

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2091 OF 2018

Dinkar Sakharam Khutade.

..Petitioner.

Versus

Returning Officer,
R/o: Grampanchayat:Pargaon,
and Another.

..Respondents.

Mr. Omkar Nagwekar for the Petitioner.

Mr. Manish R. Bhora i/b Mr. Sachin B. Shetye for Respondent No. 1.

Mrs. M. P. Thakur, AGP for the Respondent-State.

Coram : RANJIT MORE &
PRAKASH D. NAIK, JJ.

Date : **February 16, 2018.**

P. C. :

1. Heard Mr. Nagwekar, the learned Counsel for the Petitioner, Mr. Manish Bohra for Respondent No.1 and Mrs. M. P. Thakur, learned AGP for Respondent no.2.

2. The petition is filed under Article 226 of the Constitution of India challenging the order dated 14th February 2018 passed by Respondent No.1, rejecting the Petitioner's nomination for the election to the post of member of village panchayat of Pargaon village, district Palghar.

. On 22nd January 2018 the State Election Commission declared election programme for the general election to village Pargaon. Under the said election programme, nominations were to be

accepted from 5th February to 10th February. The scrutiny of the nominations was to take place on 12th February 2018 and the last date for withdrawal of nominations was 15th February 2018. The final list of valid nominations was to be published on 15th February 2018 and voting is scheduled to take place on 25th February 2018. The learned Counsel for the Petitioner contends, and the learned Counsel for Respondent No.1 does not dispute that the date of publication of valid nominations and allocation of symbols is postponed to 16th February 2018, i.e., upto today, and the same will be published after 3.00 p.m. today.

3. In view of the above statement, we have entered into the merits of the matter.

4. As can be seen from the record, the Petitioner's nomination is rejected on the sole ground that the Petitioner has undergone punishment for the period of 365 days and the period of 5 years from the date of his release has not elapsed. Briefly stated, the nature of proceedings which took place for sending the Petitioner to prison is that under section 125 of the Code of Criminal Procedure, 1973 [for short "the Code"] the Petitioner was directed to pay maintenance to his wife @ Rs. 250 p.m.. Since the Petitioner did not pay maintenance to his wife as directed for the period of 22 months,

his wife filed an application under section 125(3) of the Code on 1st February 2002. This application was decided by the learned JMFC, Palghar on 26th September 2013 and the Petitioner was sent to prison for the period of 365 days for his default to pay maintenance for the period of 22 months.

5. It is now well settled position in law that the proceeding under section 125 of the Code are civil in nature. In this regard, reference can be made to the decision of this Court in Pandharinath Sakharam Thube vs. Surekha Pandharinath Thube and ors [1999, Cr.L.J. 2919]. As can be seen from the record, since the order to pay maintenance was not complied with by the Petitioner, he was sent to prison. By this order, it cannot be said that the Petitioner was convicted for any offence. Section 14(1)(a)(i) of the Maharashtra Village Panchayat Act [for short "the Act"] has no application in the present case. Non compliance of the order made under section 125 of the Code cannot be said to be an offence nor the order sending the Petitioner to prison for non compliance thereof can be said to be a conviction. In that view of the matter, provisions of section 14(1)(a)(i) of the Maharashtra Village Panchayat Act are not applicable. Respondent No.1 therefore could not have disqualified the Petitioner from contesting the election to the member grampanchayat Pargaon.

In that view of the matter we allow this petition in terms of prayer clause (a). The impugned order is accordingly quashed and set aside. Respondent No.1 is directed to accept the Petitioner's nomination and show his name in the list of validly accepted nominations. The learned Counsel for Respondent No. 1 is directed to communicate this order to Respondent No. 1 by telephone.

6. Writ petition stands disposed of.

7. All concerned to act on an authenticated copy of this order.

[PRAKASH D. NAIK, J.]

[RANJIT MORE, J.]