

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.7726 OF 2015

Amol s/o Dattatraya Keskar

Petitioner

Versus

The Returning Officer,
Gram Panchayat Election, Salgara
(Divati)-cum-Tahsildar,
Tuljapur, District Osmanabad & another

Respondents

Mr.A.R.Devkate, advocate for the petitioner
Mr.S.T.Shelke, advocate for Respondents.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.
DATE : 28th July, 2015**

PER COURT:

1 The petitioner is objecting to the order passed by the Returning Officer thereby permitting withdrawal of candidature of the petitioner for contesting election from Ward No.3 of Village Panchayat Salgara (Divati), Tq. Tuljapur, District Osmanabad, as a general category candidate.

2 It is the contention of the petitioner that there are three seats prescribed in Ward No.3, out of which, one seat is prescribed for reserved category, whereas, two seats, marked as 3B and 3C, are prescribed for general category. The petitioner tendered nomination papers with a view to contest election as a general category candidate. According to the petitioner, he had tendered nomination papers as against general category seats marked as 3B and 3C respectively. The petitioner tendered an application seeking withdrawal of his nomination paper presented as a general category candidate for the seat which was marked as 3B. However, the Returning Officer has permitted withdrawal

of candidature of the petitioner thereby ousting him from the contest.

3 The petitioner contends that since he has tendered two different nomination papers as a general category candidate for the seats, marked as 3B and 3C, it has to be presumed that he is contesting election for general category seat those are marked as 3B and 3C, for the sake of convenience and since the petitioner has sought withdrawal of his nomination paper as a general category candidate, marked as 3B, it was not permissible for the Returning Officer to cancel his candidature as a general category candidate from Ward No.3 overlooking presentation of another nomination paper by him against the general category seat marked as 3C. The petitioner places reliance on the judgment in the matter of Vyankat Rambhau Gore Vs. The Election Commission and others (**Writ Petition No.6333 of 2015**), delivered by this Court on 24.06.2015.

4 Rule 13 of the Bombay Village Panchayat Election Rules, 1959, reads as under:

13 Withdrawal of candidature-- (1) Any candidate may withdraw his candidature by a notice in writing subscribed by him and delivered to the Returning Officer between the hours of eleven o' clock in the forenoon and three o' clock in the afternoon (on the day not later than the last day appointed for the withdrawal of candidature under Rule 7). Such notice may be delivered either by the candidate in person or by a person authorised in writing by him in this behalf. Any notice of withdrawal which is given after the expiry of such last day shall not have any effect.

(2) No person who has given a notice of withdrawal of his candidature under sub-rule (1) shall be allowed to cancel the notice.

(3) The Returning Officer, on receiving notice of withdrawal under sub-rule (12) shall, as soon as

may be thereafter, cause a notice of withdrawal to be affixed at the Village chavdi and at the Village Panchayat Office.

5 What is contemplated under Rule 13 is withdrawal of candidature and not withdrawal of nomination paper. Petitioner contends that he has presented two nomination papers marked as 3B and 3C, it shall be presumed that he is contesting for two different seats from Ward No.3 as general category candidate and as such, withdrawal of one nomination paper shall not relate to withdrawal of another nomination paper, which, according to the petitioner, is specifically marked for seat 3C.

6 It is not a matter of dispute that there are 3 members to be elected from Ward No.3, out of which, one seat is prescribed for reserved category candidate and two seats are prescribed for general category candidates. While making declaration of result, the seats earmarked for reserved category shall have to be declared elected from amongst reserved category candidates, whereas, while making declaration against general category seats, the contesting candidate at the election, who secures highest number of votes in chronological order, shall be declared elected. Taking into consideration scheme of the election, it doesn't matter, whether a candidate has tendered different nomination papers as against the seat either marked as 3B or 3C, the declaration of result shall be in chronological order of the voting pattern i.e. the candidate who secures highest number of votes shall be declared elected.

7 The argument advanced by the petitioner that the nomination paper presented by the petitioner shall be construed as against a particular category seat i.e. either 3B or 3C, is devoid of substance since both the seats are marked for general category candidates. The nomenclature of seats as 3B and 3C is only for the purpose of convenience.

8 For the reasons recorded above, writ petition is devoid of substance.

9 Writ Petition stands dismissed.

P.R.BORA
JUDGE
adb/wp772815

R.M.BORDE
JUDGE