

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15877 OF 2024**

Shilpa Subhash Gavas

.. Petitioner

Versus

1. The Election Commission of India
2. Sarjerao Mhaske Patil
The Returning Officer
147-Kopari Panchpakhadi
Legislative Assembly Constituency

...Respondents

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Mr. Narayan G. Rokade a/w. *Mr. Udaysinh Deshmukh & Mr. Vikrant Kadam, for Petitioner.*
Mr. Akshay Shinde, for Respondent No.1-Election Commission of India.
Mr. B.V. Samant, Addl. GP a/w. *Smt. V.R.Raje, AGP, for State.*

**CORAM : ARIF S. DOCTOR &
SOMASEKHAR SUNDARESAN, JJ.**

**Date : November 6, 2024
(Vacation Court)**

PC:

1. Rule. By consent of the parties, rule made returnable forthwith, and taken up for final hearing and disposal.

Factual Background:

2. This petition seeks a direction to the Returning Officer, '147-Kopari PanchPakhadi Legislative Assembly Constituency' in connection with the forthcoming elections to the Maharashtra Legislative Assembly, to reverse the rejection of the nomination form of the Petitioner.

3. According to the Petitioner, she had filed her nomination along with requisite documents online on October 29, 2024 and also submitted the hard copies to the Returning Officer (Respondent No.2). Some defects were pointed out by the Returning Officer, which according to the Petitioner, was perverse since they did not make out a case for existence of errors, leading to this challenge.

4. On October 30, 2024, according to the Petitioner, the Returning Officer asked the proposer of the Petitioner to cure the defects before 11:45 a.m. and the proposer of the Petitioner asked for more time and attended the designated office at 12:15 p.m., stating that she was ready and willing to cure all the defects.

Preliminary Objection :

5. Learned Counsel for the Respondent No.1 submits that this Court does not have jurisdiction to entertain the petition under Article 226 of the Constitution of India since a Full Bench of this Court in the case of Karmaveer Tulshiram Autade & 4 Ors. Vs. The State Election Commission & 9 Ors.¹ (**Full Bench**) has explicitly ruled, although in the context of Panchayat elections, that writ petitions would not be maintainable for rejection of nomination papers.

¹ Civil Writ Petition (St.) No. 26 of 2021 dated January 13, 2021

6. We have had occasion to extensively deal with the aforesaid preliminary objection in the case of *Aashish Kishor Gadkari Vs. The Election Commission of India & Anr.*² (*Aashish Gadkari*), where the state of the law as of today, has been dealt with in detail. In the interest of brevity, the contents of the analysis on the issue of jurisdiction are not repeated in this order.

Application to Facts:

7. In the facts of the case, it is common ground that there were indeed defects in the nomination form which remained uncured beyond 11:00 a.m. on October 30, 2024, the date on which and the time at which scrutiny was to commence. Time as to completion of the activities stipulated for the nomination is of the essence in the conduct of the electoral process. Any relaxation or tightening of such deadlines for completion of activities cannot be permitted at the discretion of the Returning Officer. In fact, if any Returning Officer were to exercise his own discretion to relax or tighten such timelines, such relaxation would be in the nature of undermining the smooth progress of the electoral process.

8. Consequently, in the facts of the present case, the jurisdictional fact

² OS-Writ Petition (L.) No. 33675 of 2024 dated November 6, 2024

necessary for even considering whether any intervention by us in exercise of Article 226 of the Constitution of India is warranted, does not exist. Consequently, there can be no intervention in favour of the Petitioner, applying the analysis set out in *Ashish Gadkari*.

9. It is also to be noted that on November 4, 2024, the final list of candidates has been notified and the interests of such candidates to contest against one another has already been crystallized. Any intervention after this stage would disturb their rights, and they too would have to be heard. All of this would vitiate the smooth progress of the election process that is already underway.

10. We are of the view that no case has been made out to hold that the jurisdictional facts necessary for exercise of our jurisdiction under Article 226 of the Constitution of India has been made out. Consequently, we are not inclined to issue any writ or direction in the facts of the case.

11. We make it clear that apart from the discussion contained above on whether we ought to consider any intervention, we have not intended to express any opinion on or pronounce upon any issue including any issue of fact. All contentions on merits are expressly kept open and the Petitioner is at liberty to pursue such remedies as he may be advised as

being available in law.

12. The writ petition is disposed of with no intervention being made.

13. All actions required pursuant to this order shall be taken upon receipt of a downloaded copy of this order as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

[ARIF S. DOCTOR, J.]