

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

WRIT PETITION NO. 256/2021.

Pradip Nanasaheb Gomase. Petitioner.

Versus

The Returning Officer, Gram Panchayat,
Ghodasgaon and others. Respondents.

Shri S. Voditel, Advocate for the Petitioner.
Shri A.A. Madiwale, Assistant Government Pleader for Respondent
Nos.1 and 6.

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**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATE : 13 JANUARY 2021

P.C.

Heard learned Counsel for the parties.

2. The Petitioner has challenged the order passed by Respondent No.1- Returning Officer for election to the Gram Panchayat, Ghodasgaon, Anjangaon Surji, District Amravati, rejecting the objection raised by the Petitioner to the nomination of

Respondent No.2.

3. The State Election Commission of Maharashtra by notification dated 11 December 2020 declared the election program for the Gram Panchayats, including that of Ghodasgaon. The voting is scheduled for day after tomorrow that is 15 January 2021. This Writ Petition is filed on 11 January 2021.

4. The Petitioner is a voter and has filed his nomination form from Ward No.2 of Village Panchayat Ghodasgaon. Respondent No.2 has also filed her nomination form. The Petitioner had objected to the nomination of Respondent No.2 on the ground that the Petitioner had incurred disqualification under Section 14[1][h] and [h-1] read with explanation 2[ii] of the Bombay Village Panchayat Act, 1958, on the ground of non payment of certain amount by her husband – Respondent No.3. The objection was rejected by the Respondent No.1 by the impugned order dated 31 December 2020 relying on a No Dues Certificate issued by the Authority.

5. The learned Counsel for the Petitioner submitted that though ordinarily this Court under Article 226 of the Constitution of India does not interfere in the election process, however, in certain exceptional circumstances, the Court can do so, and present case is one such case. The learned Counsel submitted that Respondent Nos. 2 and 3 have committed a fraud which is on the face of it is discernible, and because of such ex-facie fraud the Court

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can intervene and need not relegate the petitioner to the remedy of election petition. The learned Counsel has relied upon the decision of Division Bench in case of *Sarla Sopan Bopale .vrs. State of Maharashtra – 2001 (1) Mh.L.J. 453*, and has reproduced relevant paragraphs from the decisions in the case of *Election Commission of India .vrs. Ashok Kumar and others (2008) 8 SCC 216* and *K. Venkatachalam .vrs. A. Swamickan and another – (1994) 4 SCC 526*.

6. The learned Counsel for the Petitioner submitted that Respondent No.3 had committed a theft of government soil. The Petitioner has filed a complaint against Respondent No.3, recoveries has been ordered and Respondent No.3 filed an appeal before the Appellate Authority. Learned Counsel submitted that the record lying in the cupboard of Gram Panchayat, Ghodasgaon was sealed by Respondent No.5 since the Secretary who was looking after the affairs of the Gram Panchayat was hospitalized. He submits that once the cupboard was sealed, such No Dues Certificate could not have been issued. This according to the learned Counsel for the Petitioner is an ex-facie fraud.

7. It is a settled law that under Article 226 of the Constitution of India, when the elections are at an advance stage, interference in writ jurisdiction which would entail interrupting, obstructing and delaying the progress of the election proceeding should be avoided. Judicial intervention is permissible, if the Court

is merely correcting the smoothing of the election process to remove the obstacles therein. We have to take note of the fact that the impugned order was passed on 31 December 2020, voting is two days hence, the petition is coming up before this Court at the first instance today after having been filed day before yesterday. Any order at this stage would entail disrupting the election program.

8. As regards the case of petitioner that a fraud has been committed and the reliance of the learned Counsel for the Petitioner to the decisions cited above is concerned, the fraud alleged would entail evidence to be considered. As far as the Returning Officer is concerned, he had a No Dues Certificate issued by the statutory authority before it. The Returning Officer was not competent to set aside the No Dues Certificate on the ground that the cupboard was sealed. For consideration of this aspect in writ jurisdiction, merely because the cupboard was sealed, it does not *ipso facto* means that the No Dues Certificate issued by the statutory authority can be considered as ex-facie fraudulent and the nomination of Respondent No.2 be set aside on that count. At the most it may cast a doubt on the circumstances in which the No Dues Certificate was issued. This aspect would require a detail enquiry which is neither feasible at this stage and nor necessary in view of the availability of remedy of election petition after election in case Respondent No.2 is declared elected.

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9. In the circumstances, we do not find that any exceptional circumstances has been made out for interference in writ jurisdiction in the election program which is at a very advance stage.

10. The Writ Petition is rejected.

(ANIL S. KILOR, J)

(NITIN JAMDAR, J)