

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11539 OF 2022 (sr.22)

Ashok Ramrao Ambure Patil	 Petitioner
V/s.	
State of Maharashtra and Ors.	Respondents

ALONGWITH
WRIT PETITION NO. 11542 OF 2022 (sr.23)

Chandulal Babulal Shimpi	 Petitioner
V/s.	
State of Maharashtra and Ors.	Respondents

ALONGWITH
WRIT PETITION NO. 11544 OF 2022 (sr.24)

Devina Kapil Thanki	 Petitioner
V/s.	
State of Maharashtra and Ors.	Respondents

ALONGWITH
WRIT PETITION NO. 11535 OF 2022 (sr.21)

Vasant Lahanu Tajane ... Petitioner
V/s.

State of Maharashtra and Ors.

....Respondents

Ms. Manjiri Parasnis, Advocate for the petitioner in all petitions.

Mrs. Madhubala Kajale, AGP for State-respondent no.1.

CORAM : SANDEEP K. SHINDE, J.

DATED : 1ST OCTOBER, 2022.

P.C. :

1. This common order shall dispose of all the petitions.

2. Petitioners herein are the members of Madhuban Co-operative Housing Society Limited ("Society" for short). The Returning Officer has drawn and declared election programme of the Society on 24th August, 2022. The last date of making nomination was 29th August, 2022; date of scrutiny was 31st August, 2022; whereas, date of publication of final list of contesting candidates and allotment of election symbols was 17th September, 2022; Poll is scheduled on 2nd October, 2022; date of declaration of result of voting is scheduled on 2nd October, 2022.

3. Petitioner's nomination was rejected by the Returning Officer on 31st August, 2022 on the ground that the petitioner has defaulted payment of dues to the Society, in terms of Bye-law No.117. Returning Officer relied on communication of the Society. Section 152-A of the Maharashtra Co-operative Societies Act, provides for an

Appeal against rejection of nomination papers to be preferred within three working days of the date of rejection of nomination. Herein, nominations were rejected on 31st August, 2022. However, Appeal was filed on 5th September, 2022. Apparently, Appeal was not preferred within three working days. Be that as it may, the Appellate Authority upheld the order of the Returning Officer, vide order dated 15th September, 2022. Thereafter, petitioners have filed these petitions under Article 226 and 227 on 17th September, 2022.

4. Ms. Manjiri Parasnis, learned Counsel for the petitioner, submitted that, alleged dues, of water charges were not demanded by the Society by serving notice in writing as required under Clause-(b) of Bye-law No.117 and therefore the Returning Officer, as well as, the Appellate Authority fell in error in declaring the petitioners ineligible to contest the election of the Society.

5. In my view, Clause-(b) of Bye-law No.117, contemplates the mode of service of notice. Assuming the mode of service has not been adhered to, by the Society, however that being disputed fact, Returning Officer could not have ignored Society's communication, which conveyed arrears, due from the petitioner. That even otherwise, the decision of the Full Bench, in the case of **Karmaveer Tulshiram Autade and Ors. V/s. State Election Commission Office and Ors., 2021 (2) Bom.C.R. 1**, that once election process starts, it has to be completed in accordance with the provisions of the relevant statute and remedy available to the petitioners is to file election petition in accordance

with the provisions of the Act, and not to invoke extraordinary jurisdiction of the High Court. Article 226 of the Constitution squarely applies to the facts of the cases in hand. Reason being, final list of contesting candidates was published on 17th September, 2022 and the Poll is scheduled of 2nd October, 2022. For all these reasons, no interference is called for in the impugned order. Petitions are dismissed and disposed of accordingly.

NEETA
SHAILESH
SAWANT

Digitally signed
by NEETA
SHAILESH
SAWANT

Date: 2022.10.03
14:58:34 +0530

(SANDEEP K. SHINDE, J.)