



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

WRIT PETITION NO. 7300/2025

(NITESH @ NITIN RAMCHANDRA DHAKATE **VERSUS** THE ELECTION DECISION
OFFICER, MUNICIPAL COUNCIL GENERAL ELECTIONS-CUM-SUB-DIVISIONAL OFFICER,
BHANDARA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Abhijit Deshpande and Shri A.D. Bhate, counsel for the petitioner.
Shri A.P. Tathod, counsel for the respondent no.2.
Ms P.C. Bawankule, Assistant Government Pleader for the respondent no.3.
Shri A.M. Ghare, counsel for the respondent no.5.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : NOVEMBER 26, 2025

Heard the learned counsel for the petitioner as well as the respondents.

2. In response to the notice dated 25.11.2025 issued by this Court, the respondents are served and the petitioner has also filed an affidavit of service dated 26.11.2025 which is taken on record. Considering the urgency pointed out by the petitioner, the petition is taken up for hearing on admission.

3. The petitioner's challenge is to the order dated 18.11.2025 passed by the respondent no.1-Returning Officer, Bhandara Municipal Council General Elections-2025 and also to the judgment and order dated 24.11.2025 passed by the District Judge-1, Bhandara dismissing the Election Appeal no.1 of 2025 under Rule 15 of the Maharashtra Municipal Councils and Nagar Panchayats Election Rules, 1966.

4. The controversy involved in the petition pertains to the challenge to the rejection of the nomination form of the petitioner for the elections of Bhandara Municipal Council scheduled to be held in accordance with the election programme declared by the respondent no.1. According to the election programme, the last date for submission of nomination form was 17.11.2025 and the date for publication of validly nominated candidates was 18.11.2025 and after the date for withdrawal of nomination form, the date for allotment of symbols is today i.e. 26.11.2025.

5. The petitioner submitted his nomination form for the post of Councillor of Municipal Council, Bhandara in its General Elections from Prabhag no.15 and his nomination form came to be rejected by the Returning Officer by order dated 18.11.2025. The nomination form was rejected by invoking Section 16(1)(a) of the Maharashtra Municipal Councils Act and being aggrieved by the rejection of the nomination form, the petitioner filed Election Appeal No.1 of 2025 before the District Judge-1, Bhandara. By the judgment and order dated 24.11.2025, the said appeal came to be dismissed and being aggrieved by the said order, the instant petition is filed.

6. Shri A.M. Ghare, learned counsel for the respondent no.5 raised a preliminary objection to the maintainability of the petition and submitted that the instant writ petition is not maintainable in view of provisions of Section 21 of the Maharashtra Municipal Councils, Nagpur Panchayats and Industrial Townships Act, 1965

and Article 243ZG of the Constitution of India. By placing reliance upon the judgment of the Full Bench in ***Karmaveer Tulshiram Autade & Others Versus State Election Commission, Mumbai & Others*** [2021 (2) Mh.L.J. 349], he vehemently submitted that a petition challenging the order of rejection of nomination form is not maintainable and prayed for dismissal of the petition on this count alone.

7. In order to controvert the arguments about the preliminary objection to the maintainability of the petition, the learned counsel for the petitioner submitted that the instant petition challenging the judgment passed in election appeal is maintainable under Article 227 of the Constitution of India. In support of his submissions, he placed reliance on the judgment of the Co-ordinate Bench of this Court in ***Poonam Rajesh Pawar Versus The Returning Officer & Others*** [Writ Petition No.1974 of 2017 with connected petition].

8. As regards maintainability of the instant petition, it has to be noted that the position of law laid down by the judgment of the Hon'ble Full Bench in ***Karmaveer Tulshiram Autade*** (supra) needs to be taken into consideration. The Full Bench while considering the issue about maintainability of petition challenging rejection of nomination form has laid down in paragraph 68 as under:-

“68. For the reasons aforesaid, while agreeing with the view in Vinod Pandurang Bharsakade (supra), we answer the fundamental question as formulated in paragraph 27 in the negative. As a sequel thereto, we answer the questions referred by the Division Bench in the manner as follows:-

- (i) Allowing a challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection is definitely not a step to sub-serve the progress of election and/or facilitate its completion in the sense enunciated in Mohinder Singh Gill (supra) and explained in Ashok Kumar (supra) though it may not always amount to intervention, obstruction or protraction of the election;*
- (ii) Article 243-O(b) of the Constitution of India is a bar for entertaining a writ petition under Article 226 of the Constitution against an order passed by the Returning Officer rejecting nomination paper and such provision would clearly be attracted whenever a writ petition is presented before a Court for its consideration; and*
- (iii) The law laid down in Vinod Pandurang Bharsakade (supra) represents the correct view of law; consequently, we hold that the decision in Smt.Mayaraju Ghavghave (supra) and Sudhakar s/o Vitthal Misal (supra) do not lay down the correct law;”*

9. In view of the position of law laid down by the Full Bench, it is clear that the preliminary objection raised by the respondents has substance. The reliance placed by the counsel for the petitioner on the judgment of Co-ordinate Bench in **Poonam Rajesh Pawar** (supra) is misplaced in view of the legal position clarified by the Full Bench. Having regard to above, the instant petition challenging the rejection of nomination form of the petitioner need not be entertained. It is clarified that the instant order is passed only by considering the preliminary objection without dealing with the points raised on merits. Needless to state, the petitioner is at liberty to raise all the contentions raised in the petition by filing appropriate petition, if situation arises.

10. In view of aforesaid, the writ petition is dismissed with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

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