

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 3045 OF 2015

Dilip Sadashiv Gotke ... Petitioner
vs
The State of Maharashtra and ors. ... Respondents

Mr. Eknath P. Sawant, Advocate i/by Mr. M.P. Kale, Advocate for petitioner
Mr. V. G. Shelke, Assistant Govt. Pleader for respondent no. 1
Mr. A.A. Khande, Advocate for respondent no. 3

CORAM: SUNIL P. DESHMUKH, J.
DATE : 18TH MARCH, 2015

ORAL ORDER

1. Petitioner is a contestant for the seat reserved for Vimukta Jati and Nomadic Tribe in the election for 17 posts of directors of Rena Sahakari Sakhar Karkhana Limited, Dilipnagar Niwada, Taluka Renapur, District Latur. He claims to have been aggrieved by order dated 12th March, 2015 passed by Respondent no. 2-returning officer refusing to accept his application for withdrawal of nomination dated 12-03-2015.

2. Pursuant to the election programme declared, petitioner had submitted his nomination for the seat as has been referred to hereinabove. Nomination of the petitioner, along with others, was scrutinized by the returning officer on 25th February, 2015. In the scrutiny, nomination of the petitioner and of one more candidate had been cleared holding those to be valid. As such, two names figured for the concerned post as valid

candidates. 12th March, 2015 was the date scheduled with time upto 3.00 p.m. for withdrawal of nominations. According to the petitioner, due to impediments as had been caused during his travel to the office of the returning officer, he reached the office after delay of about an hour. He had submitted an application, requesting the returning officer to allow him to withdraw the nomination and that his name should not be incorporated in the final list of contesting candidates. However, petitioner's request had been rejected by the returning officer under the order impugned and as such, he is before this court.

3. Mr. E.P. Sawant, learned counsel appearing for the petitioner submits that because the situation was out of control of the petitioner, he could not make it to the office of returning officer before 3.00 p.m. which was the prescribed time on 12th March, 2015, as such application was delayed by an hour.

4. Mr. Sawant submits, a division bench of this court in writ petition no. 4648 of 2003 [*Rajendra s/o Balkishanji Khated and others versus The State of Maharashtra and others, decided on 17-11-2003*] had an occasion to deal with somewhat similar situation wherein candidates who were held to be validly nominated were intending to withdraw their nominations but could not submit applications before expiry of time prescribed for withdrawal of nominations and as such, the division bench had directed the

returning officer to accept their withdrawal applications and decide on the same.

5. Perusal of the order passed by division bench in writ petition no. 4648 of 2003 discloses that though the petitioners in said writ petition were present in the office of the returning officer could not submit applications seeking withdrawal of their nominations before expiry of the time fixed for the same, due to presence of large number of candidates whose nominations were held to be valid and were seeking withdrawal of the same and as such, applications of said writ petitioners could not be accepted by the returning officer within the given time. The division bench while deciding the matter has observed that, ordinarily high court would not have intervened in the matter but for the peculiar fact-situation that the petitioners therein could not submit applications for withdrawal of their nominations by stipulated time for the reason as stated hereinabove and as such no decision could be rendered by the returning office on the same. High court allowed the petitioners to submit the applications for withdrawal of nominations, however, left the decision thereon to the returning officer.

6. In the present case, situation is wide apart, in the sense, that it is not due to inability of the returning officer to accept petitioner's application within the prescribed time, but for the

default occurred in making application at the instance of the petitioner for withdrawal of nomination before expiry of prescribed time and the returning officer has rejected the application submitted by the petitioner.

7. Thus, the analogy as is sought to be drawn by the learned counsel on behalf of the petitioner by relying on the judgment referred to hereinabove, would hardly be applicable to the facts in the present case, for, in the case relied on, the court had intervened in the election process due to peculiar fact-situation.

8. It has to be taken into account that the returning officer is bound by the stages as occurring in the election programme and thus his decision in rejecting request of the petitioner for withdrawal of nomination would not be liable to be faulted with for the reasons for which the request has been rejected.

9. Having regard to aforesaid, there does not appear any infirmity in the impugned order passed by the returning officer.

10. Writ petition, as such, is rejected.

SUNIL P. DESHMUKH, J.

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