

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

ELECTION PETITION NO.15 OF 2025

Rohan Ramdas Satone

...Petitioner

V/s.

Union of India & Ors.

...Respondents

Mr. Anil Jaising Jadhav for the Petitioner.

Mr. Amit A. Karande for the Respondent No.6.

CORAM : ABHAY AHUJA, J.

DATE : 29th JULY, 2025

PC. :

1. Pursuant to the earlier orders of this Court, today when the matter is called out, Mr. Jadhav, learned Counsel appears for the Petitioner and submits that the Interim Application (L) No. 23328 of 2025 has been filed seeking withdrawal of the Election Petition and that the said Interim Application is not on board and is yet to be served.

2. Interim Application (L) No. 23328 of 2025 is not on Board but is taken on Board.

3. Mr. Jadhav at the outset seeks dispensation of service under Section 109 (2) of the Representation of Peoples Act, 1951 (the "Act"), submitting that the Respondents No. 5 to 8, 10, 12, 14 to 18, 20 to 23

and 25 have been served through RPAD. That the packets with respect to the Respondents No. 9, 13 and 24 have been returned with the remark “unclaimed” and the packets with respect to the Respondents No. 11 and 19 are returned with the remarked “incomplete address”. Mr. Jadhav submits that earlier by order of this Court, the Respondents No.1 to 4 were deleted. That the address of all the Respondents was as per the official address given by them in their nomination affidavits.

4. Mr. Jadhav submits that since he has made all the contesting candidates as the Respondents in the Petition and there is no prayer for declaration that any other candidate be declared as elected and also that there is no prayer to declare the election of the returned candidate, viz. the Respondent No. 6, as void and also that the Petitioner’s grievance against the Respondent No.5 is concerned, the Petitioner has been advised to take appropriate remedies against them as available in law, the consent of any other person is not required for withdrawing the Election Petition. It is also submitted that since the Petition is fatally defective, no purpose will be served by substituting any other elector as Petitioner. It is submitted that the withdrawal is neither misuse or abrupt termination of proceeding and democratic integrity would not be impacted in any manner whatsoever and that, therefore, this Court

may permit dispensation of service to the parties to the Petition and also publication in the Official Gazette as required under Section 109 (2) of the Act. It is submitted that in any event there will be a publication of the withdrawal of the order under Section 110(3)(b) of the Act. That none of the parties have objected to the withdrawal of the Petition.

5. On the other hand, Mr. Karande, learned Counsel appears for the Respondent No.6 and submits that since the provision of Section 109 (2) of the Act is a mandatory provision, the dispensation of service and of the Official Gazette publication of the Application for withdrawal is not permissible.

6. I have heard the learned Counsel on the aspect of dispensation of service and publication under Section 109 (2) of the Act and therefore, it would be relevant to quote Section 109 of the Act is as under:-

“109. Withdrawal of election petitions-(1) An election petition may be withdrawn only by leave of the High Court.

(2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Official Gazette”.

7. Chapter IV of the Act provides for withdrawal and abatement of of the Election Petitions. Section 109 refers to the substantive provisions on withdrawal where Section 109(1) clearly provides that the Election Petition may be withdrawn only by leave of the High Court. Section 109 (2) provides that where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all parties to the Petition and shall be published in the Official Gazette. Section 110 of the Act provides for the procedure for withdrawal. Section 111 of the Act provides for a report of withdrawal by the High Court to the Election Commission. The said section will become relevant upon the order permitting withdrawal.

8. In the facts of this case, since there is only one Petitioner, Section 110 (1) is not relevant. However, Section 110(2) provides that no application for withdrawal shall be granted, if in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not to be allowed. It is pointed out that the averment on this fact has been made in paragraph 3 of the Application.

9. Sub-section (3) of Section 110 of the Act provides that if the Application is granted then the Petitioner shall be ordered to pay the costs of the Respondents, the High Court shall direct that the notice of withdrawal be published in the Official Gazette and also that the person who might himself have been a Petitioner may, within 14 days of such publication apply to be substituted as Petitioner in place of the party withdrawing.

10. Considering the mandatory nature of Section 109(2) of the Act, where the word used is “shall” for the notice to be given to all other parties to the Petition and also for publication in the Official Gazette and also considering that upon publication of notice of withdrawal there may be a person who might himself have been a Petitioner who may want to be substituted in place of Petitioner, this Court is of the view that the Petitioner cannot be exempted from the provision of Section 109 (2) of the Act and therefore, the prayer for dispensation of service under Section 109(2) of the Act cannot be granted. The payer Clause (c) sought for in the Petition is accordingly rejected.

11. It is observed that the Interim Application is on lodging number. Let objections be removed and registered number be obtained within a period of two weeks.

12. Subject to the above, list the Interim Application on **25th August, 2025 on the Supplementary Board.**

13. Let the Application be served along with the notice of hearing to all the parties to the Petition and let there be a publication in the Official Gazette as per the Section 109(2) of the Representation of People Act, 1951.

14. Let an appropriate affidavit of service also be filed by the next date.

(ABHAY AHUJA, J.)

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