

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

WRIT PETITION NO. 7200 OF 2015

Aparna w/o Basweshar Padole Petitioner

vs

The State of Maharashtra and others Respondents

WITH
WRIT PETITION NO. 7201 OF 2015

Maroti Gangadhar Suryawanshi Petitioner

vs

The State of Maharashtra and others Respondents

WITH
WRIT PETITION NO. 7202 OF 2015

Sunita Mariba Suryawanshi Petitioner

vs

The State of Maharashtra and others Respondents

Mr. Mahesh V. Ghatge, Advocate for petitioners
Mr. V. G. Shelke, Asstt. Govt. Pleader for respondent no.1
Mr. S. T. Shelke, Advocate for respondent no. 2

CORAM : SUNIL P. DESHMUKH, J.
21ST JULY, 2015

ORDER:

1. Present batch of writ petitions has been moved by the petitioners against rejections of their nominations for candidatures to membership of village panchayat, Umri, Taluka Ardhapur, District Nanded.

2. Common ground on which rejection of nominations has taken place is non submission of requisite undertaking in respect of submissions of caste certificates for scrutiny by the scrutiny committee. In writ petition no. 7200 of 2015, however, nomination concerned has been rejected on additional grounds, namely, failure to sign some documents, such as, declaration and affirmation.

3. Mr. Ghatge, learned counsel appearing for petitioners vehemently submits that whatever lacunae were appearing in submission of papers were, in fact, sought to be removed and could have been easily removed, had an opportunity been given to the petitioners by the returning officer. He submits, according to the election programme, commencement of scrutiny was around 11.00 a.m. On 13-07-2015, an attempt to remove deficiency was blocked during working hours around 2.00 p.m. on very strange and unpalatable ground that the effort to remove discrepancies was being made after the scrutiny was over. He submits, from aforesaid endorsement in the order impugned in writ petition no.7200 of 2015, it is clear that no proper opportunity was given to the petitioners to remove deficiencies. He submits that, it is incumbent and imperative that the returning officer should afford opportunity to the candidates to remove such discrepancies and in present matter, the returning officer has grossly failed in discharging his such duty.

4. Learned counsel for petitioners submits that discrepancies and deficiencies as occurred were of minor nature and, therefore, he contends that the Bombay Village Panchayat Rules oblige returning officer not to reject applications on deficiencies which are not of substantial nature. According to him, absence of signatures or, for that matter, absence of requisite undertaking were not the deficiencies of substantial nature and further that even if for the sake of argument so be the position, those were sought to be removed but for nonchalance of the returning officer, could not be removed and the order impugned as such is bad in law.

5. In support of his submissions, Mr. Ghatge places reliance on *Anant Janardan Patil vs. State of Maharashtra*, reported in *AIR 2002 Bombay 87* as well as decision of the Supreme Court in Writ Petition (Civil) No. 121 of 2008 [*Resurgence India versus Election Commission of India*] decided on 13th September, 2013. According to Mr. Ghatge, bar under article 243-O of the Constitution of India would not be attracted having regard to the facts of the present case as has been considered in *AIR 2002 Bombay, 87 (supra)* wherein bearing in mind peculiar circumstances the high court had considered that said bar would not detain the court from passing appropriate orders.

6. Perusal of decision in *Anant Janardan Patil (supra)* would show that in said case petitioner's nomination was accepted under

interim order and he was elected unopposed being the sole contestant. In such a case, the court did not see any point in relegating him to election petition against rejection of his nomination.

7. With reference to clause (iv) of paragraph no.27 which is the operative order of the supreme court judgment referred to above, learned counsel for the petitioners vehemently submits that the returning officer is duty bound to give opportunity to the candidate to remove infirmities / deficiencies in the nomination paper, however, in the present case, there is gross failure on returning officer's part to provide petitioners such an opportunity.

8. Learned counsel for respondent no. 2 Mr. S.T. Shelke, submits that here in the present case, the election programme has reached to an advanced stage where save polling all other stages are over. At this juncture, to direct acceptance of nominations may not be proper.

9. Learned counsel for respondents also refer to the decision of the supreme court in the case of *Sant Sadguru Janardan Swami v. State of Maharashtra and others* [2001 (8) SCC 509] and urge that no interference be caused in the election process at this stage.

10. Having regard to aforesaid, I do not think that it would be proper for this court to meddle with the election programme at this stage.

11. Writ petitions, as such, are not being entertained and are accordingly rejected. However, petitioners may have recourse to a proper remedy for settlement of their grievance about rejection of their nominations, including an election petition.

SUNIL P. DESHMUKH, J.

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