

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8420 OF 2018
(Sudam s/o Laxman Pradhan Vs. Dnyaneshwar s/o Vitthal Bhosle
and others)

Mr.V.B.Kulkarni, Advocate for the petitioner.
Mr.N.K.Choudhari, Advocate for respondent No.1.
Mr.M.B.Bharaswadkar, Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/09/2018

PER COURT :

1. The petitioner / original respondent No.1 is aggrieved by the order dated 13/06/2018 by which the Trial Court has rejected application Exh.18 filed by this petitioner, in Election Petition No.3/2017.

2. I have heard the learned Advocates for the respective sides.

3. This petitioner suffered "No Say" order in the election petition. Application Exh.18 was filed beyond the limitation period seeking recalling of the "No Say" order. A cryptic order has been passed which is bereft of reasons. The only reason assigned is that the applicant failed to show sufficient reasons for delay.

4. It is well settled that in matters wherein a “No W.S.” or “No Say” order is passed which would render the said litigant defenceless, a pragmatic approach has to be adopted rather than taking a pedantic view. If the delay is not inordinate and too large to seek condonation, the Trial Court should ensure that the rights of the parties are not truncated and by imposing costs, such a right to file the written statement/say can be granted.

5. In the instant case, “No Say” order has been passed against the petitioner as well as the Tahsildar. “Proceed ex-parte” is the order passed against the Gram Sevak. The petitioner in the election petition would virtually get a 'Walk-over' in the said matter as none of the defendants have entered any written statement/say.

6. This petitioner has placed on record the death certificate of his brother in law. He has also placed on record certain medical certificates as regards his illness pertaining to lumber Spondylosis. The delay of 74 days cannot be said to be inordinate, in as much as, this petitioner would not derive any advantage by delaying the filing of his reply to the election petition since he would jeopardize his own interests.

7. Learned Advocate for the original applicant, though has strenuously opposed this petition and prays for its dismissal, submits in the alternative that if this Court is inclined to accept this petition, heavy costs may be imposed on the petitioner and the amount of costs be donated for the treatment of poor patients at Aurangabad. The petitioner is a Sarpanch of the village.

8. In view of the above, this petition is allowed. The impugned order dated 13/06/2018 is quashed and set aside and application Exh.18 is allowed. The delay of 74 days in filing the election petition is condoned subject to the petitioner depositing costs of Rs.7,500/- with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad,** either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti”**) on or before 30/09/2018. He shall produce a receipt of such deposit before the Trial Court on or before 06/10/2018.

Kranti
Hansraj
Shekatkar

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signed by
Krant Hansraj
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Date:
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(Ravindra V.Ghughe, J.)