

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

WRIT PETITION NO. 7440 OF 2015

Punjaram s/o Bapurao Rajale,
Age 60 years, occup. Agril.,
R/o Narayanpur, Tal. Gangapur,
Dist. Aurangabad and another Petitioners

versus

The State of Maharashtra & ors. Respondents

Mr. Devdatt P. Palodkar, Advocate for petitioners
Mr. V. G. Shelke, Asstt. Govt. Pleader for respondents no. 1, 3 & 4
Mr. S. T. Shelke, Advocate for respondents no. 2 and 5

CORAM : SUNIL P. DESHMUKH, J.
27TH JULY, 2015

ORDER:

1. Petitioners have moved this court, aggrieved by rejection of nominations for their candidature to election to gram panchayat, Narayanpur, Taluka Gangapur, District Aurangabad, by returning officer under order dated 21-7-2015.

2. Rejection of nominations by returning officer appears to be for the reason that the nomination forms had not been accompanied with a resolution of gram panchayat, Narayanpur referring to that the petitioners live in a residential house having toilet facility and is being regularly used by them or, in the absence of the same, they regularly use public toilet facility.

3. The sum and substance of the submissions of Mr. Palodkar is that said rejection of nominations is in excess or, is in colourable exercise of powers by the returning officer under the Maharashtra Village Panchayat Act, 1959 ("The Act") and rules thereunder, namely, Maharashtra Village Panchayats Election Rules, 1959. ("The Election Rules")

4. Mr. Palodkar bases his submissions on sections 12 and 13 and in particular on sub-section (3) of section 13. He submits that, taking into account sub-section (1) of section 13 of the Act, person whose name appears in the voters' list is entitled to vote and sub-section (2) of section 13 entitles him to lay a claim to candidature to contest unless disqualified under the Act. *[Learned counsel ascribes the word 'disqualified' a meaning and a result of 'an active and overt action' as distinct from 'potent consequences']*. He submits that sub-section (3) of section 13 of the Act underscores, exemplifies and declares that voters' list is a conclusive evidence about entitlement of a person, to be a candidate to contest the election or, for that matter, to be a voter.

5. Mr. Palodkar submits, there is no dispute about that petitioners' names figure in the voters' list pursuant to section 12 of the Act, as also in the final voters' list of gram panchayat,

Narayanpur. He goes on to submit that section 14 of the Act which deals with disqualification only sets out the circumstances under which a person may incur disqualification.

6. Sections 12, 13 and 14 read thus:

“ **12. List of voters.-(1)** *The electoral roll of the [Maharashtra Legislative Assembly] prepared under the provisions of the Representation of the People Act, 1950 (XLII of 1950), and in force on such day as the [State Election Commissioner may by order] notify in this behalf for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters for such ward or village.*

13. Persons qualified to vote and be elected.-(1) Every person [who is not less than 21 years of age on the last date fixed for making nomination for every general election or bye-election and whose name is in the list of voters shall, unless disqualified under this Act, or any other law for the time being in force, be qualified to vote at the election of a member for the ward to which such list pertains.

(2) Every person whose name is in the list of voters shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected for any ward of the village. No person whose name is not entered in the list of voters for such village shall be qualified to be elected for any ward of the village.

(3) Subject to any disqualification incurred by a person, the list of voters, shall be conclusive evidence for the purpose of determining under this Section whether any person is qualified or is not qualified to vote, or as the case may be, is qualified or is not qualified to be elected, at any stage.

“**14. Disqualification.-** (1) No person shall be a member of a Panchayat continue as such, who-

(a)

(i)

(ii)

- (a-1)
- (b)
- (c)
- (c-1)
- (d)
- (e)
- (f)
- (g)
- (h)
- (h-1)
- (i)
- (j)
- (j-1)
- (j-2)
- (j-3)
- (j-4)

(j-5) *fails to submit a certificate of the concerned panchayat, along with the resolution of the Gram Sabha certifying that,-*

(i) *he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or*

(ii) *he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet;*

Provided that, no member of a panchayat shall be disqualified under this clause, if he submits such certificate to the Block Development Officer, within a period of one year from the 10th January, 2011, being the date of commencement of the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010 (Mah. XXXVII of 2010) ”

7. He, to support his submission, purports to place reliance also on a provision under the very enactment, namely, section 16 and contends that unless an order disqualifying a person is passed, he would not be deemed to have been disqualified.

Section 16 of the Act reads thus:

“16. Disability from continuing as member.-

(1) If any member of a Panchayat,

(a) who is elected or appointed as such, was subject to any of the disqualifications mentioned in Section 14 at the time of his election or appointment, or

(b) during the term for which he has been elected or appointed incurs any of the disqualifications mentioned in Section 14, he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) If any question whether a vacancy has occurred under this Section is raised by the Collector suo motu or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member.] Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final.

