

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

1017 WRIT PETITION NO. 101 OF 2021

MONIKA RAJENDRA MHASKE

VERSUS

THE STATE ELECTION COMMISSION AND OTHERS

...

Advocate for Petitioner: Mr. Salunke V. D.

Standing Counsel for Respondents No. 1 & 2:

Mr. A. B. Kadethankar

Advocate for Respondents No.3 & 4: Mr. V. D.
Sapkal, Senior Advocate h/f. Mr. S. E. Shekade

...

1018 WRIT PETITION NO. 102 OF 2021

REKHA DEEPAK JATAL

VERSUS

THE STATE ELECTION COMMISSION AND OTHERS

...

Advocate for Petitioner: Mr. Salunke V. D.

Standing Counsel for Respondents No. 1 & 2:

Mr. A. B. Kadethankar

Advocate for Respondents No.3 & 4: Mr. V. D.
Sapkal, Senior Advocate h/f. Mr. S. E. Shekade

...

**CORAM: S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATE: 14th JANUARY, 2021

PER COURT:

1. To avoid rigmarole both these writ petitions are decided together and the facts are taken from Writ Petition No. 101 of 2021.

2. The petitioner had filled in the nomination form for the election of the post of Member of Grampanchayat from Ward No. 3B and Ward No. 3C. The nomination paper of the petitioner for both viz. Ward No. 3B and Ward No. 3C were accepted. The name of the petitioner appeared in the list of validly nominated candidates. On the date meant for withdrawal of the nomination paper the petitioner filed an application seeking withdrawal of nomination from Ward No. 3C. It is the contention of the petitioner that without issuing notice to the petitioner and without affording any opportunity to the petitioner the Returning Officer arbitrarily passed an order directing that the candidature of the petitioner stands withdrawn from Ward No. 3B and Ward No. 3C. The said order of the Returning Officer is assailed in the present writ petition.

3. The Division Bench at the Principal Seat at Bombay had referred following issues to the Full Bench-

“(i) Does allowing a challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection, amount to intervention, obstruction or protraction of the election or is it a step to facilitate the process of completion of election?

(ii) Whether rejection of nomination form would attract the provisions of Article 243-O(b) of the Constitution of India?

(iii) Are the views expressed by the Division Benches of this Court in the cases of (i) Sudhakar s/o. Vitthal Misal vs. State of Maharashtra and Ors., reported in 2007 (6) All MR 773, and (ii) Smt. Mayaraju Ghavghave vs. Returning Officer for Gram Panchayat, Dhamangaon and Anr., reported in 2004(4) ALL MR 258, correct, or does the decision in the case of Vinod Pandurang Bharasakade vs. Returning Officer, Akot and Anr., reported in 2003(4) Mh.L.J. 359, represents the correct view in law?”

4. The Full Bench of this Court under its judgment and order dated January 13, 2021 passed in Writ Petition (St.) No. 26 of 2021 with connected writ petition, answered the said Reference and held as under-

“(i) Allowing a challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection is definitely not a step to subserve the progress of election and/or facilitate its completion in the sense enunciated in Mohinder Singh Gill (supra) and explained in Ashok Kumar (supra) though it

may not always amount to intervention, obstruction or protraction of the election;
(ii) Article 243-0(b) of the Constitution of India is a bar for entertaining a writ petition under Article 226 of the Constitution against an order passed by the Returning Officer rejecting nomination paper and such provision would clearly be attracted whenever a writ petition is presented before a Court for its consideration; and
(iii) The law laid down in Vinod Pandurang Bharasakade (supra) represents the correct view of law; consequently, we hold that the decision in Smt. Mayaraju Ghavghaave (supra) and Sudhakar s/o Vitthal Misal (supra) do not lay down the correct law;"

