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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VISHAL DHAGAT
ON THE 7th OF SEPTEMBER, 2022
ELECTION PETITION No. 16 of 2019**

BETWEEN:-

NARESH GYANCHANDANI

.....PETITIONER

(BY SHRI ANKIT SAXENA - ADVOCATE)

AND

SHRI RAMESHWAR SHARMA

.....RESPONDENT

(BY SHRI AMIT DAVE- ADVOCATE)

.....
*This election petition coming on for hearing this day, the court passed
the following:*

ORDER

Heard on I.A. No.7058/2019 and I.A. No.8031/2019 and two preliminary
issued framed by this Court vide order dated 14.02.2022.

2. Heard.

3. Counsel appearing for petitioner and respondent were heard on
pending preliminary issues and on pending I.As. This Court has framed two
preliminary issues vide order 14.02.2022 as under:-

1. Whether there is non-compliance of Section 83 of the
Representation of People Act, 1951, and petition may be
dismissed?

2. Whether there is defect in affidavit due to non-compliance of Section 83(1) of the Representation of People Act, 1951 and Rule 94-A of the Conduct of Election Rules, 1961?

4. Respondent had filed an application i.e. I.A. No.7058/2019 for dismissal of election petition and petitioner had filed I.A. No.8031/2019 under Order 6 Rule 17 for proposed amendment.

5. Brief facts of the case is that election notification was issued on 02.11.2018 and polling was conducted on 28.11.2018. Counting of votes and result was declared on 11.12.2018. Petitioner namely Naresh Gyanchandani who is candidate of Indian National Congress secured 91563 votes and respondent namely Rameshwar Sharma, who is candidate of B.J.P., secured 107288 votes. After declaration of result, petitioner filed election petition on 25.01.2019 making a prayer for declaration of election result to be null and void. It was pleaded that there was breach of "Moral Code of Conduct" by creating religious and sectional conflict between Sindhi and Hindu community by giving speeches. Audio recorded in voice of respondent was made viral. By adopting such practices, respondent gain more votes than petitioner. Along with election petition audio CD, transcript and complaint made at Police Station Bairagarh was filed. Respondent had filed I.A. No.7058/2019 for dismissal of election petition. It is averred in I.A. for dismissal of election petition that full particulars of corrupt practices along with specific date and place is not pleaded. Due to want of same, no cause of action accrues to petitioner. Affidavit under Section 94-A in Form-25 has also not been filed. Petitioner has mentioned in his petition that there is violation of Moral Code of Conduct, but petition has been filed for corrupt practices made by respondent. Since full particulars has not been given and affidavit has not been filed, therefore, petition be dismissed.

6. After filing of application for dismissal of election petition, petitioner has filed an application i.e. I.A. 8031/2019 for proposed amendment by which date and place and cause of action has been mentioned in the application. Petitioner has also filed I.A. by which an affidavit as per Section 94-A is filed by him.

7. Counsel appearing for petitioner has relied on para 65 of judgment of Apex Court passed in ***Civil Appeal Nos.2250-2251 Of 2013, G.M. Siddeshwar Vs. Prasanna Kumar***. Para 65 of said judgment which is quoted as under:-

"65. Applying these principles to the facts of the present case, it seems quite clear that the affidavit filed by Prasanna Kumar in compliance with the requirements of the proviso to Section 83(1) of the Act was not an integral part of the election petition, and no such case was set up. It also seems quite clear that the affidavit was in substantial compliance with the requirements of the law. Therefore, the High Court was quite right in coming to the conclusion that the affidavit not being in the prescribed format of Form No.25 and with a defective verification were curable defects and that an opportunity ought to be granted to Prasanna Kumar to cure the defects."

In view of same, it is submitted by him that requirement of proviso 83(1) of the Representation of the People Act, 1951 is not integral part of the election petition and same can be supplied and affidavit filed was in substantial compliance of requirement of law. It is also argued that better particulars giving date and place is mentioned in application under Order 6 Rule 17 of CPC. Application is filed not to fill lacuna but to give details of facts already pleaded. Petitioner is not making out a new case by filing application under Order 6 Rule 17 of CPC, therefore, prayer is made to allow his applications for proposed

amendment and taking affidavit on record.

