

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 85 OF 2021

Gazala Bi Saddam Shah,
aged about 27 years, Occ. Housewife,
R/o. At Post Dongaon, Tahasil – Mehkar,
Dist. Buldhana

}

.. Petitioner

Versus

- 1) The Collector, Buldhana
- 2) The Returning Officer for the Elections
of Grampanchayat Dongaon and
Naib-Tahsildar, Mehkar, Tahsil Mehkar,
Dist.Buldhana
- 3) The State Election Commission,
Maharashtra State, Mumbai, through its
Commissioner.
- 4) Salma Bi w/o Syed Noor Attar,
aged about 54 years, Occupation –
Household, R/o Dongaon, Tah.Mehkar,
Dist.Buldhana

}

.. Respondents

Mr. N. B. Kalwaghe, Advocate for petitioner.

Mr. S. M. Ukey, Addl.G.P. for respondent Nos.1 & 2.

Mr. J. B. Kasat, Advocate for respondent No.3.

Mr. R. L. Khapre, Senior Advocate a/b. Mr. D. R. Khapre,
Advocate for respondent No.4.

CORAM : MANISH PITALE, J.

RESERVED ON : 18/06/2021

PRONOUNCED ON : 08/07/2021

JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

(2) At the outset when the writ petition is taken up for hearing, a strong challenge is raised on behalf of the respondents, with regard to the very maintainability of the writ petition, in the light of the recent judgment of Full Bench of this Court dated 13/01/2021 passed in **Karmaveer Tulshiram Autade And Ors. Vs. The State Election Commission and Ors.**¹. It is contended that in view of the specific questions framed and answered in the said judgment of the Full Bench of this Court, the present writ petition deserves to be dismissed, as not maintainable, in view of the specific bar contemplated under Article 243-O(b) of the Constitution of India and Section 15A of the Maharashtra Village Panchayats Act, 1959 (Act of 1959). It is submitted that the grievance sought to be raised by the petitioner in this writ petition can be raised only by way of election

¹ WPST 26 OF 2021 & connected petitions.

petition, as contemplated under Section 15 of the Act of 1959.

(3) The respondent No.3 declared election program for elections to Grampanchayats including Grampanchayat, Dongaon, with which the present petition is concerned. As per the election program, on 14/12/2020, the final voters list was published. The nomination forms were to be filled by candidates between 23/12/2020 to 30/12/2020. The scrutiny of nomination forms was to take place on 31/12/2020 and the nomination forms could be withdrawn on 04/01/2021. The final list of candidates and allotment of symbols was to be done on 04/01/2021 and the polling date was fixed for 15/01/2021 between 07.30a.m. to 05.30p.m. On 18/01/2021, the counting of votes was fixed, followed by the declaration of result. The petitioner claims in the writ petition that she filled her nomination form in the category of Backward Citizen Category – Women (BCC-W) for which one seat was reserved in ward No.1. Upon scrutiny of the nomination forms, the respondent No.2 – the Returning Officer published list of nomination forms found to be valid. The petitioner was shocked and surprise to find her name mentioned in the Backward Citizen Category (BCC). In the category of BCC-W, only the name of

respondent No.4 as having filled valid nomination form was found, with the result that there was every chance of her being elected unopposed. Since last date for publishing the final list of candidates and allotment of symbols was dated 04/01/2021, the petitioner was constrained to urgently file the present writ petition on 02/01/2021.

(4) The writ petition was taken up for consideration in view of the extreme urgency on 04/01/2021 and upon hearing the learned counsel for the petitioner, this Court found that the petitioner had made out a prima facie case in her favour. This Court found that while filling the nomination form, the petitioner appeared to have stated that she was contesting for BCC-W category and in the column specifically asking as to whether the candidate was contesting on a seat reserved for women, the petitioner had answered in the affirmative. This Court also found that in the documents filed along with nomination form, the petitioner had stated that she was filling the nomination form for election in the BCC-W category. On this basis, prima facie, this Court found that the Returning Officer had erred in accepting the nomination form of the petitioner in the BCC category, instead of BCC-W category,

(5) On this basis, interim relief was granted in favour of the petitioner in terms of prayer clause(d) subject to the result of the writ petition. The said prayer clause reads as follows :-

