

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

911 WRIT PETITION NO. 11322 OF 2016

YUVRAJ KONDIBA NALE
VERSUS
RETURNING OFFICER GENERAL ELECTION FOR
MUNICIPAL COUNCIL OSMANABAD AND OTHERS

Shri. V.D. Salunke, Advocate, for petitioner.

Shri. S.T. Shelke, Advocate, for respondent Nos.1 & 2.

CORAM: T.V. NALAWADE, J.

DATE : 18 NOVEMBER 2016

ORDER:

1) The petition is filed to challenge the decision given by the District Court Osmanabad in Election Appeal No.4/2016. The appeal was filed to challenge the order made by the Returning Officer of rejection of the nomination form of respondent No.3, Vishal Sakhare. Heard both the sides.

2) Vishal Sakhare had challenged the order in the appeal and he had contended that on the last date, nomination forms of all the candidates were accepted at

one and the same time but the receipts were given subsequently as there were many candidates and practically it was not possible for the staff of the Returning Officer to accept nomination forms one by one. It was contended that only due to serial number which was given by the staff on the receipt it cannot be inferred that nomination form filed by the candidate of the political party, Shiv Sena was filed late and so the order made by the Returning Officer needs to be set aside. The District Court has held that there is such possibility. The District Court has also referred to provisions of some rules and has allowed the appeal.

3) Learned counsel for the petitioner submitted that on the form at least the time of receipt of nomination form was mentioned and the time 14.45 hours was given to the form which was filed as candidate of political party, Shiv Sena and so it was easy to infer that this was the last form submitted by the candidate. Learned counsel for the petitioner submitted that as only four forms could have been tendered and could have been accepted in view of Rules, the Returning Officer had not committed any error

in rejecting the form filed as candidate of political party, Shiv Sena.

4) Learned counsel for the candidate took this Court through provisions of Rules 12 and 13 of the Maharashtra Municipal Councils and Nagar Panchayats Election Rules, 1966. Learned counsel submitted that as per the provision of Rule 12(5) of the said Rules, serial number needs to be given to each nomination form and unless and until such serial number is given it cannot be ascertained as to which form was tendered first in time and which form was tendered last in time. This Court has seen the numbers mentioned in the receipts given to the candidates and they are as follows.

- (1) Sr. No.98 date 28-10-2016 at 14.32 hours.
- (2) Sr. No.4/13 date 29-10-2016 at 11.32 hours.
- (3) Sr. No.3/70 date 29-10-2016 at 12.16 hours.
- (4) Sr. No.6/31 date 29-10-2016 at 14.44 hours.
- (5) Sr. No.5/107 date 29-10-2016 at 14.45 hours.
- (6) Sr. No.5/108 date 29-10-2016 at 14.44 hours.

5) Thus, there are discrepancies and the proper serial numbers were not given to the nomination forms.

This Court asked the learned counsel representing the Returning Officer about these discrepancies. Learned counsel submitted that there was rush of candidates and as it was not practically possible to accept the nomination forms one by one, all the nominations were accepted on that date at one time and then acknowledgments were issued. Such statement was also made by the learned counsel of the candidate. In view of this possibility and the nature of inquiry which is expected to be conducted, this Court holds that it is not possible to interfere in the order made by the learned District Judge.

6) One more circumstance was argued by the learned counsel for the candidate. He took this Court through the provisions of Rule 13(2) to (4) of the Rules. Learned counsel submitted that this rule does not allow rejection of nomination form on the grounds raised. He submitted that when it was possible for the candidate to tender only four forms it was duty of the Returning Officer to accept only four nomination forms. There is force in this submission and view of the provisions of rules 13(2), (3) and (4) of the aforesaid rules, this Court holds that

interference is not possible at this stage. In the result, the petition stands dismissed. It is open to raise all these points in election petition and the aforesaid points will be available in the election petition.

Sd/-
(T.V. NALAWADE, J.)

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