

Dusane

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

WRIT PETITION NO.13327 OF 2023

Sau. Bhauramma Gaisiddha Pujari ...Petitioner

V/s.

The Returning Officer & Ors. ...Respondents

Mr. I.M. Khairadi for Petitioner.

Mrs. V.S. Nimbalkar, AGP for State-Respondent
Nos. 2 and 3.

Mr. Priyal Sarda for Respondent No.4

CORAM: MADHAV J. JAMDAR, J.

DATE: 26th October 2023

P.C.:

1. Heard Mr. Khairadi, learned Counsel appearing for the Petitioners and Mr. Priyal Sarda, learned Counsel appearing for Respondent No.4.

2. In the present petition, challenge is to the legality and validity of order dated 23rd October 2023 passed by Returning Officer, Kusur Khanapur Grup Gram Panchayat.

3. By the impugned order, the Petitioner's nomination form has been rejected to contest the election to the said Gram Panchayat.

4. Learned Counsel appearing for the Respondent No. 4 relies on the Full Bench decision of this Court in the matter of **Karmaveer Tulshiram Autade & Ors. Vs. State Election Commission Office & Ors.**¹. In paragraph 68 of the said decision, reference has been answered as follows:

"68. For the reasons aforesaid, while agreeing with the view in Vinod Pandurang Bharsakade (supra), we answer the fundamental question as formulated in paragraph 27 in the negative. As a sequel thereto, we answer the questions referred by the Division Bench in the manner as follows:

(i) Allowing challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection is definitely not a step to subserve the progress of election and/or facilitate its completion in the sense enunciated in Mohinder Singh Gill (supra) and explained in Ashok Kumar (supra) though it may not always amount to intervention, obstruction or protraction of the election;

(ii) Article 243-O(b) of the Constitution of India is a bar for entertaining a writ petition under Article 226 of the Constitution against an order passed by the Returning Officer rejecting nomination paper and such provision would clearly be attracted whenever a writ petition is presented before a Court for its consideration; and

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(iii) The law laid down in Vinod Pandurang Bharsakade (supra) represents the correct view of law; consequently, we hold that the decision in Smt. Mayaraju Ghavghave (supra) and Sudhakar s/o Vitthal Misal (supra) do not lay down the correct law;"

5. In view of the above law laid down by the Full Bench of this Court, learned Counsel appearing for the Respondent No. 4 and learned AGP is right in contending that the petition is not maintainable. Accordingly, the Writ Petition is dismissed as not maintainable.

6. It is made clear that this Court has not considered the merits and all contentions of the parties on merits are expressly kept open.

(MADHAV J. JAMDAR, J.)