

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

WRIT PETITION NO. 7198 OF 2015

Dinanath s/o Bhaurao Tavale Petitioner

versus

State Election Commission and others Respondents

Mr. Kishor D. Doke, Advocate for petitioner

Mr. S.T. Shelke, Advocate for respondent no.1

Mr. S.K. Tamble, Asstt. Govt. Pleader for respondents no. 2

Mr. Y. V. Kakade, Advocate for respondent no. 3

CORAM : SUNIL P. DESHMUKH, J.
22ND JULY, 2015

ORDER:

1. The petitioner contends that that there is no indication by any remark of the election officer whether the nomination of respondent no. 3 is accepted or rejected, yet his name finds place in the list of validly nominated candidates.

2. Learned counsel for petitioner submits, apart from aforesaid, on merits candidature of respondent no. 3 could not have been considered at all for suppression of fact of registration of offence against him, accusing him of indulging in counterfeiting currency notes. Learned counsel for petitioner submits that this very specific objection had been taken before the returning officer on 13-07-2015 around 3.30 p.m. He refers to page 23 of petition,

which is a relevant declaration in schedule II given by respondent no. 3 which makes a reference to an offence against him bearing registration number 98 of 2012 lodged with police station, Akkalkot culminating into sessions case no. 98 of 2012 with Sessions Court, Solapur. He submits that there is no reference in said declaration about FIR at page 40 of petition, lodged on 3-7-2012 with Talwada Police Station for offences under section 420, 489, 511 of Indian Penal Code and in such a case, nomination of respondent no. 3 is liable to be rejected.

3. Learned counsel for petitioner supports his submission with reference to a decision of the supreme court in *Resurgence India v. Election Commission of India*, reported in *AIR 2014 SC 344*, particularly paragraphs 20 and 21 thereof which are reproduced for ready reference;

“ 20. Let us now test whether the filing of affidavit stating that the information given in the affidavit is correct but leaving the contents blank would fulfill the objective behind filing the same. The reply to this question is a clear denial. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizen under [Article 19\(1\)\(a\)](#) of the Constitution of India. The citizens are required to have the necessary information at the time of filing of the nomination paper in order to make a choice of their voting. When a candidate files an affidavit with blank particulars, it renders the affidavit itself nugatory.

21. For that purpose, the Returning Officer can very well compel a candidate to furnish information relevant on the date of scrutiny. We

were appraised that the Election Commission already has a standard draft format for reminding the candidates to file an affidavit as stipulated. We are of the opinion that along with the above, another clause may be inserted for reminding the candidates to fill the blanks with the relevant information thereby conveying the message that no affidavit with blank particulars will be entertained. We reiterate that it is the duty of the Returning Officer to check whatever the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced. "

4. Aforesaid paragraphs appear to be dealing with different factual scenario.

5. Learned counsel for respondent no. 3, however, opposes the submissions advanced on behalf of the petitioner, referring to that acceptance of nomination is generally looked at liberally. He purports to submit that addition of name of respondent no. 3 in the first information referred to above about which suppression has been alleged, had been subsequent to lodging of the first information and was missed out while submitting nomination form. He submits that there was no ill intention while filling in the nomination form. He further submits that such an act is not a

disqualification and the returning officer in the circumstances has rightly passed order validating nomination of respondent no. 3 which would seldom be susceptible to interference.

6. Mr. Shelke, learned counsel for respondent no.1–State Election Commission, in addition to aforesaid submissions, submits that the elections are in an advanced stage and that only polling is to take place which is scheduled on 25-07-2015.

7. In view of aforesaid and looking at that generally the courts refrain from passing orders causing interference in the election programme, I do not think that this is a case wherein this court should give indulgence to the submissions of the petitioner.

8. Writ petition, as such, is rejected. However, it would be open for the petitioner to adopt such remedies as would be available in law, including an election petition, questioning acceptance of nomination of respondent no. 3.

SUNIL P. DESHMUKH, J.

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