5. Confronted with the judgment of the Full Bench, Mr. Salunke, learned Counsel for the petitioners submits that the judgment of the Full Bench referred to above would be limited to the extent the issues were referred to the Full Bench and no further. The Reference was limited to the extent of maintainability of a writ petition *vis-a-vis* rejection of nomination paper. In the present case, the nomination of the petitioner was validly accepted. Subsequently, by an illegal order and without adhering to the procedure, the Returning Officer in high handed manner withdrew the candidature of the petitioner

even from the ward the petitioner had not sought withdrawal of the candidature. The same is illegal. A writ petition challenging such an illegal order would be maintainable and the judgment of the Full Bench of this Court referred to above would not be an impediment to entertain the present writ petitions. The Full Bench has not considered the eventuality and the circumstances as arising in the present case. The writ petitions against the order of the Returning Officer rejecting the nomination papers are entertained by the learned Single Judge; normally under Article 227 of the Constitution of India, probably, because of that the Full Bench was of the view that the writ petition would not be maintainable. The learned Counsel further submits that the Reference before the Full Bench was not against the acceptance of nomination form nor in respect of the orders passed by the Returning Officer for withdrawal of the candidature or otherwise. In such an eventuality, the writ would be maintainable and can be entertained by this Court.

6. Mr. Kadethankar, learned Counsel for the State Election Commission and Mr. Sapkal, learned Senior Advocate for contesting respondents submits that in view of the judgment of the Full Bench of this court referred to supra, the petitioner can naturally avail the remedy of election petition and the writ petition would not be maintainable. They referred to paragraphs no. 46, 54 and 64 of the said judgment.

7. We have considered the submissions canvassed by the learned Counsel for respective parties.

8. The Reference to the Full Bench, no doubt, was made when the Division Bench at the Principal Seat was hearing petitions against the orders passed by the Returning Officer rejecting the nomination papers. The Reference was required to be made as the Division Bench hearing the matters was confronted with contrary views of the co-ordinate benches. The Full Bench discussed the issue, law governing the challenge to the

elections, so also, took stock of the various precedents and observed as under-

"46. The essence of the above discussion is that a writ petition could be barred if it seeks to call in question a step in election, but if the approach to the Court is to facilitate free and fair completion of election, such approach would not be barred.

54. In all the aforesaid decisions, provisions of Part XV of the Constitution together with the provisions of the Representation of the People Act, 1951 were under consideration. The law laid down therein admits of no doubt that a petition under Article 226 of the Constitution would not be maintainable if it calls in question a step in election and such questioning before the Court may have the effect of interrupting, obstructing or protracting the election.

55. Article 243-O is pari-materia with Article 329. While Article 329(b) as of necessity would have to be read with the Representation of the People Act, 1951, Article 243-O has to be read with sections 15 and 15-A of the MVP Act. We have noted above what sections 15 and 15-A provide. Applying the reasoning of the Supreme Court in relation to cases covered by Part XV of the Constitution, there could be no valid and justifiable reason for not applying the same reasoning to cases covered by Part IX of the Constitution relating to "The Panchayats" in which Article 243-O and the other Articles limiting the life of every Panchayat and ordaining periodic elections to the Panchayats find place. Thus, it would seem to be an open and shut case for recording that the writ petitions are not maintainable. However, the controversy has arisen in view

of the Division Bench decisions in Smt. Mayaraju Ghavghave (supra) and Sudhakar s/o Vitthal Misal (supra) wherein views have been expressed, in contradiction to the view of an earlier Division Bench in Vinod Pandurang Bharsakade (supra). We may note here that in Vinod Pandurang Bharsadade (supra), Hon'ble C.K. Thakker, CJ. speaking for the Division Bench had the occasion to look into all the relevant authorities and treatises on the point and returned a finding that the writ petition before the Division Bench challenging a step in the election was not maintainable.

64. Having noticed the decision in Bharati Reddy (supra), we consider it appropriate to examine whether section 15 of the MVP Act provides a remedy to an aggrieved voter or any candidate who wishes to call in question the validity of any election of a member of a Panchayat; further, whether illegal/improper rejection of nomination paper of an individual seeking to contest an election could form a valid ground for invalidating the election of the successful candidate. Sub-sections(1) and (2) of section 15 of the MVP Act, in our view, provides complete answers to the aforesaid questions. Under sub-section (1), validity of any election of a member could be brought in question by any candidate at such election or by any person qualified to vote for any election in the manner and before the authority (Judge) as ordained. Sub-section (2) provides the procedure to be followed by the Judge upon receiving an election petition and the extent of relief that could be granted by him. The Judge is vested with the power to conduct inquiry and to pass necessary order confirming or amending the declared result, or setting the election aside. The submission of Mr. Deshmukh, relying on sub-section(5), that the Judge has the power to interfere

