

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

909 WRIT PETITION NO.12359 OF 2022

MEENA BABU DARADE

VERSUS

THE CHIEF ELECTION COMMISSIONER, ELECTION
COMMISSION OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner: Mr. Bhosale Mahesh S
Advocate for State Election Commission & Returning
Officer:

Mr. A. B. Kadethankar

AGP for Respondent / State: Mr. G. O. Wattamwar

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CORAM: ARUN R. PEDNEKER, J.

DATE: 07th DECEMBER, 2022

ORAL JUDGMENT:

1. By the present writ petition, the petitioner is challenging the rejection of the nomination of the petitioner for the election of the village panchayat of village Nafarwadi, Taluka - Patoda, District - Beed. The petitioner submitted her nomination form from Ward No.2 of village Nafarwadi from BCC(W) category. The nomination is rejected by the Returning Officer on the ground that the petitioner has 3 children and she is not entitled to contest the election by virtue of bar under Section 14(j-1) of the

Maharashtra Village Panchayats Act, 1959 (for short '1959 Act').

2. The election program filed alongwith the petition, indicate that the respondent no.1 declared the Election Program for the Election of village panchayat Nafarwadi, Taluka – Patoda, District – Beed on 09.11.2022. As per said election program the date of notification for the election was 18.11.2022. The date for submission for nomination was 28.11.2022 to 02.12.2022, the date for scrutiny of nomination was 05.12.2022, the date for withdrawal of nomination is 07.12.2022 and the date of election is 18.12.2022.

3. The petitioner has pointed out that the petitioner had 3 children and one of them had expired and the death certificate of the child having expired was also placed on record alongwith self declaration filed with the nomination papers, that the petitioner has only 2 children. Further the petitioner submits that on the date of scrutiny of the nomination papers, an application

was made by one of the petitioner's opponent to the Returning Officer that the Petitioner has 3 children and the petitioner be disqualified from contesting the panchayat elections. The Returning Officer without calling upon the petitioner to explain the objection, based on the material produced by the opponent, by order dated 05.12.2022, rejected the nomination of the petitioner. As there is no appellate remedy provided under the 1959 Act qua the rejection of the nomination, the petitioner has filed the present writ petition challenging the order passed by the Returning Officer dated 05.12.2022.

4. The learned counsel for the petitioner submits that the order passed by the Returning Officer is in complete denial of natural justice and that the record available with the Returning Officer filed by the petitioner clearly indicated that the petitioner has only 2 living children at the time of filing of the nomination. However, the Returning Officer has proceeded to pass the impugned order only on the basis of the record

produced by the respondent without adverting to the documents filed by the petitioner alongwith the nomination form and also without giving any notice to the petitioner before rejecting his nomination.

5. The learned counsel for the petitioner submits that the Full Bench of this Court in the case of **Subhash Sajesingh Gavit Vs. The Returning Officer ZP Nandurbar and others in Writ Petition No.6993 of 2008 dated 17.10.2019** has on the aspect of counting the deceased children for the purpose of disqualification has answered the reference at para 53, while framing the questions at para 2, as under:-

"2. The following three issues have been framed by the learned Single Judge, by way of a reference to this Court:-

(1) Whether, the disqualification clause, introduced in the Maharashtra Zilla Parishad and Panchayat Samities Act, Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and the Maharashtra Village Panchayats Act, and the proviso thereunder, would be applicable from 13.9.2000?

(2) Whether the clause of disqualification can be attracted, considering the number of birth of the

children irrespective of whether any of the children have died or whether a child who has died and is not in existence on the date of the filing of the nomination papers, will have to be excluded from the number of children procreated by the candidate?

(3) Whether such demise of the child can be excluded by interpreting the word 'had' appearing in the proviso so as to be read as 'has' appearing in Section 16(1)(k)? "

"53. We, therefore, hold that the demise of a child can be excluded while computing the number of living children in these three Acts and the number of children that a candidate has on the date of the filing of the nomination paper, would be reckoned. We answer issue Nos.2 and 3 accordingly."

6. Thus, in view of the judgment of the Full Bench, the learned counsel for the petitioner submits that on demise of the child the demised child has to be excluded from computation of the number of the children of the candidate and thus the petitioner has only two children on the date of filing of the nomination.

