

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

WRIT PETITION NO. 4052 OF 2016

Godavari Narayan Kale,
Age : 24 years, occup. Household,
R/o Khodepuri, Tq. & Dist. Jalna .. Petitioner

versus

01. The State Election Commission,
Through Additional Collector,
Jalna, District Jalna.

02. M. M. Kadam,
Agricultural Officer,
Panchayat Samiti Jalna @
Returning Officer for General
Election of Village Panchayat,
Khodepuri, Tq. and Dist. Jalna

**[Respondent no. 2 deleted as per
Court's order dated 06-04-2016]**

03. The Grampanchayat Khodepuri,
Through Gramsevak at Khodepuri,
Tq. and Dist. Jalna

04. The Tahsildar, Jalna,
Officer appointed by the State
Election Commission

05. Govind Radhakisan Dhavale,
Age 40 years, occup. Agril.,
R/o Khodepuri, Tq. & Dist. Jalna .. Respondents

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Mr. Girish B. Kulkarni, Advocate for petitioner
Mr. S. T. Shelke, Advocate for respondent no. 1 and 4
Respondent no. 2 deleted as per court's order dated 06-04-2016
Mr. G.O. Wattamwar, Asstt. Govt. Pleader for respondent-State
Mr. Aniruddha A. Nimbalkar, Advocate for respondent no. 5

CORAM : SUNIL P. DESHMUKH, J.
DATE : 16TH APRIL, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. Petitioner is before this court, aggrieved by rejection of her nomination by election officer upon an objection raised by respondent no. 5 that the nomination submitted by petitioner suffers an infirmity as in the same she refers to contest election from a seat reserved for Other Backward Class (hereinafter for brevity, 'OBC') (women) category. Petitioner has been provisionally allowed to contest the election from ward no. 2 in elections to gram panchayat, Khodepuri Tq. and Dist. Jalna, under an interim order passed by this court on 06-04-2016.

3. It is an indisputable fact that the ward i.e. ward no. 2 from which petitioner sought to contest has been reserved for OBC (general) category. The petitioner contends that with her limited educational level she did not appreciate subtle distinction between OBC (general) and OBC (women) categories. According to learned counsel for petitioner since the seat had been reserved for other backward class and petitioner being under impression that she being lady, it would be pertinent for her while submitting nomination, to make reference to her

gender in the form and accordingly under such a belief she had submitted her nomination and had also tick marked in nomination form the box referring to OBC (woman) category.

4. It is contended that when it is not disputed that petitioner belongs to OBC and is a woman and that seat is reserved for other backward class, her application accordingly ought to have been considered for the seat for which the election to said ward no. 2 had been declared.

5. Having regard to aforesaid, according to learned counsel for petitioner, additional reference to gender in the application form would not render the application invalid since the ward/seat is not meant for and reserved at all for OBC (women). The fact that the petitioner had submitted nomination also cannot be disputed. In the circumstances, the view which was plausible ought to have been taken, rather than taking up narrow, parochial, technical approach.

6. The next submission on behalf of the petitioner is that the objector taking exception to her nomination does not qualify to be objector having regard to rule 11 of the Maharashtra Village Panchayats Election Rules, 1959 since the objector does not show that he is either contesting candidate or for that matter objection is on his authorization.

7. It is being submitted that having regard to the scenario, the so called mistake on petitioner's part in indicating category as woman having occurred under inadvertence and misimpression cannot be said to be of substantial nature considering that petitioner belongs to other backward class for which the seat was reserved and that she had applied for said seat from the very class for which the ward had been reserved. In the circumstances, rejection of her nomination is on technical ground, or for a defect if it is at all, which, in the facts of the case, cannot be said to be of substantial nature.

8. Learned counsel appearing for petitioner makes reference to and places reliance on a decision of Division Bench in the case of Anant Janardan vs. State of Maharashtra, reported in 2002 (2) Mh.L.J. 238, and particularly refers to head note (a) which reads thus;

" (a) *Bombay Village Panchayats Election Rules, 1959, RR. 8 and 11 (2-A)*- Election in ward reserved for Scheduled Tribes – No format prescribed under Rules of 1959 for submitting caste certificate along with nomination form – Returning Officer rejecting nomination form as it was not accompanied by Scheduled Tribe certificate in prescribed format – Defect not of substantial character so as to entail rejection of nomination paper – Order rejecting nomination paper set aside.

In Gram Panchayat Election, for the ward reserved for Scheduled Tribe, nomination form of the petitioner who claimed to

belong to Mahadeo Koli, notified Scheduled Tribe, was rejected on the ground that the Scheduled Tribe certificate annexed to the nomination form was not in the prescribed format as provided under G. R. dated 29-10-1960. In writ petition challenging the validity of the order of the Returning Officer,

Held, that neither the Bombay Village Panchayats Election Rules, 1959 nor the prescribed form provides for a format for submission of caste certificate. The caste certificate had been issued by the Executive Magistrate and there being no prescribed format for tendering such caste certificate along with nomination form, the Returning Officer could not have insisted on the caste certificate being tendered in the prescribed format. Government Resolution dated 29-10-1960 is to be adhered to by issuing authority. Merely because the issuing authority of caste certificate did not follow the Government Resolution dated 29-10-1960, that will not render the caste certificate issued by the said authority invalid. The defect in the caste certificate annexed by the petitioner along with the nomination form was not of substantial character. Ground for rejection of the nomination paper was untenable in the eye of law. "

9. Mr. Aniruddha Nimbalkar, learned counsel appearing on behalf of contesting respondent no. 5 – objector in the first place clarifies that it is not a case that respondent no. 5 is not running the contest for concerned ward from which the petitioner is contesting, for, he has firm instructions that respondent no. 5 is also a candidate from said ward. As such, according to him, technical objection to his *locus standi* is untenable.

