

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

WRIT PETITION NO. 12777 OF 2016

Urmila Haridas Bagal

..Petitioner.

Vs

Returning cum Election
Officer .. and Ors.

.. Respondents

Mr. S.M.Gorwadkar, Senior Advocate, a/w Mr Niranjan A Mogre,
Advocate for petitioner.

Mr. Milind Deshmukh, Advocate for Respondent no.1.

Mr Dilip Bodke, Advocate for Respondent no.2.

Mr. S.B.Shetye, Advocate for Respondent no.3.

Mr. Sachin Kankal, A.G.P for Respondent no.9.

CORAM : R.G.KETKAR,J.

DATE : 16/11/2016

PC:

1. Heard Mr. S.M.Gorwadkar, learned senior counsel for the petitioner, Mr. Milind Deshmukh, learned counsel for respondent no.1, Mr. Dilip Bodke, learned counsel for respondent no.2, Mr S.B.Shetye, learned counsel for respondent no.3 and Mr. Sachin Kankal, learned A.G.P for respondent no.9 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 2.11.2016 passed by the Returning Officer as also the Judgment and order dated 09.11.2016 passed by the learned District Judge-3, Solapur in Election Appeal No. 8 of 2016. By order dated 2.11.2016, the Returning Officer overruled the objections raised by the petitioner and rejected her nomination form filed as a sponsored

candidate of Shiv Sena. The Returning Officer declared nomination form submitted by respondent no.3 as a valid nomination form. Aggrieved by this decision, the petitioner instituted Appeal before the District Court. By order dated 9.11.2016, the learned District Judge dismissed the Appeal. It is against these orders, the petitioner has instituted the present petition.

3. In support of this petition, Mr. Gorwadkar strenuously contended that the Returning officer was not justified in rejecting the nomination form of the petitioner as a candidate sponsored by Shiv Sena and declaring respondent no.2 as a validly nominated candidate of Shiv Sena party. He submitted that the Returning Officer ignored e-mails sent by Secretary of Shiv Sena party who is duly authorised by that party. He has invited my attention to nomination form submitted by the petitioner which bears seal and signature of the Secretary of Shiv Sena party (page 42) as also Annexure -I which shows that Shri Anil Desai as a Secretary of Shiv Sena party was authorised. He invited my attention to rule 13 (2) of Maharashtra Municipal Councils, Nagar Panchayats Election Rules, 1966 (for short, 'Rules'). In particular, clauses (a) to (e) of sub-rule(2) of Rule 13 empower the Returning Officer to reject any nomination paper. He submitted that reason given by the returning Officer while rejecting nomination form of the petitioner as candidate sponsored by Shiv Sena does not fall

in any of the Clauses (a) to (e).

4. On the other hand, Mr. Bodke supported the impugned orders. He submitted that while overruling the objections raised by the petitioner as also rejecting her nomination form as a candidate sponsored by Shiv Sena and declaring respondent no. 2 as a validly nominated candidate by Shiv Sena, the Returning Officer observed that the signature appearing on Annexures -I and II and the signature of Secretary of Shiv Sena Party on letter dated 29.10.2016 for cancelling candidature of respondent no.2 differs. He also invited my attention to paragraph 10 of the order passed by the learned District Judge. He further submitted that list of validly nominated candidates is already published and symbols are also allotted. The petitioner is allotted symbol of Jar and second respondent is allotted symbol of Bow and Arrow of Shiv Sena party. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

5. Mr.Shetye invited my attention to the order dated 25.2.2013 issued by State Election Commission and in particular clause (b) thereof. Clause (b) provides that in the elections of Municipal Councils/Nagar Panchayats/Municipal Corporation, candidates sponsored by the political parties have to submit prescribed Annexure form before 3 pm on last day of filing of nomination papers. He further submitted that as the election

process is already set in motion, no case is made out for interfering under Article 227 of the Constitution of India.

6. I have considered the submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the order passed by the returning Officer shows that the Returning officer observed that the petitioner should have submitted original letter of the Secretary along with his signature before the last date of submission of nomination papers and during the stipulated period. Apart from that, the letter duly signed by the authorised person was not submitted to his office. The Returning Officer also observed that the signatures of the party secretary on annexures I and II and of respondent no.2 and signature appearing on annexures I and II of the petitioner herein as also signature appearing on the letter cancelling candidature of second respondent are differing. The Returning Officer did not take into consideration e-mails submitted by the petitioner to the effect that she is a sponsored candidate of Shiv Sena party.

7. As far as the impugned order passed by the learned District Judge is concerned, in paragraph 10 the learned District Judge has confirmed the findings recorded by the Returning officer. For the reasons recorded by the Returning Officer and the reasons recorded in paragraph 10 of the order of the learned District Judge, I do not find that any case is made out for invocation of

powers under Article 227 of the Constitution of India. As noted earlier, list of validly nominated candidates is already declared. The petitioner is contesting the election on symbol of Jar and second respondent is contesting the election on symbol of Bow and Arrow. Hence, Petition fails and same is dismissed reserving liberty to the petitioner to file election dispute, if so advised. Order accordingly.

(R.G.Ketkar,J.)