

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

WRIT PETITION NO. 4099 OF 2015

Satbirsingh s/o Avatarsingh Randhawa	...	Petitioner
vs		
The Aurangabad Municipal Corporation, through its Commissioner, Aurangabad & ors.	...	Respondents

WITH
WRIT PETITION NO. 4100 OF 2015

Sanjay Ramrao Gadekar	...	Petitioner
vs		
The State of Maharashtra and others	...	Respondents

WITH
WRIT PETITION NO. 4101 OF 2015

Chaya Bhimrao Mhaske	...	Petitioner
vs		
The State Election Commission, Mumbai and anr.	...	Respondents

WITH
WRIT PETITION NO.4140 OF 2015

Shila Dadarao Nagare	...	Petitioner
vs		
State of Maharashtra and others	...	Respondents

WITH
WRIT PETITION NO.4148 OF 2015

Bhalerao Neeta Abhimanyu	...	Petitioner
vs		
State of Maharashtra and others	...	Respondents

WITH
WRIT PETITION NO.4153 OF 2015

Prakash Shravan Nade	...	Petitioner
vs		
State of Maharashtra and others	...	Respondents

WITH
WRIT PETITION NO.4155 OF 2015

Balasaheb Savaliram Punde	...	Petitioner
vs		
State Election Commission, Aurangabad & ors.	...	Respondents

Mr. Nitin K. Chaudhari, Advocate for petitioner in W.P. No. 4099 of 2015
Mr. D.P. Palodkar, Advocate for petitioners in W.Ps. No.4100 & 4148 2015
Mr. Paresh B. Patil, Advocate for petitioner in W. P. No. 4101 of 2015
Mr. Santosh S. Dambe, Advocate for petitioner in W.P. No. 4140 of 2015
Mr. Pandurang M. Gaikwad, Adv/ for petitioner in W.P. No. 4153 of 2015
Mr. Ravindra V. Gore, Advocate for petitioner in W.P. No. 4155 of 2015
Mr. S.K. Tambe, Assistant Government Pleader for Respondent - State
Mr. S.T. Shelke, Advocate for Election Commission and Returning Officers

CORAM : SUNIL P. DESHMUKH, J.
DATE : 10TH APRIL, 2015

ORDER

1. This batch of petitions calls in question rejections of nominations of respective petitioners for want of their signatures on affidavits filed along with nomination papers.
3. Learned counsel appearing for respective petitioners are being led in their arguments by Advocate Mr. Palodkar and Advocate Mr. Chaudhari.
2. There is no dispute on the fact that the affidavits concerned do not bear signatures of affiants - petitioners.
4. Learned counsel for the petitioners refer to sub rule (9) of rule (9) of the Election Rules under schedule (D) to the Maharashtra Municipal Corporation Act (hereinafter for brevity, the rules are referred to as "said rules") as well as a decision rendered by the supreme court in writ petition (civil) No. 121 of 2008 [*Resurgence India vs. Election Commission of India and another*] on 13-9-2013 and certain other decisions of the supreme court.

5. In their submissions, learned counsel for the petitioners contend that absence of signature on the requisite affidavits is unintentional and defects/deficiencies in the affidavits, if any, are formal ones and cannot be said to be defects/deficiencies of substantial nature. According to them, taking into account directions of the supreme court as have been given in the decision in *Resurgence India (supra)*, particularly clause (iv) of paragraph no. 27 of the judgment an opportunity should have been given to the petitioners to remove the defects in the nominations and since they have not been afforded such opportunity, more so even after request, the orders rendering rejections of their nominations are illegal and unsustainable.

6. On the other hand Mr. Shelke, learned counsel appearing on behalf of the State election commission and returning officers contends that the affidavits deficient of signatures are not the affidavits in the eye of law since those cannot be said to be affidavits swearing about the contents appearing under the same. It is further being submitted that under the instructions as were issued on 31-03-2009, various affidavits are required to be filed in order to enable the election officer to take a proper decision on the nominations. This was required since the provisions of various municipal laws were amended and were intended to bring in clarity in various affidavits to be filed along with nominations. In the absence of affidavit, the position as required under law could not be verified and as such the rejections of nominations of the petitioners should not faulted with.

7. According to Mr. Shelke, signature on the affidavit is a must and cannot be said to be formal defect as is sought to be contended by the petitioners. It is a defect of substantial nature and therefore the orders sought to be impugned are correct. He, in addition to the same, submits that sub rule (9) of rule (9) of said rules empowers and enables the returning officer to reject nomination if there is failure to comply with any of the provisions of the Act, or rules, or for that matter, the order of the State election commission. He, therefore, submits that it cannot be said that the election officer had no jurisdiction, power or authority to reject the nominations for want of affidavits as required under the instructions.

8. The position indisputably appears that there have been instructions given by the State election commission in March, 2009 requiring proper affidavits to be filed along with nominations and in the absence of signatures on the affidavits, it cannot be said that the petitioners could be considered to have filed affidavits in true and legal sense. The decision in *Resurgence India* (supra) of the supreme court also speaks of that a candidate is obligated to file an affidavit with relevant information and blank spaces will render affidavit nugatory.

9. The other leg of submissions on behalf of the petitioners is that opportunity should have been given to them as is referred to in the decision of the supreme court in *Resurgence India* (supra). It does appear, in these cases there have been requests made for rectification of mistakes. However, learned counsel appearing for the State election commission and

returning officers submits that such requests had been made after rejection of the nominations. It does not appear to be a further case that requests for corrections in affidavits at that stage could have been considered to cure the defect, for, it does not appear that fresh affidavits are acceptable or for that matter affidavit can be sworn in and made before the scrutinizing officer or officer/person before whom the affidavit was made had accompanied the petitioners. In such a hazy and disputable position, it would not be safe to say that the orders impugned are bad in law for want of compliance of the directions of the supreme court referred to hereinbefore. It is also required to be taken into account that the rules have not been amended as yet in accordance with directions as are appearing in said judgment of the supreme court. In view of the same, I do not deem it appropriate to accede to the requests of the petitioners to reverse the decisions of the election officers.

10. For all aforesaid reasons, writ petitions stand rejected.

SUNIL P. DESHMUKH, J.

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