

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4219 OF 2015

Mahananda W/o Eknath Battalwad,
Age: 23 years, Occ- Education & Politics,
R/o Brahmanwada, Tq. & Dist. Nanded ...PETITIONER

versus

1. The State of Maharashtra
2. The State Election Commission,
Through its Chief Election Officer,
Mantralaya Madam Kama Road,
Mumbai.
3. The District Collector,
Nanded, Dist. Nanded.
4. The Tahildar,
Through its Election Officer,
Tahsil Office at Nanded
Tq. & Dist. Nanded.
5. Jyotibai W/o Ananda Zampalwad,
Age: 35 years, Occu. Household,
R/o Bramhanwada, Tq. &
Dist. Nanded ...RESPONDENTS

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Mr. P.B. Rakhunde, Advocate for Petitioner
Mr. V.G. Shelke, A.G.P. For respondents No. 1,3 and 4
Mr. S.T. Shelke, Advocate for respondent No. 2
Mr. Pawan K. Lakhotiya, Advocate holding for
Mr. M.V. Ghatge, Advocate for respondent No. 5

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 21st APRIL, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.
2. The petitioner challenges order dated 08-04-2015 passed by returning officer, rejecting her objection to the nomination of respondent No. 5 on the ground that her nomination/application is defective since it does not comply with requirements under section 14 (1) (j-5) of the Bombay Village Panchayats Act, 1958 as the same is not accompanied by requisite certificate about she being residing in a house owned by her and is having toilet and is using the same regularly and that she is residing in the house not owned by her and is having a toilet in such house and is using it regularly and the place where she is residing does not have toilet, and as such, she is using a public toilet.
3. Learned counsel for the petitioner further purports to strengthen his case by adverting to affidavit filed by respondent No. 5 that she is constructing toilet and that in case she is elected she would complete the construction within a period of six months. Learned counsel appearing for petitioner further submits that election officer has not considered that respondent

No. 5 does not fulfill these compulsory and necessary requirements at the time of scrutiny of nomination.

4. On the other hand, learned counsel Mr. Lakhotiya, appearing for respondent No. 5 submits that nomination cannot be considered deficient, for, it is not the case of petitioner that respondent No. 5 is residing in her house having no toilet and further that she is residing in the house owned by other wherein there is no toilet. He submits that respondent No. 5 resides in a house owned by other having no toilet and in village there is no public toilet. In the circumstances, requirements of submission of certificate cannot be termed as deficient and as such decision taken by the election officer is not liable to be faulted with.

5. Mr. Shelke, learned counsel appearing for respondent -election commission submits that from the applications as have been filed by respective parties, it may be a contentious issue about qualifying for election on the factual aspects and possessing and using toilets and the circumstances as have been referred to by respective parties. He, however, submits that election programme has reached the final stage as only polling remains. As such, no intervention be caused in the same at this stage. He further submits that since lot of factual aspects are involved, election petition is proper remedy.

6. Looking at aforesaid, I consider the submissions advanced on behalf of election commission, are reasonable and as such, I do not deem it appropriate to cause interception in election programme at this juncture.

7. Writ Petition, as such, is not being entertained and is dismissed, leaving it open to the parties to raise all issues in appropriate proceedings before appropriate forum including in an election petition. Rule stands discharged.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK