the election but in the result the name "Baba Shelke" has been published. Shri Baba Shelke is neither voter nor a candidate and therefore could not have been declared as successful candidate.

In paragraph 24 the election petitioner has complained of large scale bogus voting and voting for the dead persons. These are all the pleadings in the election petition.

3. After the notices were served, the present petitioner Narayan Jotiba Shelke filed his written statement and disputed each and every allegation. In his reply to paragraph 29, he denied that the ballot papers which were used for election were illegal and that there was any infraction of the Rules in not maintaining the counterfoils or the signatures not being put on the same. He pointed out that there were Rules provided for conducting the election and the ballot papers were in keeping with the Rules. As regards the paragraph No. 23, he contended that it was he who contested the election and he was also known as Baba Shelke. He

contended that there was nothing wrong if popular name was published as contended by the petitioner. On this count, he traversed the pleadings in paragraph No. 23 of the election petition. By way of special pleadings in paragraph 32, the present petitioner, i.e. respondent No. 3 before the trial Court alleged that the allegations were too general, that there were no material particulars; in the petition, that there were no specific examples which the law postulated. He also complained that the election petitioner did not join the proper parties inasmuch as the persons against whom allegations were made were liable to be joined as the parties. In paragraph 33 again he reiterated that there were no material facts stated which was sine-qua-non for challenging the election of a returned candidate. He pointed out that though the complaints of impersonation were made, even the names of those persons who were impersonated had not been supplied in the election petition. The most striking feature is that thereafter ordinarily the parties should have been directed to file their documents and the Court should have framed the issues on the basis of the pleadings in the election petition and traversed in the written statement. In the name of issues, the learned trial Court framed the following issues:

(1) Whether the petitioner prove that election of Ward No. 28 of Nagpur Municipal Corporation held on 25.2.1992 is invalid?

(2) What order?

If this is the manner in which issues in election petition are to be framed, then the issues would be common in all the election petitions irrespective of the challenges made and irrespective of the pleadings introduced by the parties. The learned trial Court has not realised that this was an election petition and under Rule 4 of the Rules framed by Notification No. 5041-2476-M-XIII dated 23.11.1951 this election petition was to be tried as a civil suit and the procedure applicable to the trial of civil suits under the CPC was applicable to the same. The issues should have been framed in that manner which is provided in the Civil Procedure Code. Be that as it may, the parties went to the evidence on the basis of the two specious issues, if at all they can be called issues, probably not even realising their own burdens.

4. In the name of evidence again, the election petitioner examined himself and examined one more witness, none-else than the Returning Officer. The elected candidate and the petitioner herein examined himself. After the evidence the trial Court upset the election by his judgment dated 8.3.1996. In his operative order, the trial Judge has declared the election of respondent No. 3 as a councillor from Ward No. 28 of City of Nagpur Corporation, Nagpur declared on 27.2.1992 which was held on 25.2.1992 as invalid. He has set aside the same and then interestingly enough, the trial Court has directed the Corporation respondent No. 1 to hold fresh election of Ward No. 28 in accordance with the provisions of City of Nagpur Corporation Act. One fails to follow from where the learned trial Court derived this authority to declare a fresh election. Be that as it may, on account of the election having been set aside the petitioner has challenged this judgment by

way of the present writ petition under Articles 226 and 227 of the Constitution of India.

5. Shri N.S. Khubalkar, the learned Counsel for the petitioner, has firstly pointed out that the only ground on which the election of the petitioner is sought to be set aside is that though the real name of the petitioner is Narayan Jotiba Shelke" in the ballot paper his name was printed as "Baba Shelke". He has pointed out that in this behalf, the learned trial Court has observed that this wrong mentioning of the name in the ballot paper has resulted in infracting the, Rule 11(1) of the Rules relating to municipal councillors which are in existence and which have been brought in existence vide, notification No. 230-1965-M-XIII dated 15.1.1992 u/s 9 read with Section 420(2)(f) of City of Nagpur Corporation Act, 1948.

He has pointed out that the learned trial Court has, therefore, held that the election of the present petitioner was rendered null and void on account of the infraction of the afore-mentioned Rule 11(1). He has further argued that in fact even this Rule is not infringed and the trial Court has committed grave error in relying upon this Rule. He has further pointed out that factually if his election is set aside on the ground that the name was wrongly written in the ballot papers, then the election should have been challenged on that ground and there should have been same pleading to that effect. He pointed out that there is absolutely no pleading to this effect in the whole petition. He has drawn my attention towards Rule 15(c) by which the election can be set aside if there is any non-compliance with the provisions of any of the Rules, framed u/s 9(3) read with Section 420(2)(f) and Sections 420(2)(i) and (j), provided such non-compliance has resulted in materially affecting the result of the election. He points out that in the whole petition there is no challenge to this effect and the petition is completely silent on this aspect. He, therefore, points out that there is no scope for confirming the judgment in so far as it relates to the point of infraction of Rules 11(1), (2) and (3). The other leg of Shri Khubalkar's argument is that on all the other aspects raised in the election petition, the finding is in favour of the elected candidate and this is the only ground on which the election has been set aside. According to him, there was no material before the trial Court to hold that the irregularity or the infraction of Rule 11(1) was such as had materially affected the result of the election. He pointed out that there is absolutely no finding to that effect which was essentially to be given. On this count, he contends that the judgment is rendered illegal.

