

Manohar Vs. Kunal (Baba) and Others

Manohar Vs. Kunal (Baba) and Others

SooperKanoon Citation : sooperkanoon.com/1176214

Court : Mumbai Aurangabad

Decided On : Oct-26-2015

Judge : M.T. Joshi

Appeal No. : Election Petition No. 14 of 2014

Appellant : Manohar

Respondent : Kunal (Baba) and Others

Judgement :

1. Heard both sides.

2. The present Election Petition is filed to seek a declaration that the election of the present respondent no.1 to the Office of Member of Maharashtra Legislative Assembly from 6 Dhule Rural Legislative Assembly Constituency in the State of Maharashtra declared on 19/10/2014 is void and further to declare that the petitioner, who was also one of the candidate, be declared as duly elected to the said Office.

3. Respondent nos.2 to 9 were also nominated as candidates to the said election and, therefore, they are joined as parties. None of them however has filed any written statement.

Infact, respondent no.1 “ Shri Kunal (Baba) S/o Rohidas Patil had raised a preliminary objection to the maintainability of the present election petition and

later-on on 6/8/2015, Mr. P.M. Shah, learned senior counsel i/b. Mr. Shrikant Patil, Advocate for respondent no.1 made a statement at the bar that all the factual aspects as pleaded in the petition and the annexures thereto are admitted by respondent no.1 and, therefore, he agreed that instead of recording any evidence, the election petition itself can be heard finally. Under the circumstances, both the sides were heard on merit of the petition.

4. In essence, it was pleaded by the petitioner that the respondent no.1 in his affidavit, which was filed alongwith the nomination form, has suppressed his assets and liabilities and has also not disclosed that the contract subsists between him and the appropriate Government i.e. the Government of Maharashtra which was entered in due course of his business. Therefore, in view of the provisions of section 9A of the Representation of the People Act, 1951, he was disqualified from contesting the election.

5. There is no dispute between the parties that if the assets and liabilities which are substantive in nature are not included in the affidavit annexed to the nomination form, then the nomination is required to be rejected and, therefore, election can be declared as void as per the provisions of section 100 of the Representation of the People Act, 1951.

6. The philosophy and history requiring the filing of the affidavit with the nomination form need not be repeated here. Suffice to say that the Supreme Court of India in the landmark decision in the case of **Union of India Vs. Association for Democratic Reforms and another? 2002 (5) SCC 294** has directed the Election Commission of India to issue necessary orders to call for information on affidavit from each candidates, as detailed therein.

Further, in the case of **Peoples Union for Civil Liberties (PUCL) and anr. Vs. Union of India and anr.? (2003) 4 SCC 399**, inter-alia it is declared that the contrary provisions made thereafter being section 32B of the Representation of the People (3rd amendment) Act, 2002, as constitutionally invalid.

Further, in the case of **Resurgence India Vs. Election Commission of India? 2014 AIR(SC) 344**, it was directed to the Election Commission of India to make it

compulsory for the Returning Officers to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blank particulars.

7. In pursuance of the directions from the Supreme Court, Rule 4A was added to the Conduct of Elections Rules, 1961 by the Election Commission of India further providing for form of affidavit to be filled in as per Form No.26.

8. In nutshell the submission of the petitioner are that in the said form filled in by the present respondent no.1, he had not given the following information:

i) Ownership of seven agricultural properties as detailed in the pleadings as well as explained by the certified copy of record of rights of village Sutterepada, Taluka and District Dhule as a director of the company.

ii) Directorship of Tvish Infrastructure Pvt. Ltd. and Tara Spaces Pvt. Ltd.

iii) Liability of incurring loan from State Bank of India outstanding against the agricultural properties at serial number 1

iv) Trusteeship of Public Educational Trusts ; and

v) Obtaining a Miniport terminal at Kauthani on lease from Maharashtra Maritime Board for Samrudha Resources Ltd. of which the respondent no.1 is a Director.

According to the petitioner, the lease of the Miniport from the Maharashtra Maritime Board, is infact a subsisting contract entered into by the respondent no.1 in the course of his business with the appropriate Government incurring disqualification as provided by section 9A of the Representation of the People Act, 1951.

