

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 3736 of 2018

Vandana Pradip Patil
age 32 years occupation household
R/o Gangapur Taluka Gangapur District Aurangabad.

...Petitioner

VERSUS

1. Suvarna Sanjay Jadhav
age 43 years occupation household & business
R/o Akhilesh Nagar, near bus depot, Gangapur
Taluka Gangapur District Aurangabad.
2. State Election Commission,
Maharashtra State,
New Administrative Building,
Hutatma Rajguru Chowk,
Madam Cama road, Mumbai
through its Commissioner.
3. Election Returning Officer,
Municipal Council, Gangapur
Taluka Gangapur District Aurangabad.
4. Bamasak Farhana Faizal,
age 36 years occupation household
R/o Gangapur Tal. Gangapur Dist. Aurangabad.

...Respondents

Mr M.S. Deshmukh, Advocate for petitioner
Mr R.N. Dhorde, Senior Advocate, inserted by Mr U.V. Kakde,
Advocate for respondent No.1
Mr S.T. Shelke, Advocate for respondent No.2.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 11th July, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned advocates for appearing parties finally, by consent.

2. Learned counsel Mr M.S. Deshmukh, appearing for petitioner, submits that issue No.1 is redundant. He submits that going by the pleadings as are on record, said issue would not arise. He further submits that while pleadings would not bear such issue, it would be unnecessary and burdensome for the parties. He, however, fairly concedes to the position as to other subsisting issues. Issue No.1 is as under :

" 1. Whether it is a irregularity or illegality to make available to the voters, both the buttons (End Button and Nota Button) simultaneously ?"

He refers to technicalities involved in election voting machine and some other aspects.

3. Learned Senior Advocate Mr Dhorde appearing for respondent No.1/election petitioner on the other hand submits that going by the pleadings of respondents in election petition and the general tenor of arguments in election petition, it cannot be said that the issue would not arise at all. He further submits that on appreciation of exhaustive pleadings the issue has been framed. While the Ad-hoc District Judge, Vaijapur, has considered it to be pertinent, may be writ petitioner feels that the issue does not arise, yet looking at the pleadings of respondent No.3 as would appear in paragraph No. 5 as well as the pleadings of respondents No.1 and 2, it would not be said that the issue would not arise at

all. He submits that while petitioner is elected by margin of 130 votes, not taking into account 152 votes as contended on behalf of election petitioner/respondent No.1, would have significance. Discrepancy appearing in counting votes cast which is in the region of 152 votes, is more than 130. As such, issue No.1 would have bearing on outcome of elections of petitioner. He further submits that no particular prejudice can be said to have been caused to the writ petitioner in the process. Learned senior advocate goes on to submit that discretion may not be exercised by this court when not necessary.

4. Although learned counsel Mr Deshmukh has purportedly referred to some technicalities involved in election voting machine and others, yet in the matter issue No.1 is framed having regard to pleadings of parties and there does not appear to be any irregularity in framing the same.

5. The writ petition is, thus, not entertained and is dismissed.

6. Rule discharged making it clear that all the contentions are open for the parties.

**(SUNIL P. DESHMUKH)
JUDGE.**