

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 WRIT PETITION NO. 11287 OF 2016

VISHAL PRABHAKAR SAKHRE
VERSUS
RETURNING OFFICER GENERAL ELECTION FOR
MUNICIPAL COUNCIL OSMANABAD AND OTHERS

Shri. Santosh G. Chapalgaonkar, Advocate, for petitioner.

Shri. S.T. Shelke, Advocate, for respondent No.1.

Shri. V.D. Salunke, Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 18 NOVEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the Returning Officer by which the nomination form of respondent No.3 for the election to Municipal Council, Osmanabad is accepted. The petition is also filed to challenge the decision of the District Court Osmanabad in Election Appeal No.5/2016. Both the sides are heard.

2) The petitioner took objection before the Returning Officer against the nomination form of

respondent No.3 that he was not eligible in view of the provision of Section 16(1)(i) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. It was contended that some work was taken by respondent No.3 as per the order issued by the local body and that transaction was not yet settled. The petitioner produced record like written communication made by respondent No.3 to the Chief Officer of the local body dated 31-8-2016. The candidate had informed to the local body that though there are some dues to be paid to the candidate by the local body, the local body was not settling the matter intentionally to see that he suffers politically and so he was giving up his right in respect of his claim. The candidate had done the work by using JCB machine during the year 2009-2010 and according to him the amount in respect of this work was not paid by the local body. In view of possibility of incurring disqualification he had given this written communication and he had given up his claim. In view of this written communication, the objection raised against the candidate was rejected by the Returning Officer.

3) Learned counsel for the petitioner submitted that by giving such letter there cannot be unilateral termination of the contract. He submitted that the provisions of section 93 of the said Act needs to be considered in that regard. The said provision has different object and that provision cannot be applied in the case like present one. When there was contract and the work is already completed and one party is entitled to recover some amount as consideration of the work done, it is open to that party to give up his claim.

4) Learned counsel for the petitioner has placed reliance on a case reported as **2004(3)Mh.L.J. 6 (Indumati Laxman Bhakare v. State of Maharashtra)**. This Court has carefully gone through the observations. The observations were made in view of the facts of that case. Facts and circumstances of each and every case are always different. In the present case not only the work was completed but the candidate had given up the claim in respect of amount and so he had left no interest under the aforesaid transaction. There is no question of using the post if the candidate gets elected for getting released the

amount in view of the written communication given by him under which he has given up his claim. In view of these facts, this Court holds that it is not possible to interfere in the order of the Returning Officer and the decision given by the District Court. In the result, the petition stands dismissed. It is open to the petitioner to go by election petition and the aforesaid points will be available in the election petition.

Sd/-
(T.V. NALAWADE, J.)

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