RMA / ATU

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1273 OF 2024

Rajesh Chandrakant Shingade .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION NO. 1360 OF 2024

Nita Ramesh Thakore & Anr. .. Petitioners
Versus
The State of Maharashtra & Ors. .. Respondents

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- Ms. Shivani Kondekar a/w. Mr. Siddharth Jagushte, Advocates for Petitioners.
- Mr. Jitendra P. Patil, AGP for Respondent Nos.1 to 4 – State.
- Mr. C.G. Gavnekar a/w. Mr. Ashutosh Gavnekar and Mr. Rohit Parab, Advocate for Respondent No.5.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 21, 2024.

ORAL JUDGMENT:

1. Both Writ Petitions are disposed of by this common judgment. Facts are absolutely identical in both Writ Petitions. For convenience and reference, facts in Writ Petition No.1273 of 2024 are referred to herein. The result applies to both Petitions. In Writ Petition No.1360 of 2024, two Petitioners have filed the Election Petition jointly. It is verified by both Petitioners.

2. The question that arises before the Court in the present Writ Petitions is *"Whether any procedural deficiency in the proceedings filed online within the prescribed limitation period designated with objection can be labelled as proceedings filed beyond limitation?"* Strict period of limitation applies in the present case. The proceedings is an Election Petition filed to challenge result of an Election (public).

3. Petitioner in Writ Petition No.1273 of 2024 - Rajesh Chandrakant Shingade has filed the Election Petition. Facts in the Election Petition as also other relevant dates are not in dispute. Election result was declared on 06.11.2023. Respondent No.5 represented by Mr. Gavnekar was declared elected from Ward No.3 of the Gram Panchayat of Mauje Jambulpada Varhad, Taluka Sudhagad, District Raigad in the election. Petitioner being unsuccessful challenged the election of Respondent No.5 by filing Election Petition. Under the statute, such Election Petition is required to be filed within 15 days from the date of declaration of results of election. That prescribed period of limitation would end on 21.11.2023.

4. Petitioner has come with the case that on 20.11.2023, Petitioner filed Election Petition through his Advocate before the Civil Judge Junior Division Pali, District Raigad through e-filing i.e. online. Petitioner got e-filing No.C2023000012 which is supported by document at page No.201 of the Petition. According to Petitioner, remark which appeared pursuant to e-filing action undertaken by Petitioner on 20.11.2023 reads as "*document not serial*". Petitioner would submit that this was due to technical failure of the internet and there was a network issue. Advocate for Petitioner immediately thereafter on the same date proceeded to Pali District Court for exercising the option of physically filing the Election Petition as well. Distance between the Court at Alibag and Pali is 55 kms. It is averred by Petitioner that in Pali District Court, Petitioner's Advocate attempted to physically file the Election Petition but was informed by the Court Filing Staff that the online attempt made by Petitioner raised the objection "*Document not serial*" and it was due to network reception problem in Pali District Court. It is averred that Petitioner's Advocate was informed to return back after 2-3 days but that would be beyond 21.11.2023 i.e. beyond the prescribed period of limitation. It is next averred by Petitioner that on 22.11.2023, Petitioner approached the Assistant Superintendent in the office of District Court at Pali and submitted Application dated 23.11.2023, copy of which is appended at page No.203 of Petition, stating the action taken by Petitioner on 20.11.2023 and what transpired thereafter be considered and delay of two days in physically filing the Election Petition be condoned. Application was resisted by Respondent No.5. It was heard by the learned District Court and by order dated 21.12.2023, Application was rejected resultantly leading to filing of the present Writ Petition. The impugned order in Writ Petition No.1360 of 2024 is dated 21.12.2023.

