

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4042 OF 2015

Jitendra Vasant Mhatre ... 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.)

By the present petition, the 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 submitted caste validity certificate with nomination form as per requirement of Law. By way of 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. 1 Kulgaon-Badlapur Municipal Council scheduled to 22/04/2015 for a period of three months.

2) Mr. Ashish Mehta, learned counsel for the petitioner assailed the order passed by the respondent no. 5 with contention that Returning Officer should not have rejected the nomination form of the petitioner for want of caste validity certificate. He has contended that on 07/04/2015, Urban Development Department, Government of Maharashtra had issued a circular, bringing to the notice of all concerned about the amendment made in The Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 whereby liberty had been given to a person contesting the election from reserved ward to produce validity certificate within 6 months from the date elected as a councilor. 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 for want of caste validity certificate 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 extraordinary 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 and therefore, writ petition is not maintainable in law. It is further pointed out that circular as referred by the learned counsel for the petitioner was issued on 07/04/2015. So also amendment to section 9 A of The Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 has been made on 07/04/2015. Whereas the nomination of the petitioner was rejected on 01/04/2015. In view of this, there are no merits in the say and submissions of learned counsel for petitioner that Returning Officer has wrongly rejected the nomination form of the petitioner. 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.

(V.L. ACHLIYA, J.)

(NARESH H. PATIL, J.)

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