

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

6 WRIT PETITION NO. 11139 OF 2016

LATA SUNILRAO KHANDAGALE
VERSUS
THE MAHARASHTRA STATE ELECTION COMMISSION
THROUGH ITS COMMISSIONER MUMBAI AND OTHERS

Shri. S.J. Salunke, Advocate, for petitioner.

Shri. S.T. Shelke, Advocate, for respondents – State
Election Commission.

Shri. R.B. Bagul, Assistant Government Pleader, for
State of Maharashtra.

Shri. Suhas R. Shirsat, Advocate, for respondent No.5.

CORAM: T.V. NALAWADE, J.

DATE : 15 NOVEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the Returning Officer and the decision given by the District Court Majalgaon in Election Appeal No.2/2016. The nomination form of the present petitioner is rejected. The petitioner wants to contest the election to the Majalgaon Municipal Council. Both the sides are heard.

2) The nomination form is rejected on the ground that the same proposer viz. Ashok Kisan Gadekar had already proposed other candidate from ward No.7 like Smt. Asha Sanjay Dharpade. In rule 12(3) of the Maharashtra Municipal Councils and Nagar Parishads Election Rules, 1966 it is provided that the proposer cannot propose more than one candidate and if he has proposed more candidates, his earlier nomination will be only valid and the subsequent nominations will not be valid. Rule 12(3) runs as under :-

"12. Nomination of candidates.--

(1)

(2)

(3) Any person who is qualified to vote under sub-section (1) of Section 12 and whose name is entered in the list of voters for the ward for which the candidate is nominated, may subscribe as proposer. He shall not subscribe as proposer more than one such nomination paper. If he does so, all the nomination papers so subscribed, except the one received first shall notwithstanding anything contained in sub-rule (2) of Rule 13, be invalid. The same candidate may, however, be nominated by more than one such nomination paper for election in the same ward, if the nomination papers are subscribed by different proposers:

Provided that, not more than four such nomination papers shall be presented by or on behalf of any candidate, or accepted by the Returning Officer, for such election."

3) Learned counsel for the petitioner submitted that in Ward No.7 there were 2 seats like 7-A and 7-B and the post from 7-A was reserved for Scheduled Tribe Woman candidate and the post from 7-B was open for general candidates. Learned counsel for the petitioner submitted that in view of this circumstance it was open to the proposer to propose both the candidates and this position is not considered by the Returning Officer and the District Court. The aforesaid provision shows that if the proposer is voter in one ward he can propose only one candidate. In the present matter from the same ward there were two seats. In view of the aforesaid rule only one candidate could have been proposed by the proposer.

4) Learned counsel for the petitioner placed reliance on a case reported as **2012(6) Mh.L.J. 327 Division Bench (Pathan Iliyas Khan v. State of Maharashtra)**. The facts of the reported case were totally different. There, the ward had many seats and a candidate from one category died and it was held that the death cannot affect the other election in Multi-seat ward. The observations made were in different contest and they

were not with regard to rule 12(3). Learned counsel for the petitioner submits that mischief was played and some other person had signed as proposer on the nomination form of Smt. Asha Sanjay Dharpade and Smt. Dharpade has subsequently withdrawn her candidature. He submitted that such contention was made before the District Court also. Though there is such contention, such contention involves question of fact which cannot be decided at this stage. There is no possibility of interference. The petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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