5. Ms. Kondekar, learned Advocate for Petitioners in both Writ Petitions would submit that as a result of the impugned order, substantial right of challenge of the Petitioners to the election result stands ousted despite the Petitioner having approached and having filed the Election Petition in the Court within the limitation period on 20.11.2023 through e-filing which is evident from the fact that Petitioners were allotted a filing number bearing AMH20210052373C202300016 and AMH20220000917C202300012 respectively with the remark "*Document not Serial*" on 20.11.2023 itself. She would submit that there was an inherent internet technical failure on 20.11.2023 due to which immediately after the e-filing procedure having been complied with, Petitioners as a matter of abundant caution approached the District Court at Pali to file the physical copy of Election Petition so as to ensure that there is no transgression of the limitation period which was supposed to end on the following day i.e. on 21.11.2023.

5.1. In her submissions, she would submit that after the declaration of election result on 06.11.2023, Election Petition was filed by Petitioners on 20.11.2023 online and thereafter the Petitioners'

Advocate approached the Bench Clerk in Pali Court, namely Pradip Mhatre for filing the Election Petition physically. She would submit the fact that the Petition was filed online is evidenced from the online acknowledgment placed on record at page No.201 of the Writ Petition. The first entry on the said document notes that Rajesh Chandrakant Shingade (Petitioner) has filed the Election Petition against Sandesh Dnaneshwar Londhe and the e-filing number allocated thereunder namely AMH20210052373C202300016 evidences such filing. She would submit that on that date, there was a network failure due to which some technical difficulty had arisen. The remark which is mentioned after e-filing of the Election Petition namely "*Document not serial*" could not be rectified online on that date. Hence she would submit that as a matter of abundant caution, Petitioners' Advocate immediately left from the Court of the Civil Judge Junior Division, Pali, District Raigad to carry out the physical filing of the Election Petition on that date itself. She would draw this Court's attention to the fact that the Election Petition was filed online on 20.11.2023 whereas the last date of filing of the Election Petition was on 21.11.2023. She would submit that on 20.11.2023, physical filing of the Election Petition was also effected and the Petitioners were infact informed by the Court filing staff that e-filing of the Election Petition was showing the objection "*Document not serial*" due to network problem in Pali District Court. Next she would submit that Petitioners' Advocate was therefore asked to revisit the Court after 2–3 days by which date the network problem would be sorted out.

5.2. At this stage, she would make a point that the fact of the Election Petition having been filed on 20.11.2023 is clearly evidenced by the e-filing number allocated on that date. She would submit that in order to arrest the period of limitation, the Election Petition had to be e-filed on or before 21.11.2023, which was accomplished.

5.3. She would fairly inform the Court that though averments made in paragraph Nos.8 to 11 of the Petition pertain to the exercise of physical filing of the Petitions also, but in view of the averments made in paragraph No.13 onwards, this Court should not hold otherwise i.e. the Petitioner had waived his right of having filed the Election Petition online on 20.11.2023 against the Petitioners, because the Petitioners approached the Court to file the Petition physically. This fact incidentally has been capitalized upon by Mr. Gavnekar appearing for Respondent No.5 in his response, which I will advert to later.

5.4. In support of her submissions, she has referred to and relied upon the following 3 decisions of this Court:-

(i) ***Trafigura Global Services Pvt. Ltd. Vs. Principal Commissioner of CGST & Central Excise***[1];

(ii) ***NBK Films LLP Vs. Reliance Industries Limited***[2]; and

(iii) ***Yogesh Rajendra Mehra Vs. Principal Commissioner CGIT and Central Excise Raigad and Ors.***[3].

5.5. On the basis of the aforesaid decisions, she would submit that Petitioner has filed the Election Petition online on 20.11.2023 and this has to be construed as having filed the Election Petition within limitation. She would draw my attention to paragraph No.8 of the decision in the case of *Trafigura Global Services Pvt. Ltd.* (*1st supra*) and would contend that the Division Bench of this Court has taken a categorical view that even assuming that the Petitioner had subsequently submitted the relevant documents, once the Writ Petition has been filed by online method and there is evidence of it being filed online, it could not have been held that the Petitioner's Application (filing) was barred by limitation due to any defect and deficiency, which was a curable defect and hence she would submit that filing of the Election Petition online on 20.11.2023 has to be held within the prescribed period of limitation only.

