

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

WRIT PETITION NO. 11228 OF 2016

Hitendra Ramesh Deshmukh and Others ..PETITIONERS

VERSUS

The Returning Officer and Others ..RESPONDENTS

....

Mr. A.B. Kale, Advocate for petitioners.

Mr. R.B. Bagul, A.G.P. for State.

Mr. S.T. Shelke, Advocate for Respondent No.1.

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CORAM : T.V. NALAWADE, J.

DATED : 17th NOVEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made by the Returning Officer for the election of Municipal Council, Chopda, District Jalgaon. Both sides are heard.

2. The petitioner had prayed for giving common symbol to the candidates of their registered political party and they had requested for giving 'Road Roller' as symbol to all candidates of the registered political party. They have registered their political party under the name as 'Shahar Vikas Aghadi, Chopda' and it was registered in the year 2007.

The Returning Officer has rejected the application by holding that Annexures I and II which were required to be supplied before 04.00 p.m. of 29th October, 2016 i.e. the time given for filing the nomination form were not supplied and so common symbol cannot be given to the petitioners.

3. Learned Counsel of both sides took this Court through various provisions of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Election Rules, 1966 and Maharashtra Election Symbols (Reservation and Allotment) Order, 2009. Learned Counsel for Returning Officer placed reliance on the Rules as amended in the year 2009.

4. The Rules as amended by Order of 2009 by the State Election Commission, Maharashtra show that separate provisions are made for allotment of symbols to recognised political party, to registered political party and to independent candidates. Rule 8 runs as under:-

“8. Choice of symbols by candidates of registered political parties or other candidates and allotment thereof:-

(1) Any candidate at an election to local bodies in the State other than a candidate set up by recognised political party shall choose and shall be allotted in accordance with

the provisions hereinafter set out in this paragraph one of the symbols specified as free symbols by the Commission.

(2) Where any free symbol has been chosen by only one candidate at such election, the returning officer/election officer shall allot that symbol to that candidate and to no one else.

(3) Where the same free symbol has been chosen by several candidates at such election, then, if of those several candidates only one is a candidate set up by registered political party, and all the rest are independent candidates, the returning officer shall allot that free symbol to the candidate set up by the registered political party and to no one else, and if of those several candidates two or more are set up by different registered political parties and the rest are independent candidates, the returning officer shall decide by lot to which of the two or more candidates set up by the different registered political parties that free symbol shall be allotted and allot that symbol to the candidate on whom the lot falls and to no one else.”

5. Rule 9 of the same order gives the procedure for getting allotment of symbol as provided under Rule 8(3) and it runs as under:-

“9. When a candidate shall be deemed to be set up by a registered political party.-

For the purpose of this order, a candidate shall be deemed to be set up by a political party, if and only if,-

(1) *the candidate has made a declaration to that effect in his nomination paper;*

(2)(a) *a notice in writing to that effect has been delivered to the Returning Officer of the constituency and the concerned Collector or Municipal Commissioner, as the case may be-*

(i) *the political party setting up candidate at any election to Zilla Parishad shall communicate the names of the authorised persons in Form II-A prescribed under rule 15A of the Maharashtra Zilla Parishads (Electoral Divisions and Conduct of Election) Rules, 1962. Such authorised persons shall give notice of intimation of names of candidates in Form II-B of the said rules;*

(ii) *the political party setting up candidate at any election to Panchayat Samiti shall communicate the names of the authorised persons in Form II-A prescribed under rule 15A of the Maharashtra Panchayat Samities (Electoral Colleges and Conduct of Election) Rules, 1962. Such authorised persons shall give notice of intimation of names of candidates in Form II-B of the said rules;*

(iii) *such notice and communication shall be sent to the Municipal Commissioner or, as the case may be, the Collector for the purpose of elections to the Municipal Corporations, Municipal Councils and Nagar Panchayats in the form prescribed in Annexure – I and Annexure – II*

respectively.

(b) The said notice shall be signed in ink pen or ball point pen by the President, Secretary or any other officer who is authorised by the party to send such notice. A notice signed on behalf of the President, Secretary or the authorised person, or bearing a counter signature, or rubber stamp signature or signed in any other manner, or a notice sent by fax, shall not be permissible. A notice, which is not so permissible, shall not be accepted by the Collector or the Returning Officer.”

6. The aforesaid rule shows that candidate shall be deemed to be set up by the political party (registered political party) if and only if intimation as provided above to that effect has been delivered to the Returning Officer of the constituency and the concerned Collector or Municipal Commissioner as the case may be as required in Rule 9(2)(a) (iii).

7. Annexure I is applicable to national parties, state parties and registered unrecognised political parties and Annexure II is applicable to other political parties. Learned Counsel for petitioner submitted that the term political party is not defined in Order of 2009 and so supply of Annexure II before the time fixed for filing nomination form cannot be

asked from present registered political party. He submitted that definitions of recognised political party and registered political party are only given in Order of 2009, but Annexure II is in respect of political party and so annexures cannot be used against the petitioner. This submission is not at all acceptable. If Annexure I and II are read together, the only inference possible is that to other political party, which is not included in Annexure I, Annexure II is applicable.

8. Admittedly, the petitioners had not given the list of candidates as required in Annexure II to the authorities mentioned in Annexure II. In view of this circumstance, this Court holds that it is not possible to interfere in the order made by the Returning Officer.

9. Learned Counsel for petitioner submitted that the Rules which were in existence at the time of registration of political party of the petitioners, need to be used and parent rules like Rules of 1966 and Rules of 2004 can be used. He submitted that in the Rules of 2004 definitions of all three like political party, registered political party and recognised political party were given but there is no such clarification in Order of 2009. This submission is not at all acceptable. A political party comes into existence even before registration but for getting rights like getting

common symbol, the party needs to be registered and so the definition of registered political party is given in Order of 2009.

10. Thus it is not possible to interfere in the order made by the Returning Officer. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

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