

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 33 OF 2016

Mr. Santosh Madhukar Gurav

..Petitioner

Vs

Election Officer,
Khalapur Municipal Council and
Ors

.. Respondents

Mr.Mandar Limaye, Advocate for Petitioner.

Mr. M.R.Bohra i/b S.B.Shetye, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 04/01/2016

PC:

1. As regular Court presided over by Honourable Mr. Justice M.S.Sonak is not available, as per Administrative order passed by Honourable Acting Chief Justice, this matter is placed before me.

2. Not on Board. At the request of Mr. Limaye, taken up in production board. Heard Mr. Mandar Limaye, learned counsel for the petitioner and Mr. M.R.Bohra, learned counsel for respondent no.1 at length.

3. By this petition under Article 227 of the Constitution of India, the petitioner has challenged order dated 18.12.2015 passed by respondent no.1 rejecting nomination of the petitioner on the ground that the declaration does not bear the signature of

the petitioner as also judgment and order dated 29.12.2015 passed by the learned District Judge-4, Alibag in Election Appeal No.1 of 2015. By that order, the learned District Judge dismissed the Appeal preferred by the petitioner challenging the order of Returning Officer dated 18.12.2015.

4. Mr. Limaye submitted that in exercise of the powers conferred by sub-section (1-A), clauses (b), (c) and (d) of sub-section (2) of Section 9, Section 10 and clauses (a) to (q) of sub-section (2) of section 17 read with sub-section (2) of section 321 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, 'Act') in that behalf, the Government of Maharashtra made the Maharashtra Municipalities Election Rules, 1966 (for short, 'Rules'). Rule 12 deals with nomination of candidates. Sub rule (1) lays down that any person may be nominated as a candidate for election to fill a seat, if he is qualified to be chosen to fill that seat under the provisions of the Act. Sub-rule (2) thereof provides every nomination paper shall be in Form II which shall be supplied by the Returning Officer to any voter on demand. The nomination paper duly completed and signed by the candidate and by a voter of the ward as proposer shall be delivered to the Returning officer by each candidate, either in person or by his proposer, on or before the date appointed under sub-rule (1) of Rule 4 during

the time and at the place specified thereunder. Rule 13 thereof deals with scrutiny of nomination papers. Rule 13 (2) provides that the Returning Officer shall examine the nomination papers and decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination paper on any of the grounds, that is to say:

(a) & (b) x x x x

(c) that there has been a failure to comply with any of the provisions of the Act or prescribed by these Rules.

Sub rule (4) provides that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Sub-rule (5) provides that the Returning officer shall hold the scrutiny on the date appointed in this behalf under clause (d) of sub-rule (1) of Rule 4 and shall not allow any adjournment of the proceedings, except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control. Proviso thereto lays down that in case any objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it not later than the next day, and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

5. Mr. Limaye submitted that respondent no.1-Returning Officer rejected nomination of the petitioner only on the ground that the declaration does not bear petitioner's signature. In the first place, the prescribed form-II under Rule 12(2) does not contemplate declaration which is appended to the nomination paper. He submitted that the declaration is to be given only by the candidates belonging to reserved category as also declaration to the effect that a particular candidate is sponsored at the election by a particular political party and that the symbols he has chosen, are in order of preference. However, the declaration appended to the nomination provides that candidate has to declare:

- (1) that he has completed number of ... years;
- (2) that he is not disqualified for being elected as member of Panchayat;
- (3) that he is not having any contract with Nagar Panchayat; and
- (4) that no dues of Council are payable. In short, his submission is that the declaration appended to the nomination is not consistent with the statutory form-II prescribed under Rule 12(2).

6. Mr. Limaye further submitted that as per proviso to Rule 13(5), the Returning Officer ought to have allowed the petitioner

to rectify the mistake thereby permitting to him to sign the declaration. As per proviso to sub-rule (5) of Rule 13, the candidate has to be allowed time to rebut the objection not later than the next day. In the present case, no such opportunity was given to the petitioner. He further submitted that even otherwise not signing the declaration, at the highest, will amount to defect of a technical nature. In other words, the said defect is not of a substantial nature warranting rejection of nomination paper. In support of this proposition, he relied upon the decisions of Mohd Talib Vs Dr A.S.Kuchewar, 2007 (4) Mh.L.J 557. He also relied upon the decision in the case of Jagannath Ramchandra Nunekar Vs. Genu Govind Kadam, AIR 1989 SC 475 and in particular paragraph 11, to contend that Rule 13(5) proviso empowers the Returning Officer to allow time to the candidate to rebut objection and lastly Rattan Anmil Singh Vs. Ch.Atma Ram, AIR 1954 SC 510 and in particular paragraph 15 thereof, to contend that if the defect is technical and unsubstantial, the Returning Officer is not justified in rejecting the nomination.