1 WPL No.23118 of 2023 decided on 16.01.2024

2 IAL No.8410 of 2023 decided on 18.01.2024

3 WP No.1632 of 2024 decided on 20.01.2024

5.6. Next she would submit that in the decision of *NBK Films LLP* (*2nd supra*) the learned Single Judge of this Court (Coram: Smt. Bharati Dangre, J) has returned a finding that once the action is generated on the date of filing which is electronically received by the Registry, it has to be considered, rather it shall be considered as the date of e-filing. She would submit that even though, it is quite possible, that on that 'action' being generated there may be objections which are notified on a subsequent date and these objections can be cured later on, but the date of filing will be the date on which the proceeding is received electronically by the Registry.

5.7. In the third decision which is the decision of the Division Bench of this Court in the case of *Yogesh Rajendra Mehra* (*3rd supra*), Ms. Kondekar has drawn my attention to paragraph Nos.11 to 16 thereof and she has relied upon them in support of Petitioner's case in its entirety. She would submit that the findings returned by the learned Division Bench of this Court, support the Petitioners' contentions that Petitioners' filing of Election Petition on 20.11.2023 by electronic filing method and the electronic filing number having been generated needs to be accepted as the Election Petition having been filed on 20.11.2023 i.e. within the period of limitation.

5.8. She would submit that the Writ Petitioners have strictly abided by the strict period of limitation i.e. the 15 days window period which is their fundamental right and filed the Election Petition well before the said limitation would end on 21.11.2023 and in that view of the matter, the impugned orders deserved to be quashed and set aside.

5.9. She would submit that in the facts and circumstances of the present case, a very hyper-technical view cannot be adopted by holding that though admittedly the Election Petition was electronically filed/received on 20.11.2023 with objections or defects, the same will have to be rejected as having not been filed within the period of limitation. According to her, the objection raised on e-filing of the Election Petition on 20.11.2023 i.e. "*Document not serial*" is a curable defect which is in the nature of objections required to be cured and removed and such objection cannot oust the legal right and the legal remedy available to the Writ Petitioner to file the Election Petition. She has drawn an analogy of e-filing of the Election Petition with e-filing of matters in the Bombay High Court which on being filed are initially allocated a stamp registration number and various objections are raised which required to be removed subsequently. She would submit that after the objections are removed the matter is allocated a final registration number. Hence she would submit that the date of filing is the date of the stamp number of the Petition always.

5.10. In view of the above, she would submit that the electronic filing number generated in both cases which is at page No.201 of the Writ Petition No.1273 of 2024 and which is at page No.224 of Writ Petition No.1360 of 2024, within the period of limitation as on 20.11.2023 as prescribed deserves to be accepted and both the impugned orders deserve to be quashed and set aside.

6. Mr. Patil, learned AGP appearing for Respondent Nos.1 to 4 – State and its functionaries. He would submit that in the facts and circumstances of the present case and the submissions advanced by the Petitioners and Respondent No.5, this Court after considering the legal position and the Rules be pleased to pass an appropriate decision in the Writ Petitions.

7. ***PER CONTRA***, Mr. Gavnekar, learned Advocate appearing for Respondent No.5 would succinctly submit that in the present case e-filing has been unsuccessfully done by electronic filing on 20.11.2023 and therefore the Application dated 23.11.2023 was filed by Petitioner for taking the Petition on record. Hence according to him, this action of physically filing the Application after the prescribed period of limitation renders the challenge to the Election result nugatory as it is maintained beyond limitation.

