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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10708 OF 2015

Ganesh Shantaram Pardeshi
Age - 26 years, Occ - Agriculture
R/o At Post Patharwala (Bk)
Taluka - Ambad, District - Jalna

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Collector, Jalna
2. The Tahsildar, Ambad, District - Jalna
3. The Returning Officer /
Election Officer,
Patharwala (Bk), Taluka - Ambad
District - Jalna

RESPONDENTS

.....
Mr. A. C. Deshpande, Advocate for the petitioner
Mr. R. V. Dasalkar, AGP for respondent State
Mr. S. T. Shelke, Advocate for respondents No.2 and 3
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 29th OCTOBER, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitioner purports to have been aggrieved by an order dated 19th October, 2015 passed by returning officer, Gram Panchayat Patharwala (Bk), Taluka - Ambad, District - Jalna,

whereunder his application for nomination to contest election to said Gram Panchayat as a candidate belonging to reserved category of Nomadic Tribe (2) came to be rejected.

3. Indisputable facts in the matter are - the petitioner along with his nomination form has not submitted caste certificate indicating that he belongs to Nomadic Tribe (2). However, he has indeed submitted a receipt acknowledging submission of claim for validity of caste for scrutiny by the committee at Aurangabad. The returning officer has recorded that while the scrutiny of the applications for nomination was being proceeded with, the petitioner had been asked to submit a photo copy of caste certificate and accordingly some time had been solicited by the petitioner. However, despite that the petitioner could not procure requisite copy. Under the circumstances, the returning officer went on to pass order rejecting nomination of the petitioner.

4. Learned advocate for the petitioner Mr. A. C. Deshpande, vehemently submits that while there is no dispute on fact about submission of certificate for validity to the scrutiny committee, it should be deemed that caste certificate has been subsisting and was in existence, without which the acknowledgment could not

have been issued. He further submits that it would be too pedantic to insist upon production of copy of caste certificate when an acknowledgment has been produced, pursuant to section 10-1A of the Maharashtra Village Panchayat Act, 1959. He submits that in this case, availability of caste certificate shall be presumed in view of the acknowledgment having been produced and not disputed. The approach under the circumstances under the impugned order is too hyper technical.

5. Learned advocate for the petitioner purports to rely on an order passed by Nagpur Bench dated 20th April, 2015 in case of "*Rohini Kishor Raut V. Returning Officer / Tahsildar*" in writ petition No.2044 of 2015. On perusal of the order, it appears that the petitioner therein had in fact produced '*caste **validity** certificate*' and while notice had been issued earlier on in the matter, the respondents were directed to provisionally accept nomination of the petitioner to contest election on a seat reserved for Other Backward Class category. It was considered by the court that once caste validity certificate is placed on record, submission of caste certificate would not be necessary. In the circumstances, the order came to be passed.

6. However, in the present case, the facts cannot be said to

be similar and may be rather reverse, in the sense, there is no validity certificate and it is being contended that the caste certificate should be deemed to be produced having regard to acknowledgment of the submission of claim to scrutiny committee.

7. Learned advocate for the petitioner goes on to submit that the word "*shall*" occurring in section 10-1A of the Act shall be deemed to be directory in nature and not mandatory. He fairly refers to that, however, said position has to be cleared by larger bench, since two division benches have opined diversely on the subject. It is submitted by the learned advocate that view taken in Dadasaheb Gaikwad's case (*supra*) is holding good, which held proviso to be directory.

8. In the present matter, in the face of absence of any document indicating that petitioner belongs to a particular caste, it would not be appropriate to hold at this stage that the returning officer has committed an error, for, save and except, reference to the caste in the nomination form and averments in the petition, there is no other document indicating his caste. In such a case, the situation is ambulatory. Mere submission of claim without reference to the caste will be too much of

presumption. Had the situation been that it is substantiated by some material, matter could have been said to be worth some consideration.

9. Under the circumstances, I do not consider this is a case fit enough to give indulgence to the petitioner.

10. The petition as such, is not being entertained and stands dismissed. Rule stands discharged. It would, however, be open for the petitioner to take up appropriate proceedings at appropriate stage challenging order of the returning officer, including an election petition. Observations hereinbefore made are for the purpose of rejection of the writ petition and have no efficacy any further. The authorities shall not be influenced by any observation made herein above.

11. Pending civil application, if any, stands disposed of.

[SUNIL P. DESHMUKH, J.]