



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4640 OF 2024

Ubaid Ur Rehman Ata Ur Rehman
and Others

...Petitioners

Versus

The Election Commission of India
& Ors

...Respondents

...

Mr. S. S. Gangakhedkar, Advocate for the Petitioners
Mr. S. K. Tambe, AGP, for the Respondent/State
Mr. Alok Sharma, Advocate for the Respondent No. 1
Mr. A. B. Kadethankar, Advocate for Respondent No. 2

...

CORAM	: RAVINDRA V. GHUGE & R. M. JOSHI, JJ
DATE	: MAY 03, 2024

ORDER (PER R. M. JOSHI, J)

1. Petitioners pray that the impugned order dated 26.04.2024, passed by the District Election Officer, be quashed being in violation of Section 26 of the Representation of the People Act, 1951 (for short 'the Act'). Petitioners are also seeking Writ of Mandamus to set aside the show cause notice dated 05.04.2024, issued by the said Respondent to the Petitioners. A declaration is also sought that the Petitioners are not qualified for appointment as Presiding Officer/Polling Officer.

2. It is the case of the Petitioners that they are employees of a private school governed by the provisions of the Maharashtra Employees of Private School Act. It is their further case that there is no embargo for the employees of private school to associate with a political party and also to become its active member. Petitioners are active members of a political party and have placed on record document indicating active membership since 2019. It is the case of the Petitioners that in view of Section 26(1) of the Act, since they being associated with a political party, Respondents cannot be permitted to avail their services for the process of election. It is claimed that a candidate from a political party is contesting parliamentary elections to the 19th Lok Sabha constituency in General Elections of 2024 and in the light of the affiliation of the Petitioners with the said political party, it would not be appropriate for them to discharge their duties in the capacity of Polling Officer. According to the Petitioners, the consequential action of the Respondents of issuance of show cause notice etc. is not tenable.

3. We have heard the learned Advocate for the Petitioners and Shri. Sharma, Standing Counsel for the Election Commission of India.

4. It is the contention of the learned Advocate for the Petitioners that there is no prohibition for the employees of the private school to get affiliated with a political party and in the present case, the Petitioners are active members of a political party, which has fielded its candidature in the General Elections of 2024 from Aurangabad Constituency. He drew attention of the Court to Section 26 of the Act, in order to canvass that there would be prohibition for any active member of a political party to become a part of the process of the election and that such persons cannot be appointed as "Polling Officer". It is his contention that this would absolutely be essential to maintain the purity of the process of election. He relied upon the judgment of the Hon'ble the Supreme Court in case of Tata Chemicals Ltd Vs. Commissioner of Customs (Preventive), Jamnagar, (2015) 11 SCC 628 to canvass that if the law requires that something be done

in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of law at all.

5. Learned Standing Counsel for the Election Commission of India opposed the said submissions by contending that the Election Commission is facing a severe shortage of manpower and finding it very difficult to get adequate number of persons to carryout the process of elections and as such, there would be no justification for accepting the request of the Petitioners. On the basis of written instructions received by him from Collector and District Magistrate, Chhatrapati Sambhajinagar, it is submitted that the political party, of which the Petitioners are active members, has not fielded their candidate from Jalna Lok Sabha Constituency and hence, there is no question of any political influence being caused by the Petitioner Nos. 1, 2 and 5. As far as Petitioner Nos. 3, 4 and 6 are concerned, it is stated that Respondent No. 3 is ready to change the nature of duties assigned to this Petitioners in such a manner so that the Petitioners cannot politically influence the election process by

granting supplementary and ancillary duties other than the Polling Station duty. He placed reliance on the judgment of this Court at Nagpur Bench in *Writ Petition No. 5896/2011 (Shrikant Subhash Pande Vs. The Deputy Director of Education and Others)*.

6. We the people of India owe solemn duty of preserving the democracy and it is absolutely essential to participate in the process of election, and to extend help to the Election Commission of India and State Authorities to conduct the elections in a fair and proper manner. It is not only mandate of law, but moral responsibility of each citizen of this Country. The provisions of the Act clearly indicate such mandate which also provides for action for breach of official duties in connection with election under Section 134 of the Act. Section 159 empowers the Election Commission to direct the Authorities to made staff available for election work. There is no dispute about the fact that the school, in which the Petitioners are working, is amenable to such directions.

