

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7762/2022 .

Samadhan Natthu Mendke -VERSUS- State Election Commission and ors.

WRIT PETITION NO. 7763/2022 .

Sushila Hiranman Kamble -VERSUS- State Election Commission and ors.

WRIT PETITION NO. 7764/2022 .

Mahesh Waghji Wankhede -VERSUS- State Election Commission and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.L.Kadu, Advocate for Petitioners.
Ms.T. Khan, A.G.P. for Respondent Nos.2 and 3.

CORAM : VINAY JOSHI, J.

DATE : DECEMBER 08, 2022.

Heard learned Counsel present for the parties.

2. These petitions pertain to challenge of acceptance of nomination forms by the Returning Officer for Gram Panchayat elections.

3. At the outset maintainability of these writ petitions has been seriously challenged by respondent State in the light of recent decision of Full Bench in case of **Karmaveer Tulshiram Autade and others .vrs. State Election Commission and others –**

2021 [2] Mh.L.J. 349. It is contended that in view of specific question framed and answered by the Full Bench, these petitions are not maintainable.

4. In all petitions, respective petitioners have challenged the order of Returning officer dated 05.12.2022, thereby accepting the nomination form of respondent no.5 (in all petitions), despite objection raised by them. Thus, the issue involved in all petitions is common about acceptance of nomination forms pertaining to Gram Panchayat Elections.

5. Respondents have declared the election program for the elections to various Gram Panchayats, including the concerned Gram Panchayats. As per the election program on 18.11.2022, notice of election program was published. Nomination forms were to be filled by the candidates between 28.11.2022 to 02.12.2022. Scrutiny of the nomination forms was to take place on 05.12.2022 and withdrawal of candidature was till 07.12.2022. Final list of candidates and allotment of symbols was to be done on 07.12.2022, and polling date is scheduled on 18.12.2022. Counting of votes is fixed on 20.12.2022, followed by result.

6. In all petitions, petitioners have raised objections

contending that the respective respondent no.5 have encroached upon government land and thus, they are liable for disqualification in terms of Section 14[1][j-3] of the Maharashtra Village Panchayat Act, 1958. According to petitioners, the objections have not been considered, but, the Returning Officer has illegally accepted the nominations of respective respondent no.5 in each petition.

7. In above referred Full Bench decision of this Court in case of *Karmaveer Autade*, a specific question regarding maintainability of the writ petition seeking to challenge an order of rejection of nomination paper to contest gram panchayat elections, was framed and answered. The Full Bench has categorically held that writ petition under Article 226 of the Constitution of India against the orders passed by the Returning Officer, rejecting or accepting nomination paper is not maintainable in the light of settled position of law right from the judgment of Supreme Court in case of **N.P. Ponnuswami .vrs. Returning Officer, Namakhal and others – AIR 1952 SC 64**. The Full Bench has analyzed the position of law as discussed in earlier judgment and reiterated that Writ Petition challenging the order of Returning Officer is not

maintainable in view of specific bar created under Article 243-O[b] of the Constitution of India and Section 15A of the Maharashtra Village Panchayat Act.

8. Besides that, this Court in a decision in case of **Gazala Bi Saddam Shah .vrs. The Collector, Buldhana and others – Writ Petition No.85/2021 dated 08.07.2021**, has once again taken stock of all earlier decisions in the field including the above referred Full Bench decision and reiterated that Petition is not maintainable. Petitioners are unable to convince as to how these decisions would not apply to their cases.

9. The learned Counsel appearing for petitioners has relied on a decision of **Janabai .vrs. Additional Commissioner and others – AIR 2018 SC 5069** to contend that even if the encroachment upon the government land is made by family member and the candidate shares the encroached property, still he/she is liable for disqualification. There can be no dispute about the said legal proposition. However, the issue involved is about maintainability of these petition after declaration of the election program.

10. Since the issue of maintainability is squarely covered by the above referred decision of Full Bench, I have no

hesitation to hold that the present petitions are not maintainable and accordingly they are dismissed. However, it is made clear that all contentions raised by the respective petitioners, are kept open to be canvassed in appropriate proceedings.

JUDGE

JITENDRA
BHARAT
GOHANE

Digitally signed by
JITENDRA BHARAT
GOHANE
Date: 2022.12.12
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