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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7203 OF 2022

Yogesh Harichandra Darade & Ors.

..... Petitioners

Vs.

State of Maharashtra & Ors.

..... Respondents

Mr. Laxman S. Deshmukh for the Petitioner

Mr. V. M. Mali, AGP for the State

Mr. Sarthak Diwan for Respondent No.2

Mr. Ashutosh Kulkarni for Respondent No.3

CORAM: S.V. GANGAPURWALA &
S. M. MODAK, JJ.

DATED : JUNE 24, 2022

P.C.

1 The learned Counsel for the Petitioners strenuously contends that the process adopted by Respondent No.3 for dispatch of ballot papers to the electorates by ordinary post is illegal and does not stand to reason.

2 According to the learned Counsel, Rule 46 of Maharashtra State Pharmacy Council Rules, 1969 (**Rules, 1969**) enables the State to make Rules with regard to the manner in which the elections under Chapter III of the Pharmacy Act 1948 are to be held. Pursuant thereto the Rules have been framed by the State Government. According to the said Rules, the ballot papers are to be sent to the voters by Under Certificate of Posting (UPC). The Central

Government, under its Notification dated 31st January 2011 has done away with the UPC methodology of postal service. However, no such corresponding amendment was made in the said Rules, 1969, more particularly, Rule 17(1). The said Rule has become obsolete. The ballot papers were sent by ordinary post. A large malpractice has come to the knowledge of the Petitioner. Many of the ballot papers did not reach the voters. Free and fair elections have not taken place. The learned Counsel submits that this Court made it clear that the process adopted by Respondent No.3 for dispatch of ballot papers to the electorates by ordinary post, is illegal.

3 The learned Counsel for Respondent No.3 submits that the Petitioners have remedy to challenge the elections before the State Government as per Section 24 of the Pharmacy Act, 1948. The process has been adhered to by the Officer and no illegality has been committed.

4 It is not in dispute that the entire process of the election has been concluded and the results are to be declared tomorrow i.e. 25th June 2022. It is trite that this Court, at the eleventh hour would not exercise its jurisdiction in interfering with the process of election and more particularly when all stages in the elections are concluded.

5 The Petitioners, if they so desire, can avail the remedy under

Section 24 of the Pharmacy Act, 1948. In that event all contentions on factual aspects are kept open.

6 The Petitioner also seeks direction against Respondent No.1 to amend Rule 17 of the Rules, 1969.

7 The Rules viz. the Maharashtra State Pharmacy Council Rules 1969 have been framed by the State Government pursuant to its delegated powers of legislation under the Statute. It is for the State to consider the appropriate legislation. No doubt, the Central Government under the Notification of the year 2011 has done away with the UPC methodology of postal service. It is for the State to consider what would be appropriate methodology for the dispatch of ballot papers to the voters, as contemplated under Rule 17 of the Rules, 1969. The Petitioners may approach the State Government in that regard.

8 We hope and trust that the State Government may consider the representation of the Petitioners on its own merits.

9 The Writ Petition is accordingly disposed of. No costs.

(S. M. MODAK,J.)

(S.V. GANGAPURWALA, J.)