

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

**WRIT PETITION NO.17167 OF 2025**

Rahul Vishnu Dhakane

] .. Petitioner

***Versus***

1. State of Maharashtra
2. State Election Commission
3. Election Officer,  
Pathardi Municipal Council
4. Pathardi Municipal Council
5. Abhay Narayan Avhad
6. Bandu Vitthal Borde

] ] ] ] ] ] ]  
] .. Respondents

Dr. Uday P. Warunjikar with Ms. Sonali R. Chavan, Advocates for the Petitioner.

Smt. Neha S. Bhide, Government Pleader with Mr. O.A. Chandurkar, Additional Government Pleader with Smt. Pooja Patil, Assistant Government Pleader for the Respondent-State of Maharashtra.

Mr. S.B. Shetye, Advocate for the Respondent-SEC.

**CORAM : SHREE CHANDRASHEKHAR, CJ. &  
GAUTAM A. ANKHAD, J.**

**DATE : 16<sup>TH</sup> DECEMBER 2025.**

**P.C. :**

The petitioner has filed this writ petition assailing the Government Resolution dated 18<sup>th</sup> November 2025 issued by the respondent no.2 and an order passed by the respondent no.3 dated 18<sup>th</sup> November 2025 wherein his nomination form for Municipal Council elections was rejected. The petitioner seeks the following reliefs:

- “(a) Be pleased to call for record and proceedings, the Government Resolution dated 18<sup>th</sup> November 2025 and after going through the same and after satisfying its validity, legality and propriety, be pleased to quash and set aside the same.*
- “(b) During pendency of present petition be pleased to stay election program in respect of the post for president of the*

*Pathardi Municipal Council declared by the respondent no.2 till final disposal of the present petition.*

- (c) In the alternatively, be pleased to direct the respondent to include the name of the present petitioner in the list of the candidates contesting the election of Municipal Council during pendency of the above referred petition.*
- (d) During the pendency, be pleased to grant stay to the operation and implementation of the final list of the candidates contesting election of Pathardi Municipal Council prepared and published by the respondent no.3.*
- (e) Ad-interim relief in terms of prayer clauses (b), (c) and (d) be granted.”*

2. The election programme for Municipal Councils in Maharashtra was declared by the respondent no.2 on 4<sup>th</sup> November 2025. On 17<sup>th</sup> November 2025, the respondent no.2 issued a Resolution clarifying that as per the previous resolution dated 5<sup>th</sup> May 2025 and rule 13(4) of the the The Maharashtra Municipal Councils and Nagar Panchayats Election Rules, 1966, the form submitted by the optional candidate with the signature of one proposer shall be accepted subject to further scrutiny and verification. On 18<sup>th</sup> November 2025, the said clarification provided was withdrawn. On 2<sup>nd</sup> December 2025, an updated election programme came to be notified which prescribed 10<sup>th</sup> December 2025 as the last date for withdrawal of the nomination form by the candidates.

3. Dr. Uday P. Warunjikar, the learned counsel for the petitioner, submits that on 17<sup>th</sup> November 2025 the petitioner had filled an online application form for the alternate candidate for the post of Mayor from political party namely National Congress Party (NCP)(Ajit Pawar Group). On 18<sup>th</sup> November 2025, the nomination application of the petitioner came to be rejected as the application was not supported by five proposers under Rule 12(2) of the Maharashtra Municipal Council Election Rules, 1966 as per the resolution dated 18<sup>th</sup> November 2025. On 10<sup>th</sup> December 2025, the

main candidate-Mr. Bhagwat decided to withdraw his nomination. Dr. Warunjikar contends that the petitioner's nomination has been wrongly rejected, resulting in his disqualification from contesting the elections on the ground that his nomination lacked the signatures of five proposers. He submits that this rejection is arbitrary and that respondent no.2 could not have issued the Government Resolution dated 18<sup>th</sup> November 2025 once the nomination forms had already been submitted before the returning officer. The rules cannot be altered or applied retrospectively to the petitioner's detriment and therefore, the petition deserves to be allowed. It is also submitted that on 24<sup>th</sup> November 2025, the learned District Court at Jalgaon in Election Appeal no. 02 of 2025 passed an order in a similarly situated case where the appeal has been allowed and the said candidate has been declared to be considered for the post of Municipal Council President, if the main candidate withdraws his nomination.

4. We have heard the learned counsels for the parties and find no merit in this petition. It is settled law that a right to contest an election is neither a fundamental right nor a common law right. In *Vishwanath Pratap Singh vs. Election Commission of India*, 2022 SCC Online SC 2213, the Hon'ble Supreme Court has held as follows:

"5. We find that the writ petition before the High Court was entirely misconceived and so is the present special leave petition. The right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. In *Javed v. State of Haryana*, (2003) 8 SCC 369, this Court held that:—

"22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right — a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same

*statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.”*

5. The law relating to the writ jurisdiction of the High Court with respect to election matters when the election process is still ongoing was also summarised by the Hon’ble Supreme Court in “*State of Goa v. Fouziya Imtiaz Shaikh*” (2021) 8 SCC 401. While dealing with analogous constitutional bar under Article 243-ZG, the Court held as follows:

“63. A conspectus of the aforesaid judgments in the context of municipal elections would yield the following results:

I. Under Article 243-ZG(b), no election to any municipality can be called in question except by an election petition presented to a Tribunal as is provided by or under any law made by the legislature of a State. This would mean that from the date of notification of the election till the date of the declaration of result a judicial hands-off is mandated by the non-obstante clause contained in Article 243ZG debarring the writ court under Article 226 and Article 227 from interfering once the election process has begun until it is over. The constitutional bar operates only during this period. It is therefore a matter of discretion exercisable by a writ Court as to whether an interference is called for when the electoral process is “imminent”, i.e., the notification for elections is yet to be announced.”

6. A reading of the above judgments makes it clear that once the election process has commenced, the writ court will not interfere. It is always open to the aggrieved party, to challenge the same by filing an election petition and seeking appropriate relief in accordance with law.

7. The election programme began on 4<sup>th</sup> November 2025. On 18<sup>th</sup> November 2025, the State Election Commission clarified that a dummy/optional candidate who submits a nomination supported by only one proposer is not eligible, and such nomination is liable to be rejected. It records that the optional

candidate (like the petitioner) must submit a nomination form supported by five proposers to qualify. Further, the main candidate who has purportedly withdrawn his nomination is not a party to this petition. In his absence, such a statement cannot be verified. In our view, considering the above law, the election process cannot be interdicted at this stage in our writ jurisdiction. We cannot interfere with this process at the petitioner's instance, which is otherwise applicable to all other candidates contesting the Municipal Council elections. For the aforesaid reasons, **Writ Petition No.17167 of 2025 stands dismissed.**

[ GAUTAM A. ANKHAD, J. ]

[ CHIEF JUSTICE ]