“d. during pendency of instant petition, by way of interim order, be pleased to direct the respondent No.2 i.e. the Returning Officer for Elections of Grampanchayat Dongaon and Naib-Tahsildar, Mehkar to provisionally accept the nomination paper of petitioner submitted for a seat reserved for Backward Citizen Category/OBC-Women Category (BCC-W) in the election for Ward No.1 of Village Dongaon, Tah.Mehkar, Dist. Buldhana ;”

(6) In view of the aforesaid interim relief granted by this Court, the nomination form of the petitioner was provisionally accepted by the respondent No.2 – Returning Officer in the BCC-W category. As per the election program, polling took place and result was declared. The petitioner was elected in the BCC-W category. Only the petitioner and respondent No.4 were the candidates in the said category and since the petitioner secured 1037 votes as against 467 votes secured by respondent No.4, the petitioner stood elected.

(7) There were large number of petitions filed in the High Court challenging the orders passed by the Returning Officers.

The learned Chief Justice of this Court constituted a Full Bench in order to decide the question regarding maintainability of the writ petitions challenging such orders pertaining to nomination forms passed by the Returning Officers. A difference of opinion in judgments of Division Benches was noticed and the Full Bench framed specific questions in that context. The Full Bench rendered its Judgment on 13/01/2021, categorically holding that writ petition under Article 226 of the Constitution of India against the orders passed by Returning Officer, rejecting or accepting nomination forms, was not maintainable in the light of the settled position of law starting from judgment of the Hon'ble Supreme Court in the case of **N.P. Ponnuswami vs. The Returning Officer²**.

(8) In the light of the specific pronouncement on the said question of the maintainability, large number of writ petitions filed by candidates stood dismissed on the ground of maintainability. The respondents herein have specifically relied upon the orders passed by learned Single Judges of this Court dismissing writ petitions as not maintainable, in the light of the aforesaid judgment of the Full Bench of this Court.

² AIR 1952 SC 64

(9) It is in the light of these developments that when the present writ petition was taken up for consideration, preliminary objection regarding maintainability of the writ petition was pressed into service by the learned counsel appearing for the respondents.

(10) Mr.R.L.Khapre, learned Senior Counsel for respondent No.4, submitted that the aforesaid recent Full Bench Judgment of this Court had reiterated the settled position of law and that therefore, the present writ petition deserves to be dismissed, as not maintainable and the interim order dated 04/01/2021 passed by this Court deserves to be vacated as a consequence thereof. By referring to the specific questions framed by the Full Bench and the answers given thereto, it was submitted that the question of maintainability of the present writ petition was no longer *res integra*. By inviting attention to Article 243-O(b) of the Constitution of India, it was submitted that the grievance of the petitioner could be raised only in a properly instituted election petition under Section 15 of the Act of 1959. By relying upon the said provision, the learned Senior Counsel further submitted that in the present case, the grievance of the petitioner was acceptance of her nomination form in a wrong category,

which was also covered under the sweep of the said provision. It was further submitted that acceptance of nomination form of the petitioner in the wrong category, obviously meant that her nomination form had been rejected in the category that she claimed the form ought to have been accepted. It was emphasized that Section 15A of the Act of 1959 provided for an emphatic bar to interference in the election except in accordance with Section 15 of the Act of 1959, under which only an election petition could be filed. It was submitted that the word “election” included each and every stage thereof, including the stage of acceptance / rejection of nomination forms and that therefore, any grievance with respect to the same could be raised only by way of an election petition. The learned Senior Counsel relied upon the judgment of the Hon’ble Supreme Court in the case of **N.P Ponnuswami** (supra) and the aforesaid Full Bench of this Court. It was further submitted that the nature of dispute raised by the petitioner would necessarily require an inquiry into the facts, entailing recording of evidence, which can be done only in a properly instituted election petition, thereby further indicating that the present writ petition deserves to be dismissed.

(11) Mr.S.M.Ukey, learned Additional Government Pleader appearing on behalf of the respondent Nos.1 & 2 submitted that the bar under Article 243-O(b) of the Constitution of India and Section 15A of the Act of 1959, applied in full force to the facts of the present case. In the light of the aforesaid recent Full Bench judgment of this Court, the question regarding maintainability of the writ petition was no more *res integra* and that therefore, the writ petition deserved to be dismissed. It was submitted that right from the enunciation of law by the Hon'ble Supreme Court in the case of **N. P. Ponnuswami** (supra) upto the aforesaid recent Full Bench judgment of this Court, it has been laid down and reiterated that election includes every stage of the election and particularly the process of acceptance/rejection of a nomination form. In the present case, it is undisputed that as per the election program, the process of election started on 14/12/2020 and that the grievance of the petitioner pertains to the stage of acceptance of nomination form. It was submitted that acceptance of the nomination form of the petitioner in a category, which according to her was wrong, meant that impliedly her nomination form stood rejected in the alleged correct category. By placing reliance on the judgment of a Division Bench of this Court