6. Shri P.C. Marpakwar, the learned Counsel for the respondent No. 1 election petitioner, supports the judgment and agrees fairly that on practically all the grounds the findings of the learned trial Court are in favour of the elected candidate excepting the one on which the election is upset. He has fairly conceded that he does not propose to challenge the findings which are against him on the other counts. He, however, submits that the finding of the learned trial Court on the question of infraction of Rule 11(1) is correct as, according to

him, it could not be said that there is no material pleading. He further submits that even if there is no pleading there was evidence led on record to support the contention that the ballot paper contained wrong name. He also asserts that merely because there is no pleading to this effect, that could not be said to be fatal mistake and the trial Court could still allow the evidence to be led in that behalf and record the finding. He has supported his contention. He has also contended that in not framing the issues, the trial Court has not committed any error and as the trial was not strictly as per the provisions of Civil Procedure Code, but was supposed to be as nearly as possible under the procedure provided by the Code of Civil Procedure.

7. On these rival contentions, it has to be seen as to whether the judgment of the trial Court in upsetting the election is correct. The pleadings of the election petition have been deliberately dealt with in details as in reality there does not appear to be any pleading in respect of a wrong name being printed on the ballot paper. This writ petition has to be decided only on this one question as to whether the trial Court was right in upsetting the election on account of the so-called infraction of Rule 11(1) as admittedly all the other findings are in favour of the present petitioner the elected candidate and no other challenge raised in the election petition has been accepted by the trial Court. Shri Marpakwar has no dispute with those findings. Therefore, the only question that will have to be decided is whether the trial Court was right in upsetting the election as prayed for infraction of Rule 11(1). As has already been pointed out, there does not appear to be any basis in the election petition for this challenge. The learned trial Judge has quoted Rule 11 in paragraph 13. Before that in paragraph 12 he has unequivocally stated:

To summarise the reason I would like to mention that I do not find any substance in the entire allegations made by the petitioner in the petition to declare the election of the respondent No. 1 invalid except the ground mentioned by him that Baba Shelke was neither the candidate nor voter and even if he has been declared as elected....

It has already been pointed out earlier that the learned Judge has derived this pleading from paragraph 23. In paragraph 13 thereafter the learned Judge proceeds to consider this ground. The learned Judge has come to the conclusion that the name "Baba Shelke" was printed on the voting papers (ballot papers). He observes that the present petitioner Shri Shelke has not made any reference to that name in his nomination papers Exhs. 48-A and 48-B. He has thereafter quoted Rule 11 which is as under:

11(1) Every voting paper shall be in Form I (the particulars in the Form may be in Marathi also).

(2) The names of the candidates shall be arranged on the voting paper in the same order in which they appear in the list of duly nominated candidates.

(3) If two or more candidates bear the same name they shall be distinguished by

the addition of their occupation or residence or in some other manner.

The learned Judge then refers to Exh. 49 which is the list of candidates whose nominations were duly accepted as also to Exh. 51 which is in respect of allotting the Symbols to the contesting candidates and observes that both these bear the name Narayan Jotiba Shelke and has no reference to Baba Shelke. He has then referred to the fact that the evidence of respondent No. 2 Wamanrao Maruskar that Baba Shelke and Narayan Jotiba Shelke are the two names of one and the same person. He, therefore, further holds that there is a reason to believe that the voters might have caused their votes in favour of Baba Shelke knowing fully well that he is respondent No. 3 though the name of Narayan Jotiba Shelke was not printed or used on the voting paper. On this basis, he further records that there is a reason to believe that with full identity of respondent No. 3 as Baba Shelke, Baba Shelke might have secured more votes in his favour. Thereafter he records that considering the Rules, the voting papers used in election were not strictly in accordance with the provisions of Rules 11(1), (2) and (3) and the said ballot paper was not in Form No. 1 and then he proceeds to hold that "I have to declare the said election invalid only on the ground that voting papers used in the election were not in Form No. 1 and in accordance with the provisions of Rule 11(1) of the Rules relating to the election of the councillors." The judgment is purposefully quoted in order to show that the learned Judge has not appreciated or understood the law relating to the election.

8. Now it is trite because of the specific language of Rule 15(c) that the result of the election must have been materially affected because of any non-compliance in order that the election is to be declared void. This will be clear from the very language of Section 15 which is as under:

S.15. Save as hereinafter provided in this rule, if in the opinion of the Court-

(a) and (b): Not relevant,

(c) the result of the election has been materially affected by any irregularity in respect of a nomination or by the improper reception or refusal of a vote or by any non-compliance with the provisions of any of the rules framed u/s 9(3) read with Section 420(2)(f) and Sections 420(2)(i) and (j) the election of the candidate shall be void.