only if a corrupt practice has been committed by the successful candidate within the meaning of sub-section (6) does not appear to us to be sound. Though sub-section (5) refers to a particular contingency which could invalidate an election, sub-sections (1) and (2) are not controlled by sub-section (5). Sub-section (1) and (2), read together, are of wide import and would take within its fold a grievance raised against illegal/improper rejection of nomination paper. We, thus, conclude that the MVP Act, a complete code in itself in relation to Panchayat Raj in Maharashtra, does provide the necessary machinery for vindication of ubi jus ibi remedium and for appropriate redressal of grievance of any disgruntled individual who perceives that he has been wronged by the Returning Officer. The decision in Bharati Reddy (supra) is, therefore, distinguishable on facts."

9. After discussing the law, the Full Bench answered the Reference as under-

"(i) Allowing a challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection is definitely not a step to subserve the progress of election and/or facilitate its completion in the sense enunciated in Mohinder Singh Gill (supra) and explained in Ashok Kumar (supra) though it may not always amount to intervention, obstruction or protraction of the election;
(ii) Article 243-O(b) of the Constitution of India is a bar for entertaining a writ petition under Article 226 of the Constitution against an order passed by the Returning Officer rejecting nomination paper and such provision would clearly be attracted

whenever a writ petition is presented before a Court for its consideration; and
(iii) The law laid down in Vinod Pandurang Bharasakade (supra) represents the correct view of law; consequently, we hold that the decision in Smt. Mayaraju Ghavghaave (supra) and Sudhakar s/o Vitthal Misal (supra) do not lay down the correct law;"

10. The Full Bench observed that Article 243-O(b) of the Constitution of India is a bar in entertaining the writ petition under Article 226 of the Constitution of India against the order passed by the Returning Officer rejecting nomination paper and such provision would clearly be attracted whenever writ petition is presented before a Court for its consideration.

11. Article 243-O(b) reads thus-

"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."

12. Mr. Salunke, the learned Counsel further contends that Article 243-O of the Constitution of India contemplates challenge to the election after

the election is over and it does not contemplate stage prior to the election.

13. The said argument would not hold good on the touch stone of the judgment of the Full Bench referred to above.

14. Article 243-O(b) mandates that no election to any Panchayat shall be called in question except by an election petition presented to such an authority and in such manner as is provided for by or under any law made by Legislature of the State. The Full Bench referred to Article 243-O read with Section 15 of the Maharashtra Village Panchayat Act and formed an opinion that the bar to entertain a writ petition as enshrined under Article 243- O (b) would be attracted.

15. In the present case, the candidature of the petitioner is withdrawn under the orders of the Returning Officer. The candidature of the petitioner stands withdrawn from Ward No. 3B and 3C, though, according to the petitioner the

application for withdrawal of the candidature was only from Ward No. 3C, however, the fact remains that the candidature of the petitioner stands withdrawn for both Wards 3B and 3C *inter alia* rejected.

16. The analogy cannot be any different than what has been observed by the Full Bench while holding that Article 243-O(b) of the Constitution of India would be bar for entertaining a writ petition under Article 226 of the Constitution of India against the order passed by the Returning Officer rejecting the nomination paper. In the present case also, under the order of the Returning Officer the candidature of the petitioner stands withdrawn *inter alia* barred from contesting elections in the midst of the election process.

17. In view of the judgment of the Full Bench referred to *supra*, it will not be possible to accede to the arguments of Mr. Salunke, learned Counsel for the petitioners.

18. Writ Petitions, as such, are disposed of.

19. The petitioners would be at liberty to assail their grievance in the appropriate proceedings, in accordance with law. In that event, all contentions of parties are kept open. No costs.

[SHRIKANT D. KULKARNI, J.]

[S. V. GANGAPURWALA, J.]

marathe