

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10701 OF 2015

Savita Ashok Zhadbuke

PETITIONER

VERSUS

The State of Maharashtra & others

RESPONDENTS

.....

Mr. Sushant B. Choudhari, Advocate for the petitioner

Mr. S. S. Dande, AGP for respondent State

Mr. S. T. Shelke, Advocate for respondent No.2

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 27th OCTOBER, 2015

ORDER :

1. Heard learned advocates for the parties.
2. Objection taken by the petitioner, to nomination of respondent No.5 Taramati Vaijinath Zhadbuke was on the ground that her name figures in voters' list of Washi at serial No.326 and name appearing at serial No.185 in the voters' list of Sarola Gram Panchayat is that of Taramati Vishwanath Zadbuke and as such, since name of respondent No.5 does not figure in the voters' list of Sarola Gram Panchayat, having regard to section 13 of the Maharashtra Village Panchayat Act, she would not be eligible to contest elections of Sarola Gram Panchayat.

3. These objections have been dealt with by respondent No.2 apparently having regard to reasons which are appearing in the order impugned in the present writ petition that respondent No.5 had annexed to the nomination form, certificate of residence at Sarola, which is in taluka Washi and that there is an affidavit to the effect that there is a printing error while referring to her name in the voters' list at Sarola.

4. Regard may be had to two decisions namely 2007 (3) ALL MR 99 "*Dr. Mohd. Talib Mohd. Sadique V. Dr. A. S. Kuchewar*" and 2004 (4) ALL MR 89 "*Indumati Laxman Bhakare V. State of Maharashtra and Others*". Head note "A", in case of *Dr. Mohd Talib Mohd. Sadique* reads thus -

A. Maharashtra State Veterinary Council Rules (2005), R.3 (8) (i) - Election to post of member of council - Rejection of nomination - nomination forms of petitioner rejected on ground that name of petitioner does not tally with the name mentioned in the voter's list and the office record of the council - Held, the nomination paper did not suffer from any material defect - The identity of the candidate was and is not in dispute - Defect on the nomination form was not of any substantial nature warranting rejection of the nomination paper - The Returning Officer was, therefore, not justified in rejecting the nomination form of the petitioner".

Head note "E" of the judgment in case of "*Indumati Laxman Bhakare V. State of Maharashtra and Others*" reads thus -

“(E) Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act (1965), Ss. 11, 12 (1) (2) – Voters – Contention that Petitioner was not voter at all since his surname did not tally with that given in the Electoral List – First name, father's name, electoral identity card, address, etc. same – Different surname in List was printing error – Held, petitioner was a voter (2003) 8 SCC 613 followed.”

5. Learned advocate for the State Election Commission states that the elections have reached a very advanced stage, and save polling all other stages are already over. In such a case, there shall not be any disturbance to the election process. He, therefore, urges not to give any indulgence to the petitioner.

6. There appears to be no question of identity being raised and for such an error of printing name of respondent No.5, she may not be blocked at this stage, since she may not have played any role in printing of the voters' list.

7. In view of aforesaid, this is not a case wherein indulgence is possible to be given to the petitioner at this juncture having regard to the stage at which the elections now stand. In the circumstances, I am not inclined to entertain the writ petition. Writ petition, as such, stands rejected. However, it would be open for the petitioner to take up appropriate proceedings in case respondent No.5 is elected, including an election petition.

Observations hereinbefore are only for the purpose of rejection of present writ petition and have no efficacy any further.

[SUNIL P. DESHMUKH, J.]

drp/wp10701-15