A glance at this would go to suggest that there has to be a finding that because of the non-compliance, the result of the election has been materially affected. The learned Judge has not quoted this rule anywhere in his judgment, probably he was not aware of the same nor was the rule pointed out to him. There is absolutely no finding given by the learned Judge and indeed such finding could not have been given for the reasons which follow hereinafter.

9. It has already been pointed out that there has been no complaint in the election petition that the ballot paper was wrongly printed. The pleadings in paragraphs 19 and 23 have been deliberately given in details in the earlier part

of the judgment. Both those paragraphs would show that there is absolutely no pleading regarding the ballot papers containing a wrong name of Baba Shelke in place of Narayan Jotiba Shelke. In so far as paragraph 19 is concerned, the only complaint is that ballot papers were illegal because there were no counter-foils maintained and secondly because they were not signed by the Polling Officers. Beyond this, there is no complaint regarding the ballot papers or their validity. In so far as the paragraph 23 is concerned, the only contention is that respondent No. 3 contested the election but in the result the name of Baba Shelke has been published, Baba Shelke is neither a voter nor a candidate and, therefore, could not have been declared as a successful candidate. Now beyond these two paragraphs, there is absolutely nothing in the whole election petition to suggest that the ballot paper was either not in keeping with the form provided there for or ballot paper was wrongly printed and had the name of Baba Shelke instead of Narayan Jotiba Shelke which should have been printed on the ballot paper. There is absolutely nothing and, therefore, Shri Marpakwar was fair enough to admit this. Not only this, but there is no further averment that because of this so-called error the result of the election of respondent No. 3 was materially affected. Now all these are factual pleadings. When these factual pleadings were not there in the petition at all, one fails to follow as to wherefrom has the learned trial Court brought all these facts and based his findings thereupon. One further fails to follow as to why the learned trial Court did not bother to look into Rule 15(c) of the Rules which was the provision for declaring the election void for the non-compliance with the Rules. There has been a shocking casualness in firstly conducting the trial. It has already been found as a matter of fact that the learned Judge did not even frame the issues. There has been a further shocking casual approach towards the provisions of law and the provisions of law were not probably read and if they were read they were not understood at all.

10. Shri Khubalkar is, therefore, right in contending that in the absence of any pleadings about the non-compliance of the Rule 11(1) and so-called error of the name of Baba Shelke appearing instead of Narayan Jotiba Shelke in the ballot papers, this charge could not have been considered let apart held to be proved by the learned Judge. It is trite in the election law that the allegations have to be supported with material facts and there has to be a proper pleading for the same. Rule No. 1 which is in the light and pan materia to the provisions in Representation of the People Act specifically provides that every application calling an election into question shall contain a statement in concise form of the material fact on which the applicant relies and the particulars of any corrupt practice which he alleges. Here lei apart the particulars, the material facts also were not stated. The learned trial Court has relied upon the name being printed wrongly in the ballot papers. There is not even a whisper in the whole election petition of that material fact. There is a catena of case law on this question. One of them is: Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, where the Apex Court has held as under:

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.

It has already been pointed out that Rule 1 is absolutely pan materia to Section 83 of the Representation of the People Act and as such the said Rule also must be held to be mandatory. If, therefore, there was no concise statement of the material fact that the ballot paper was wrongly printed and bore a wrong name of the present petitioner and the respondent No. 3 in the election petition, then the learned trial Court could not have relied upon that fact to set aside the election. That apart, there is also no statement in the election petition that such non-compliance has resulted in the result of the election being materially affected. Therefore, even if the election petitioner wanted to lead the evidence on that aspect, the said evidence could not have been led as the said evidence would have been rendered inadmissible in the absence of any pleading. This is only by way of observation because the learned Judge has not bothered to consider that question also let apart give a finding on that question. Therefore, it is clear that the Judgment setting aside the election of the present petitioner cannot be sustained and has to be set aside. No other point was argued by either of the parties.

Shri C.S. Dhabe, the learned Counsel for the respondent No. 2 Municipal Corporation of the City of Nagpur, contended that this petition should be dismissed as against the Corporation as the State Election Commissioner has not been made a party. This Shri Dhabe says because, according to him, after the election of the petitioner has been set aside a fresh election has been ordered which is scheduled to be held on 23.6.1996. One fails to follow the logic of this argument. What is in question in this petition is the judgment of the Election Tribunal. If subsequently any elections are declared that is beyond the scope of this petition. The contention of Shri Dhabe cannot, therefore, be accepted. Besides this, no other point was argued.

12. In the result, the writ petition succeeds. Rule is made absolute in the above terms. The impugned judgment and order dated 8.3.1996 declaring that the election is invalid in Election Petition No. 38/92 are set aside and the Election Petition No. 38/92 is hereby dismissed with costs throughout. Needless to say that this will reinstate the position of the petitioner as a validly elected candidate.