

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13098 of 2022

Vivek Akre

..Petitioner

v/s.

The Election Returning Officer & Ors.

..Respondents

Ms. Yogita Deshmukh Chitnis for the Petitioner/s.

Mr. Dharam Sharma a/w. Uma Sanjay ni/b. Dharam & Co. for the
Respondent Nos.2 and 5.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 11th NOVEMBER, 2022.**

P.C.

1. Not on Board. Upon production, taken on Board. In view of extreme urgency expressed, heard finally with consent.

2. At the outset, learned Counsel for the Petitioner seeks leave to amend the writ petition as to delete the word "Article 226". Leave granted. Amendment to be carried out forthwith.

3. Respondent No.5, the Aryan Education Society (AES), a Public Charitable Trust, declared the election program on 28.9.2022 for election of Council of Management of Aryan Education Trust (AES) for the period from 15.11.2022 to 14.11.2027. As per the election program

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nomination forms were to be filed by candidates between 13.10.2022 to 19.10.2022. The scrutiny of nomination forms was to take place on 20.10.2022. Appeal against rejection of nomination forms was to be submitted on 21.10.2022 and decision on such appeal was to be displayed on 22.10.2022. The date of withdrawal of nomination forms was 27.10.2022 and the final list of eligible candidates with their symbol was to be displayed on 28.10.2022. The elections are scheduled on 13.11.2022 and the counting of votes is scheduled on 14.11.2022.

4. The Petitioner filed his nomination on 19.10.2022 for the post of Teacher Member. The nomination form filed by the Petitioner was scrutinized and the same came to be rejected on 20.10.2022 for not mentioning the Constituency. The Petitioner filed an appeal before the Respondent No.2 on 21.10.2022. The Petitioner also filed a representation before Respondent no.3 -Jt. Charity Commissioner, with a prayer to direct the Respondent No.2 to accept his nomination and allow him to contest the election. The Petitioner invoked the writ jurisdiction of this Court under Article 227 of the Constitution with a grievance that the Respondent Nos.2 and 3 have not taken decision on his appeal and representation, and has sought to quash order dated 20.10.2022 and to allow the appeal filed before the Respondent No.2.

5. Mr. Gopinath Venkatrao Nagargoje has filed his affidavit-in-reply

wherein he has stated that the nomination form filed by the Petitioner was rejected by the Election Scrutiny Committee for not mentioning the name of the constituency. It is further stated that the appeal filed by the Petitioner was rejected on 21.10.2022. He has stated that the process of election program has already begun, the candidates names and symbols have been published and the election is scheduled on 13.11.2022. In view of above, the petition is not maintainable.

6. Ms. Yogita Deshmukh submits that the Petitioner was not required to give details of the constituency in the nomination form. She further states that the Petitioner was not informed about dismissal of the appeal. She submits that the Petitioner cannot be deprived of his right to contest the election.

7. It is pertinent to note that in the representation made to the Respondent No.3-Joint Charity Commissioner, the Petitioner had stated that he was telephonically called for the hearing of the appeal on 22.10.2022 and was informed that there would be no change in the list of candidates dated 21.10.2022. He had further stated that his name was deleted from the list of eligible candidates displayed on 22.10.2022. The statements made in the said representation negate the case of the Petitioner that he was not informed about dismissal of the appeal or that he was not aware of the list of eligible candidates displayed on

22.10.2022.

8. It is pertinent to note that as per the election program, the final list of eligible candidates along with the symbols was displayed on 28.10.2022. The ballot papers of the election scheduled on 13.11.2022 have been printed and the same have been supplied to the candidates. The Petitioner has approached the Court after considerable delay. Granting the reliefs as prayed for would amount to stalling the election scheduled on 13.11.2022.

9. Hence, I am not inclined to entertain the petition. The Petition is dismissed without expressing any opinion on merits of the controversy and the factual issues related thereto. The Petitioner is at liberty to take recourse to alternate remedy, if any, to challenge the election.

(ANUJA PRABHUDESSAI, J.)