

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ELECTION PETITION NO.7 OF 2019

Bapu Kelu Barde ... Petitioner
Vs.
Election Commission of India and others ... Respondents

None for Petitioner.

Mr. Bapu Kelu Barde, Petitioner present in person.

Ms. Drishti Shah i/b. Ms. Rekha Rajagopal for Respondent No.1 - ECI.

Mr. Himanshu B. Takke, AGP for Respondent No.2 - State.

Mr. Kamlesh Ghumre and Ms. Sonali Jadhav i/b. Ms. Sandhya Lokhande for Respondent No.3.

CORAM : MANISH PITALE, J.
DATE : FEBRUARY 28, 2024

P.C. :

. This election petition has been listed before this Court on the basis of a *praecipe* moved by the petitioner himself in person stating that he desires to withdraw the petition. The record shows that the petitioner is represented by an advocate.

2. The petitioner has appeared before this Court in person. He states that his advocate has not been appearing in this petition and that despite instructions, the advocate is not present in Court. In this situation, the petitioner appearing in person prays for withdrawal of the election petition. This Court has perused the original Aadhar Card of the petitioner to ascertain his identity. The Aadhar Card indeed shows that the petitioner Bapu Kelu Barde is present in Court today, making the aforesaid prayer for withdrawal of the petition. The original Aadhar Card is returned to the petitioner.

3. Chapter IV of the Representation of the People Act, 1950, consisting of Sections 108 to 116, pertains to 'withdrawal and abatement

of election petitions'. Section 109 specifically pertains to withdrawal of election petitions and sub-section (1) thereof provides that, an election petition can be withdrawn only by leave of the High Court. Sub-section (2) requires notice of fixing a date for hearing such application for withdrawal to be given to all other parties to the petition and to be published in the Official Gazette. Section 110, *inter alia*, requires the High Court to ascertain that such an application for withdrawal of the election petition has not been induced by any bargain or consideration, which ought not to be allowed. Section 111 of the Act stipulates that, report of such withdrawal should be made to the Election Commission, which in turn, shall publish the report in the Official Gazette.

4. In this election petition, the petitioner has prayed for declaring the election of respondent No.3 as void. The Election Commission of India and Returning Officer are respondent Nos.1 and 2. There is no prayer for declaring the petitioner as the elected candidate and therefore, the other candidates in the fray had rightly not been made parties in the election petition. Respondent Nos.1 and 2 are represented by Advocate Ms. Drishti Shah and Assistant Government Pleader Mr. Himanshu Takke respectively. Respondent No.3 is represented by Advocate Mr. Kamlesh Ghumre. Hence, all the three parties are before this Court and they have notice of the prayer made on behalf of the petitioner in person for withdrawing the election petition.

5. In the light of the fact that all the three respondents are here before this Court today and they have been given notice with regard to the intention of the petitioner to withdraw the election petition, the requirement of publishing notice in Official Gazette is dispensed with. This is particularly in the light of the statement made on behalf of the respondent No.1 i.e. the Election Commission of India that the report of such withdrawal will indeed be published in the Official Gazette in

compliance of Section 111 of the aforesaid Act.

6. This Court has interacted with the petitioner in person and satisfaction of this Court is recorded to the effect that the prayer for withdrawal has not been induced by any bargain or consideration.

7. The Election Commission of India represented by counsel before this Court has taken note of such withdrawal and has undertaken that the Election Commission of India shall publish report of withdrawal of the present petition in the Official Gazette. It is submitted that such publication of the report shall be made within two weeks from today.

8. The election petition stands disposed of as withdrawn in the above terms.

(MANISH PITALE, J.)

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