10. Mr. Nimbalkar further submits, the ground which has been taken in the petition that mistake has occurred under oversight may turn out to be improper or incorrect, for, all over the application wherever category is to be mentioned, the same is with bracket-suffix showing her gender. Under the circumstances, he submits, ground of mistake being due to oversight is not available to the petitioner.

11. Learned counsel for respondent no. 5 submits that having regard to aforesaid, deficiency/defect or extra information supplied by the petitioner about her gender is a defect or deficiency of substantial nature, for, while the seat had not been reserved for other backward class (women) category, she applied from said category.

12. Mr. Nimbalkar refers to and relies on two decisions, one in the case of *Harjit Singh Mann vs S. Umrao Singh*, reported in 1979 DGLS (Soft) 503 = 1980 AIR (SC) 701, and another in the case of *Vinod Natha Bhagat vs. Returning Officer, Nimdari*, reported in 2005 (4) Bomb.C.R. 522.

13. In the first case, it has been considered that an application submitted beyond prescribed period pursuant to the rules could not have been considered and had been rejected by returning

officer. In the circumstances, it was considered by the supreme court that rejection by returning officer was proper and nomination cannot be said not to be suffering from substantial defect.

14. The second case of *Vinod Natha* relied on by Mr. Nimbalkar, referred to supra dealt with peculiar facts as the ward number, from which applicant was seeking to contest the election, was not mentioned in the nomination form. In the circumstances, the supreme court in paragraph 7 of the judgment considered thus;

" 7. Having noted the rival submissions, we cannot ignore that whenever the election process starts unless there is some objection going to the very root of it, the same is not to be halted. That is the mandate of Article 243-O of the Constitution and which is already enshrined in Section 15 of the Bombay Village Panchayats Act. Mr. Sugdare submitted that although the name of the ward is not mentioned, the number of ward wherefrom the candidate is going to vote in the election has been mentioned. Now, these are two different things. It is quite possible that a candidate may be voting from one ward but may be contesting from another ward. Merely because he has mentioned the number of the ward wherefrom he is going to vote in the election, it cannot be said that he has mentioned the ward wherefrom he is going to contest. Besides, apart from these three candidates i.e. the petitioners herein, the other candidates from that very ward knew what is the name of the ward and they have mentioned it in their forms. If this was the problem for the entire village, there was no reason as to why all other contestants in the two other wards

have mentioned the name of their ward wherein the elections are going to be held. We cannot say that the Election Officer has played any role in this on account of this failure on the part of the petitioners or that it is so done for the benefit of the somebody else. "

It was in the peculiar facts and situation of that case that the court had considered that rejection of nomination form by returning officer was proper.

15. In the present case, the factual position that the seat from the concerned ward i.e. ward No. 2 has been reserved for OBC (general) category is not in dispute. So is the case in respect of that the petitioner comes from OBC category. Nomination form contains various boxes, *inter alia*, referring to OBC (Women) category where candidates are supposed to tick mark from the category from which they seek to contest. In the present matter, literacy level of the petitioner does not appear to be higher. The petitioner being lady is also not disputed. While indicating her class in the application form, her intention appears to refer to her category as OBC and additionally she thought it pertinent to refer to her gender, she being a lady. Having regard to that ward has been reserved for OBC (general) category and petitioner belongs to OBC category being not in dispute, gives sufficient indication that the petitioner has plainly referred to her gender and reference to the same does not appear to be

intentional or deliberate. No advantage can be said to have been gained by petitioner by making reference to her gender in the application form. It is not in dispute that the petitioner has applied for contest from ward no. 2 which has been reserved for OBC (general) category. The intention as such will have to be considered. Reference to the gender in the application form and a tick marking would not be a discrepancy/deficiency of such a substantial nature so as to incur disqualification, for, the application pointedly makes it clear that it was meant for ward no. 2, which had not been, in fact, reserved for OBC (women) category but for OBC (general).

16. Having regard to aforesaid, it appears that the seat in the present case was reserved for OBC (general) category and the petitioner was seeking to contest the election she being from the other backward class. However, having regard to her educational level and understanding, she did not realize difference between reference to 'other backward class (general)' and 'other backward class (women)' while referring to her gender in the application form. However, petitioner had submitted nomination from other backward class category and her intention all along appears to have been so depicted in the same.

17. In the circumstances, the defect in nomination does not

appear to be of such a substantial nature as sought to be claimed by respondent no. 5 that petitioner deserves to be kept away from the contest that is taking place and having regard to the interim order passed by this court, it is being stated that the petitioner has already been allotted symbol and polling is scheduled tomorrow.

18. As such, writ petition is allowed in terms of prayer clause (B), keeping it open for respondent no. 5 if he desires to question the election, if any, of petitioner on the ground of nomination form by resorting to remedies as may be available and/or advised.

19. Rule made absolute accordingly. Writ petition stands disposed of.

SUNIL P. DESHMUKH,
JUDGE

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