

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1480 OF 2023

Pravin Vithaldas Gujrathi
and others

.. Petitioners

Versus

The State of Maharashtra
and others

.. Respondents

...

Advocate for petitioners : Mr. Ajeet B. Kale
GP for the respondent – State : Mr. D.R. Kale
Advocate for the respondents nos. 2 to 4 : Mr. S.K. Kadam

...

**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : 06 FEBRUARY 2023

ORDER (MANGESH S. PATIL, J.) :

Heard the learned advocate Mr. Kale for the petitioners and learned advocate Mr. S.K. Kadam who appears for respondents nos. 2 to 4 as also the learned Government Pleader.

2. The petitioners had filed their nominations in the election of the respondent no. 5 - co-operative sugar factory pursuant to the programme declared under rule 19 of the Maharashtra Co-operative Societies (Election to the Committee) Rules, 2014 (**Election Rules, 2014**). It is their stand that they intended to withdraw their nominations within the stipulated time that was to end by 3:00 pm of 30 January 2023. Since there was huge rush in the office of the respondent no. 4

who is the Election Officer appointed by the respondent no. 2 - State Election Authority, they immediately sworn affidavits before the Notary Public on the same day and applied to the respondent no. 4 for withdrawal of their nominations still, those were not considered. They pray that they may be permitted to withdraw their nominations and since after their withdrawal, there would be only one candidate in the fray, he be declared as elected unopposed.

3. Mr. Kale, learned advocate for the petitioners submits that there were in all 171 nominations and several of candidates wanted to withdraw their nominations. There was too much of rush in the office of the respondent no. 4 and the petitioners though were intending to withdraw their nominations, could not do so.

4. Mr. Kale would submit that the petitioners' attempt was *bona fide*. As is indicated in the applications submitted by each of them with the respondent no. 4 along with the papers, they merely intended that as the respondent no. 5 - sugar factory is financially weak, the expenditure for elections could be avoided. With this intention the petitioners were seeking withdrawal of the nominations and the prayer ought to have been accepted.

He would also refer to the decision in the matter of Jaywantrao Amrutrao Patil Vs. Maharashtra State Co-operative Election Authority

in writ petition no. 4863 of 2015 (Aurangabad Bench) dated 27-04-2015.

5. Learned advocate Mr. Kadam for the respondents nos. 2 to 4 strongly opposes the petition. He submits that the fact regarding the petitioners having attempted to withdraw their nominations by 3:00 pm of 30 January 2023, is strongly disputed by these respondents. He would submit that there was enough time with the petitioners to withdraw their nominations prior thereto inasmuch as according to the election programme, the nominations could be withdrawn from 16 January 2023 to 30 January 2023 between 11:00 am and 3:00 pm. He would submit that there was enough time available with the petitioners to withdraw the nominations during this long period.

6. Mr. Kadam would further submit that as per rule 27 of the Election Rules, 2014, a candidate intending to withdraw the nomination has to fill in Form E-6 and have an acknowledgment also in the prescribed format. When the law requires something to be done in a particular manner, it ought to have been done in the same manner. Any attempt to permit the petitioners now to withdraw their nominations and directing the respondents nos. 2 to 4 to concede to such request would tantamount to interference in the process of election and this Court should not exercise powers under Article 226 of the Constitution of India.

7. We have carefully considered the rival submissions and perused the papers.

8. There is no dispute about the fact that the period for withdrawal of the nominations as notified was from 16 January 2023 to 30 January 2023. Irrespective of the dispute as regards the fact whether the petitioners were really present in the office of the respondent no. 4 and were willing to withdraw their nominations, there was enough time for them to take appropriate steps, if they were really interested in saving the expenditure as they have been now submitting before the final rush hours. Nothing is mentioned in the petition as to why they did not make any attempt to withdraw their nominations prior to 30 January 2023. They cannot now be permitted to take a plea regarding their inability to withdraw their nominations on the last date by the last hour.

9. There is no dispute about the fact that by virtue of rule 27 of the Election Rules, 2014, the nominations can be withdrawn in a particular manner by submitting an application to the Returning Officer in a prescribed Form 'E-6'. Clause 5 of Rule 27 requires the Returning Officer on being satisfied about the genuineness of a notice of withdrawal and the identity of the person can cause a notice to be affixed on the notice-board of his office. This Form 'E-6' also comprises of an acknowledgment which a candidate is supposed to have regarding submission of the application for withdrawal from the

Returning officer. Without following such a requisite procedure, the petitioners are approaching this Court, may be, as an afterthought.

The purpose of providing a specific time limit for withdrawal in all probability *inter alia* must be to avoid horse trading. Permitting a candidate to withdraw the candidature beyond the stipulated time limit, as notified in the election programme which is published well in advance would run afoul to this objective. One need not delve any further. Admittedly, there is nothing on the record to demonstrate that the petitioners had made any attempt to seek withdrawal of their nominations within the stipulated time. This Court in exercise of the powers under Article 226 of the Constitution cannot venture into and grant any relief as is being claimed.

10. It does appear that in the matter Jaywantrao (supra), this Court had permitted the petitioners therein to withdraw the nominations beyond such time limit. However, with respect, the afore-mentioned aspects were not considered. Besides, it was observed in that order that the petitioner had tendered withdrawal application at 2:59 pm when the time was to get over by 3:00 pm which is not the fact situation in the matter in hand.

11. The writ petition is dismissed.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/