

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10553 OF 2015

Shri Mahendra Dwarkanath Patil.	...	Petitioner.
V/s.		
The State of Maharashtra and others.	...	Respondents.

M.S.Karnik i/b. S.S.Patil for the petitioner.

PPKakade, AGP for respondent Nos.1 to 3.

K.S.Dewal i/b. J.M.Joshi for respondent No.4.

S.B.Shetye for respondent No.5.

**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

DATED : 27th October 2015.

PC.

The petitioner filed nomination form for contesting election of Grampanchayat of village Kharbhau, Bhiwandi, Thane. By an order dated 19th October 2015, the Returning Officer rejected the nomination form of the petitioner on the ground that third child was born to the petitioner after the cut-off date. Both sides submitted documentary evidence in support of their submissions in respect of birth of third child. The Returning officer accepted the plea of the complainant i.e. respondent No.4 herein who is also a contesting candidate.

2. Section 14 of the Maharashtra Village Panchayats Act, 1959 (“Village Panchayats Act” for short) refers to disqualification of a person to be a member of Panchayat. Clause (j-1) of the said section refers to disqualification of a person having more than two children after the prescribed cut-off date. Section 15 provides for determination of validity of elections and section 16 provides for disability from continuing as member. Rule 11 of the Bombay Village Panchayats Election Rules, 1959 (“Rules of 1959” for short) refers to scrutiny of nominations. Rule 11 reads as under:

“11. Scrutiny of nominations.- (1) At the time and place appointed for the scrutiny of nominations, intending candidates and any other person duly authorized in writing by such intending candidate shall alone be entitled to be present. The Returning Officer shall allow such persons reasonable facilities for examining the nomination papers of intending candidates.

(2) The Returning Officer shall examine the nomination papers and decide all objections which may be made before him to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he considers necessary, reject a nomination paper on any of the following grounds, namely:-

- (i) that the candidate is disqualified or is not qualified under the Act or these rules for election; or
- (ii) that the candidate has failed to comply with any of the provisions required by these rules or the Act.

(2-A) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(3) For the purpose of sub-rule (1) the production of a certified copy of any entry made in the list of voters shall be conclusive evidence of the right of any voter named in that entry to stand for election unless it is proved that the candidate is disqualified.”

Under rule 11, if an intending candidate or any other person duly authorized raises an objection to the nomination of the contesting candidate, the Returning Officer may decide the objection and after such summary inquiry, if any, may reject a nomination paper of the contesting candidate, if the candidate is not qualified under the said rule. The Returning Officer in his order has also referred to the Government Resolution dated 12th July 2001.

3. The learned counsel appearing for the petitioner submits that the evidence produced by the petitioner was more reliable and convincing compared to the documents produced by the objector. The objection in respect of birth of child requires detailed scanning of evidence, both documentary and oral. The same cannot be done by way of adopting summary procedure.

4. The learned counsel appearing for respondent No.4-complainant submits that based on some affidavits filed by Sarpanch and UpaSarpanch and the certificates issued by the hospital authorities, the Returning Officer has taken his prima facie view which need not be interfered by this Court in its extra ordinary writ jurisdiction.

5. The learned counsel appearing for respondent No.5- State Election Commission submits that according to the existing procedure, the Returning Officer has expressed his prima facie view and rejected the nomination form of the petitioner. If the petitioner is aggrieved by the said order, he may resort to alternate statutory remedy as may be permissible in law.

6. We have heard learned counsel appearing for the respective parties. We have perused the record placed before us and the relevant provisions of law.

7. Prima facie we are of the view that the objection raised under section 14(j-1) of the Village Panchayats Act requires appreciation of documentary and oral evidence produced by the parties. Many times such issues are hotly contested. Such issues cannot be decided merely on the basis of affidavits filed by the contesting persons or on the basis of certificates produced by the contesting parties. At times it is difficult to decide such issues summarily, and that too within very short period.

8. The provisions of section 16 of the Act confer powers on the Collector to decide the question of disability from continuing as member who was subjected to disqualification under section 14. Against the order of the Collector, an appeal has been provided to the State Government

9. The question, therefore, is as to whether it would be appropriate to confer powers on the Returning Officer to summarily

decide the question in respect of objection raised under section 14(j-1) of the said Act while deciding the objections under rule 11 of the Rules of 1959. We expect the State Election Commission and the State Government to consider whether necessary amendments are required to the relevant provisions of the Act and the Rules so that hardship caused to the contesting candidates is minimized, and litigation gets curtailed to some extent.

10 In the facts, we are not inclined to invoke our extra ordinary writ jurisdiction as the election process is set in motion. The voting is to take place on 1st November 2015. However, we observe that the petitioner is entitled to resort to alternate statutory remedy as may be permissible in law. All rival contentions are kept open.

11. With the aforesaid observation, petition is disposed of.

12. Registry to forward the copy of this order to the State Election Commission and the Principal Secretary, Rural Development Department, Mantralaya.

(S.B. SHUKRE, J.)

(NARESH H. PATIL, J.)