7. The petitioner further submits that she has no other alternate efficacious remedy. The petitioner further submits that the election

petition maintainable under Section 15 of the 1959 Act does not remedy the rejection of nomination and only deals with corrupt practices. Section 15 of the 1959 Act reads as under:-

"15. (1) If the validity of any election of a member of a panchayat is brought in question by 2[any candidate at such election or by] any person qualified to vote at the election to which such question refers 3[such candidate or person] may, at any time within fifteen days after the date of the declaration of the result of the election, apply 4 [* * * *] 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 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) An 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. 5[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-section (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, the Judge shall not permit (a) any application to be compromised or withdrawn or (b) any person to alter or amend any 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 sub-section (6) 6[* * *] he shall declare the candidate disqualified for the purpose of that election and of such fresh election as may be held under 7[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 that 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 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 joint 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 of being used for the purpose of road transport, whether propelled by mechanical power or otherwise, and whether used for drawing other vehicle or otherwise.

1[(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.]”

8. The learned counsel for the petitioner submits that Section 15 of the 1959 Act provides a remedy by election petition in a very limited way and the present situation is not covered under the remedy provided under section 15 of the 1959 Act

and thus urges this court to exercise it's writ jurisdiction.

9. Per contra, Mr. Kadethankar, learned counsel for the respondent / State Election Commission submits that the election process to the village panchayat has reached a very advanced stage and today i.e. 07.12.2022 is the last date of the withdrawal of the nomination and that election symbols will be given to the candidates today and in view of the clear bar under Article 243(O)(b) of the Constitution of India the present writ petition is not maintainable and only an election petition can be filed challenging the impugned order. Article 243-O(b) reads as under:-

"243-O. Bar to interference by courts in electoral matters.-

Notwithstanding anything in this Constitution,-

(a) ...

(b) 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."

10. The learned counsel further submits, that however grave the facts may be and even assuming them to be true this court cannot entertain the writ jurisdiction in remedying the situation as the same can be done only by election petition as provided in the 1959 Act, in view of the bar under Article 243(0)(b) of the Constitution of India. The learned counsel further submits that in a very recent Full Bench Judgment of this Court passed in Writ Petition Stamp No.26 of 2021 with connected petition, dated 13.01.2021 in case of Karmaveer Tulshiram Autade and others Vs. The State Election Commission and others, this court while recording the similar issues in para 4 (i), (ii) and (iii) and answered the same at para 68 as under:-

"4. Considering that the issues need to be settled, the Division Bench thought it appropriate to refer the following issues for the decision by a larger Bench, as noted in the above order:-

(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 243-0(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 Bharsakade vs. Returning Officer, Akot and Anr., reported in 2003(4) Mh. L.J. 359, represents the correct view in law?"

"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;"

11. Therefore, in view of the judgment of **Karmaveer Tulshiram Autade** (supra), the learned counsel appearing for the State Election Commission submits that Article 243(O)(b) of the Constitution of India is a bar to entertain petition under Article 226 of the Constitution of India against the order passed by the Returning Officer rejecting the nomination paper.

12. On considering the rival submissions and in view of the clear bar as contemplated under Article 243(O)(b) of the Constitution of India to entertain the present petition as it would amount

to interference in the election process, the petitioner can only avail of a remedy available under the statute by way of an election petition challenging the same.

13. The next contention of the petitioner is that Section 15 of the 1959 Act does not provide remedy for his grievance. The scope of Section 15 of the 1959 Act has been considered by the Full Bench in the case of ***Karmaveer Tulshiram Autade (supra)***, in para 64 as under:-

"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-sections (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 Panchayati 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."

14. In view of the law laid down in the case of **Karmaveer Tulshiram Autade (supra)**, Section 15 of the 1959 Act provides for remedy of election

petition even in cases of acceptance or rejection of nomination papers. Thus, relying upon the full bench judgment of this court in case of **Karmaveer Tulshiram Autade** (*supra*), and the bar contained under Article 243(0)(b) of the Constitution of India, this petition is not entertained and is disposed of.

15. The petitioner would be at liberty to assail the grievance raised in the present writ petition in the appropriate proceedings, in accordance with law. In that event, all contentions of parties are kept open.

[ARUN R. PEDNEKER, J.]

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