

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 10757 OF 2018

Balaso @ Ashok Achutarav Patil.

..Petitioner.

V/s.

Shivkumar Ramchandra Phate & ors.

..Respondents.

Mr. Satyavrat Joshi, advocate for Petitioner.

Mr. Ajay A. Joshi, advocate for respondent No. 12.

Mr. Sarang S. Aradhya, advocate for respondent No.6.

Mr. Karan S. Thorat, AGP for State.

Mr. R. Mantri I/b. Sachindra Shetye, advocate for State Election Commission.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : SEPTEMBER 26, 2018.

P. C. :

1 Heard the learned Counsel for the respective parties. Rule. Rule made returnable forthwith with the consent of the parties.

2 The present petition is seeking quashing and setting aside of the order dated 12/9/2018 passed by the Returning Officer for election of Village Gardi, Taluka-Pandharpur, District-Solapur. The voting of the said Gram Panchayat has commenced at 7.30 a.m. today i.e. 26/9/2018. It is the contention of the petitioner that the petitioner had raised objections to the acceptance of the nomination of certain candidates who are respondent Nos. 1 to 8 in the present petition, on the ground

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that their nomination forms were not supported by the certificates and the resolution issued by the Gram Panchayat that they are having toilets in their residential homes.

3 At the outset, this Court is of the opinion that since the voting process has already started, process of election cannot be stalled. The prayer of the petitioner that the results of the Grampanchayat election to be withheld or shall be made subject to the result of this Writ Petition also cannot be granted in view of the fact that an election is democratic process and the declaration of the results is a part and parcel of the election process and cannot be stalled in Writ Petition without enquiring into the matter and the merits of the matter would be a subject matter of an election petition.

4 Learned Counsel for the petitioner has arraigned Shri Deepak Desai, Agricultural Assistant Officer, Pandharpur as respondent No. 12 in the present petition. It appears from the records that Shri Desai was appointed as an administrator of the Grampanchayat in the year 2017. Since entire body was dissolved, he was expected to hold election for the year 2017-2018 to the Grampanchayat, Gardi. Today he is represented by advocate Mr. Ajay Joshi.

5 Learned Counsel for the petitioner has drawn attention of this court to a resolution passed by the Grampanchayat purportedly dated of 1st May, 2018. It is clear from the said document that in fact, the date 26/1/2017 has been scored by Shri Deepak Desai.

6 Shri Deepak Desai is present in the court. Upon his instructions, it is submitted that in fact, he had conducted meeting on 26/1/2017 and not on 1st May, 2018. However, his name appears to be shown in the said resolution as the President of the Gram Sabha on 1st May, 2018. Learned Counsel Mr. Joshi has further submitted that in fact, the elections to Grampanchayat Gardi were declared in June, 2018 and the prospective candidates seeking nominations are shown in the resolution dated 1st May, 2018. The election programme was declared on 27/8/2018 and therefore, there could not have been prospective candidates seeking nomination as on 1st May, 2018. The learned Counsel appearing for the respondent No. 12-Shri Desai submits that only upon going through the paper book of the present petition, respondent No. 12 has learnt that he has been shown as President in the meeting dated 1st May, 2018 and in fact, he was not presiding over the said meeting. The document is purportedly a fabricated document and he would take necessary action as permissible in law.

7 The learned Counsel for the petitioner has submitted that there was political interference in the said election. It is also submitted that although the objections at the scrutiny stage was turned down on 12/9/2018, true copy or certified copy of the subject order was not made available for 5 days. The order was made available only on 14/9/2018. However, other papers were made available on 17/9/2018 and therefore, there is delay in approaching the court.

8 Be that as it may, since democratic process cannot be stalled in a Writ Petition, without following due process of law, this Court is of the opinion that all the contentions raised in the petition would be subject matter of the election petition, if filed.

9 With these observations, no interference is called for at this stage. Hence, the petition stands disposed of. Rule is discharged.

Parties to act on the authenticated copy of this order.

[SMT. SADHANA S. JADHAV, J.]

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signed by
Aruna
Sandeep
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