7. The argument sought to be raised in this Petition is that since they are active members of a political party, they ought not to have been appointed as a Polling Officer contemplated by Section 26 of the Act. Perusal of Section 26 shows that the District Election Officer is empowered to appoint a Presiding Officer for each polling station and such Polling Officer(s) as he thinks necessary, but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election. It is thus clear that the said embargo is in respect of employee of a candidate or otherwise who is working for a candidate in the said election. It is not the case of the Petitioner that they are employees of a candidate or that they are working for the candidate or are his agents. A plain reading of Section 26 does not seem to create an embargo on appointment of any other person as a Presiding Officer for a polling station. Moreover, Election Authorities are competent to take a conscious decision in this regard keeping in mind requirements.

8. In this regard, it would be material to take note of the written instructions issued by the Collector and District Magistrate, Chhatrapati Sambhajinagar to the Standing Counsel for Election Commission of India. We find it appropriate to reproduce the same herein below:

With reference to the above subject, it is hereby brought to your notice that, the petitioner No. 1, 2 and 5 have been assigned election duties for 18 Jalna Loksabha Constituency. All India Majalis-e-Ittehad-ul-Muslimeen (AIMIM) Political party is not the contesting party in Jalna Loksabha Constituency nor the said party has fielded any candidate for the said constituency. So there is no question of any political influence that can be caused by the petitioner No. 1, 2 & 5 in Jalna Loksabha Constituency.

As regards the petitioner No. 3, 4 & 6, it is brought to your notice that, though the respondent No. 3 have assigned election duties to the said petitioners for 19-Aurangabad Loksabha Constituency. However, the respondent no. 3 is ready to change the nature of duties assigned to the said petitioner in such a manner so that, the said petitioners cannot politically influence the election process.

The respondent No. 3 is ready to assign the petitioner Nos. 3, 4 & 6 certain supplementary and ancillary duties, other

than polling station duties, which will not expose the petitioner politically and which will not influence the process of election.

You are requested to kindly bring the above facts, to the kind notice of the Hon'ble High Court.

9. It is thus clear that the political party to which the Petitioners claim association and active membership, has not fielded any candidate from Jalna Lok Sabha Constituency. As such, the question of Petitioner Nos. 1, 2 and 5 resisting the election duty does not arise. With regard to Petitioner Nos. 3, 4 and 6, it is made clear that they would be assigned ancillary duties which will not expose them politically and care will be taken that the process of election is not influenced in any manner.

10. At this stage, we would like to refer to the observations made by the Coordinate Bench of this Court in case of Shrikant Pande (supra) which are reproduced herein below:

Prima facie, we are of the opinion that a Government Servant or person in employment in an educational Institution is not required to have any political association or connection till he is in such service.

The provisions, which we have incorporated above, are required to be considered from the aforesaid angle. If an employee is actively associated with any political Organization, he may bring influence of his political ideas while imparting education, which cannot be ruled out totally. If a Government Servant while in service is actively associated with any political Organization, one can say that his conduct is not befitting of a Government servant. So far as the post of Teacher is concerned, a Teacher's role is to impart education to the students in an impartial manner. In a given case. there may be an apprehension that if a Teacher is actively associated with any political party, it may hamper the educational atmosphere of a School. Simply because Teacher is not charging any remuneration for his political activities, it cannot be treated as a ground by which such parallel political activities can be said to be permitted. In any case, this is not a case wherein suspension order passed by the Management on the ground that the petitioner is actively associated with political Organization can be struck down by holding that petitioner is free to continue his political activities along with his teaching job in the Institution. So far as education is concerned, it should be kept away from politics and educational field should not be allowed to be polluted in any manner by bringing politics. There are some Institutions, which are required to be kept away from politics and academic Institution is one of such Institutions.

11. We find absolutely no reason or justification to disagree with the above observations of Coordinate Bench of this Court. One more aspect strikes to our mind which has more serious consequences on the entire process of election. If the contention of the Petitioners is accepted that since they have become active members of a political party, they shall never be engaged in any election process, this would encourage all employees of private school, colleges, universities etc to become members of one or other political party by paying nominal membership fees (we are told that it is hardly about Rs. 5/- or 10/-), and would seek immunity from participation in the election process. Having experience of finding excuses being made by persons who are called upon to perform such duty, that possibility exist. To our mind, this will cause serious impact on the large scale election process. In such circumstances, we do not find any reason to accept the request of the Petitioners.

12. **The Writ Petition, therefore, stands dismissed.** It is open for the Authorities to utilize the services of the Petitioners in the election process as per

requirement in consonance with the law. Needless to say that failure on the part of the Petitioners to comply with the said orders would meet the consequences as provided in law.

(R. M. JOSHI, J)
Malani

(RAVINDRA V. GHUGE, J)