7.1. At the outset, Mr. Gavnekar draws my attention to the e-filing record which is appended at page No.201 of the Writ Petition and would submit that what has been allocated to the Petitioner is not a final number assigned to the Election Petition, but a mere e-filing number. He would therefore draw my attention to the averments made in the Writ Petition and more specifically paragraph No.7 to 12 of the Writ Petition and after reading them would submit that only because the Petitioners failed in e-filing the Petition they filed the Election Petition physically by invoking Rule 14 of the e-Filing Rules of the High Court of Bombay 2022 which apply to the present case. He would submit that specific averments made by Petitioners in paragraph Nos.8 to 10 leave no room for doubt to construe that Petitioners invoked Rule 14 which is the alternate method of filing the Election Petition by physical filing. He would buttress his submissions by drawing my attention to the averments in paragraph No.14 of the Petition wherein reference is made to the Application filed 23.11.2023 filed by the Petitioner seeking condonation of delay, which is appended at page No.203 of the Writ Petition. While taking me through the Application and its averments, he would submit that Petitioner has accepted that he has successfully filed the Election Petition by physical filing on 23.11.2023 and that amounted to Petitioner having waived his right of filing the Petition online by e-filing. While drawing my attention to Rule 14 of the said Rules and more specifically Rule 14.3, he would submit that the said Rule applies when there is a difficulty in registering and filing of the matter online through e-filing due to a technical failure. He would submit that Rule 14.3 states that the facility for online e-filing through the web portal shall be available during all twenty four hours of each day, subject to breakdown, server downtime, system maintenance or "such other exigencies" when online e-filing is not possible due to any of the reason and therefore it sets out, that parties can either approach to the designated counters or take recourse to physical filing. In the facts of the present case, he would therefore submit that the act of Petitioner invoking the remedy of physically filing the Election Petition on 23.11.2023 clearly waived his right of e-filing the Petition and the physical filing was admittedly beyond the prescribed period of limitation. Hence it will have to be construed that the said Election Petition is not filed within limitation and the impugned order deserved to be sustained.

7.2. Besides the above factual submissions, Mr. Gavnekar has made legal submissions stating that once the document is filed and a stamp number and login ID number is generated, then the document becomes the property of the Court. He would draw my attention to Section 3 of the Limitation Act, 1963 and would contend that the key words used in the said Section are the words "……….

instituted……….” and “…………. shall be dismissed………..” in that Section.

7.3. He would submit that in the facts and circumstances of the present case, the Election Petition has to be construed as having been filed, rather “instituted” in the Designated Court only on 23.11.2023 when the Election Petition was physically filed by the Petitioner and therefore the same having not been filed before the expiry of the limitation period on 21.11.2023, the Election Petition is time barred and has to be therefore dismissed as filed beyond limitation.

7.4. While distinguishing the above 3 judgments of this Court referred to by Ms. Kondekar, Mr. Gavnekar would submit that the facts of the cases in the 2 Division Bench judgments were entirely different. He would submit that the issue in one of the case therein pertained to filing of proceedings in this Court i.e. High Court whereas in the second decision it pertained to filing of proceedings electronically under the Income Tax Act. He would submit that those facts are clearly distinguishable from the facts in the present case. In the instant case, Petitioner filed the Election Petition physically by electing that option and thus the Election Petition is filed beyond the period of limitation which is not the case in the two Division Bench judgments. In so far as the Single Judge’s decision is concerned, while referring to paragraph No.10 of the said decision he would submit that the said decision would not apply to the facts of the present case as the Respondent is arguing the present case only on the basis of waiver of the Petitioner's right in view of the Petitioner's subsequent action of having filed the Election Petition physically on 23.11.2023.

7.5. Mr. Gavnekar on the basis of his submissions has urged the Court to dismiss both Writ Petitions and sustain the impugned orders passed by the learned Trial Court and to hold that the Election Petitions are filed beyond the period of limitation.

8. I have heard Ms. Kondekar, learned Advocate for Petitioners in both Writ Petitions; Mr. Patil, learned AGP for Respondent Nos.1 to 4 – State and Mr. Gavnekar, learned Advocate for Respondent No.5 in both Writ Petitions and with their able assistance perused the pleadings and record of the case. Submissions made by the learned Advocates have received due consideration of the Court.

