

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.12742 OF 2022
IN
ELECTION PETITION NO.16 OF 2019

THE RETURNING OFFICER, ELECTION OF LOHA ASSEMBLY
CONSTITUENCY AND OTHERS
VERSUS
MUKTESHWAR KESHAVRAO DHONDAGE AND OTHERS

...
Mr. A. M. Sharma, Advocate for applicants.
Mr. R. I. Wakade, Advocate for respondent No.1.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11th October, 2022

ORDER :-

1. Present application has been filed on behalf of original respondent Nos.10 to 13 in the main Election Petition No.16 of 2019 for deleting their names in view of the fact that Section 82 of the Representation of the People Act, 1951 does not permit any other person or institution as party respondent.

2. Heard learned Advocate Mr. A. M. Sharma for the applicants and learned Advocate Mr. R. I. Wakade for respondent No.1.

3. Learned Advocate Mr. Sharma representing the applicants has relied on the decision in ***Jyoti Basu and others Vs. Debi Ghosal and others, [AIR 1982 SC 983]***, wherein it has been observed thus :-

"Section 81 prescribes who may present an election petition. It may be any candidate at such election; it may be any elector of the constituency; it may be none else. Section 82 is headed "Parties to the petition" and Clause (a) provides that the petitioner shall join as respondents to the petition the returned candidates if the relief claimed is confined to a declaration that the election of all or any of the returned candidates is void and all the contesting candidates if a further declaration is sought that he himself or any other candidate has been duly elected. Clause (b) of Section 82 requires the petitioner to join as respondent any other candidate against whom allegations of any corrupt practice are made in the petition. Section 86(4) enables any candidate not already a respondent to be joined as a respondent. There is no other provision dealing with the question as to who may be joined as respondents. It is significant that while Clause (b) of Section 82 obliges the petitioner to join as a respondent any candidate against whom allegations of any corrupt practice are made in the petition, it does not oblige the petitioner to join as a respondent any other person against whom allegations of any corrupt practice are made. It is equally significant that while any candidate not already a respondent may seek and, if he so seeks, is entitled to be joined as a respondent u/s 86(4), any other person cannot, under that provision seek to be joined as respondent, even if allegations of any corrupt practice are made against him. 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 Section 82 and Section 86(4) and no others. However, desirable and expedient it may appear to be, none else shall be joined as respondents."

4. The said decision has again been relied by the Full Bench of the Hon'ble Supreme Court in ***Michael B. Fernandes Vs. C.K. Jaffer Sharief and others, [AIR 2002 SC 1041]***. He also relies on the decision of this Court in ***The Returning Officer, Parliamentary Constituency, Beed and others Vs. Vishnu Tulshiram Jadhav and others***, in Civil Application No.8394 of 2020 in Election Petition No.05 of 2019 with companion matters dated 13.09.2022, wherein also similar applications came to be allowed based upon the above-said decisions by the Hon'ble Apex Court.

5. Per contra, the learned Advocate appearing for respondent No.1 submits that the legal position cannot be denied, however, as regards the Returning Officer is concerned there are allegations against him in paragraph Nos.10 and 14 of the petition. Even prior to the filing of election petition when the petitioner/present respondent No.1 had given representation to applicant No.3 – the

Chief Electoral Officer, he had not taken any decision on the same.

6. It is to be noted that the ratio that has been laid down in ***Jyoti Basu and others (Supra)*** has been reiterated by the Hon'ble Full Bench of the Supreme Court and it has been specifically stated that when Section 82 of the Representation of People Act is very much clear, then no other person than mentioned in Section 82 of the Representation of People Act can be the party to the petition. It has been specifically observed that all others are excluded and in the aforesaid paragraph, the stress can be said to have been given on "the ring is closed to all except the petitioner and the candidates at the election". Therefore, even if any allegations have been made against the Chief Electoral Officer, it would be to the extent of not considering the representation. It cannot be considered as a personal allegation and it will not amount to a corrupt practice.

7. Under such circumstance, the present applicants/respondent Nos.10 to 13 in Election Petition No.16/2019 are not necessary parties and, therefore, present application stands allowed and disposed of. Respondent Nos.10 to 13 in Election Petition No.16/2019 stand deleted from the Election Petition No.16 of 2019.

**[SMT. VIBHA KANKANWADI]
JUDGE**

scm