

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

**CIVIL APPLICATION NO.12568 OF 2022
IN
ELECTION PETITION NO.15 OF 2019**

**THE RETURNING OFFICER ELECTION OF LOHA ASSEMBLY AND ORS
VERSUS
SHIVKUMAR NARAYANRAO NARANGALE AND ORS**

...
Advocate for Applicants : Mr. Alok Madangopal Sharma
Advocate for Respondent : Mrs. P.G. Sonakke (Patil)
...

CORAM : MANGESH S. PATIL, J.

DATE : 30.09.2022

PER COURT :

This is an application filed by the respondent Nos.10 to 13 seeking deletion from the array of the respondents in the light of Section 82 of the Representation of the People Act, 1951 (herein after the Act) being the officers working in aid of election process.

2. The learned advocate Mr. Sharma would cite the following decisions:

- i. **Jyoti Basu and Ors. Vs. Debi Ghosal and Ors.;**
(1982) 1 SCC 691
- ii. **Michael B. Fernandes Vs. C.K. Jaffar Sharief and Ors.;**
AIR 2002 SC 1041
- iii. **The Returning Officer, Parliamentary Constituency, Beed and Ors. Vs. Vishnu Tulshiram Jadhav and Ors.;**
(CA/8394/2020 in EP/05/2019 dated 13.09.2022)

3. Learned advocate Mrs. Sontakke who appears for the original petitioners strongly opposes the request by filing affidavit-in-reply. She contends that so far as the respondent Nos.11 to 13 are concerned, their names can be deleted. However, the petitioners have serious objection as far as deleting the name of the respondent No.10 - the Returning Officer. She submits that there is a specific averment in the petition alleging that he had failed in his duty as is contemplated under Section 36 of the Act to scrutinize the proposal/nomination which permitted the returned candidate to get through the scrutiny of the nominations. A crime was registered against him. He had suppressed that fact while filing the nomination, and in breach of provisions of Section 33 and 33A. The respondent No.10 Returning Officer ought to have been vigilant. His failure to perform the duties has resulted in the returned candidate getting through the scrutiny and subsequently getting elected.

4. I have carefully considered the rival submissions and perused the papers.

5. So far as the respondent Nos.11 to 13 are concerned, obviously, since no specific role is attributed to them, apart from the statutory provision contained in Section 82 of the Act, they need not be arrayed as respondents in an election petition.

6. So far as the role attributed to the respondent No.10 Returning Officer is concerned, there is a vague averment in the petition about he having failed to discharge his duty cast upon him under Section 36 in as

much as, in spite of the returned candidate having not disclosed the crime registered against him, he allowed his nomination to be cleared.

7. However, the allegations are as vague as it could be. When on one hand the petitioner is claiming that it was the returning candidate who ought to have disclosed the information under Section 33 and 33A but had suppressed it, in the absence of specific and precise allegations attributing knowledge to the respondent No.10 returning officer about registration of offence against the returned candidate, it cannot be said that he had played any role in the alleged fraud. His presence in the petition is not necessary for its adjudication.

8. The Application is allowed as prayed for. The respondent Nos.10 to 13 stand deleted from the array of the respondents.

9. List the Election Petition on 14.10.2022.

(MANGESH S. PATIL, J.)

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