

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10345 OF 2015

Mahadev G. Mohite

.. Petitioner

vs.

The Returning Officer

Ainghar Gram Panchayat, Ainghar

and ors.

.. Respondents

Mr. C.G. Gavanekar i/b Mr. S. S. Deokar for the Petitioner.

Ms Dhanashree Mondkar-Hule i/b Mr. S.B. Shetye for Respondent No.2.

Mr. A.R. Metkari, AGP for Respondent Nos.3 and 4.

Mr. Deval K. Anja for Respondent No.5

CORAM : M. S. SONAK, J.

DATE : 19 OCTOBER 2015.

P.C. :-

1] The challenge in this petition is to the order dated 14 October 2015 rejecting the Petitioner's application objecting to acceptance of nomination of Respondent No.5.

2] At this stage, there is no necessity to go into the merits or demerits of the impugned order. This is because the Petitioner has an alternate and efficacious remedy of challenging the election of Respondent No.5, in case Respondent No.5 is elected, on the ground that the nomination of Respondent No.5 was wrongly accepted.

3] The impugned order was made on 14 October 2015. The list of validly nominated candidates was published on 15 October 2015 and the actual election is slated for 28 October 2015. The election process is, therefore, underway.

4] Section 15 of the Maharashtra Village Panchayats Act, 1959 (said Act) provides for remedy of Election Petition and the scope of determination of validity of elections. The provisions contained in Section 15 of the said Act are quite wide and comprehensive. The same will obviously include the objection as has been raised by the Petitioner in the present case. Section 15A of the said Act provides that no election to any Panchayat shall be called in question except, in accordance with the provisions of Section 15 and no Court other than the Judge referred to in that Section shall entertain any dispute in respect of such election. The provisions contained in Section 15A of the said Act, is in accord with the provisions contained in Article 243-O of the Constitution of India, which also provides that no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

5] Mr. Gavanekar, learned counsel for the Petitioner, however, placed reliance upon the decision of Division Bench of this Court in case of *Dalsing Shamsing Rajput Vs. State of Maharashtra & ors.*¹ and submitted that the Division Bench of this Court has held in the said case that the jurisdiction under Article 226 of the Constitution of India can never be ousted and if it is apparent that a candidate is ineligible to contest election, then such person should be barred from contesting rather than drive the objector to avail alternate remedy. Mr. Gavanekar also submitted that in case this Court interferes, the election process can continue, though without participation of Respondent No.5.

6] In the facts and circumstances of this case, election petition would be appropriate remedy. The Division Bench of this Court in case of *Dalsing S. Rajput (supra)* was concerned with the provisions of Maharashtra Co-operative Societies Act, 1960. There was no provision akin to Article 243-O of the Constitution of India made applicable to such elections. Besides, in the facts and circumstances of the said case, the ineligibility was quite glaring and did not admit any serious dispute.

1 2006(5) Bom.C.R. 691

7] For the aforesaid reasons, the present petition is not entertained. However, it is clarified that all issues and contentions by and on behalf of all parties are kept open.

8] The petition is disposed of in the aforesaid terms. There shall, however, be no order as to costs.

9] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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