

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No.11455 OF 2017

Dada Shahaji Barbade and Anr.

....Petitioners

Vs.

The State of Maharashtra and Ors.

....Respondents

Mr. Samir Kumbhakoni for Petitioners

Mr. S.H. Kankal for State- Respondent No.1

Mr. D.S. Mondkar – Hule a/w. S.B. Shetye for Respondent No.2

CORAM: M.S.SANKLECHA, J.

DATE : 12TH OCTOBER, 2017.

P.C:-

. Not on Board. Upon mentioning, the petition is taken up for consideration on the production board.

2. Mr. Kumbhakoni, learned counsel appearing for the Petitioners seeks leave to amend so as to add the Returning Officer as Party Respondent No.4 to the petition.

3. Leave to amend is granted. Amendment to be carried out forthwith. Re-verification dispensed with.

4. This petition under Article 227 of the Constitution of India

challenges the order dated 3rd October, 2017 passed by Respondent No.4 Returning Officer. By the impugned order dated 3rd October, 2017, the Petitioners' objection to the nomination of Respondent No.3 to contest the election to the Gram Panchayat of Village Rastapur is scheduled to take place on 16th October, 2017.

5. Article 243 O of the Constitution of India, 1950 clearly bars a challenge to an election to any Panchayat by a manner other than the election petition filed before such authority as has been provided under the law. Section 15 of the Maharashtra Village Panchayat Act, 1958 provides for a forum to challenge an election to the Village Panchayat. Therefore, the Petitioners have an efficacious remedy available to challenge the election after the election process is over.

6. In fact, the Apex Court in ***Shaji K. Joseph Vs. V. Viswanath and Ors.***[2016 (4) SCC 429] has deprecated the practice of the High Court interfering with the process of election particularly when the process of election has already set in motion the election programme. It would be appropriate to reproduce paragraph 15 of the aforesaid decision:

“In our opinion, the High Court was not right in interfering with the process of election especially when the process of election had started upon publication of the election programme on 27-1-2011 and more particularly when an alternative statutory remedy was available to Respondent 1 by way of referring the dispute to the Central Government as per the provisions of Section 5 of the Act read with

Regulation 20 of the Regulations. So far as the issue with regard to eligibility of Respondent 1 for contesting the election is concerned, though prima facie it appears that Respondent 1 could contest the election, we do not propose to go into the said issue because, in our opinion, as per the settled law, the High court should not have interfered with the election after the process of election had commenced. The judgments referred to hereinabove clearly show the settled position of law to the effect that whenever the process of election starts, normally courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without the court's order. Very often, for frivolous reasons, candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated. For the aforesaid reasons, this Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election.”

5. In the above view, the petition is dismissed.
6. Needless to state that if the Petitioners do file the election petition, it should be decided on its own merits and without being influenced by any of the observations made hereinabove.

Petition dismissed.

(M. S. SANKLECHA,J.)