

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (O) NO. 585 OF 2020 IN
ELECTION PETITION NO. 1 OF 2020

(Shri Ranjeet s/o Babulal Chavan Vs. The Returning Officer & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri K.S. Motwani, Advocate for the petitioner.
Mrs. Ketki Joshi, Government Pleader for respondent
No.1.
Shri G.I. Dipwani, Advocate h/f Shri H.N. Verma,
Advocate for respondent No.2.

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CORAM : PUSHPA V. GANEDIWALA, J.
AUGUST 13, 2021.

Heard.

2. This is an application for deletion of respondent No.1 – Returning Officer, from the array of respondents.

3. In this petition, the petitioner has challenged the elections held on 21/10/2019 for 61-Bhandara (S.C.) Legislative Assembly Constituency General Election – 2019. Respondent No.1 had performed the duties of the Returning Officer for the said elections.

4. The petitioner in this petition sought the following reliefs :

“1) declare that the nomination papers of such candidates i.e. respondent No.2 to 14 are null and void who not made an oath or affirmation as prescribed under in third schedule of article 173(a) of The Constitution of India, if any;

2) declare that the petitioner himself is duly elected candidate in 61-Bhandara (S.C.) Legislative Assembly as such he taken an oath prescribed in third schedule of article 173 of the Constitution of India;”

5. Mrs. Joshi, learned GP, pointed out Section 82 of the Representation of the People Act, 1951 (hereafter “the Act of 1951”, for short), and submitted that as per this provision, the returning officer is not a necessary party. The learned GP relied on the following authorities in support of her submissions :

i) Jyoti Basu and others Vs. Debi Ghosal [AIR 1982 SC 983].

ii) Sundara Rami Reddy Vs. Election Commission of India [1991 (Suppl.) (2) SCC 624].

iii) Michael B. Fernandes Vs. C.K. Jaffar Sharief and another [AIR 2002 SC 674].

6. At this juncture, it would be relevant to refer to Section 82 of the Act of 1951. It is reproduced below :

“82. Parties of the petition.- A petitioner shall join as respondents to his petition-

(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in this petition.”

7. Shri Motwani, learned counsel for the petitioner, opposed the application mainly on the ground that considering the nature of reliefs sought in this petition, the presence of respondent No.1/ Returning Officer is necessary for complete and effective adjudication of the issue involved in it.

8. A bare perusal of the prayers quoted above, it would reflect that the petitioner has only sought a declaration that the nomination papers of

respondent Nos.2 to 14 to be null and void and to declare that the petitioner himself is a duly elected candidate in 61-Bhandara (S.C.) Legislative Assembly Constituency General Election – 2019. The petitioner has rightly added all the contesting candidates in the petition. However, with regard to joining of Returning Officer as a respondent in the election petition, the learned counsel for the petitioner could not point out as to how the provisions of the Act of 1951 permit impleading Returning Officer as a respondent in election petition.

9. In this context, the Hon'ble Supreme Court in the case of **Jyoti Basu** (*supra*), in para 9, has held as under :

“9. XXXX It is clear that the contest of the election petition is designed to be confined to the candidates at the election. All others are excluded. The ring is closed to all except the petitioner and the candidates at the election. If such is the design of the statute, how can the notion of ‘proper parties’, enter the picture at all? We think that the concept of ‘proper parties’ is and must remain alien to an election dispute under the Representation of the People Act, 1951. Only those may be joined as respondents to an election petition who are mentioned in S.82 and S.86(4) and no others. However,

desirable and expedient it may appear to be, none else shall be joined as respondents.”

10. Considering the aforesaid legal position, in the considered opinion of this Court, the presence of respondent No.1 is not required in this petition.

11. In this view of the matter, the Civil Application is allowed. The applicant/ respondent No.1 is permitted to delete respondent No.1 from the array of respondents.

CIVIL APPLICATION (O) NO. 584/2020.

12. In view of order passed in Civil Application (O) No. 585/2020, this application is rendered infructuous. The same is disposed of accordingly.

(JUDGE)

Sumit