

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ELECTION PETITION NO. 16 OF 2019

Aslam Badshahji Sayyed

...Petitioner

Versus

The Election Commission of India & Ors.

...Respondents

WITH

APPLICATION IN ELECTION PETITION (L) NO. 5 OF 2020

Dhairyasheel Sambhajirao Mane

...Applicant

In the matter between

Aslam Badshahji Sayyed

...Petitioner

Versus

The Election Commission of India & Ors.

...Respondents

Mr. Sandeep Rankhambe, for the Petitioner.

Mr. R.J. Mane, AGP, for the Respondent No. 2-State.

Mr. S.R. Ganbavle, a/w Mr. Sanjay Gawade, for Respondent No. 3.

CORAM : R.I. CHAGLA J.

DATE : 14 February 2020

ORDER :

1. By an order dated 16th January 2020, the Application

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February 14, 2020

taken out by the Applicants/Respondents No. 1 and 2 in the Election Petition viz. the Election Commission of India and the Returning Officer for their deletion as parties, was allowed by this Court. In so allowing the Application it was recorded that the Petitioner shall carry out appropriate amendment by deleting Respondents No. 1 and 2 in the Election Petition as well as consequential amendments. This was to be carried out within a period of one week from the date of the order.

2. On 31st January 2020, the learned Counsel for the Petitioner had sought an extension of time to carry out the amendment. This was vehemently opposed by the learned Counsel for the Respondent No. 3. It was accordingly, recorded by this Court that an extension of time of one week is granted as and by way of last opportunity and if the Petitioner does not carry out the requisite amendment in the Election Petition within the period of one week from the date of this order, the Election Petition shall be dismissed without further reference to the Court.

3. Today, the learned Counsel for the Petitioner has requested for further extension of time to carry out the amendment

by stating that the Petitioner had been hospitalised and hence, was unable to comply with the previous order dated 31st January 2020.

4. Considering that this is a self operative order, the Election Petition as well as the Application taken out by the Respondent No. 3 stands dismissed without further reference to the Court, the oral application made by the Advocate for the Petitioner cannot be considered.

5. The learned Counsel for the Respondent No. 3 submits that this Court should not entertain any application if filed for restoration of the Election Petition. He has submitted that the order passed by this Court on 31st January 2020 is an order under Section 98(a) of the Representation of the People Act, 1951. He has submitted that Section 98(a) of the said Act makes it clear that at the conclusion of the trial of an Election Petition this Court shall make an order dismissing the Election Petition. The Election Petition cannot be restored once such an order is passed. He has submitted that the said Act is a special Act and this Court only has power to determine the Election Petition within the ambit of the said Act.

6. He has further relied upon Section 107 of the said Act which provides that subject to the provisions contained in Chapter IV-A relating to the stay of operation of the order of this Court under Section 98 or Section 99, every such order shall take effect as soon as it is pronounced by the High Court. He has thus, submitted that the order dated 31st January 2020 had taken effect on that date when the order was pronounced by this Court.

7. The above submissions of the learned Counsel for the Respondent No. 3 shall be taken into consideration, in the event of an application being filed by the Petitioner for restoration of the Election Petition.

[R.I. CHAGLA J.]