Provided that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard. "

8. Mr. Palodkar refers to and relies also on the election rules particularly rules 8, 11 and Form 'A' referred to thereunder. Rules 8 and 11 and Form 'A' are reproduced for ready reference hereinbelow;

“8. Nomination of candidates.- *(1) On the day appointed for the nomination of candidates, and during the hours appointed by the Mamlatdar under Rule 7 in this behalf, each candidate shall make an application in writing in Form 'A' signed by him and*

present it either in person or through a representative authorities in writing in this behalf by such candidate to the Returning Officer signifying his willingness to serve as a member of the panchayat.

(2) On receiving a nomination paper under sub-rule (1), the Returning Officer shall write on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and exact time at which the application was delivered to him.

(3) When an election is held at or about the same time for two or more wards in a village, one and the same person may stand for election in all or any number of such wards.]

Explanation.- *A person who is unable to write his name shall be deemed to have duly signed the nomination paper if he has placed a mark or thumb impression in the presence of the Returning Officer or any other officer authorised by the Returning Officer in this behalf and such officer on being satisfied as to the identity of that person, has attested the mark or thumb impression as the mark or thumb impression of that person.*

11. Scrutiny of nominations. *(1) At the time and place appointed for the scrutiny of nominations, intending candidates and any other person duly authorised in writing by such intending candidate shall alone be entitled to be present. The Returning Officer shall allow such persons reasonable facilities for examining the nomination papers of intending candidates.*

(2) The Returning Officer shall examine the nomination papers and decide all objections which may be made before him to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he considers necessary, reject a nomination paper on any of the following grounds, namely :-

(i) that the candidate is disqualified or is not qualified under the Act or these rules for election; or

(ii) that the candidate has failed to comply with any of the provisions required by these rules or the Act.

(2-A) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(3) For the purpose of sub-rule (1) the production of a certified copy of an entry made in the list of voters shall be conclusive evidence of the right of any voter named in that entry to stand for election unless it is proved that the candidate is disqualified.

FORM 'A'
(See rule 8)

Nomination Paper

Name of the ward for which the candidate is nominated.

Full name of candidate

Age

Address

In the case of a ward in which a seat is reserved for Scheduled Castes or Scheduled Tribes, state whether or not belonging to such castes or tribes for which seat or seat is or are reserved. If members of a Scheduled Caste or Scheduled Tribe, state the name of the caste or tribe.

Name of ward in which candidate is entitled to vote, and his number in the Voters' list.

I hereby declare that I am willing to serve as a member, if elected.

Date:

Serial No.

Signature of candidate

Date on which and time at which nomination paper was delivered to Returning Officer..... "

9. Learned counsel submits that having regard to aforesaid rules and particularly requirement under Form A, it is easily discernible that a candidate is not expected to submit along with nomination, the documents referable to section 14(1)(j-5) of the Act. He further relies on order dated 15-03-2014 of the State Election Commission and submits that said order as well does not oblige fulfillment of requirements under section 14(1)(j-5) of the Act. As corollary, he submits that failure to produce requisite certificates would not result in an order of rejection of nomination, for, there is no such requirement either under the rules or the statute, or for that matter, in the Form-A prescribed.

10. Mr. Palodkar thus submits that the returning officer has trampled on statutory rights of petitioner under section 13 on considerations which are extraneous looking at aforesaid and as such, has transgressed the limitation on authority.

11. Learned Assistant Government Pleader Mr. V.G. Shelke, and learned advocate Mr. S.T. Shelke for election commission and its authorities, however, submit that perusal of concerned provisions particularly section 14(1) of the Act which begins with words '*No person shall be a member of a Panchayat or continue*

as such' would show that the same would be operative when a person is deficient in respect of requirements under the provisions of section 14(1) and other provisions. **[They submit, in the present case, in fact, position emerges to be admitted that the petitioners have failed to produce the requisite documents under section 14(1)(j-5)].**

12. As such, the disqualification occurring under the provisions does not require any extra or overt action by the authorities to declare a person disqualified. A person stands statutorily disqualified for want of compliance of requirements under section 14(1) for the categories referred to thereunder. They further submitted that section 16 of the Act, as a matter of fact, comes into play only after a person is a member of the gram panchayat and not before. It is only then an overt-action is ordained under the statute as a dispute is envisaged with regard to the same to be resolved by quasi-judicial authority, whereas section 14 declares a person to be disqualified either at the very entry or after becoming a member for want of compliance of requirements under sub-section (1) of section 14 of the Act. To say other-way round, it does not allow entry to a person who does not comply with requirements declaring him to be disqualified. They point out phraseology used in section 13

specifically refers to that unless disqualification under the provisions means and implies statutory disqualification occurring without there being overt-action or that it should be preceded by any quasi-judicial action, the returning officer is within his power and authority while rejecting the nominations as rule 11 empowers him to reject candidature if the person concerned is disqualified under the Act and if he stands disqualified under section 14. The order passed by the returning officer cannot be said to be without power or, for that matter, in excess of power.

13. Looking at the conspectus and having regard to the stage of the elections, I do not think that it would be appropriate to cause interlude in the on-going election process.

14. Writ petition, as such, stands rejected.

SUNIL P. DESHMUKH, J.

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