

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 11238 OF 2015

Mr. Bharat Shamrao Karande ... Petitioner

V/s.

The State of Maharashtra and others ... Respondents.

Mr. Ashish Mehta a/w Ms. Trishala Yelve a/w Mr. Prakash Mishra a/w Mr. Nikhil Mallewar for the Petitioner
Mr. Vikas Mali AGP for the State.
Mr. D. P. Adsule for Respondent nos. 4 & 5
Mr. Sachin B. Shetye for Respondent no. 2

**CORAM : NARESH H. PATIL AND
V.L. ACHLIYA, JJ.
DATED : 20th APRIL 2015.**

PC. (Per: V. L. Achliya, J.)

Petitioner has challenged the order dated 01/04/2015 passed by respondent no. 5 i.e. Returning Officer appointed to conduct the election of Kulgaon-Badlapur Municipal Council. By the impugned order, the Returning Officer has rejected the nomination form of the petitioner as he has not filled in some of the blank spaces in the nomination form. As an interim relief, petitioner has sought direction against the respondent nos. 2 to 5 to accept the nomination form of the petitioner and to adjourn the polling of ward no. 22 Kulgaon-Badlapur Municipal Council scheduled to 22/04/2015 for a period of three months.

2) Learned counsel for the petitioner submitted that the reason for which respondent no. 5 has rejected the nomination form of the petitioner is not sustainable in law for the sole reason that mistake was not substantial in nature. It is the first time submission of nomination form by on-line was introduced by Election Commission. Due to on-line submission of application, some of the blank spaces remained to be filled in while submitting the nomination. Respondent no. 5 has rejected the nomination form by over looking relevant Rules in that behalf. Petitioner was not given opportunity to rectify the mistake, which was otherwise not substantial in nature. Respondent no. 5 has adopted a very casual, mechanical and technical approach in scrutiny of nomination form of the petitioner. Learned counsel has further submitted that in a case based upon identical facts, in an appeal preferred under section 15 of The Maharashtra Municipal Council, Election Rules, 1966 by similarly placed person whose nomination was rejected by respondent no. 5, vide order dated 10/04/2015 the District Judge Kalyan set aside the order and allowed him to contest the election. Learned counsel further submits that though the remedy of appeal was available for the petitioner, but due to reasons beyond the control of the petitioner, he could not file appeal. Learned counsel has prayed for invoking extra ordinary writ jurisdiction of this Court so as to allow the petitioner to contest the election.

3) Learned counsel representing the respondents have opposed the maintainability of the petition. It is contended that petitioner had statutory remedy under Rule 15 of The Maharashtra Municipal Council, Election Rules, 1966 to file appeal against impugned order and therefore, writ petition is not maintainable in law. It is further submitted that

election process is in its concluding stage and the polling for the election is scheduled on 22/04/2015. It is therefore contended that it is not desirable to interfere with the on going process of the election.

4) We are not inclined to entertain the petition for the sole reason that the process of election is already initiated and same is in its concluding stage. The nomination form of the petitioner was rejected on 01/04/2015. There was remedy under Rule 15 of The Maharashtra Municipal Council, Election Rules, 1966 available to petitioner to prefer an appeal against the order of rejection of nomination paper, which he has not availed. The final list of the contesting candidates is already published and the polling for election to Municipal Council is scheduled to be held on 22/04/2015. It is well settled position in law that normally Court should not interfere with the on going process of election. In view of this, we are not inclined to entertain this petition, in exercise of extra ordinary writ jurisdiction under article 226 of Constitution of India. The petitioner may resort to appropriate remedy as per law after election is over. All the contentions made & issue raised in the petition are left open for the petitioner to be raised in appropriate proceeding. Accordingly writ petition is dismissed.

(VL. ACHLIYA, J.)

(NARESH H. PATIL, J.)