

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8660 OF 2016

LATA SHIVAJI MORE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Shri Gandhi Amol S.
AGP for Respondents 1 & 3 : Shri Bhagat N.T.
Advocate for Respondent 6 : Shri Nagarkar Kiran M.

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CORAM : RAVINDRA V. GHUGE, J.
Dated : June 28, 2017

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PER COURT :-

1. This Court (Coram : Sunil P. Deshmukh, J.), while issuing notice has observed in the order dated 11.8.2016 as under:-

“1. Issue notice to the respondents, returnable on 22-09-2016. Learned AGP waives service of notice on behalf of respondents no. 1 and 3.

2. Learned counsel Mr. Amol Gandhi, submits that impugned order is absolutely non speaking order, no reason is given for passing the order save and except the consideration of the report, though, the order purports to have heard the parties concerned, yet, the order does not depict any consideration of the cases put up by the petitioners. Learned counsel further apprehends that, pursuant to the impugned order, further action of lodging criminal prosecution may be taken up. He submits

that all the petitioners are students, in the circumstances, their prospects are likely to be hampered, if the action is allowed to be go on under such an order. He, therefore, urges for interim relief, as such, till returnable date, there shall be ad interim relief in terms of prayer clause 1st 'C'.

3. *In addition to court process, the petitioners shall serve the respondents privately by any legally acceptable mode and to file affidavit along with tangible proof of service. In case of failure to serve the respondents privately and file service affidavit by returnable date, the ad-interim relief would cease to operate.”*

2. Since then, the interim relief was continued and the petitioners are protected against the impugned order and especially the directions by the Sub-Divisional Officer, Biloli for initiating criminal action against these petitioners for having obtained their enrollment in the electoral voters' list on the basis of alleged bogus documents.

3. I have considered the submissions of the learned Advocates for the respective sides for quite sometime.

4. The learned AGP appearing for the State authorities relies upon the affidavit-in-reply dated 23.9.2016, filed by the Naib-Tahsildar, pointing out from paragraph No.12 that the petitioners

have an alternate efficacious remedy of filing an appeal before the Collector / District Election Officer. He further submits that if the petitioners approach respondent No.2, they would be heard and after giving them a reasonable opportunity of hearing, respondent No.2 would decide their appeal.

5. Shri Nagarkar, learned Advocate for respondent No.5 / original complainant, submits that he would also acquire a right of hearing.

6. Shri Gandhi, learned Advocate for the petitioners submits that as the petitioners have been protected by this Court for almost a year, the petitioners have no difficulty in resorting to the remedy available provided the protection is continued since they are young persons and they would be subjected to criminal proceedings which would cause an irreparable harm, serious prejudice and manifest inconvenience to them personally.

7. Considering the above, this petition is disposed off with the following directions:-

(A) All the litigating sides having agreed to appear before respondent No.2, shall do so on 21.7.2017 at 3.00 PM and formal notices need not be issued.

(B) The petitioners are permitted to appear through a representative or an Advocate and shall not seek adjournments by remaining absent.

(C) All the litigating sides are permitted to enter their written notes of submissions, if so advised.

(D) Respondent No.2 shall consider the record and proceedings from the file of respondent No.3 and after giving a reasonable opportunity of hearing to the litigating sides, shall decide the appeal on its own merits and by passing a reasoned order.

(E) The protection granted by this Court on 11.8.2016 shall continue till the decision in the matter is delivered by respondent No.2 and for a further period of four weeks if an adverse decision is delivered against the petitioners.

(F) The litigating sides would extend their cooperation to respondent No.2, who shall endeavour to decide the said appeal, on/or before 13.10.2017.

(RAVINDRA V. GHUGE, J.)

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