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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7631 OF 2015

Sayyed Jalal Sayyed Amin
Age – 47 years, Occ – Agriculture
R/o Walur, Taluka – Selu
District – Parbhani

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai
2. The State Election Commission,
Madam Kama Road, Fort,
Mumbai
3. The Returning Officer for
Elections to Gram Panchayat,
Walur, Taluka – Selu
District – Parbhani
4. Gram Panchayat Walur
Taluka – Selu, District – Parbhani
Through its Gramsevak

RESPONDENTS

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Mr. Swapnil S. Rathi, Advocate for the petitioner
Mr. S. P. Daund, AGP for respondent State
Mr. S. T. Shelke, Advocate for respondents No.2 and 3
Mr. Girish Rane, Advocate for respondent No.4.

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 28th JULY, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with

consent of learned advocates for the parties.

2. After hearing learned advocates for the parties, the situation emerges that the petitioner has declared that he has six children born after the cut off date i.e. 13th September, 2000 as is appearing in the declaration form.

3. The returning officer on the day of scrutiny, after inspecting the nomination form, had rejected nomination of the petitioner since the nomination form shows that the petitioner has six children born after the cut off date. It was after this decision, the petitioner appears to have moved an application before the returning officer around 5.00 pm stating that as a matter of fact, by mistake reference to six children had been made as after the cut off date and the intention of the petitioner was not to state that he has six children born after the cut off date, but was to state total number of children he has.

4. According to learned advocate for the petitioner all the six children of the petitioner are born before the cut off date. He, further submits that earlier on he was a member of the Gram Panchayat, under the earlier elections. He thus submits that proper view requires to be taken in the matter, in exercise of powers under Article 226 of the Constitution of India. Learned

advocate for the petitioner further files an additional affidavit showing that all the children having been born before the cut off date. Learned advocate for the petitioner relies on the documents annexed to the additional affidavit to buttress his submission that the children have been born before 13th September, 2000. He, therefore, seeks indulgence of this Court.

5. Learned advocate for respondent No.4 supports the contentions of the petitioner by stating that in the earlier elections the petitioner had been elected as a member of Gram Panchayat, however, he refrains from entering into the controversy about children being born after or before the cut off date.

6. Learned advocate for the State Election Commission and learned AGP contend that the elections have already reached final stage, save polling all other stages are already over. They further refer to various citations, including “*Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another V. State of Maharashtra and Others*” reported in (2001) 8 SCC 509 and submit that no interference needs to be caused as ultimately all these are questions of facts. He further refers to Articles 329 and 243-O (b) of the Constitution of India.

7. Having regard to the stage of the elections and further that the corrective action was sought to be taken only after the decision had been taken by the returning officer, it would hardly be said that the returning officer had committed any mistake.

8. Under the circumstances, although it is being requested by learned advocate for the petitioner that in such a case this court should invoke its extra ordinary powers, however, looking at the citations relied upon by learned advocate for the State Election Commission, I am disinclined to grant any indulgence to the request made on behalf of the petitioner.

9. Writ petition, as such stands dismissed leaving it open for the petitioner to take up appropriate proceedings at proper stage before appropriate forum. Needless to refer to that the observations hereinabove are restricted only for rejection of the writ petition. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]