

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4154 OF 2015

Kailash Jagannath Raut

.. PETITIONER

Versus

The State Election Commission
Maharashtra State Through its
Returning Officer, Ward No.88
Aurangabad Municipal Corporation
Election 2015, Dist.Aurangabad

.. RESPONDENT

...

Shri R.V.Gore, Advocate for petitioner
Shri S.T.Shelke, Spl.Counsel for respondent.

...

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

Order :-

1] The petitioner is before this Court to challenge order dated 8/4/2015 passed by Returning Officer rejecting nomination for election to Ward No.88 for the ensuing Aurangabad Municipal Corporation Local Body Elections. Nomination of the petitioner has been rejected by the Returning Officer for the reason that nomination had been deficient and it did not bear signature of the proposer.

2] Learned counsel for the petitioner submits that taking into account the purport underlying under Sub rule 11 of Rule 9 of Schedule-D of the Bombay Provincial Municipal Corporation Act,

1949, an opportunity should have been given by Returning Officer to remove the alleged defect. Learned counsel submits that since such opportunity was not given, the order should be deemed to be perverse, bad and unsustainable.

3] Mr.Shelke, learned counsel for the Election Commission opposing claim by the petitioner submits that absence of signature of proposer can be easily detected from the nomination form for it was not signed by proposer. He submits that it is substantial requirement according to the Rules and application is deficient in this respect could not have been considered to be valid. He submits that Rule 11 cannot be used for curative action by candidates. It is a case wherein the Returning Officer is supposed to scrutinise the application and to decide the objections if any. It was on scrutiny appears that the application is deficient in respect of proposer and the defect is of substantial character and as such, the application has been rejected. Taking into account that as per the Rules and the procedure of the Election Commission, the proposer, and seconder are a must for a valid nomination and that Rule 11 does not appear to allow a candidate to cure the defect of such nature. The decision taken by Returning Officer cannot be termed as perverse as is sought to be submitted as hereinabove. Writ Petition as such, does not deserve any consideration and stands rejected.

(SUNIL P. DESHMUKH,J.)

umg/