

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

WRIT PETITION NO. 7781 OF 2015

RANGNATH MALLAHARI PHAPALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Gholap Ajit M.
AGP for Respondents: Mr.A.P.Basarkar
Advocate for Respondents : Mr.S.T.Shelke For R/ 6
Adv.Mr.R.R.Karpe For R/ 7
...

CORAM : N.W.SAMBRE,J.
DATED : 19TH NOVEMBER,2015

ORDER :-

Nomination form of the respondent no.7 returned candidate in the election of village panchayat was objected by the petitioner on three counts : (A) that the criminal antecedents in detail are not disclosed; (B) the details of the properties are not disclosed and (C) the details as regards educational qualification of respondent no.7 were not disclosed. Said objections raised by petitioner came to be rejected and respondent no.6 was declared as elected candidate.

2] After the result of the election was notified, the petitioner is trying to canvass before this Court that under Articles 226 and 227 of the Constitution of India, this Court is empowered to set aside the nomination, so also election of the returned candidate, as according to him, the petition was admitted prior to declaration of the result. In support of his contention he has placed reliance upon judgment of Apex Court in the matter of **Krishnamoorthy V/s Sivakumar and**

others reported in 2015 All SCR 2409 so as to canvass that the above referred three objections which prima facie can be noticed from the plain reading of the nomination form of the petitioner, the election of respondent no.6 is not sustainable.

3] I am afraid if the above referred submissions of the petitioner cannot be accepted, that too in an eventuality if the entire election process is over. This Court can in my opinion is not authorised to set aside the election of returned candidate in exercise of writ jurisdiction. The remedy that is available to the petitioner is by filing an appropriate election petition under the relevant statute.

4] Even in judgment of Krishnamoorthy cited supra the Apex Court was dealing with an eventuality wherein in an election petition, the election of the returned candidate was set aside.

5] In view of above, in my opinion, the prayer of the petitioner for setting aside the election of the respondent no.6 returned candidate in exercise of powers under Articles 226 and 227 of the Constitution of India cannot be gone into. As such Petition fails and it is dismissed.

6] At this stage, learned counsel for the petitioner seeks liberty to challenge election of the returned candidate by initiating election petition. As the same is statutory right available to the petitioner, liberty is granted.

(N.W.SAMBRE,J.)

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