passed in the case of **Vinod Pandurang Bharsakade vs. Returning Officer, Akot³**, particularly paragraph 51 thereof, it was submitted that the grievance of the petitioner could be redressed only by way of a properly instituted election petition under Section 15 of the Act of 1959. Reliance was placed on the very same judgment to submit that the petitioner was not entitled to rely upon Sub Section (7) of Section 15 of the Act of 1959, because the very act of acceptance / rejection of nomination form by the Returning Officer amounted to adjudication of the entitlement of a person which was substantive in nature and it was not covered under the said provision. The learned Additional Government Pleader further submitted that the petitioner was not justified in claiming that in the present case there was error committed by the respondent Election Commission in order to claim that writ petition was maintainable.

(12) Mr.J.B.Kasat, learned counsel appearing for respondent No.3, State Election Commission adopted the contentions raised on behalf of the respondent Nos.1, 2 and 4, further reiterating that recourse to Section 15(7) of the Act of 1959, was not available to the petitioner in order to claim that the writ petition was maintainable.

³ 2003 (4) Mh.L.J. 359

(13) Mr. N. B. Kalwage, learned counsel for the petitioner strongly opposed the contentions raised on behalf of the respondents on the preliminary objection regarding maintainability of the writ petition. It was submitted that the present case was unique, insofar as the petitioner was not aggrieved by either rejection of her nomination form or the acceptance of the nomination form of her rival, but she was aggrieved by acceptance of her nomination form by the respondent No.2 – Returning Officer, in a wrong category. According to the learned counsel for the petitioner, such an error committed by the Returning Officer could be set right only in a writ petition, because the remedy of an election petition under Section 15 of the Act of 1959, could not be termed to be an efficacious remedy, in view of Sub Section(7) thereof, which stipulates that when the validity of an election is brought in question only on the ground of an error made by the Officer or on the basis of an irregularity or informality not corruptly caused, the judge shall not set aside the election.

(14) According to the learned counsel for the petitioner, since the substance of the challenge raised on behalf of the petitioner fell within Sub Section (7) of the Section 15 of the Act of 1959, even if

the petitioner were to file an election petition, he would not succeed in setting aside the election.

(15) The learned counsel for the petitioner relied upon judgments of the Hon'ble Supreme Court in the case of **Virinder Kumar Satyawadi vs. The State of Punjab**⁴ and **Bar Council of Delhi and others vs. Surjeet Singh and others**⁵ and he sought to distinguish judgments of the Hon'ble Supreme Court in the case of **N.P.Ponnuswami** (supra) and judgment of this Court in the case of **Vinod Bharsakade** (supra), as also the aforementioned Full Bench judgment rendered by this Court in the case of **Karmaveer Autade** (supra). Additionally, the learned counsel for the petitioner also relied upon judgment of the Hon'ble Supreme Court in the case of **Laxmibai vs. Collector and others**⁶. The learned counsel for the petitioner placed much emphasis on the manner in which the respondent Election Commission has allegedly prescribed forms to be filled by the candidate like the petitioner, which were actually meant for election of Members to the Municipal Council and could not have been applied to the elections to Gram Panchayat. It was submitted that because of

4 AIR 1956 SC 153

5 (1980) 4 SCC 211

6 (2020) 12 SCC 186

such an error committed by the State Election Commission, the nomination form of the petitioner was accepted in a wrong category i.e. BCC instead of BCC(W), to the prejudice of the petitioner. Such a dispute could not be raised in an election petition under Section 15 of the Act of 1959 and that therefore, the present petition was clearly maintainable. By further inviting attention of this Court to the documents available on record, it was submitted that the error committed by the respondent No.2 – Returning Officer was obvious and that the learned Senior Counsel appearing for respondent No.4 was not justified in saying that the matter required recording of evidence.

(16) It was further submitted that an anomalous situation would arise in the present case if the petitioner was to be relegated to file an election petition for the reason that she would have to challenge the election of respondent No.4 as a person elected on a post under BCC(W) category, when the petitioner herself had been wrongly deprived of participating in the same. By emphasizing on the fact that in pursuance of the interim order passed by this Court, the petitioner had participated in the election and she had won by a

handsome margin, it was submitted that the writ petition deserved to be considered on its own merits and then to be allowed in its entirety.

