

Santosh

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

ELECTION PETITION NO. 3 OF 2022

Shahaji Nanai Thorat @ Shahjirao
Dhonidba Thorat

...Petitioner

Versus

Returning Officer and ors.

...Respondents

Mr. Shahaji Nanai Thorat @ Shahjirao Dhonidba Thorat,
Petitioner-in-person, present.

CORAM: N. J. JAMADAR, J.

DATED : 9th MARCH, 2022

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ORDER:

1. The petitioner, who contested Parliamentary Election 2019 from North-East Mumbai Constituency No.28, has preferred this petition calling in question the election of respondent no.9 to Loksabha from the said constituency. The result of the said election was declared on 23rd May, 2019.

2. The instant petition is lodged on 25th November, 2021. The registry has raised objections, including, the bar of limitation under the provisions contained in Section 81 of the Representation of the People Act, 1951 ("the Act, 1951"), which stipulates a period of 45 days, to call in question in the election, from the date of the election of the returned candidate.

3. Since the petitioner appears in person, pursuant to the directions of the Hon'ble Chief Justice, the petition came to be assigned to this Court to hear the petitioner.

4. On the previous date, the petitioner was informed that *prima facie* the petition seems to be barred by limitation, as stipulated under Section 81 of the Act, 1951.

5. Today, the petitioner has tendered a compilation of documents including judgments on which the petitioner intends to rely upon.

6. Heard the petitioner-in-person.

7. On facts, there is no controversy. In the written notes of arguments the petitioner fairly submits that the petition ought to have been presented on 7th July, 2019, if the period of limitation is reckoned from 23rd May, 2019. However, the petitioner seeks the condonation of delay and determination of the petition on merits on the ground that he had submitted an application before the Legal Services Authority on 1st July, 2019. Time was consumed in preparing a petition. Eventually, a writ petition was filed on 21st January, 2020. Later on, the said writ petition was withdrawn. The petitioner claimed that the instant petition was filed on 11th May, 2021.

8. The petitioner has placed reliance on a judgment of a learned Single Judge of this Court in the case of *Pratik Prakashbapu Patil vs. Maruti Mura Vagare and others*¹ and a Division Bench judgment in the case of *Ashok Shankarrao Chavan vs. Anil Trayambakrao Patil*². Both the judgments do not advance the cause of the petitioner.

9. In the case of *Pratik Patil* (supra) wherein the exclusion of period was sought on the count that the person, who filed the election petition, had initially filed a public interest litigation, the learned Single Judge, after adverting to the provisions of Section 81 of the Act, 1951, and the governing precedents observed that the position in law is absolutely clear that the provisions of Sections 4 to 24 of the Limitation Act are not applicable to the filing of election petition. The observations of the learned Single Judge in paragraph 19 are relevant and hence extracted below:

“19. Hence from a reading of the judgments cited on behalf of the applicant, the position in law is absolutely clear that the provisions of section 4 to 24 of the Limitation Act are not applicable to the filing of an election petition. The Apex Court has also made it clear that equity does not find a place insofar as filing of the said petitions are concerned. In my view the same would take care of the submission of the Election Petitioner that since he was pursuing with the authorities and had also filed a P.I.L., the delay should be condoned. In the light of the aforesaid, the above

1 2012(5) Mh.L.J. 86.

2 1987 The Bombay Law Reporter, 39.

Application for dismissal of the Election Petition would have to be allowed and is accordingly allowed”

10. In the case of *Ashok Chavan* (supra) also, the position was reiterated that the provisions contained in Sections 4 and 5 of the Limitation Act do not apply to an election petition.

11. In this view of the matter, the petition which is clearly barred by the period of limitation stipulated under Section 81 of the Representation of the People Act, 1951, does not deserve to be entertained.

12. Hence, the petition stands rejected.

[N. J. JAMADAR, J.]