

(1998) 01 BOM CK 0045

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No"s. 357, 358 and 411 of 1998

Kalpana Ananda Sutar and
others

APPELLANT

Vs

The State of Maharashtra and
others

RESPONDENT

Date of Decision: Jan. 28, 1998

Acts Referred:

- Bombay Village Panchayats Act, 1958 - Section 15, 15
- Constitution of India, 1950 - Article 243

Citation: (1998) 3 ALLMR 106 : (1998) 3 BomCR 712 : (1998) 2 MhLj 626

Hon'ble Judges: R.G. Deshpande, J; A.D. Mane, J

Bench: Division Bench

Advocate: R.R. Mantri, A.M. Gholap and V.J. Dixit, for the Appellant; V.D. Sapkal, S.K. Tambe and K.G. Patil, A.G.PS., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.D. Mane, J.

The central point involved in all these petitions is common and it relates to the election to Panchayat. The grievance of the petitioners is that the Returning Officer committed an error in rejecting their nomination forms to contest the elections of Village Panchayat. The question arises whether rejection or acceptance of nomination form falls within the bar created by section 15-A of the Bombay Village Panchayats Act, 1958. Section 15-A of the Act provides that, "no election to any Panchayat shall be called in question except in accordance with the provisions of section 15; and no Court other than the Judge referred to in that section shall entertain any dispute in respect of such election.

2. In order to appreciate this question, regard may be had to the word "election" as interpreted by the Apex Court in the case of [N.P. Ponnuswami Vs. Returning Officer,](#)

[Namakkal Constituency and Others,](#). The Supreme Court laid down that the word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression "conduct of elections" in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in part XV including Article 329(b). The term "election" may be taken to embrace the whole procedure which consists of several stages and embraces many steps, whereby an "elected member" is returned, whether or not it be found necessary to take poll. It is not used in a narrow sense. The Supreme Court, in that case, also held that rejection or acceptance of a nomination paper is included in the term "election".

3. The construction of the word "election" as used in Part XV of the Constitution which includes Article 329(b) ipso facto applies to the word "election" as used in Part IX Article 243-K relating to election to the Panchayat. Therefore, if the term "election" is understood in proper perspective which includes several stages and embraces many steps whereby an elected member is returned, the process of rejection or acceptance of nomination paper forms a part of the term "election" and, therefore, section 15-A intervenes. Therefore, the bar created by section 15-A automatically applies even in a given case.

4. We may mention that on identical question, the Division Bench of this Court in (Writ Petition No. 4399/97 by its judgment and order dated 23-10-1997) has held that the remedy to challenge the decision of the Returning Officer for rejection or acceptance of nomination form is only by way of an election petition u/s 15 of the Bombay Village Panchayats Act, 1958.

5. In addition to the reasons which we have given, we agree with the view taken by the Division Bench. In that view of the matter, there is no merit in the petitions. Writ Petitions stand rejected.

6. Petition rejected.