

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 8394 OF 2020
IN

ELECTION PETITION NO. 05 OF 2019

The Returning Officer, Parliamentary ... **Applicants**
Constituency, Beed and others

VERSUS

Vishnu Tulshiram Jadhav and others ... **Respondents**

AND

APPLICATION IN EP NO. 58 OF 2019

IN

ELECTION PETITION NO. 02 OF 2019

The Returning Officer 18- Jalna ... **Applicants**
parliamentary Constituency, Jalna and
others

VERSUS

Dr. Sharadchandra Ganpatrao Wankhede ... **Respondent**

AND

APPLICATION IN EP NO. 52 OF 2019

IN

ELECTION PETITION NO. 04 OF 2019

The Returning Officer-16 Nanded ... **Applicants**
Parliamentary Constituency, Nanded and
others

VERSUS

Yashpal Narsingrao Bhinge and others ... **Respondent**

AND

APPLICATION IN EP NO. 50 OF 2019

IN

ELECTION PETITION NO. 06 OF 2019

The Returning Officer-15 Hingoli ... **Applicants**
Parliamentary Constituency, Hingoli and
others

VERSUS

Mohan Fattusing Rathod and others ... **Respondents**

AND

APPLICATION IN EP NO. 47 OF 2019

IN

ELECTION PETITION NO. 09 OF 2019

The Returning Officer-17 Parbhani ... **Applicants**
Parliamentary Constituency, Parbhani and
others

VERSUS

Alimgir Mohammad Khan and others ... **Respondents**

AND

APPLICATION IN EP NO. 46 OF 2019

IN

ELECTION PETITION NO. 10 OF 2019

The Returning Officer-41 Latur ... **Applicants**
Parliamentary Constituency, Latur and
others

VERSUS

Ramrao Narsing Garkar and others ... **Respondents**

Mr. Alok Sharma, Advocate for the Applicants

Mrs. Priyandra G. Sontakke, Advocate for the respondents/petitioners

AND

APPLICATION IN EP NO. 1 OF 2021

IN

ELECTION PETITION NO. 12 OF 2019

The Returning Officer, Latur ... **Applicant**

VERSUS

Bajrang Bhujangrao Jadhav and others ... **Respondents**

Mr. Alok Sharma, Advocate for the applicant,

Mr. A. D. Chapule h/for Mr. N. P. Patil Jamalpurkar, Mr. J.R. Shah a/w

Mr. A.N. Sikchi, Advocate for the respective respondents.

CORAM : S. G. MEHARE, J.

DATE : 13th SEPTEMBER, 2022

ORDER:

1. These civil applications are filed by the applicants/respondents seeking deletion of the respondents- Returning Officers/Election Officers.

2. The applicants have the case that, as per section 82 of the Representation of the People Act, 1951 ('the Act, 1951' for short), the present applicants are not necessary parties to the present proceedings. Therefore, they be deleted as respondents to the election petitions.

3. The learned counsel Mr. Alok Sharma appearing for the applicants, has referred to Section 82 of the Act 1951 and vehemently argued that the Act 1951 is complete in itself and, therefore, no other person than mentioned in section 82 of the Act 1951 is a necessary party. He has vehemently argued that even if the allegations against the returning officers of having hand-in gloves with the elected candidates are considered, they are not necessary parties to the election petitions. The election petitions are governed under the Act 1951 and the Rules framed thereunder.

4. The learned counsel for the applicants has pressed into service the judgment in the case of **Michael B. Fernandes Vs. C.K. Jaffer Shariff & others, (2002 AIR (SC) 1041)**. Referring to this judgment, he has vehemently argued that the present applicants are joined as respondents beyond the scope of sections 82 and 86 of the Act 1951. He has vehemently argued that the law laid down in the case of **Jyoti Basu**

and others Vs. Debi Ghosal and others(AIR 1982 SC 983) has taken care of all the cases wherein the allegations have been levelled against the returning officer and the view taken by Hon'ble High Court in the cases of **H. R. Gokhale Vs. Bharucha Noshir C. & others(AIR 1969 Bom.177)** as well as in the case of **Dwijendra Lal Sen Gupta Vs. Harekrishna Konar, (AIR 1963 Cal.218)** were considered by the Hon'ble Supreme Court in **Jyoti Basu** case. It was held in the said case that the public policy and legislative wisdom, both seem to point to an interpretation of the provisions of the Act, 1951, which does not permit the joining as party a person other than those mentioned in Sections 82 and 86(4) of the Act. Relying on this case law and the provisions of the law, the learned counsel has vehemently argued that the applications are liable to be allowed.

5. The learned counsel Mr. Sharma also added that the applicants may not be continued or arrayed as parties under Order 1 Rule 10 of the Civil Procedure Code. In the above cited case, this issue has also been answered.

6. Mrs. Sontakke, the learned counsel for the respondents/ original petitioners, has vehemently opposed the applications. She has vehemently argued that specific allegations have been levelled against the returning officers about their doubtful role. They were hand-in-gloves with the elected candidates. Section 82 of the Act, 1951 does not bar joining such persons against whom serious allegations have been

levelled. She has referred to Paragraph Nos. 11, 12, 15, and 17 of the petitions and pointed out how the illegalities have been committed by the returning officers. She has also referred to Section 100(3) of the Act 1951 and vehemently argued that these petitions are governed by the said provisions. The returning officers have received improper votes. Referring to the counting sheet on page Nos. 93 and 98, she would submit that there was apparently a difference of 665 votes. The representations made by the petitioners were also not considered. If such a difference is noticed, the powers of the returning officer cease, and he has to refer the issue to the Election Commission. Though apparently there was a difference in the votes, the returning officers, instead of referring the issue to the Election Commission, proceeded to count votes and declare the result in favour of the winning candidates. The learned counsel has also referred to Rule 64 of the Conduct of Election Rules and argued that it was the duty of the returning officer to examine the Electronic Voting Machine (EVM), but he also failed there.

