

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13366 OF 2023**

Akshay Magan Rakshe ...Petitioner
Versus
The State of Maharashtra through its Secretary & ...Respondents
Ors

**WITH
WRIT PETITION (ST) NO. 29580 OF 2023**

Vanita Ram Rakshe ...Petitioner
Versus
The State of Maharashtra through its Secretary & ...Respondents
Ors

**WITH
WRIT PETITION (ST) NO. 29581 OF 2023**

Pushpa Raju Gaikwad ...Petitioner
Versus
The State of Maharashtra through its Secretary & ...Respondents
Ors

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2023.11.06
14:04:05 +0530

**WITH
WRIT PETITION (ST) NO. 29583 OF 2023**

Seema Dhananjay Rakshe ...Petitioner
Versus
The State of Maharashtra through its Secretary & ...Respondents
Ors

WITH
WRIT PETITION (ST) NO. 29585 OF 2023

Vinayak Balu Vidhate ...Petitioner
Versus
The State of Maharashtra through its Secretary & ...Respondents
Ors

WITH
WRIT PETITION (ST) NO. 29586 OF 2023

Mahesh Sunil Rakshe ...Petitioner
Versus
The State of Maharashtra through its Secretary & ...Respondents
Ors

WITH
WRIT PETITION (ST) NO. 29588 OF 2023

Swati Nilesh Rakshe ...Petitioner
Versus
The State of Maharashtra through its Secretary & ...Respondents
Ors

Mr Nitin G Patil, *for the Petitioner in all matters.*
Mr Kedar Dighe, **Addl. GP**, *with YD Patil, AGP, for the Respondent-
State in all matters.*
Mr Sachindra S Shetye, *with Sarika Shetye & Akshay Pansare, for
Respondent No. 2-SEC in all matters.*
Mr Ganesh Gupta, *with Sahil Ghorpade, i/b G Legal Associates, for
Respondent No. 5.*

**CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 3rd November 2023**

PC:-

1. The Petition is thoroughly misconceived. The relief sought in prayer clauses (b), (c) and (d) reads thus.

“(B) Hold and declare that the entire process of election undertaken by the Respondent No. 3 Returning Officer for conducting the elections to Salumbre Village Panchayat, Tq. Maval, Dist. Pune, including the scrutiny of nominations for ongoing elections 2023, is illegal, arbitrary and violative of Article 14, 19(1)(c) & 21 of the Constitution of India hence liable to be quashed and set aside and for that purpose issue necessary orders.

(C) Issue an appropriate writ or direction to quash and set aside the impugned order dated 23.10.2023 passed by the Respondent No. 3 Returning Officer thereby rejecting the nominations of the petitioner for contesting elections to the post of Sarpanch of Salumbre Village Panchayat, Tq. Maval, Dist. Pune for ongoing elections 2023 and for that purpose issue necessary orders.

(D) Issue an appropriate writ or direction to treat the nomination of the petitioner for contesting to the post of Sarpanch of Salumbre Village Panchayat, Tq. Maval, Dist. Pune for ongoing elections 2023 as valid nomination and petitioner be permitted to participate in the further process of elections and his name accordingly be included in the list of validly contesting candidates and he be allotted symbol to contest the said elections and for that purpose issue necessary orders.”

2. Writ Petition No 13366 of 2023, filed by Akshay Magan Rakshe, relates to the election of Sarpanch. The other six Petitions relate to the elections of members of the Gram Panchayat, Salumbre, Taluka Maval, District Pune.

3. The allegation is that the Returning Officer wrongly rejected the nominations of these Petitioners and equally wrongly accepted the nominations of others. The submission before us was that one panel was rejected and another panel was accepted.

4. Mr Shetye has taken instructions. He does not canvass the proposition that this Court's Writ jurisdiction is in any way compromised, but he does maintain that there is a remedy by way of an appeal under Section 15 of the Maharashtra Village Panchayats Act, 1959 although this may have to be availed after the elections.

5. He points out that the rejection typically was on the basis that the nominations were incomplete. His instructions are to say that the incompleteness was in several respects. There was firstly the incorrect mentioning of an Electoral Roll Number. This is sought to be explained by saying that the Petitioners or some of them gave the ERN of the Gram panchayat Electoral Roll and there is a mismatch between the Gram panchayat Electoral Roll and the Assembly Electoral Roll.

6. Leaving aside what an individual voter may or may not do, we expect that a person who stands for election must at least know his or her Electoral Roll on the Electoral Roll that is relevant for that

election. No one suggests that Electoral Roll Serial Numbers are the same across different Electoral Rolls. Obviously, that cannot be. The constituencies are different. The numbers of people on each Electoral Roll are different. Obviously, serial numbers will not exactly match. It is hardly possible or credible to say that it is irrelevant whether a candidate gives his number as one or 130 but it must somehow be discerned by the Returning Officer which number relates to which Electoral Roll.

7. But even more seriously, Mr Shetye points out that the actual papers that were submitted were incomplete. The all-important Affidavits of Declaration of assets and criminal antecedents, if any, were filed but they were not affirmed. Only notarised copies were filed. Original affirmed affidavits were not. Mr Shetye clarifies that what was filed was a document attested as a true copy by a Notary. That is not in compliance with the mandatory requirement of filing an Affidavit before the Returning Officer as part of the nomination process. Even under the Representation of the People Act, 1950, the Supreme Court has repeatedly stressed the importance of such Affidavits being complete, accurate, legible, and affirmed because the consequences of incorrect statements and incomplete disclosures are indeed serious.

8. If such an Affidavit is filed and is unaffirmed, the simplest thing for any candidate would be to thoroughly disclaim the Affidavit by saying that he or she had never made a statement on affirmation or on an oath and therefore could not be held to the correctness of those statements.

9. Now it is argued that this was not a ground given for rejection. We do not take that the Returning Officer is required to pass detailed speaking orders, itemising every ground of rejection. That is not the state of the law. As Mr Shetye points out, that is not even practicable because hundreds of forms are being scrutinised in just a few hours.

10. It is simply not possible for us to pass an order which would have the result of allowing parties to cut corners with the election process.

11. We see no merit in these Petitions. They are rejected. No order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)