

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 8906 OF 2016

Rashid s/o. Gulab Mujawar  
Vs.  
The Returning Officer & Ors.

WITH  
WRIT PETITION NO. 8907 OF 2016

Bhalchandra s/o. Ankush Lokhande  
Vs.  
The Returning Officer and Ors.

...  
Advocate for petitioners : A.A. Mukhedkar  
Advocate for respondent Nos. 1 and 2 : S.T. Shelke  
AGP for respondent No. 3 : S.R. Yadav  
...

**CORAM : T.V. NALAWADE, J.**  
**DATED : 23rd August, 2016.**

**ORDER :**

1. The petitions are filed to challenge the orders made by Returning Officer, respondent No. 1 on 10.8.2016. In elections to Village Panchayat of village Tugaon, Tahsil Umerga, present petitioners had filed objections to the nomination forms of respondent No. 4 of the present petitions and these objections are rejected by Returning Officer. Both the sides are heard.

2. The last date for filing nomination form was 9.8.2016 and the date of scrutiny was 10.8.2016. It is the case of

petitioners that respondent No. 4 of the present petitions had filed the nomination form from OBC category on 9.8.2016. 'OBC' category is also called as 'B.C.C.' category. It is the case of petitioners that when as per the requirement, respondent No. 4 ought to have filed caste certificate and also the record to show that he had sent the caste certificate already to Caste Scrutiny Committee, he had not filed record to the effect that he had sent the caste certificate to Caste Scrutiny Committee prior to 9.8.2016. It is the case of petitioners that there was no compliance of G.R. of this Government issued on 31.3.2016 making aforesaid requirements compulsory and so, the nomination of respondent No. 4 of both the petitions ought to have been rejected.

3. As per the programme, the voting is to take place on 24.8.2016 i.e. tomorrow. The learned counsel for respondent Nos. 1 to 3 submitted that the aforesaid objection can now be taken in Election petition. He placed reliance on the case reported as **2003 (4) Mh.L.J. 359 [Vinod Pandurang Bharsakade Vs. Returning officer, Akot and anr.]**. The relevant observations are in para No. 48 and 49 and they are as under :-

"48. Finally, in Election Commission of India vs.

Ashok Kumar and ors. (2000) 8 SCC 216, after considering several leading decisions on the point, the Supreme Court laid down certain principles on entertaining petitions under Article 226 of the Constitution of India and in issuing interim directions after the commencement of electoral process.

49. The Court stated :

“For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove :

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the

election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329 (b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilize the court's indulgence by filing petition outwardly innocuous but essentially a subterfuge or pretext

for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”

In view of the aforesaid observations and as taking of the decision on the aforesaid objection will amount to stopping of the elections of the wards for which the nomination form is filled by respondent No. 4, this Court holds that relief claimed in the present matters cannot be given. This Court is avoiding to make discussion with regard to the eligibility conditions and also to say anything as to whether the conditions were fulfilled by respondent No. 4 in the present matters. There is record to show that respondent No. 4 in the present matters had deposited necessary fee for scrutiny of the caste certificate on 9.8.2016 and the receipt of such deposits was produced. It appears that such receipt was produced on 10.8.2016 and it was not produced along with the nomination paper on 9.8.2016. The last date for filling nomination paper was on 9.8.2016 as already observed. In view of the law laid down by the Apex Court in aforesaid case, this Court holds that it is not desirable to take decision on the point raised at this stage. In the result, the

petitions stand dismissed.

**[ T.V. NALAWADE, J. ]**

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