

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

WRIT PETITION NO. 12188 OF 2019

Mahavir Babgonda Patil ... Petitioner.

V/s.

Circle Officer @ Election Officer,
Grampanchayat Takali & Ors. ... Respondents.

Mr. A. D. Sale, Advocate, a/w. Tukaram Shendge for the
Petitioner.

Mr. C. D. Mali, AGP for Respondent Nos. 1 to 3.

Mr. S.B. Shetye, Advocate for State Election
Commission/ Respondent No. 4.

CORAM : UJJAL BHUYAN, J.

DATE : NOVEMBER 27, 2019.

PC :

Not on Board. Mentioned. Taken up on
production Board.

1 Liberty is granted to the Petitioner to amend
the Writ Petition to add State Election Commission, as
Respondent No.4. Amendment to be carried out
forthwith.

2 Heard Mr. A.D. Sale, learned counsel for the
Petitioner; Mr. C. D. Mali, learned AGP for Respondent
Nos. 1 to 3; and Mr. S.B. Shetye, learned counsel for
the added Respondent No. 4- State Election
Commission.

3 By filing this petition under Article 227 of the Constitution of India, Petitioner assails legality and correctness of the intimation letter/order dated 22.11.2019 issued by Respondent No.1- Returning Officer-cum-Election Officer, Grampanchayat Takali, Tal. Miraj in district Sangli, rejecting the application of the Petitioner for acceptance of his nomination paper.

4 In October, 2017, election was held in respect of village Panchayat Takali. One Jahangir Jamadar was elected as Sarpanch by defeating the Petitioner. However, he expired on 28.09.2019; whereafter, the post of Sarpanch fell vacant, necessitating holding of bye-election. In this connection, election program was declared, by issuing a notice on 06.11.2019. The period provided for filing of nomination forms was from 16.11.2019 till 21.11.2019. Scrutiny of nomination forms was fixed on 22.11.2019 from 11 a.m. till completion of the scrutiny. Date for withdrawal of nomination was fixed on 25.11.2019 upto 3 p.m. with distribution of symbols on the same day after 3 pm.. Polling is scheduled on 08.12.2019.

5 Petitioner submitted his nomination form for the post of Sarpanch. Scrutiny of his nomination form was taken up on 22.11.2019 at 11 am. An objection was raised by Respondent No. 1 that necessary affidavit was not filed by the Petitioner, disclosing his assets and liabilities; besides affidavit was also not filed stating that Petitioner did not have more than two children.

6 According to the Petitioner, Returning Officer informed him that his nomination form would not be accepted.

7 Petitioner relied upon a circular dated 15.03.2004 issued by the State Election Commission, which laid down the procedure for filing of nomination forms and contended that Petitioner had substantially complied with the procedural requirement since in the said circular filing of affidavit was not required. This intimation was furnished to the Returning Officer by the Petitioner at about 2 p.m. on 22.11.2019. However, before close of the scrutiny hours at 5 p.m., impugned communication/order was passed by Respondent No.1 at about 4.30 p.m. on 22.11.2019, rejecting the nomination form of the Petitioner.

8 Aggrieved, present Writ Petition has been filed for quashing of the order rejecting nomination of the Petitioner and for a direction to Respondent No. 1 to accept the nomination form of the Petitioner to enable him to contest the election.

9 Primary contention of learned counsel for the Petitioner is that under Rule 11 of the Bombay Village Panchayats Election Rules, 1959, it is mandatory on the part of the Returning Officer not to reject any nomination paper unless the defect is of substantial character. He submits that the defect in the case of the Petitioner is a curable one and could have been easily cured by the Petitioner had an opportunity been given to him by the Returning Officer. Instead of doing this, Returning Officer came to the conclusion hurriedly and cancelled the nomination paper of the Petitioner.

10 On the other hand, learned counsel for the Respondents have referred to the provisions of Article 243-O of the Constitution of India and section 15A of the Maharashtra Village Panchayats Act, to contend that there is constitutional and statutory bar to interference by courts in electoral matters in any

Panchayat. Only remedy is by way of election petition, as provided under section 15 of the aforesaid Act.

11 In reply, learned counsel for the Petitioner submits that court can still interfere in the matter if the court takes a view that such limited interference would only aid and assist the electoral process. In the present case, it is not a general election but a bye-election to the office of Sarpanch. Therefore, a limited interference by this court at this stage, would not impede the electoral process; rather it would only facilitate in having a free and fair election, moreso when it is an admitted position that the defect with the nomination paper is a curable one.

12 Submissions made by learned counsel for the parties have been considered.

13 Part IX was inserted in the Constitution of India by the Constitution (73rd Amendment) Act, 1992. It provides a constitutional status to the Panchayats in the country. Part IX of the Constitution deals exhaustively with constitution of Panchayats. As per Article 243-O, more particularly, clause (b) thereof, there is bar to interference by courts in electoral

matters. Article 243-O starts with a non-obstante clause and states that notwithstanding anything in the Constitution, no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. A reading of Article 243-O(b) would make it abundantly clear that the bar to interference by courts in electoral matters is absolute without any exception. It is evident, going by the language of the provision itself when it says that no election to any Panchayat shall be called in question except by an election petition.

14 Section 15 of the Maharashtra Village Panchayats Act provides the procedure for determination of validity of elections. Section 15-A is relevant and it says that no election to any Panchayat shall be called in question except in accordance with the provisions of Section 15; and no Court other than the Judge referred to in that Section shall entertain any dispute in respect of such election.

15 From the above, it is quite clear that no election to any Panchayat can be called in question except in accordance with the provisions of Section 15

of the Act. In such circumstances, remedy of the Petitioner would be by way of an election Petition under section 15 of the Maharashtra Village Panchayats Act and for availing this remedy, he will have to await conclusion of the electoral/election process. It is trite that the election process commences the moment the election notification is issued. Acceptance or rejection of nomination form/paper is part of the electoral process. Ground taken by the Petitioner for assailing rejection of his nomination form/paper may be taken in the petition that may be filed under section 15 of the Act, if so advised. But for the moment, in view of the Constitutional and Legislative embargo, court is not inclined to interfere with the electoral process, moreso under Article 227 of the Constitution of India.

16 Accordingly, interference is declined. Writ Petition is dismissed.

(UJJAL BHUYAN, J.)

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