

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

WRIT PETITION NO. 9161 OF 2013

Swarupchand S/o Keshavrao Paratwar,
Age: 73 years, Occu : Business,
R/o Station Road, Hingoli.

...Petitioner

versus

1. Shri. S.S. Lahane,
Election Officer,
Adarsh Education Society, Hingoli
and Inspector, Public Trust Office,
Hingoli.
2. Assistant Charity Commissioner,
Hingoli.
3. Adarsh Education Society, Hingoli,
Through its Secretary.

...Respondents

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Mr. A. S. Deshpande, Advocate for petitioner.
Mr. S. S. Manale, Advocate for respondent No. 1.
Mrs. Y. M. Kshirsagar, A. G. P. for respondent/State.

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CORAM : N.W. SAMBRE, J.

**RESERVED ON : 9TH MARCH, 2015
PRONOUNCED ON: 12TH MARCH 2015**

ORDER :

. The petitioner has preferred present writ petition with
following prayers :-

- A) Writ Petition may kindly be allowed.
- B) The elections held by R-1 of R-3 institution, under the
orders of R-2 on 9.11.2013, by unjustly and illegally deleting

the name of the petitioner from the ballot paper, may kindly be quashed and set aside, with further directions to hold the elections of R-3 afresh, upon adjudication of the issue of validity and legality of the 254 voters, which is subjudiced before this Hon'ble Court in W. P. No. 8681 of 2013.

F) petitioner may kindly be awarded costs of this petition, so also the costs of elections, on account of wrongful deletion of his candidature for the post of Member of Managing Committee of R-3, on account of careless and casual approach exhibited by R-1, while conducting so-called elections on 9.11.2013.

G) Any other suitable and equitable relief, to which the petitioner is entitled to and this Hon'ble Court deems fit and proper, may kindly be granted in his favour.

2. The basis for moving above referred prayers by the petitioner was that he is one of the member of Adarsh Education Society, Hingoli and sought to contest election of the Trust which was to be held after period of about 15 years, and as such, submitted his nomination form which was processed and accepted. The petitioner claimed that, though he was validly nominated candidate, it is because of illegality committed by Election Officer, his name was deleted from the ballot paper.

3. He claimed that, on 31/10/2013, the Election Officer declared final list of candidates, who sought election to the Trust and petitioner's name was reflected in the said list at Sr. No. 8, wherein

the petitioner sought election to the post of Joint Secretary.

4. He further claimed that, having noticed that, his name was not found in the voters list, on the date of voting, he raised objection on 09/11/2013 at 12.55 noon. According to him, the said mistake was duly admitted by the Election Officer and as such, the order needs to be passed for the purpose of holding of fresh voting from the stage of voting as he was already allotted election symbol on 01/11/2013.

5. While countering the above referred submissions, relying upon the affidavit in reply filed by the Election Officer dated 16/12/2013, learned Counsel for respondent No. 1 would urge that, it is admitted position on record that, the petitioner was allotted election symbol, after he was declared as validly nominated candidate for the post of Joint Secretary. However, he noticed that, list of validly nominated candidates was in two parts, one part was for office bearers and other in respect of members. It is further claimed that, one Dnyaneshwar Rajeshwarappa Gotare filed an application and requested for the increase in the font size in the ballot papers and accordingly he took decision to increase the size of fonts in the ballot papers. As such, existing ballot paper was substituted with that of three pages. It is noticed that, the name of the petitioner which was

earlier at the bottom of page inadvertently got deleted. He further claimed that, the petitioner after casting his vote at 12.00 noon and raised his objection at 12.55 p.m. He further claimed that, mistake was noticed after completion of major part of voting. It is further claimed that, in view of short number of votes, enough number of proposer and seconder were not available.

6. According to him, once the election is over, the question of setting aside of the same would not arise, as such, prayed for rejection of the petition.

7. Having considered the contentions of the parties, it is required to be noted that, on 01/11/2013, the final list of the validly nominated candidates alongwith their symbols was published and voting was scheduled on 09/11/2013. The Election Officer has fairly admitted the mistake of deletion of the name of the petitioner, however, it is required to be noted that, whether, it is open for this Court to interfere in the election process at advanced stage of election i.e. counting of votes.

8. Admittedly, in the order passed in W. P. No. 8681 of 2013, the result of the election is not declared in view of the disputed membership. However, the said petition is dismissed with observations that, the result of the election be declared. Once it is noticed that, the petitioner has raised objection to illegal decision as

regard deletion of his name from the ballot paper after voting was almost over, as voting was for the period from 10.00 a.m to 2.00 p.m. and the petitioner raised such objection at about 12.55 p.m., it will not be appropriate for this Court to exercise its extra ordinary jurisdiction by upsetting the election process.

9. In view of the fact that, the election process is at very advanced stage i.e. only declaration of result is remained, it will not be appropriate to accept the prayer of the petitioner.

10. In view thereof, this Court proceed to pass the following order :

a) Writ Petition is dismissed.

b) The petitioner is at liberty to prefer appropriate objection/dispute in relation to the issue raised in the present petition before appropriate Forum under the Bombay Public Trust Act or otherwise.

[N.W. SAMBRE, J.]