

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

WRIT PETITION NO.10995 OF 2021

Santosh s/o Ganeshrao Lomte

... Petitioner

Versus

The Returning Officer for Election of
Gram Panchayat Malkapur & Anr.

... Respondents

...

Mr. S. S. Thombre, Advocate for the Petitioner

Mr. A. B. Kadethankar, Advocate for Respondent No.1

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 22nd JULY, 2022

ORDER :

1. This petition is filed under Article 226 & 227 of the Constitution of India challenging the order dated 06-03-2021, passed by the learned Civil Judge, Junior Division, Kallamb below Exhibit-1 in Election Petition No.1/2021.

2. The petitioner is a defeated candidate, who has filed Election Petition No.1/2021 under Section 15 of the Maharashtra Village Panchayat Act, 1958 (for short 'the said Act') challenging the election of respondent no.2 to the post of member of village Panchayat Malkapur, Taluka Kallamb, District Osmanabad, on the ground that respondent no.2 has three children and he is not

eligible to contest the election and therefore, he was disqualified for contesting the election. Along with the election petition, the petitioner also filed an application (Exhibit-5) seeking temporary injunction under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908.

3. The trial court, by a detail order dated 06-03-2021, passed below Exhibit-5, rejected the application on merit, so also the election petition, on the ground that the Civil Court had no jurisdiction to entertain the election petition. This order is impugned in the present petition.

4. Heard the learned Advocate for the petitioner and the learned Advocate for the respondent no.1.

5. The respondent no.2 though served, none appears for him.

6. The petitioner has filed election petition under Section 15 of the said Act challenging the election of respondent no.2 solely on the ground that respondent no.2 was not eligible to contest the election, as he has three children.

7. The election petition under Section 15 of the said Act is maintainable only on the ground of corrupt practices mentioned in clause (a), (b) and (c) of sub-section 6 of Section 15 of the said Act. In **Soni Vs. Election Officer Gram Panchayat, Yavatmal and Ors.** reported in **2020 (2) Mh.LJ 941**, this Court has taken a view that election petition under Section 15 of the said Act, is

maintainable only on the grounds mentioned in sub-section 6 of Section 15 of the said Act.

8. Admittedly, the election petition filed by the petitioner is not on the ground of corrupt practice, but it is on the ground that respondent no.2 has three children and therefore, he was not eligible to contest the election. Therefore, the election petition filed by the petitioner under Section 15 of the said Act, was not maintainable.

9. The issue of jurisdiction is decided by the trial court, while considering the application (Exhibit-5), filed by the petitioner. The trial court has held that it had no jurisdiction to entertain the election petition filed by the petitioner. Though this order is passed on 06-03-2021, the petitioner has not challenged the same before the appropriate forum.

10. In the light of settled legal position that election petition under Section 15 of the said Act can be filed only on the grounds given under Section 15 (6) of the said Act, the election petition of the petitioner is rightly held to be not maintainable by the trial court. There is no error or illegality in the order impugned in the present petition. The writ petition, being devoid of substance, is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]

Sameer