7. The sum and substance of the argument of learned counsel for the petitioners is that the specific pleadings as regards the role played by these returning officers have been made in the petitions. This is a matter of fact and investigation; therefore, unless the evidence is recorded, the applications filed by the present applicants/ Returning Officers cannot be decided. The present applications are premature.

Therefore section 82 of the Act, 1951 would not come in the way of the petitioners.

8. In reply, the learned counsel Mr. Sharma for the applicants has argued that the issue is limited to the necessary party. Justification for the reception of improper votes is not the matter in these applications. The applications are confined to Section 82 of the 1951 Act. The applications are confined to section 82 of the 1951 Act. Section 82 of the 1951 Act, is reproduced thus:

82. Parties of the petition:- A petition shall join as respondent 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 the petition."

9. Chapter II of the Representation of People Act, 1951 title as presentation of election petitions to High Court. The chapter contains various provisions for questioning the elections, the jurisdiction of the Court to try election petition, parties to the petition, contents of the petition and the relief that may be claimed by the petitioner. It seems

that the entire procedure for the presentation of the election petition has been mentioned in the Act 1951 itself.

10. The Hon'ble Apex Court, in the case of **Michael B. Fernandes** (Supra), referring to section 82, in the middle of para 5, has observed that "On a plain reading of section 82, which indicates as to the person who can be joined as a respondent to an election petition the conclusion is irresistible that the returned candidate, the candidate against whom allegations of any corrupt practice have been made are to be joined as party respondent when declarations sought for holding the election of the returned candidate to be void and when a prayer is made as to any other candidate to be declared to be duly elected, then all the contesting candidates are required to be made party respondents. On a literal interpretation of the aforesaid provisions of section 82, therefore, it can be said that an election petition which does not make the person enumerated in Section 82 of the Act, as party respondent, is liable to be dismissed. The two decisions of this Court directly on the questions are the cases of **Jyoti Basu and others Vs. Debi Ghosal & others**, and **B. Sundara Rami Reddy Vs. Election Commission of India & ors.** In the former case, Chinnappa Reddy, J, speaking for the Court, held that right to elect or to be elected or dispute regarding election are neither fundamental rights nor common law right but are confined to the provisions of the Act and the Rules made thereunder and consequently,

rights and remedies are all limited to those provided by the statutory provisions. On the question of joinder of parties, referring to Sections 82 and 86(4) of the Representation of the People Act, it was held that the (contest) of the election petition is designed to be confined to the candidates at the election and all others are excluded and therefore, only those may be joined as respondents to an election petition, who are mentioned in Sections 82 and 86(4) and no others."

It has also been observed further that- the concept of 'proper parties' is and must remain alien to an election dispute under the Act.

In the same Paragraph, it has also been observed that "Mr. Venkataramani then relied upon the decision of Calcutta High Court in *Dwijendra Lal Sen Gupta vs. Hare Krishna Konar* (A.I.R. 1963 Calcutta 218), where the question came up for consideration directly, and the Calcutta High Court did observe that the Returning Officer may nevertheless in an appropriate case be a "proper party" who may be added as a party to the election petition and undoubtedly, the aforesaid observation supports the contention of Mr. Venkararamani. Following the aforesaid decision, the learned Single Judge of the Bombay High Court in the case of **H.R. Gokhale Vs. Bharucha Noshir C & others**, had also observed that the observations of Shah, J. in **Ram Sewak Yadav Vs. Hussain Kamil Kidwai and other's case**(AIR 1964 SC 1249) in Paragraph (6) is not intended to lay down that the Returning Officer can in no event be a proper party to an election petition. But both these

aforesaid decisions of the Calcutta High Court and Bombay High Court had been considered by this Court in **Jyoti Basu case**, and the Court took the view that the public policy and legislative wisdom both seem to point to an interpretation of the provisions of the Representation of the People Act which does not permit the joining, as parties, the persons other than those mentioned in Sections 82 and 86(4).

11. The petitioners have pleaded against the returning officers that they have committed illegalities. However, the law has been interpreted by the Hon'ble Supreme Court in the above cited cases as regards parties to the election petition and candidly laid down the law that the persons other than those mentioned in Sections 82 and 86(4) of the Act, 1951 are not permitted to be joined as a party to the election petition under the provisions of the Act 1951.

12. In the above case, the question regarding the allegations against the returning officers or the chief election officers regarding the conduct of the election was also considered. Considering this fact, so also section 82 of the Act 1951, as has been interpreted above, so far as the pleadings as regards the conduct of returning/election officers is concerned, that would not help the petitioners to claim that any relief may be sought against them. The candidate would suffer the consequences of illegality committed in the election procedure to the election and not by the election officer. Be that as it may, considering the interpretation of section 82 of the Act, 1951 in the aforesaid case,

there is no doubt that the present applicants are not necessary parties.

Therefore, they are liable to be deleted.

13. In view of the facts above and the law, all applications are allowed.

14. The petitioners are directed to delete the present applicants from the array of respondents in petitions within two weeks from today.

(S. G. MEHARE, J.)

JPChavan