



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6292 OF 2022

Kavita Ajay Pimpalshende,
Aged about : 32 years, Occ. Housewife,
R/o at Post Marda, Warora,
Tah.Warora, District Chandrapur

...Petitioner

// VERSUS //

1. Returning Officer Gram Panchayat
Marda Warora/Tahsildar, Tah: Warora,
District Chandrapur
2. District Collector, Chandrapur, Dist.
Chandrapur
3. Yogita Leeladhar Pimal Shende
Aged about 42 years, Occupation:
Housewife,
R/o At post Marda, Warora,
Tah.Warora, District Chandrapur

... Respondents

Mrs. (Dr.) R.S.Sirpurkar, Advocate for the petitioner.
Ms. H.N.Jaipurkar, AGP for the respondent nos. 1 and 2/State.
Shri A.P.Thakare, Advocate for the respondent no.3.

CORAM : ANIL S. KILOR, J.
DATED : 3rd OCTOBER, 2023.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by
consent of the parties.

2. On rejection of nomination paper of the petitioner for the
election of Gram Panchayat Marda, as a Member, the petitioner

approached to this Court by filing a writ petition No. 116 of 2021. Thereupon, this Court vide order dated 4th January, 2021, by way of ad-interim relief directed the Returning Officer to accept the nomination paper of the petitioner and take consequent action. It was also observed that the result of the election would be subject to the result of the writ petition. In pursuance to the said interim relief, the petitioner contested the election and got elected.

3. Subsequently, the writ petition filed by the petitioner came to be dismissed vide order dated 9th February, 2021. However, though the election of the petitioner was set aside, no one was declared as elected.

4. Thereafter, the respondent no.3 filed a writ petition no. 3249 of 2021 seeking declaration to the effect that she stands elected as Member of Gram Panchayat, Marda.

5. The Division Bench of this Court vide judgment dated 25th March, 2022, allowed the writ petition and granted such declaration in favour of the respondent no.3.

6. Thus, the cause of action for the petitioner to challenge the election of the respondent no.3, arose first time on 25th March, 2022 when Division Bench of this Court declared the respondent no.3 as elected.

7. Accordingly, the petitioner filed an election petition on 11th April, 2022 challenging the election of the respondent no.3. The said

election came to be dismissed vide impugned order dated 16th September, 2022 on the ground that it was barred by limitation, as the petition was filed after the period of limitation of 15 days.

8. After going through the impugned order dated 16th September, 2022 passed by the learned Civil Judge, Senior Division, Warora in Election Petition no. 1 of 2022, it is evident that learned trial Court has not considered the date of declaration of election of respondent no.3 as 25th March, 2022 i.e. the date of judgment of the Division Bench of this Court declaring the respondent no.3 as elected. Whereas, the learned trial Court wrongly considered the date of dismissal of the writ petition of the petitioner i.e. 9th February, 2021, as a date of cause of action for filing of Election Petition, ignoring the fact that, though on 9th February, 2021, the writ petition filed by the petitioner was dismissed, no one was declared as elected.

9. In absence of any such declaration in favour of any candidate as elected, it cannot be said that cause of action arose on 9th February, 2021 to file the election petition.

10. It is further evident from the observations made by the learned trial Court that the learned trial Court has not taken into consideration, the date of declaration of election of the respondent no.3 as 25th March, 2022.

11. In the circumstances, I have no hesitation to hold that the learned trial Court has committed error in holding that the election

petition is barred by limitation as it was not filed within 15 days from 9th February, 2021.

12. If the limitation of 15 days is considered from the date as 25th March, 2022, then filing of Election Petition on 11th April, 2022 is well within limitation as there was second Saturday on 9th April, 2022 and Sunday on 10th April, 2022 which were holidays. Accordingly, I pass the following order.

- i. Writ petition is allowed;
- ii. The impugned order dated 16th September, 2022 passed by Civil Judge, Senior Division, Warora in Election Petition No. 1 of 2022 is hereby quashed and set aside holding that the election petition filed by the petitioner was filed well within limitation.

[ANIL S. KILOR, J.]