

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

WRIT PETITION NO. 11231 OF 2016

Asefkhan Bostan Khan Pathan

..PETITIONER

VERSUS

Shaikh Kasam Shaikh Ayub and Others

..RESPONDENTS

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Mr. Arvind Deshmukh, Advocate for petitioner.

Mr. S.S. Shinde and Mr. S.S. Joshi, Advocates for Respondent No.1.

Mr. S.T. Shelke, Advocate for Respondent No.2.

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CORAM : T.V. NALAWADE, J.

DATED : 17th NOVEMBER, 2016

ORDER :

1. The petition is filed to challenge the decision given in Election Appeal No. 4 of 2016 by District Judge, Parbhani. Both sides are heard.

2. The petitioner had filed nomination paper to the election of Municipal Council, Selu. Objection was taken to his nomination by persons who had filed appeal before the District Judge that applicant – present petitioner was having more than two issues and some issues were borne after the relevant date i.e. 12th September, 2001. Some record of school in respect of issues of present petitioner was produced. The

Returning Officer did not believe that record and he rejected the objection. The District Judge has allowed the appeal by holding that there is sufficient material for summary enquiry, for rejection of nomination.

3. Learned Counsel for petitioner submitted that notice of appeal was not served on petitioner and there was no opportunity to him to show to the Court that the said record cannot be accepted to hold that third issue was borne after the relevant date. This Court has gone through the procedure laid down for hearing of appeal in Rule 15 of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Rules, 1966. Today, learned Counsel for Returning Officer produced the record of service of notice as provided under this Rule and it shows that after receipt of show cause notice through Superintendent of District Court, Parbhani, the Returning Officer had taken steps as provided under Rule 3 (3-A) and he had complied the order made and the notice was pasted on the outer door of his office to publish it. Learned Counsel for petitioner submitted that not a single person whose nomination was accepted had received this notice and so respondent had not appeared in the appeal. He submitted that there is possibility that there was no such publication of the notice by Returning Officer.

4. This Court holds that in summary enquiry such submission can not be considered and accepted. The report given by the Returning Officer about the procedure followed by him like publication of notice needs to be accepted as it is. Learned Counsel for petitioner on merits submitted that the child shown to be born after the relevant date was not borne to the second wife of the petitioner. In view of school record which is produced, this submission cannot be accepted. Subjective satisfaction of the Returning Officer is necessary and same is applicable to the appeal filed against the order made by the Returning Officer. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

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