(17) Having heard the learned counsel for the rival parties, the crucial question that arises for consideration in the present case is, as to whether the writ petition against the impugned order passed by the respondent No.2 – Returning Officer is maintainable. An answer to the said question would then require this Court to further proceed in the matter, if at all.

(18) In order to appreciate the rival contentions on the question of maintainability of the writ petition, it would be appropriate to refer to the relevant provisions of law. These are as follows :-

“ Article 243-O :- Bar to interference by Courts in electoral matters. - Notwithstanding anything in this Constitution –

(a)

(b) no election to any Panchayats 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.]

Section 15 of the Act of 1959 :- Determination of validity of elections : enquiry by Judge ; procedure – (1) If the validity of any election of a member of Panchayat is brought in question by [any candidate at such election or by] any person qualified to vote

*at the election to which such question refers, [such candidate or person] may, at any time within fifteen days after the date of declaration of the result of the election, apply [***] to the Civil Judge (Junior Division), and if there be no Civil Judge (Junior Division) then to the Civil Judge (Senior Division) (hereinafter in each in case, referred to as “the Judge”) having ordinary jurisdiction in the area within which the election has been or should have been held for the determination of such question.*

*(2) Any enquiry shall thereupon be held by the Judge and he may after such enquiry as he deems necessary pass an order, confirming or amending the declared result, or setting the election aside. For the purposes of the said enquiry the said Judge may exercise all the powers of a Civil Court, and his decision shall be conclusive.[If the election is set aside, a date for holding a fresh election shall forthwith be fixed under section 11 [***].]*

(3) All applications received under sub-sections (1) - (a) in which the validity of the election of members to represent the same ward is in question, shall be heard by the same Judge, and

(b) in which the validity of the election of the same member elected to represent the same ward is in question; shall be heard together.

(4) Notwithstanding anything contained in the Code of Civil Procedure, 1908,(V of 1908), the Judge shall not permit (a) any application to be comprised or withdrawn or (b) any person to alter or amend by pleading unless he is satisfied that such application for compromise or withdrawal or the application for such alteration or amendment is bona fide and not collusive.

(5) (a) If on holding such enquiry the Judge finds that a candidate has for the purpose of the election committed a corrupt practice within the meaning of subsection (6) [* *] he shall declare the candidate disqualified for the purpose of that election and of such fresh election as may be held under [sub-section (2)] and shall set aside the election of such candidate if he has been elected.*

(b) If, in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the

Judge shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected:

Provided that, for the purpose of such computation, no vote shall be reckoned as valid if the Judge finds any corrupt practice was committed by any person known or unknown, in giving or obtaining it:

Provided further that after such computation, if an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in favour of such candidate or candidates, as the case may be, selected by lot drawn in the presence of the Judge in such manner as he may determine.

(6) A person shall be deemed to have committed a corrupt practice,-

(a) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person, or

(b) who with a view to inducing any person to stand or not to stand or to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise of individual profit or holds out any threat of injury to any person, or

(c) who hires or procures, whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station:

Provided that, the hiring of a vehicle or vessel by a voter or by several voters at their cost for the purpose of conveying him or them to or from any such polling station shall not be deemed to be corrupt practice under this clause if the vehicle or vessel so

hired is a vehicle or vessel not propelled by mechanical power:

Provided further that, the use of any public transport vehicle or vessel or any tram-car or railway carriage by any voter at his own cost for the purpose of going to or coming from any such polling station shall not be deemed to be a corrupt practice under this clause.

Explanation 1. - A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2. - "A promise of individual profit" does not include a promise to vote for or against any particular measure which may come before a Panchayat for consideration, but subject thereto, includes a promise for the benefit of the person himself or any person in whom he is interested.

Explanation 3. - The expression "vehicle" means any vehicle used or capable or being used for the purpose of road transport, whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.

[(7) If the validity of any election is brought in question only on the ground of an error made by the Officer charged with carrying out the rules made in this behalf under section 176 read with sub-section (2) of section 10 and section 11, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election.]