7. On the other hand, Mr. Bohra submitted that the symbols are already allotted to the candidates and ballot papers are also prepared. He further submitted that 28.12.2015 was the date of withdrawal of nominations and on 1.1.2016 list of validly nominated candidates in respect of Ward No.3 from where the

petitioner contested, was declared. In short, he submitted that election process is already set in motion and the voting will take place on 10.1.2016. He, therefore, submitted that no case is made out for invocation of jurisdiction under Article 227 which will have effect of interfering with the election process.

8. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the petitioner has not signed the declaration appended to nomination form. The moot question is whether the said defect is of substantial nature or defect of technical and unsubstantial nature. Perusal of the provisions of the Act and in particular Section 16(1)(h) and clause (i) shows that under section 16(1)(h) a person is disqualified for becoming a Councillor if he is in arrears, (otherwise than as a trustee) of any sum due by him to the Council after the presentation of bill therefor to him under section 150. Clause 16(1)(i) lays down that a person is disqualified for becoming Councillor if he has directly or indirectly, by himself or his partner, any share or interest in any work done by order of a Council or in any contract with or under or by or on behalf of a Council.

9. Perusal of the declaration appended to nomination shows that candidate is expected to declare that:

- (a) he has completed ..years;
- (b) that he is not disqualified for being elected as member of Panchayat;
- (c) that he is not a contractor of Council; and
- (d) that dues of Municipal Council are not payable.

10. Mr.Limaye submitted that along with the nomination, the petitioner has filed documents which clearly show that he is not in arrears of any dues of Council as contemplated by section 16(1)(h). In other words, he submitted that defect at the highest could be treated as technical and unsubstantial. It is not possible to accept this submission. As noted earlier, section 16(1)(h) and (i) specifically provide for disqualification on these two grounds. In view thereof, I do not find that the learned District Judge and Returning Officer committed any error in rejecting the nomination paper.

11. Mr.Limaye relied upon the decision in the case of Mohd.Talib (supra). In that case the electoral roll showed name of candidate as "Dr.Mohammad Talib Mohd. Sadique" while in nomination form he mentioned his name as "Mohd.Talib Mohd Sadique". The Division Bench of this Court observed that "Mohd" being an abbreviation of the name "Mohammad" and that there was no dispute about identity of person, defect was not of a substantial nature so as to warrant rejection of nomination paper.

In view of the facts therein, this Court held that defect was not of a substantial nature. The said decision is not applicable to the facts of the present case, as I have held that defect is substantial nature. As far as decision in the case of Jagannath Ramchandra Nuneekar (supra), in paragraph 11 the Apex Court held that the Returning Officer has to give a chance to the candidate to rebut his objections. Mr Bohra submitted that nomination papers were to be filed between 10.12.2015 and 17.12.2015 and the petitioner filed his nomination on 17.12.2015 at 1.52 pm being the last date for filing nomination. In view thereof it cannot be said that Returning Officer committed error in rejecting the application. I find merit in the submission of Mr Bohra as the petitioner himself filed nomination at 1.52 pm on 17.12.2015 which was indisputably the last date for filing nomination. Reliance placed by the petitioner on the decision of Rattan Anmol singh (supra) and in particular paragraph 15 is concerned, it does not advance the case of the petitioner as in that case the Apex Court observed in paragraph 15 that if defect is technical and unsubstantial, Returning Officer would not be justified in rejecting the nomination.

12. That apart, symbols are already allotted and ballot papers are also prepared. List of polling booths are also published. Last date for declaring nominated candidates for Ward No.3 was

1.1.2016. Thus, the election process is already set in motion and hence no case is made out for invocation of powers under Article 227 of the constitution of India. Petition fails and the same is dismissed.

13. It is made clear that the observations made herein are tentative and prima facie and are only for the purpose of considering the correctness of the impugned order. In case the petitioner files Election Dispute, the same shall be decided on the basis of evidence on record and in accordance with law uninfluenced by the observations made herein.

(R.G.KETKAR, J.)