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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2759 OF 2017

Mrs. Vaijayanta Damodar Kolekar

.. Petitioner

Vs.

The State of Maharashtra and ors.

.. Respondents

Mr. S. P. Kadam for petitioner.

Mr. S. B. Shetye for respondent no.2.

Ms. R. A. Salunkhe, AGP for State.

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

MARCH 14, 2017.

P.C.

1. Petitioner prays for quashing and setting aside the election result of Panchayat Samiti for from Gan No. 18, Khojanwadi, Taluka – Jath, District -Sangli. Petitioner further prays for direction to conduct re-poll at Booth Center No. 9/18/26 of village Devnal, Taluka – Jath, District – Sangli.

2. It is submitted that the petitioner contested election to Panchayat Samiti held on 21/2/2017. The result of the election was declared on 23/2/2017. The respondent no.5 secured 3886 votes and the

petitioner secured 3727 votes. As the respondent no.5 secured highest votes, he was declared elected. The petitioner secured second highest votes.

3. Learned counsel for the petitioner submits that in view of the language of the provisions of Section 27 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (for short the Act of 1961), the filing of election petition will not be the remedy to the petitioner. Reference was made to Section 16 of the Act of 1961. Learned counsel submits that Returning Officer by a communication dated 21/2/2017 had informed the Dy. Collector, Sangli that in view of the defect being noticed in the Electronic Voting Machine (EVM), it was desirable to have re-polling. Instead of having re-polling, the part of the polling process was conducted by securing a new EVM.

4. Learned counsel appearing for the State Election Commission submits that the petitioner will have to resort to alternate statutory remedy as petitioner is challenging the election of a elected candidate. On this ground alone and in view of the availability of alternate mechanism, petition deserves to be dismissed, according to the learned counsel.

5. We have perused the provisions of Sections 16 and 27 of the Act of 1961. Article 243O of the Constitution of India reads as under :-

“243-O. Bar to interference by courts in electoral matters.

- Notwithstanding anything in this Constitution -

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State.

6. Affidavit was filed on behalf of respondent nos.3 and 4 by Shankar Ramchandra Barge, Returning Officer – ZP and PS Election 2017 and Sub Divisional Office, Sub Division, Jath, Dist. Sangli. Para 9 of the said affidavit reads as under :-

“9. With reference to Para 11 of the Writ Petition, I say that the Election Officer has worked as per rules mentioned in R.O.

Hand Book. As stated above I point no.14.40.1 it is clearly stated, in what circumstances the re-polling will be conducted. I say that one of the voter at Centre No. 9/18/26 at Devnal has brought to the notice of the Presiding Officer that when he has pressed the button of particular candidate to whom he wants to give his vote, the red light at NOTA was glow. Therefore, the Presiding Officer has changed the Control Unit No. E-019631 with the permission of Returning Officer and the further voting was done on Control Unit No.F-062076. At the time of counting the position of both the machines are as under :

Control Unit No.E-019631

Sr. No.	Name of Candidate	VOTES REGISTERED
1	Kolekar Vaijayanta Damodar	43
2	Mane Phulabai Birappa	16
3	Sonur Supriya Nagesh	48
4	None of the above (NOTA)	69
	TOTAL	176

Control Unit No.F-062076

Sr. No.	Name of Candidate	VOTES REGISTERED
1	Kolekar Vaijayanta Damodar	234
2	Mane Phulabai Birappa	37
3	Sonur Supriya Nagesh	123
4	None of the above (NOTA)	2
	TOTAL	396

Hereto annexed and marked as Exhibit “1” collectively are the copies of the extract of the statement showing the final position of counting in Form no.18 and Result of Election in Form No. 19.”

7. The contention of the petitioner is that the ground which the petitioner is raising herein is not available to the petitioner in a election petition. Prima facie we are not convinced with the submissions advanced by the learned counsel for the petitioner.

8. In the facts and in view of the above stated provisions, the petitioner may resort to appropriate alternated remedy. Petition is rejected. It is clarified that we have not expressed any opinion on merits of the matter.

(M. S. KARNIK, J.)

(NARESH H. PATIL,J.)