

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2055 OF 2017

Shri Shantanu Nanashheb Patil	...	Petitioner
V/s.		
The Election Returning Officer & others	...	Respondents

Mr. S.B. Deshmukh for the petitioner.

Mr. Kishor Patil a/w. Pratik B. Rahade i/b. P.N. Joshi for respondents 2 and 3.

Mr. S.B. Shetye for State Election Commission.

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

14th February, 2017.

P.C.

The petitioner challenges acceptance of Nomination form of respondent no.3 Shri Jaydatta Sitaram Holkar. Learned Counsel appearing for petitioner submits that the Scrutiny form and other essential forms were not filled in by the returning officer which demonstrates that without application of mind, the returning officer accepted the nomination form. This act on the part of returning officer is contrary to the view adopted by the Apex Court in the case of **Resurgence India v/s. Election Commission of India & anr. {(2014) 14 Supreme Court**

Cases 189}.

2. Learned Counsel submits that the necessary directions be issued accordingly.

3. Learned Counsel appearing for respondent no.3 submits that petition is not maintainable in view of alternate remedy available to the petitioner under Rules 20 of the Provisions of the Maharashtra Zillha Parishad, Panchayat Samiti and Village Panchayat Act and the Election Rules.

4. Learned Counsel appearing for Election Commission submits that all the issues could be raised in an election petition.

5. We have perused the record and the judgment cited supra. The election process is already set in motion. According to the election programme on 13/2/17 and 15/2/2017 names of list of validly nominated candidates would be published. Though the petitioner has not preferred appeal against the order of Returning Officer, it is informed to the Court that Nanasaheb D. Patil, father of the petitioner had preferred an appeal against the said order of Returning Officer being Election Appeal No.

4/2017 dated 9th February, 2017. Learned Counsel appearing for respondent submits that appeal is listed for orders by the District Court today.

6. In the facts, we observe that petitioner has alternate efficacious remedy provided under Section 27 of the Maharashtra Zilla Parishad Panchayat Samittee Act. The petitioner may avail of the said remedy. All issues on merits are kept open.

7. It is clarified that we have not expressed any opinion on the issue raised by the petitioner herein.

8. Learned Counsel Shri Shetye appearing for State Election Commission shall intimate the State Election Commission about the issues raised by the petitioner regarding the alleged lapses committed by the Returning Officer.

9. Writ Petition stands rejected.

(M.S. KARNIK, J.)

(NARESH H. PATIL, J.)