

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

WRIT PETITION NO. 7419 OF 2015

Saynazbee Yakub Sayyed,
Age: 47 years, Occu.: Household,
R/o : Keralha, Tal Sillod,
Dist.: Aurangabad.

...PETITIONER

versus

1. The State of Maharashtra,
Through Department of Rural
Development, Mantralaya,
Mumbai 400 032.
2. The State Election Commission of
Maharashtra Through State
Election commissioner, Mumbai.
3. The collector,
Aurangabad,
District Aurangabad.
4. The Tahsildar,
Sillod, Tal Sillod,
Dist. Aurangabad.
5. Returning Officer,
For the General Election of
Village Panchayat, Kerhala,
Tal Sillod, Dist. Aurangabad.
6. Tarabai Punjaji Barumthe,
Age: Major, Occu. Household,
R/o Kerhala, Ta. Sillod,
Dist. Aurangabad.

...RESPONDENTS

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Mr. D.P. Palodkar, Advocate for Petitioner
Mr. S.P. Daund, A.G.P. for respondents No. 1,3 and 4
Mr. S.T. Shelke, Advocate for respondents No. 2 and 5
Mr. S.S. Thombre, Advocate for respondents No. 6

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 24th JULY, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, with consent.

2. Petitioner is before this court against rejection of her nomination to contest election in respect of village Gram Panchayat, Kerhala, Ta. Sillod, District Aurangabad, on the ground of having more than two children after the cut off date-13-09-2001. According to learned counsel for the petitioner, objection with regard to date of birth of fifth child being 17-05-2002, had taken him by surprise, for, as a matter of fact, his birth date is 15-05-2001.

3. Learned counsel for petitioner submits that while taking objection to nomination of petitioner, objector has relied on extracts of school admission register depicting the dates of birth of four children whereas while it came to the date of birth of fifth child, objector has placed reliance on certificate issued purportedly under Registration and Births and Deaths Act, 1959 and some notings of "ANM". According to learned counsel, last two items are manipulated, concocted ones and are manufactured with a view to disqualify the petitioner. He submits that petitioner had placed sufficient authentic record before the returning officer in the shape of extract of school admission register in respect of fifth child depicting his date of birth as 15-05-2001 and his progress cards of several years. He submits that in such a case, credence ought to have been given to the record produced by the petitioner rather than that produced by the objector. He submits,

generally, while scrutinizing the nominations, nature of enquiry is summary and further that at this stage liberal consideration not being given to the evidence which has been placed on record by the petitioner, returning officer has committed grave error in rejecting nomination.

4. Learned Counsel Mr. Palodkar places reliance on a decision of Supreme Court reported in (2014) 14 Supreme Court cases, 189 (Resurgence India Vs. Election Commission of India and another) paragraphs No. 23 and 24 therein are reads as under-

“23. 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.

24. *We also clarify to the extent that in our coherent opinion the above power of rejection by the Returning Officer is not barred by*

Para 73 of People's Union for Civil Liberties which reads as under :-(SCC P.451)

“73. While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in Assn for Democratic Reforms case, the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the 'documentary proof'. Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission are not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in Assn for Democratic Reforms case and as provided under the [Representation of the People Act](#) and its third Amendment.”

The aforesaid paragraph, no doubt, stresses on the importance of filing of affidavit, however, opines that the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary inquiry at the time of scrutiny of the nominations cannot be justified since in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. This Court was of the opinion that if sufficient time is provided, the candidate may be in a position to produce proof to contradict the

objector's version. The object behind penning down the aforesaid reasoning is to accommodate genuine situation where the candidate is trapped by false allegations and is unable to rebut the allegation within a short time."

5. According to him, the Supreme Court had already taken cognizance of the candidates who, in such a situation, are handicapped to rebut the allegations. He goes on to submit that the petitioner had placed sufficient material before the returning officer, and hence, the returning officer ought not to have rejected her nomination.

6. Learned counsel for respondents submit that petition raises disputed questions of facts. Learned counsel for respondent No. 6 Mr. Thombre submits that, the birth certificate of fifth child of petitioner placed on record by respondent No. 6 has been issued by the officer who is having authority under Registration of Births and Deaths Act, 1959 to issue the same and, it has as such got presumptive value. In such a case, no fault should be found with certificate of birth submitted by the objector in respect of birth of fifth child of petitioner.

7. Learned counsel for respondents further submits that manipulation and/or manufacturing of evidence are conjectures and allegations of petitioner which require scrutiny and will have to be proved by proper evidence. As on the date, having regard to certificate from the authorized officer under Registration of Births and Deaths Act, 1959 returning officer has not committed any error in rejecting the nomination.

8. Mr. Shelke, learned counsel for election commission supports the submission of respondent No. 6 and submits that all stages of the elections are over, now only polling has remained and no leniency be shown having regard to the disputed questions of facts and generally courts decline to intercept election programme.

9. Taking into account aforesaid submissions and circumstances of the case, authenticity of birth dates claimed require adjudication of facts. Under the circumstances, I do not deem it appropriate to enter into such adjudication at this stage of election programme under writ jurisdiction.

10. Writ petition, as such, stands dismissed. Rule is discharged. It would be open for the petitioner to make approach by way of proper remedy at proper stage, including an election petition.

Sd/-
(**SUNIL P. DESHMUKH, J.**)

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