

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

914 WRIT PETITION NO. 11183 OF 2016

SHAIKH NIZAM JAINUDDIN
VERSUS
THE RETURNING OFFICER BEED AND OTHERS

...
Advocate for Petitioner : Tungar Hrishikesh V
AGP for Respondent/State : S.K. Tambe
Advocate for Respondent/Returning Officer : S.T. Shelke
...

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

ORDER :

1. The petition is filed to challenge the order of acceptance of nomination form of respondent No. 11 and also the order made by District Court, Beed in Election Appeal No. 2/2016. Heard the learned counsel for petitioner and learned counsel Shri. Shelke for Returning Officer.

2. The submissions made show that 29.10.2016 was the last date for filing nomination form and the nomination papers are to be accepted prior to 4.00 p.m. As there were many candidates and their proposers, candidates and proposers were taken inside the hall prior to 4.00 p.m. and then one by one the nomination forms were collected from them. Such endorsements were made on nomination forms and A, B forms supplied by the

political parties. It is the contention of the petitioner that respondent No. 11, who is contesting the election as N.C.P. Candidate, had not submitted A, B forms before 4.00 p.m. and as endorsement shows that A, B forms were accepted at 5.06 p.m., nomination form ought to have been rejected. The reasoning given shows that the Returning Officer had taken a decision to see that the persons, who had come to tender nomination forms and A, B forms prior to the time fixed i.e. 4.00 p.m. were taken in the hall and one by one their forms were accepted. In view of these circumstances, at this stage, it is not possible to give decision by making the inquiry which can be made in election petition whether in strict sense the form was tendered before the time fixed. Such inquiry and decision is possible in election petition. At this stage, when the Returning Officer has accepted the nomination form by making endorsement of aforesaid nature, this Court holds that it is not possible to interfere in the order made by the Returning Officer.

3. The learned counsel for petitioner placed reliance on the case reported as **AIR 1980 SUPREME COURT 701 [Harjit Singh Mann Vs. Umrao Singh and Ors.]**. The facts of the reported case are different. It is true that filing of the nomination papers before the prescribed time is mandatory and if it is not

done then it is defect of substantial character. However, in view of the aforesaid circumstances, in the present proceeding, it is not possible to decide that point and at present the order of Returning Officer needs to be upheld. In the result, the petition stands dismissed with liberty to file election petition. All the points are kept open.

[T.V. NALAWADE, J.]

ssc/