

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

WRIT PETITION NO. 11137 OF 2016

Syed Ajmera Noor

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. S.S. Kazi, Advocate for petitioner.

Mr. B.A. Shinde, A.G.P. for Respondent – State.

Mr. S.T. Shelke, Advocate for Respondent Nos.2 and 3.

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CORAM : T.V. NALAWADE, J.

DATED : 16th NOVEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made by the Returning Officer and also the decision given by District Judge, Bhoom in Election Appeal No.1 of 2016. Both sides are heard.

2. The petitioner had filed nomination form for election to the Municipal Council, Paranda from Ward No. 1A which was reserved for woman candidate. The nomination form was submitted by present petitioner as candidate of political party - Indian National Congress Party. For the same ward, Maimunabi Salim Khan has filed the nomination form as candidate of the same political party. In Form-B filed by this political party, the name of Maimunabi Salim Khan was informed as party candidate and

name of present petitioner was mentioned as substitute candidate. The nomination form of Maimunabi Salim Khan came to be accepted. The nomination form of present petitioner came to be rejected by giving reasoning that as nomination form of Maimunabi Salim Khan was accepted, there was no possibility of accepting the nomination form of present petitioner.

3. It was submitted for the petitioner that as Maimunabi Salim Khan wanted to withdraw the candidature in view of rules framed with regard to the nomination forms, the nomination form of petitioner could not have been rejected. Such submission was made before the District Court also. Order issued by Election Commission on 25th February, 2013 amending the Rules shows that from the year 2009, it became necessary to the political party to file Annexure – I and II informing the party candidates before the expiry of time fixed for filing nomination. In the past, while filing of the form, the supplying of such annexure was permissible before the time fixed for withdrawal of the nomination form. Learned Counsel for the Returning Officer places reliance on some observations made by the Apex Court in the case reported as *AIR 2000 SC 317 (Krishna Mohini Vs. Mohinder Nath Sofat)*. These observations are with regard to the interpretation of Section 33 of Representation of People Act, 1951. In the present matter, the rules framed for the local body election need to be considered. Thus there is this

circumstance in support of petitioner, but there is one circumstance that before the date fixed for withdrawal, the party candidate Maimunabi Salim Khan did not withdraw her nomination form. It appears that she had only informed to the Court her intention but such information is not sufficient. Now the said candidate is contesting the election. In view of this circumstance, nothing can be done in favour of the petitioner in the present proceeding.

4. Learned Counsel for petitioner places reliance on some reported cases like *AIR 1999 SC 935 (Rakesh Kumar Vs. Sunil Kumar)* and *AIR 2007 SC 2924 (Pothula Rama Rao Vs. Pendyala Venkata Krishna Rao and Others)*. The facts of these two reported cases were different. In the first case, the Apex Court has observed that rejection of nomination without giving opportunity of hearing the petitioner is not proper. In other matter there was challenge to the acceptance and the facts were different. In view of peculiar facts of the present case, nothing can be done in the present matter. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

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