9. It has been urged by Petitioners that the Election Petitions have been filed electronically and received by the Court online on 20.11.2023 i.e. before the end of the limitation period on 21.11.2023, despite the objection "*Document not serial*" and that action be considered as having filed the Petitions within the period of limitation. The learned Trial Court while deciding the Application filed by

Petitioners has held that Limitation Act would not apply in the facts and circumstances of the present case, but in the same breath has rejected the Applications filed by the Petitioners.

10. It is an admitted position and both the learned Advocates are *ad idem* that the Rules framed by the State Government, namely E-Filing Rules of the High Court of Bombay 2022 would apply for the purpose of e-filing of the Petitions in the learned Trial Court in the present case.

11. The said Rules are relevant and will have to be read in its entirety. They cannot be read piecemeal which is attempted to have been the position advocated by Respondent No.5 by restricting reading and applicability of Rule 14.2 and 14.3 only. In my opinion, the definition of Electronic Filing (e-filing) under Rule 2.7 is most relevant and reads thus:-

> "*2.7. **Electronic Filing (e-filing):** means e-filing as prescribed through the Internet (at the web portal of the Court) and through the internet / intranet at Designated Counters, unless the context requires otherwise.*"

12. From the above definition, it is clear that all that is contemplated is e-filing as prescribed through the internet (at the web portal of the Court) and through the internet / intranet at the designated counters. In the present cases, this specific action has been undertaken and complied with by both Petitioners on 20.11.2023 and it is evidenced by the document placed at page Nos.201 and 224 in both Writ Petitions wherein electronic filing number is clearly mentioned and allocated to both Election Petitions as having been e-filed through the internet at the web portal of the Court through the designated counter on 20.11.2023.

13. Once the Petitioners have cleared this hurdle of electronic filing as prescribed under the definition enumerated in Rule 2.7 read with the General Instructions under Rule 3 which have also been complied with in its entirety in the present case, it will have to be construed that the Election Petitions have been filed on 20.11.2023 within the period of limitation.

14. Though Respondent No.5 has laid thrust on the averments of Petitioners having approached the Trial Court subsequently for physical filing of the Election Petitions on 23.11.2023 and therefore having waived their right of having filed the Election Petition online through e-filing on 20.11.2023, I am not willing to accept the said submission of the said Respondent due to the fact that Petitioners have filed the Election Petition electronically online on 20.11.2023 well before the end of limitation period on 21.11.2023 and the said Petition was received electronically and the e-filing number was generated on that date.

15. I have not heard Respondents having made any specific submission on the fact that after e-filing has been effected by Petitioners on 20.11.2023, the remark "*Document not serial*" would preclude them from maintaining the Election Petition as having been filed on that date.

16. The only thrust of Respondent No.5's submission is that the subsequent approach of Petitioners to file the Petitions physically on 23.11.2023 amounted to waiver of the e-filing done unsuccessfully on 20.11.2023.

17. In this regard, I wish to refer to the decision in the case of *Yogesh Rajendra Mehra* (*3rd supra*) and paragraph Nos.11 to 16 of the said decisions which are relevant and read thus:-

> *"11. On behalf of the Petitioner, it is submitted that this is clearly a case of an inadvertent / bona fide error on the part of the Petitioner's Chartered Accountant in filing the returns and depositing tax under a cancelled registration number and for the second time filing the same return under new registration number. He therefore submitted that the Petitioner was entitled to seek refund of the tax which was erroneously deposited with the returns filed under the first (cancelled) registration number. He submits that returns as filed under the old registration were void ab initio and consequently, the amount deposited thereunder was of no legal consequence, so as to amount to be any tax either validly paid or collected. It is submitted that these facts were not taken into consideration by the authorities below, in passing the impugned orders. It is hence submitted that the said orders are contrary to law. Insofar as the impugned order passed by the appellate authority is concerned, the submission is that although the order records that the Appellant had filed the appeal Online on 8th August 2022, the appellate authority has not set out any reasons as to why such online filing of the appeal was not taken into consideration in deciding the issue of limitation. He submits that, although there was an error in submitting copies of some of the documents, that cannot make*

the filing of the appeal to be invalid and/or not within the limitation when according to him, the same was filed within the prescribed limitation as prescribed by Sections 107(1) and (4) of the CGST Act.

