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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10814 OF 2015

Chababai Babu Pawar
Age – 45 years, Occ – Agriculture
R/o Gokulwadi, Taluka – Badnapur
District – Jalna

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Collector, Janla,
Collector Office, Jalna
2. The State Election Commission,
Maharashtra State, Mumbai
3. The Tahsildar, Badnapur,
Taluka – Badnapur, District – Jalna
4. The Returning Officer for the
General Election – 2015 of village
Gokulwadi, Grampanchayat,
Taluka – Badnapur, District – Jalna
5. Kalyan Sitaram Pawar
Age – 44 years, Occ – Agriculture
R/o Gokulwadi, Taluka – Badnapur
District – Jalna

RESPONDENTS

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Mr. Suhas B. Ghute, Advocate for the petitioner
Mr. R. V. Dasalkar, AGP for respondent State
Mr. S. T. Shelke, Advocate for respondents No.2 and 4
Mr. Joshi for J. P. Legal Associates for respondent No.5

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 27th OCTOBER, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Petitioner takes exception to order passed by returning officer, Gram Panchayat, Gokulwadi, Taluka - Badnapur, District- Jalna, whereby her objection to nomination of respondent No.5 has been overruled.

3. I have heard learned advocates for the parties at quite some length. Learned advocate for the petitioner fairly refers to the objection taken before the returning officer to nomination of respondent No.5, referring to that the thrust of the objection was that name of respondent No.5 figures in voters' lists at two places, one at Gokulwadi and the other at Jalna. According to the petitioner, since respondent No.5 is the resident of Jalna, his nomination from Gokulwadi is unsustainable.

4. It appears that name of respondent No.5 has been referred to in both the voters' lists as "*Kailas*" whereas respondent No.5 happens to be "*Kalyan*". There did not appear to be any dispute about identity of respondent No.5, that he has been referred to as "*Kailas*" in both the voters' lists. Taking into account

aforesaid, the returning officer rejected the objection.

5. Learned advocate for the petitioner submits, name of respondent No.5 referred to as "*Kailas*" at Gokulwadi, had not been realized by the petitioner and as such, dispute about identity had not been raised. He contends that there is nothing on record that "*Kalyan*" is "*Kailas*" or *vice versa*. In the circumstances, it should be deemed that name of respondent No.5 being not appearing at all in the voters' list at Gokulwadi, he is not eligible to contest elections to Gram Panchayat Gokulwadi, especially having regard to the provisions of section 13 of the Maharashtra Village Panchayat Act. He submits that eligibility is the entry of name in the voters' list, and since *Kailas* is the name appearing in the voters' list of Gram Panchayat, and not *Kalyan* that of respondent No.5, he is not qualified to contest the elections.

6. In order to support his submissions, he refers to a judgment reported in 1963 Mh.L.J. 351 "*Suleman Fakruddin Ansari V. S. B. Kulkarni*" submitting that high court has jurisdiction to correct patently wrong decisions of returning officer. According to learned advocate since the returning officer has not taken into account that name of respondent No.5 does not figure in the

voters' list, his nomination is liable to be rejected, taking into account purport underlying section 13 of the Act. He faltered in doing so and this court can take corrective action in this regard. He also relies on a decision reported in 2011 (6) *Mh.L.J.* 470 "*Shailesh Narayan Shinde V. Chetan Vitthal Tupe*". According to him, based on said judgment, it was the duty of the returning officer to appreciate the defect in the nomination form and having regard to substantial defect occurring in the nomination form, the same ought to have been rejected. He also refers to *AIR 1999 SC 1723 (1)* "*K. Venkatchalam V. A. Swamickan*" and contends that this court, under such circumstances, shall exercise powers under Article 226 of the Constitution of India to set aside the order of the returning officer.

7. Learned advocate for respondent No.5 and the learned advocate for the state election commission submit that the mistake occurred in the voters' list of Gokulwadi is of a minor nature and there was no question of identity having been raised there. The person - voter is "*Kalyan*", however, his name has been referred to as "*Kailas*". Learned advocate for respondent No.5 submits that this is a printing error, for which respondent No.5 should not be penalized since he hardly has any role in preparation / printing of the voters' list.

8. Learned advocate for respondent No.5 for said purpose relies on a decision reported in 2007 (3) ALL MR 99 “*Dr. Mohd. Talib Mohd. Sadique V. Dr. A. S. Kuchewar*”. He refers to head note “A”, which reads as under-

“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”.

9. Learned advocate for respondent No.5 also relies on a judgment reported in 2004 (4) ALL MR 89 “*Indumati Laxman Bhakare V. State of Maharashtra and Others*”. He refers to Head Note “E” and corresponding paragraphs No.20 and 21 thereof. He submits that such a technical error and printing mistake should not come in the way of rights available to respondent No.5. Head note “E” of said judgment 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.”

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

11. The petitioner basically has moved the returning officer on the premise that name of respondent No.5 figures at two places, at Gokulwadi and Jalna and according to him a person is not entitled to be a voter at two places and as such, respondent No.5 would stand disqualified. The basic objection does not raise any dispute about identity of the person of respondent No.5. The petitioner appears to have improved his case while it came to filing of writ petition stating that it had not been realized by the petitioner that name of respondent No.5 has not been referred to in the voters' list. However, this is an improvisation in the case, for, earlier on as well name of respondent No.5 has been referred to at the relevant serial numbers i.e. 388 in the voters list at Jalna as Kailas and as also at serial No. 203 in the voters' list at

Gokulwadi. In such a case, there appears to be sufficient indication of that the petitioner initially did not want to dispute identity of the person.

12. Having regard to decisions which have been referred to by learned advocate for respondent No.5, I think that this is not a case wherein indulgence can be given to the petitioner and having regard to the stage at which elections now stand, I am not inclined to cause any interference in the election programme.

13. Writ petition, as such, is not being entertained and stands dismissed. Rule stands discharged. However, it would be open for the petitioner to take up appropriate proceedings at appropriate stage, as may be advised. Observations made hereinbefore are for the purpose of rejection of the writ petition and would not have any efficacy any further.

[SUNIL P. DESHMUKH, J.]