[Section 15A of the Act of 1959 :- Bar to interference by Court in electoral matters. – 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.] ”

(19) The learned counsel for the parties have invited

attention of this Court to the relevant judgments of the Hon'ble Supreme Court and this Court on the question of maintainability of writ petition in the face of the specific bar to interference in the process of election manifested in Article 243-O(b) of the Constitution of India and Section 15A read with Section 15 of the Act of 1959. Similar such restrictions to filing of writ petitions have been subject matter of consideration pertaining to pari materia provisions before this Court and the Hon'ble Supreme Court. The series of relevant judgments have been noticed in the recent Full Bench judgment of this Court in the case of **Karmaveer Autade** (supra). Therefore, it would be appropriate to refer to the questions framed by the Full Bench and the answers given thereto. The Full Bench of this Court in its judgment rendered on 13/01/2021 framed the questions for consideration as follows :-

“(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 case of (i) *Sudhakar s/o. Vitthal Misal vs. State of Maharashtra and others.*, 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 Bharsakade vs. Returning Officer, Akot and Anr.*, reported in 2003(4) Mh.L.J. 359, represents the correct view in law ?”

(20) Apart from this, the Full Bench also held in paragraph 27 as follows :-

“27. Although 3 (three) questions have been referred by the Division Bench for being answered by the larger Bench, upon hearing the parties and the learned amicus curiae and on perusal of the authorities cited at the Bar as well as the statutory provisions governing the elections in question, we are of the considered view that the answer to a solitary fundamental question arising for determination before us would guide us to answer the questions referred without much ado. The fundamental question is, whether a writ petition before the Bombay High Court exercising jurisdiction under Article 226 of the Constitution would be maintainable if the petitioner seeks to challenge an order of rejection of his nomination paper (to contest a Gram Panchayat election) by the Returning Officer/the competent authority having regard to the provisions in Article 243-O of the Constitution as well as section 15-A of the MVP Act read with section 15 thereof?”

(21) The said questions were answered in the judgment of the Full Bench in the following manner :-

“68. For the reasons aforesaid, while agreeing with the view in Vinod Pandurang Bharsakade (supra), we answer the fundamental question as formulated in paragraph 27 in the negative. As a sequel thereto, we answer the questions referred by the Division Bench in the manner as follows :-

(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 sub-serve 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 Bharsakade (supra) represents the correct view of law; consequently, we hold that the decision in Smt. Mayaraju Ghavghave (supra) and Sudhakar s/o Vitthal Misal (supra) do not lay down the correct law; ”

(22) In the said Full Bench judgment of this Court, copious reference has been made to the judgment of the Hon’ble Supreme Court in the case of N.P.Ponnuswami (supra), as also subsequent judgments in the case of **Mohinder Singh Gill & Anr. Vs.**

The Chief Election Commissioner, New Delhi & Ors.⁷, Election Commission of India through Secretary Vs. Ashok Kumar & Ors.⁸, and recent judgment in the case of **Laxmibai** (supra). The Full Bench has analyzed the position of law as discussed in the said judgments and it is found that the dictum laid down as far back as in the year 1952 in the case of **N.P.Ponnuswami** (supra), still holds good. The said position of law unequivocally lays down that “election” includes the stage of acceptance/rejection of nomination form by the Returning Officer. In the case of **Vinod Bharsakade** (supra), a Division Bench of this Court after relying upon the judgment of the Hon’ble Supreme Court in the case of **N.P.Ponnuswami** (supra), in the light of Article 243-O(b) of the Constitution of India, as also Sections 15 and 15A of the Act of 1959, held as follows :-

“51. Relying on [Sections 15](#) and [15A](#) of the Act, [Article 243-O](#) of the Constitution and following N. P. Ponnuswami and other cases, the Court held that a petition would not be maintainable against an order rejecting a nomination paper. Legality or propriety of the election can be challenged only by filing an election petition. The Court observed that [Section 15](#) confers very wide powers on the trial Judge to decide validity of an election, without specifying any grounds. Qualification or disqualification of an elected candidate, improper rejection or acceptance of a nomination paper, improper counting or commission of corrupt practice, etc. are

⁷ (1978) 1 SCC 405

⁸ (2000) 8 SCC 216

some of the grounds for invalidating an election. Sub-section (7) of [Section 15](#) prohibits setting aside of an election only on the ground of an error made by the Officer charged with carrying out the rules. It means that if there is an error which does not go to the root of the case and is only an infraction of a rule, that by itself will not entitle a person to challenge the election and get it set aside. But when Returning Officer accepts a nomination paper, which ought not to have been accepted, or rejects a nomination paper, which should not have been rejected, he adjudicates entitlement of a person to contest or not to contest the election. Sub-section (7) of [Section 15](#) would, therefore, not prevent the judge from considering improper rejection or acceptance of nomination paper as a ground for setting aside the election of a returned candidate.”