8. Counsel appearing for respondent on the contrary relied on judgments reported in *(2009) 9 SCC 310; Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar, (2000) 8 SCC 191; Ravinder Singh Vs. Janmeja Singh and others, (1999) 9 SCC 386; Jeet Mohinder Singh Vs. Harminder Singh Jassi, 2009 (4) M.P.L.J. 292; Shushil Kumar Vs. Sartaj Singh and (2005) 5 SCC 46; Harmohinder Singh Pradhan Vs. Ranjeet Singh Talwandi and others*. Relying on said judgments, counsel appearing for respondent submitted that petitioner ought to have given full particulars of corrupt practices and how election was vitiated. Petitioner cannot be permitted to file affidavit after filing of election petition. Election petition ought to have been accompanied by affidavit and same is mandatory. Court should not rightly interfere with election of returned candidate and it should have regard to serious consequences of such interference. Since material particulars had not been given, therefore, election petition is liable to be dismissed. On strength of said judgments, it is further submitted that amendment application filed beyond period of 45 days after expiry of limitation cannot be permitted to be allowed. In these circumstances, application filed for dismissal of election petition be allowed and application for proposed amendment be dismissed and preliminary issue framed by this Court may be answered in his favour. Defect in election petition is not curable, therefore, election petition be dismissed.

9. Heard the counsel appearing for petitioner as well as respondent.

10. Petitioner has filed election petition on 25.01.2019. In election petition, it was pleaded that election be declared void due to breach of Moral Code of Conduct. Particular of corrupt practices along with specific date and

time has not been mentioned. Pleading is made that election be declared void as per Section 100 (1) (a) of Representation of the People Act, 1951. Section 100 (1) (a) of Act of 1951 relates to disqualification of a candidate, if the returned candidate is disqualified then election be declared void. No ground in election petition has been raised regarding disqualification. Petitioner in election petition has made a pleading under Section 100(1) (d) (ii) of Representation of the People Act, 1951. Petitioner has not made any pleading regarding 'corrupt practices' and has submitted that respondent election be declared void for breach of 'Moral Code of Conduct'. Ground raised in election petition is not a ground in Section 100 of Representation of the People Act, 1951 for declaring election void. Court has framed preliminary issue whether there is non-compliance of Section 83 of Representation of the People Act, 1951.

11. Section 83 of Representation of the People Act, 1951 is quoted as under:-

"[83. Contents of petition.-"(1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be

signed by the petitioner and verified in the same manner as the petition.]"

12. On going through pleadings made in election petition, it is found that petition is not filed on grounds of corrupt practices by respondent, but for violation of Moral Code of Conduct. Since petitioner has not made any pleading regarding corrupt practices, therefore, it cannot be said that there is violation of Section 83 of Representation of the People Act, 1951. Concise statement of material facts has been given and petition has been verified as per Section 83 (1) (c).

13. Second preliminary issue was in respect of defect in affidavit due to non-compliance of Section 83 (1) of Representation of People Act, 1951 and Rule 94-A.

14. Rule 94-A provides that affidavit accompanying election petition shall be in Form 25 in case of averment of corrupt practices. Affidavit in Form No.25 of Rule 94-A is regarding corrupt practices. There is no pleading regarding corrupt practices in election petition, therefore, it cannot be said that election petition be dismissed for violation of Conduct of Election Rules, 1961.

15. Respondent had filed I.A. No.7058/2019 for dismissal of election petition and petitioner had filed an application for amendment i.e. I.A. No.8031/2019 are taken into consideration. Petitioner has made vague and general pleadings in election petition. He has not given date on which cause of action arises for filing of election petition. Period of limitation allowed for filing of election petition is 45 days. Election result was declared on 11.12.2018 and election petition ought to have been filed on 25.01.2019. Election petition was filed on 25.01.2019, but no cause of action has been described in election petition. To remove said defect, application for amendment was filed on

02.07.2019. Said application is filed beyond the limitation prescribed in law.

16. Since proposed amendment sought to be introduced in election petition is barred under Limitation Act, therefore, application for amendment cannot be allowed. Application for amendment i.e. **I.A. No.8031/2019** is **dismissed**.

17. Apex Court in case of *Anil Vasudev Salgaonkar (supra)* has held that material fact is to be completed before expiry of period of limitation for filing election petition. Since date when cause of action arises has not been mentioned in election petition, therefore, in absence of date of accruing of cause action to petitioner, election petition cannot be permitted to continue.

18. Election petition can be filed on grounds mentioned in Section 100 of Representation of the People Act, 1951. Section 100 of the Act of 1951 does not mention violation of Moral Code of Conduct as one of the ground for declaring election as void.

19. Pleadings in election petition is to be construed strictly. Election petition is not a common law but statutory right and court in absence of precision and fatal defects in petition will dismiss the same. Petitioner failed to show accrued date of cause of action and petition on grounds not mention in Section 100 of the Representation of People Act, 1951.

20. Resultantly, **I.A. No.7058/2019** is **allowed**. Election petition filed by petitioner is **dismissed** for want of ground under Section 100 of Representation of the People Act, 1951 and in absence of pleadings giving cause of action to petitioner for filing of election petition.

(VISHAL DHAGAT)
JUDGE

sp/-

