

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.270 OF 2018
(Bharat Tukaram Payaghan Vs. The State Election Commission,
Maharashtra State, and others)

Mr.V.V.Bhavthankar, Advocate for the petitioner.
Mr.S.T.Shelke, Advocate for respondent Nos. 1 and 4.
Mr.S.K.Tambe, AGP for respondent Nos. 2 and 3.
Mr.Rahul Tambe, Advocate for respondent No.5.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 18/01/2018

PER COURT :

1. This matter was heard on 10/01/2018 and today.
2. The issue is that 693 votes were cast by the valid voters in the elections to the Village Gram Panchayat Khadgaon, Tal.Majalgaon, Dist.Beed. 11 votes were cast in favour of NOTA. 341 votes appeared to be in favour of an elected candidate. The petitioner fetched 339 votes. Though 693 votes were cast, the tally of the total votes registered with the EVM is 691 and 2 votes are mysteriously missing. The strenuous contention of the petitioner is that these 2 votes were cast in his favour and which would have placed him at par with the elected candidate. Thus there would have been a different method of declaring a candidate as elected as per the rules applicable.

3. Mr.Shelke, learned Advocate appearing on behalf of respondent Nos. 1 and 4 Election Authorities, submits that though 693 voters had cast their votes, the EVM indicates that only 691 votes were recorded which would mean that though 2 more votes were cast, the voters may have wrongly pressed the 'end' button due to which the votes were not registered.

4. Mr.Tambe, learned Advocate for respondent No.5 has strenuously opposed this petition and prays for dismissal of this petition with heavy costs.

5. Considering the above and the judgment of the learned Division Bench of this Court in the matter of Dropadabai w/o Murlidhar Thete and another Vs. State of Maharashtra and others [2007(4) MH.L.J. 712], an election petition would therefore be a remedy available to the petitioner.

6. Learned Advocate for the petitioner submits on instructions that the petitioner desires to withdraw this petition to avail of a remedy as is permissible in law.

7. As such, this petition is disposed of, as withdrawn with liberty

as prayed for. The time spent by the petitioner in this Court from 04/01/2018 till the passing of this order shall be a good ground for condonation of delay.

(RAVINDRA V. GHUGE, J.)