

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 619 OF 2016

Shri Santosh Ramesh Jadhav and anr. .. Petitioners

Vs.

The State Election Commission and ors. .. Respondents

Mr.Dilip Bodake, for the Petitioners.

Mr.S.B. Shetye, for Respondent No.1.

Mr.V.R. Gaikwad, for Respondent No.5.

Mrs.M.P. Thakur, AGP for State.

**CORAM : NARESH H. PATIL &
M.S.KARNIK, JJ.**

05th DECEMBER, 2016

ORDER :

. Rule, returnable forthwith. Heard finally by consent of the parties.

2. The petitioners challenge the order dated 23/12/2015 passed by the State Election Commission.

3. Admittedly, the elections of Mauze – Chinchner Gram Panchayat were held. According to the election

programme, last date of the withdrawal of the candidature was 08/12/2015. There were 3 wards. 17 persons filed their nominations for 9 seats.

4. It is the contention of the petitioners that in ward No.3, 2 persons filed nominations, one by the petitioner No.1 and another by respondent No.5. It is the petitioners's contention that respondent No.5 withdrew his candidature by filing appropriate application on 08/12/2015 at 2.00 p.m. In the late evening, on the same day, respondent No. 5 approached police authority and returning authority and lodged complaint that he was pressurized to withdraw his candidature. The State Election Commission called for report and based on that report, impugned order is passed.

5. Learned Counsel appearing for the petitioners submits that in accordance with the provisions of Section 10A of the Maharashtra Village Panchayats Act and in view of the Rules 10 & 13 of the Bombay Village Panchayats Election Rules, 1959

(for short 'Rules'), the State Election Commission erred in passing the impugned order. The petitioners denied allegations made by respondent No.5 that he was pressurized by the petitioners. Once the candidature was withdrawn, there is no provision in law to cancel such a candidature. Learned Counsel referred to provisions of Section 10A of the Maharashtra Village Panchayats Act and the Rule 13 (2) of the Bombay Village Panchayats Election Rules, 1959.

6. Learned Counsel for State Election Commission referred to relevant provisions of law and submitted that the State Election Commission was of the view that the petitioners exerted pressure on the respondent No.5, therefore, for maintaining purity of elections and for conducting fair election State Election Commission passed appropriate order which is impugned herein.

7. Learned Counsel for respondent No.5 submitted that he lodged complaint to various authorities in the evening of the

same day of withdrawal of the candidature stating that he was pressurized to withdraw the candidature. Another grievance is that petitioners's name was registered at different places which itself disqualifies the petitioners to contest the election.

8. We have perused the record. Section 10A of the Maharashtra Village Panchayats Act reads thus.

10A. State Election Commission :-

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to the Panchayats shall vest in the State Election Commissioner.

(2) The State Election Commissioner may, by order, delegate any of his powers and functions to any officer of the Commission or any officer of the State Government not below the rank of Tahsildar.

(3) All the officers and members of the staff appointed or deployed for preparation of electoral rolls and conduct of election of Panchayats under this Act or the rules shall function under the superintendence, direction and control of the State Election Commissioner.

(4) Notwithstanding anything contained in this Act and the rules, the Commission may issue such special or general orders or directions which may not be inconsistent with the provisions of the Act for fair and free elections.

9. Provisions of Rule 13 of the said Rules reads thus :

“13. Withdrawal of candidates.-

(1) Any candidate may withdraw his candidature by a notice in writing subscribed by him and delivered to the Returning Officer between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon [on the day not

later than the last day appointed for the withdrawal of candidature under Rule 7]. Such notice may be delivered either by the candidate in person or by a person authorised in writing by him in this behalf. Any notice of withdrawal which is given after the expiry on such last day shall not have any effect.

(2) No person who has given a notice of withdrawal of his candidature under sub-rule (1) shall be allowed to cancel the notice.

(3) The Returning Officer, on receiving notice of withdrawal under sub-rule (1) shall, as soon as may be thereafter, cause a notice of withdrawal to be affixed at the Village Chavdi and at the Village Panchayat Office.

Explanation.- A person who is unable to write his name shall be deemed to have subscribed the notice of withdrawal if he has placed a mark or thumb impression thereon in the presence of the Returning Officer or any other officer authorised by the Returning Officer in this behalf and such officer on being satisfied as to the identify of that person, has attested the marks or thumb impression as the mark or thumb impression of that person.”

10. Respondent No.5 had withdrawn his candidature at 2.00 p.m. on 08/12/2015 and in the evening of the same day, he made some complaint to police and returning officers. An enquiry was conducted. A report was called by the State Election Commission and on the basis of the same, the impugned order was passed on 23/12/2015 which is annexed at Exhibit 'M'. The State Election Commission cancelled the election programme relating to the election of the petitioner and directed by- election.

11. Provisions of Rule 13(2) are clear which specifies that no person who has given a notice of withdrawal of his candidature under sub-rule (1) shall be allowed to cancel the notice. Whether the petitioners exerted pressure or influence of any nature on respondent No.5 is a question of fact which requires appreciation of evidence. The statute provides effective alternate remedy in case a person is aggrieved by declaration of election of a candidate.

12. Respondent No.5 would therefore, will have to resort to alternate remedy as prescribed in law.

13. In the facts, the petitioner No.1 remained the only candidate after respondent No.5 withdrew his candidature. Outcome is that Election Officer will have to pass appropriate order in accordance with law. In view of above, following order is passed.

ORDER

- i) The impugned order is set aside.

- ii) We direct the Election Officer to declare the result of election in view of the observations made by us above at the earliest, in accordance with law.

14. Rule is made absolute in the above terms.

(M.S.KARNIK, J.)

(NARESH H. PATIL, J.)