9. All the factual aspects are admitted by the respondent no.1. It was further admitted that respondent no.1 was required to disclose assets and liabilities concerning himself, his spouse and the dependents as provided by the relevant provisions.

However, as regards the lease, it was submitted that the Miniport is obtained on lease by the company of which the respondent no.1 is merely a director and even the Maharashtra Maritime Board would not be an appropriate Government within the provisions of section 9A of the Representation of the People Act, 1951.

During arguments Mr. Hon concedes the submission.

10. Mr. V.D. Hon, learned Senior Counsel i/b. Mr. P.D. Bachate strenuously submitted before me that taking into consideration the philosophy behind the introduction of the relevant provisions in the rules that the voters should be fully aware about the financial and other antecedents of the candidate, the provisions of the rules providing for declaration of the assets and liabilities of a candidate, his spouse or dependents shall also mean the assets and liabilities of the company of which the candidate is a director.

On the same line he is required to declare as to whether he is a trustee of any Public Trust.

11. In view of the ratio of **Shrikant Vs. Vasantrao and others? (2006) 2 SCC 682**, Mr. Hon concedes that since Samrudha Resources Ltd. has obtained lease from Maritime Board, which cannot be called an appropriate Government, the respondent no.1 was not disqualified from contesting the election.

12. The affidavit filed by the respondent no.1 with the nomination form would show that while disclosing the assets, he has disclosed that he was a shareholder and a director of one Tek Sutte Industries Private Ltd. and his shares therein are detailed. The assets of the said company are not held individually by him, his spouse or his dependents. The same is the case regarding the liabilities incurred on those properties.

As regards the fact that he is the director of Tvish Infrastructure Pvt. Ltd. and Tara Spaces, it was submitted that being a director is neither an asset nor the properties of the said company would be the assets of the respondent no.1, his spouse or dependents and, therefore, no information was required to be supplied.

13. Rule 4A of the Conduct of Election Rules, 1961 provides as under:

4A. Form of affidavit to be filed at the time of delivering nomination paper. “

The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under subsection (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.?

14. Form No.26 inter-alia provides that details of the assets and liabilities of candidate himself, his spouse or the dependents are required to be given.

15. Mr. Hon relies on the ratio in the case of **Kisan Shankar Kathore Vs. Arun Dattatray Sawant and others? 2014 AIR(SCW) 2889**. In the said case, the candidate was the partner in a firm and the assets of the said firm were not disclosed in the affidavit filed with the nomination form. His election therefore was declared as void.

16. Upon hearing both sides, in my view, the respondent no.1 has not suppressed any material information regarding his assets or liabilities. The assets or liabilities of a private limited company of which the respondent no.1 was the director is not required to be furnished as per the rules and the forms appended to the said rules.

17. Similarly, the fact that the respondent no.1 was the director of two companies or that he was a trustee of a certain Public Trust, as detailed supra, would not be his asset. In that view of the matter, the ratio laid down in the case of **Kisan Shankar Kathore?** (cited supra) would not be applicable to the facts in the present case.

It is to be noted that the basic requirement is of furnishing information about the candidate's assets and liabilities as well as the assets and liabilities of his nuclear family. The same cannot be stretched to the requirement of furnishing all the assets and liabilities of a company or of a Public Trust of which the candidate or his spouse or dependents would be the share holder/director or a trustee.

18. In **Kisan Shankar Kathore?** (cited supra) the candidate has suppressed his share in a partnership firm. It is needless to repeat here that partnership firm is merely a compendium of the persons having no entity in law. In that view of the

matter, share in the assets and liabilities of a partnership firm of which either a candidate or his spouse or dependent is a partner would be a material information. The same cannot be stretched to the declaration requiring the candidate to declare even the assets and liabilities of the company with which the relation is only as a director or a shareholder.

19. Considering all these facts on record, it cannot be declared that the nomination of the present respondent no.1 has been improperly accepted. In the circumstances, the following order:

20. The Election Petition is hereby dismissed without any order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com