

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 11140 OF 2016

Shakuntalabai W/o Gopalrao
Kulkarni

...Petitioner

VERSUS

Returning Officer
Election Municipal Council, Gangakhed,
District Parbhani
and others

...Respondents

...
Mr. S.S. Gangakhedkar, Advocate for petitioner.
Mr. S.T. Shelke, Advocate for respondent Returning Officer.
Mr. S.K. Tambe, A.G.P. for respondent/State.

...
CORAM : T.V. NALAWADE, J.
DATED : 16th November, 2016.

ORDER :

1 The petition is filed to challenge the order made by Returning Officer by which the nomination form of present petitioner is rejected and it is also filed to challenge the decision given by the District Court, Gangakhed in Municipal Appeal No. 01 of 2016. The petitioner wanted to contest the election to Municipal Council Gangakhed. Both the sides are heard.

2 The nomination form is rejected by the Returning officer on the ground that the affidavit which is required to be filed along with the nomination papers was not sworn in before the competent officer and as there was no affidavit as such along with nomination form, the nomination form was invalid. The Rules and letter of State Election Commission were referred by the Returning Officer. The procedure laid down with regard to filling of nomination form shows that the nomination form which is not accompanied with the affidavit or declaration as required to be made as per the forms annexed with the nomination form is liable to be rejected. In the present matter, it appears that Annexure No. II, a form of affidavit was filled by the candidate and it was also signed, but the candidate had not taken oath before competent officer as required to make it affidavit and so, this Annexure II cannot be treated as affidavit. The affidavit contains almost all particulars which includes the eligibility conditions and declaration about the amounts due to the Local Body or to the Government.

3 The learned counsel for petitioner placed reliance on the observations made by the Apex Court in the cases reported as **AIR 2014 SSC 344 (Resurgence India V/S Election Commission of India And Anr.)** and **(2012) 11 SSC 390 (Shambhu Prasad Sharma V/S Charandas Mahant And**

Others). The facts of these reported cases were different. No defect was found in nomination form, but the defect was found in annexure like affidavit. In one case, there were same blanks. It was observed that such blanks can be ignored if there is other material which can explain and give particulars about such blanks. Thus, in those cases there was the affidavit, but there was some defect in respect of the either the format or the contents of the affidavit. The facts of the present matter are altogether different. No affidavit at all was filed by the candidate. In view of these circumstances, this Court holds that the observations made by the Apex Court are of no help to the petitioner. In the result, petition stands dismissed.

[T.V. NALAWADE, J.]

pnc/