

Urmila Ingale

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

ELECTION PETITION NO. 30 OF 2019

Shri Abhijit Wamanrao Awade - BichukalePetitioner
Vs.
Shri Shivendra Raje Bhosale and ors. Respondents

**WITH
APPLICATION (L) NO. 1352 OF 2019**

The Returning Officer .. Applicant

In the matter between

Shri Abhijit Wamanrao Awade - BichukalePetitioner
Vs.
Shri Shivendra Raje Bhosale and ors. Respondents

None for the Petitioner.

Mr.S.R.Borulkar a/w Mr.Siddhsen Borulkar i/b Mr.Rushikesh Barge,
for Respondent No.1.

Ms.Drishti Shah i/b Ms.Rekha Rajgopal, for Respondent No.4 in EP
and for Applicant in Application (L) No. 1352 of 2019.

Mr.K.B.Dighe, AGP for the Respondent No.5- State.
Mr.

CORAM : M. S. KARNIK, J.

DATE : 19th MARCH, 2021

P.C. :

. Learned Counsel Shri Borulkar appears for
Respondent No.1. Learned Counsel Ms.Shah appears for

Respondent No.4. Learned AGP Shri Dighe appears for Respondent No.5. From the record it is revealed that the Election Petition was filed on 09/12/2019. The same was listed on 13/02/2020 when none appeared on behalf of the Petitioner. Thereafter the same was listed on 20/02/2020 when the following order came to be passed.

" None present on the last occasion. No one has appeared even today. If on the next date none appears on behalf of the Petitioner, this Court will be constrained to pass appropriate orders even in the absence of the Petitioner.

2. Stand over to 26 February 2020."

2. On 26/02/2020, there was again no appearance on behalf of the Petitioner. Notice came to be issued to the Petitioner, returnable on 18/03/2020. On 18/03/2020, again there was no appearance on behalf of the Petitioner. The office report indicates that the status of the notice on the India Post website shows that notice is delivered. On 18/03/2020 since there was no appearance on behalf of the Petitioner again matter was adjourned on 16/04/2020. On 08/03/2021, on an application made by the Respondent No.4, following order came to be passed.

"This is an application for declaration that the EVM's consisting of Ballot Units 437, Control Units

437 and VVPAT 448 which are kept in the custody of the District Election Officer are not necessary for the adjudication or determining the dispute in the Election Petition. A prayer is made for release of the Ballot Units 437, Control Units 437 and VVPAT 448 which is kept in the custody of District Election Officer.

2. On the last four occasions when the Petition was listed for admission, none had appeared on behalf of the Petitioner. Since the Civil Application is now filed for the relief mentioned herein before, the Applicant-Returning Officer (Original Respondent No.4) to give a private notice to the Petitioner informing him that the Application would be listed on 10.03.2021. An affidavit of service to be filed to that effect. It is made clear that if no representation is made on behalf of the Petitioner, the Application will be decided on its own merits."

3. The matter then appeared on 10/03/2021. It was recorded that the Petitioner has not been appearing despite service of notice on the Petitioner and therefore, application was adjourned to 17/03/2021. On 17/03/2021 again there has been no appearance on behalf of the Petitioner and only by way of indulgence, matter was adjourned on 19/03/2021 to be placed under the caption "for dismissal".

4. There has been no appearance on behalf of the

Petitioner even today.

5. Learned Counsel for Respondent No.1, 4 & 5 urged that present Petition should be dismissed for non-prosecution as the Petitioner does not seem to be interested in prosecuting the Petition. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Dr.P. Nalla Thampy Thera Vs. B.L. Shanker and ors. 1984 (Supp.) Supreme Court Cases 631.**

6. From the time the present Election Petition is filed, the Petitioner has not appeared even once for prosecuting the Election Petition. The Petitioner does not appear to be interested in prosecuting the Election Petition and therefore the same is dismissed for non-prosecution.

7. So far as the Application (L) No. 1352 of 2021 is concerned, for the reasons mentioned in the Application, the same deserves to be allowed and is accordingly allowed in terms of prayer clauses (a) & (b) which read thus :

"a. That this Hon'ble Court be pleased to declare that the EVM's consisting of Ballot Units 437, Control Units 437 and VVPAT 448

which are kept in the custody of the District Election Officer are not necessary for the adjudication or determining the dispute in the above Election Petition.

b. That this Hon'ble Court be pleased to release the Ballot Units 437, Control Units 437 and VVPAT 448 which is kept in the custody of the District Election Officer."

(M.S.KARNIK, J.)

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Ingle

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signed by
Urmila P. Ingle
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