

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10763 OF 2015

Shri Tukaram Gajendra Gosavi and Ors.] ... Petitioners

Versus

The Returning Officer and Ors.] ... Respondents

Mr. S. S. Aradhye for Petitioners.

Mr. A. R. Metkari, A.G.P., for Respondent Nos.1 and 2.

Mr. Prashant C. Kamble for Respondent No.4.

CORAM :- M. S. SONAK, J.

DATE :- OCTOBER 29, 2015

P. C. :-

1. The challenge in this petition is to the order of the Returning Officer by which the petitioners' nomination for election to the *Panchayat* of Village Wakav have been rejected. The learned Counsel for petitioners submitted that the rejection is totally arbitrary and without application of mind.

2. At this stage, it is not possible to entertain the present petition. The election process is already underway and the actual poll is scheduled on 01/11/2015. Section 15 of The Maharashtra Village Panchayats Act, 1959 ('said Act') provides that if the validity of any election of a member of a *Panchayat* is brought in question by any

candidate at such election or by any person qualified to vote at the election to which such question refers, such candidate or person may, at any time within fifteen days after the date of declaration of the result of the elections, apply to the Civil Judge (Junior Division), having ordinary jurisdiction in the area within which the election has been or should have been held for the determination of such question. The provisions contained in Section 15 of the said Act are quite wide and would admit a dispute pertaining to rejection of nomination papers.

3. Further, 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. Section 15A of the said Act, in fact, echoes what is provided in Article 243(O) of the Constitution of India which, *inter alia*, 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.

4. No doubt, the learned Counsel for petitioners is right that despite such provision, this Court retains jurisdiction to entertain petition under Article 226 of the Constitution of India. However, considering the circumstance that the election is already underway and actual poll is scheduled on 01/11/2015, it will not be appropriate

to exercise discretion and entertain the present petition. Accordingly, the present petition is not entertained. It is, however, made clear that this Court has not examined the dispute on merits and therefore all contentions of all parties are left open for decision by the appropriate authority if and when any occasion arises for the same.

5. The petition is disposed of in the aforesaid terms.

6. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)