12. On the other hand, Mr.Mishra, the learned counsel for the Respondents, would support the impugned orders. He however submits that the portal indicates that there is no dispute in presenting the appeal online. He would also submit that the first registration under which the tax was deposited was cancelled and, thereafter, the Petitioner applied for a fresh registration, which was granted to the Petitioner on 26th March 2022.

13. Having heard the learned counsel for the parties and perused the documents on record, in our opinion we find that the approach of both the Authorities in dealing with the Petitioner's refund application is not correct in facts as also in law. This appears to be clearly a case wherein, admittedly, the Petitioner's first registration stood cancelled by an order dated 1st January 2019. It is not in dispute that the Petitioner, was granted a fresh registration on 26th March 2022 which was his valid registration under the CGST Act, under which the Petitioner was expected to file his returns. However, it appears that there was an inadvertent / bona fide mistake, on the part of the petitioner's Chartered Accountant in filing the Petitioner's return for the first quarter of the year 2022 on both the registrations instead of filing such returns under the new / second registration. Not only this, the returns were identical, also, the tax deposited was of the similar amount of Rs.1,22,220/-.

14. Considering these facts, it was required to be considered by the authorities below that an assessee cannot be expected to file his return and deposit any tax under an invalid cancelled registration number. Further, a legitimate and proper return was filed by the Petitioner under the second (new) registration which was a valid registration. Thus, insofar as the tax deposited under the first (cancelled) registration is concerned, the said registration itself being non-existent, the tax return filed thereunder and any tax deposited under such return, could not have been retained by the respondents as it was not a deposit as per law, it also cannot be a deposit received or any collection of tax under authority of law. Insofar as the second registration return is concerned, the same was appropriately filed and similar amount of Rs.1,22,220/- was deposited.

15. In these circumstances, it was not correct for the original authority to furnish the reasons, as noted by us above, so as to deny the refund claim of the Petitioner. Further, the appellate authority on a purely technical reason that the Petitioner's appeal was barred by limitation under Sections 107

(1) and (4) rejected the Petitioner's appeal. It is not in dispute that the Petitioner had filed his appeal online on 18th August 2022, which was within the prescribed limitation i.e. within a period of four months from the impugned order dated 8th June 2022. Although, in paragraph 4.5 of its order, the appellate authority has recorded the said fact, however, merely on the ground that physical copies were not furnished and/ or on some deficiencies on documents to be uploaded being not complied by the Petitioner, the appellate authority taking a hyper-technical view of the matter, rejected the Petitioner's appeal, without examining such essential facts and without touching the merits of the Petitioner's case. Such approach of the appellate authority, in our opinion, was not only contrary to the record and illegal, but also not consistent with the provisions of Sections 107(1) and (4) of the CGST Act.

16. We may observe that, in such circumstances, any deficiency in filing the appeal / application like failure to file physical documents, cannot make the appeal, which was registered on the online portal within the prescribed period of limitation, to be labelled and/or held to be barred by limitation. Once the appeal was filed (albeit under the Online method) within the prescribed limitation, any deficiency in the appeal certainly could be removed later on, as the law does not provide, that the proceeding be strictly filed sans deficiency, and only then, the proceedings would be held to be validly filed. If such proposition is to be recognized as the correct position, it would not only tantamount to a patent absurdity, but also would result in a gross injustice, prejudicially affecting the legitimate rights of persons to a legal remedy(access to justice). Thus, the parties would necessarily have an opportunity to remove the deficiencies, if any, which may prevail at the time of filing of the proceedings, after the proceedings are filed. It may be observed that procedural compliances can never defeat the substantive remedy/right to pursue any proceedings when filed within limitation. Thus, any procedural deficiency in the proceeding filed within the prescribed limitation cannot be labelled to be a proceeding filed beyond limitation."