(23) It is significant that in the above quoted judgment of the Division Bench of this Court, specific reference is made to Sub Section (7) of Section 15 of the Act of 1959. Therefore, the contention raised by the learned counsel for the petitioner in the context of the said provision stands answered in the above quoted portion of the judgment. It has been specifically submitted that the nature of the grievance of the petitioner is such that the judge while considering an election petition under Section 15 of the Act of 1959, would not be able to set aside the election, even if the contentions of the petitioner were to be accepted. In the above quoted portion of the judgment of the Division Bench of this Court, it has been specifically held that when

a Returning Officer accepts a nomination paper or rejects it, he adjudicates entitlement of a person to contest or not to contest the election and that therefore, such a situation would not be covered under Sub Section (7) of Section 15 of the Act of 1959.

(24) The learned counsel for the petitioner has sought to make a distinction, claiming that the facts of the present case are unique in the sense that the petitioner is not claiming that the nomination form of the contesting respondent has been wrongly accepted when it ought not to have been accepted or that the nomination form of the petitioner has been rejected, when it ought not to have been rejected. The grievance of the petitioner is that although her nomination form has been accepted, it has been accepted in a wrong category, thereby, depriving her of an opportunity to contest election in the category to which she belongs and she desires to contest. The result of this error on the part of the Returning Officer is that the respondent No.4 would stand elected unopposed on the post as the only candidate in the particular category of BCC-W. This Court is of the opinion that the facts of this case viewed from any angle pertain to the correctness or otherwise of the decision of the Returning

Officer of accepting a nomination form. The act has been performed by the Returning Officer, the effect of which is an adjudication of the claim of the petitioner regarding her acceptance of nomination form in the category of either BCC-W or BCC. The process through which the Returning Officer has accepted her nomination form in the BCC category is in any case by a process of adjudication, with which the petitioner is aggrieved. The acceptance of her nomination form in the category of BCC is equally having the effect of non-acceptance or rejection of her nomination form in the BCC(W) category. Therefore, in the opinion of this Court, the petitioner is not justified in claiming that the peculiar facts of the present case would show that her case is covered under Sub Section (7) of Section 15 of the Act of 1959.

(25) The learned Senior Counsel appearing for respondent No.4 is justified in contending that any inquiry into the grievance raised by the petitioner would necessarily entail finding on facts, which can be arrived at only upon recording of evidence and not otherwise. Such an exercise can be undertaken only by way of an election petition under Section 15 of the Act of 1959. Once, such a finding is reached, the bar contemplated under Article 243-O(b) of the Constitution of India and Section 15A of the Act of 1959, would apply

in its full force.

(26) In that context the judgments relied upon by the learned counsel for the petitioner can be of no assistance to carry the case of the petitioner any further. Reliance placed on judgment in the case of **Virinder Kumar Satyawadi** (supra) is misplaced, because the facts of the said case are clearly distinguishable and in any case it has been held that the function performed by Returning Officer under the relevant Statute is judicial in character, but when the Returning Officer decides the validity of a nomination paper, he cannot be termed to be a Court. The said observation of the Court cannot be of assistance to the petitioner in the facts of the present case.

(27) Insofar as the judgment in the case of **Bar Council of Delhi** (supra) is concerned, the observations made by the Hon'ble Supreme Court are in the facts of that case where the question pertained to the whole process of preparation of electoral rolls being null and void. Such is not the nature of grievance raised by the petitioner before this Court.

(28) This Court is of the opinion that considering the

settled position of law laid down by the Hon'ble Supreme Court and reiterated in the aforesaid recent Full Bench Judgment of this Court, the present writ petition challenging the impugned order dated 31/12/2020, passed by the respondent No.2 – Returning Officer, is not maintainable in view of the specific bar under Article 243-O(b) of the Constitution of India and Section 15A of the Act of 1959. Consequently, the present writ petition is held to be not maintainable.

(29) Accordingly, the Writ Petition is dismissed. The interim order dated 04/01/2021, passed by this Court stands vacated and its consequences shall follow. No order as to costs.

[MANISH PITALE J.]

KOLHE/P.A.