

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6479/2016

(Dr. Ashok s/o Shaligram Kabra vs. The State of Maharashtra and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Mr. S.R.Deshpande, Advocate for the petitioner
Mr. Sanjeev Deshpande, Addl. Govt.Pleader for respondent-State
Mr. J.B. Kasat, Advocate for respondent nos. 2,3 and 5
Mr. P. Deshmukh, Advocate for Respondent no.6

**CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.**

DATED : 16th November, 2016.

Heard.

By this petition, the petitioner seeks a direction against the respondents to enquire into the matter in regard to the acceptance of the nomination form of the candidates desirous of contesting the elections to the Municipal Council, Malkapur.

According to the election programme, the nomination forms were required to be filled from 24.10.2016 to 29.10.2016 till 3.00 pm. The nomination forms were to be filled *on-line*. According to the petitioner, there was some difficulty in submitting the nomination forms *on-line* and, therefore, the petitioner and certain other candidates desirous of contesting the election, made representations to the concerned authority about the difficulty in submitting the nomination forms, *on-line*. It is the case of the petitioner that the nomination form was supplied to the petitioner at 10.00 am. on 29.10.2016 for submitting it *off-line*

and time to submit the nomination form off-line was extended till 4.00 pm, on 29.10.2016. According to the petitioner, it was not possible for the petitioner to fill the nomination form within a period of six hours. It is stated that an affidavit was also required to be tendered along with the nomination form and there was some difficulty in securing the affidavit from the Notary after the Tahsildar refused to permit the petitioner to swear an affidavit before him. It is the case of the petitioner that the action on the part of the respondents in not accepting the nomination form of the petitioner that, was sought to be supplied *off-line* on 29.10.2016, is bad in law.

The learned counsel for the respondents opposed the prayer made in the Writ Petition. It is stated that the facts stated on behalf of the petitioner are disputed by the respondents. It is stated that there was no difficulty in filing the nomination form on-line as ten nomination forms are received on line. It is stated that the representations of the petitioner and some other candidates were considered favourably and the candidates were permitted to fill the form *off-line*. It is stated that 12 candidates have filled the form *off-line* and the petitioner could have filled the form *off-line* with due diligence, like the other candidates. It is submitted that the time to submit the form *off-line* was also extended by one hour, but the petitioner did not submit the form *off-line* before 4.00 pm, on 29.10.2016. It is stated that the statement made on behalf of the petitioner that the respondents did not accept the form of the petitioner though it was sought to be submitted before 4.00 pm, on 29.10.2016 is incorrect. It is stated that the elections are scheduled on 27.11.2016 and any indulgence by this Court at this stage would result in causing hindrance in the election process.

On hearing the learned counsel for the parties, we find that several disputed questions of facts arise for consideration in this Writ Petition. The process has already commenced. It is held by the Hon'ble Supreme Court and this Court, time and again, that it would not be proper on the part of the Court to interfere in the election process after it has commenced. Since the election process had already commenced on 24.10.2016, it would not be proper for this Court to interfere in the election process at this stage, especially when the petitioner could avail the remedy of filing an Election Petition as per the provisions of the Act. In view of the existence of the disputed question of facts, it would not be proper to decide the issues involved in this Writ Petition in exercise of the writ jurisdiction.

Hence, we dispose of the Writ Petition with no order as to costs. The petitioner may avail the remedy after the elections are concluded, if so advised. The points raised in the petition are kept open.

JUDGE

JUDGE

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