17.1. The facts of the above case are stated in paragraph No.11 to 13 and the findings are returned in paragraph Nos.14 to 16 therein. This Court observed that any deficiency in filing the Appeal / Application for failure to file the physical documents, cannot make the Appeal or the proceedings which was registered on the online portal within the prescribed period of limitation to be labelled and held to be barred by limitation. This Court held that once the proceedings are filed *albeit* under the online method within the prescribed limitation, any deficiency in the same certainly could be removed later on as the law does not provide that proceedings be strictly filed *sans* deficiency and only then the proceedings would be held to be validly filed.

18. In the above context, while referring to the e-filing Rules applicable to the present case, it is seen that there is nothing in the said Rules which could construe that the proceedings which have been filed by Petitioners on 20.11.2023 would debar them from maintaining the Election Petition. It is clear that the Petition is filed online and electronically by them before the end of the limitation period generating the remark "*Document not serial*". This Court has held that to take an extreme view that if there is deficiency in filing it would debar the party from maintaining the action would tantamount to patent absurdity and it would result in gross injustice prejudicially affecting the legitimate right of persons to a legal remedy (access to justice). It is trite that parties will undoubtedly have an opportunity to remove the deficiencies, if any, which may prevail at the time of filing the proceedings, after the proceedings are filed.

19. This Court has observed that procedural compliances can never defeat the substantive remedy and right to pursue substantive challenge and proceedings when filed within the limitation period. In the present case the procedural deficiency noted as "*Document not serial*" after admittedly electronically filing and registration of the Election Petition online on 20.11.2023 cannot be held to be as the Petition being not filed within the limitation period. What is crucial is the fact of receiving the Petition in the record of the Registry, which infact has been accomplished.

20. The impugned orders dated 21.12.2023 passed by the learned Trial Court though have rejected the Application filed by Writ Petitioners which was on account of considering the physical filing of the Election Petition two days later, the jurisdiction of this Court and the amplitude of this Court while hearing writs under its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India is extremely wide. Respondent No.5 cannot construe and maintain an argument that, by virtue of Petitioners adopting physical filing of the Petitions, their challenge by electronic filing is waived by them. By filing both the Election Petitions online, which were received online on 20.11.2023, despite the objection raised, the Election Petitions will have to be held as filed on that date within limitation. The objection raised or subsequent act of the Petitioners to file the Petition physically later cannot render the electronic filing of the Petition on 20.11.2023 as nugatory. Petitioners' right to maintain challenge is upheld as the

Petitions are held to have been filed on 20.11.2023 online, despite the objection raised. The objection undoubtedly being a curable defect. This Court can always cure the defect of the action which is occurred.

21. In view of the above observations and findings, I am of the clear opinion that both the aforesaid Election Petitions have been filed within limitation on 20.11.2023 which was supposed to expire on 21.11.2023. They have therefore to be accepted as filed within limitation. Learned Trial Court shall give appropriate time and opportunity to all Petitioners to remove the defects and objections, if any, and proceed with the said Election Petitions strictly in accordance with law and dispose of the same as expeditiously as possible and at the joint request of both the contesting parties, within a period of six (6) months from today.

22. Needless to state that the impugned orders, both dated 21.12.2023 in both Writ Petitions are quashed and set aside and above directions are issued in the Election Petitions.

23. With the above directions, Writ Petition No.1273 of 2024 and Writ Petition No.1360 of 2024 are both allowed and disposed.

Ajay

[MILIND N. JADHAV, J.]