

WRIT PETITION NO. 12599 OF 2016

V/s.

Mr. S.B.Shetye for respondent no.1.

15th November, 2016.

The petitioner filed a nomination paper for contesting election to State Legislative Council 2016. By an order dated 3rd November, 2016 the returning officer rejected the nomination paper as the same was not accompanied by additional affidavit of the petitioner as required by the order of the Election Commission of India dated 3rd February, 2016.

2. In the view of the Returning Officer the said defect is of substantial nature for the purposes of Section 36 of the Representation of the People Act, 1951.

3. Learned Counsel appearing for petitioner submitted that it was the responsibility and duty of the Returning Officer to intimate the petitioner regarding the non-compliance of the order passed by the Election Commission of India. If it would have been intimated to the petitioner, the petitioner would have complied with the said order and filed additional affidavit. Learned Counsel refers to and relies upon provisions of Section 36(5) of the Representation of the People Act, 1951. Learned Counsel relied upon two Supreme Court Judgments in the case of ***S.J.S. Business Enterprises (P) Ltd. v/s. State of Bihar & ors. {(2004) 7 Supreme Court Cases 166}***, ***Shambhu Prasad Sharma v/s. Charandas Mahant & ors. {(2012) 11 Supreme Court Cases 390}*** and ***Kisan Shankar Kathore v/s. Arun Dattatray Sawant & ors. {(2014) 14 Supreme Court Cases 162}***.

4. The respondents filed affidavit of Mr. Saurabh Rao, Collector and District Election Officer Pune. The deponent contends in Paragraph-5 as under:-

“ I say that if the Petitioner has never occupied any Government accommodation during the last 10 years prior to the date of the notification of the current election, he ought to have said so on an Affidavit in the prescribed form, as mandated by the Election Commission of India. The Petitioner failed to do so and, therefore, by my order dated 3.11.2016, as Returning Officer, I have rejected the Petitioner's nomination paper. The said order at Exhibit-C is self-explanatory. “

5. Learned Counsel appearing for Election Commission of India submits that it was mandatory for the petitioner to submit additional affidavit which was not submitted by the petitioner on the day of filing of nomination paper or on the day of scrutiny. The defect being of substantial nature, the returning officer had to reject the nomination paper. It is submitted that election is due on 19th November, 2016, therefore, no interference is warranted at this stage.

6. We have perused the record placed before us, the provisions of the Representation of People Act and judgments of Apex Court as cited supra. Prima-facie we find that the orders passed by the Election Commission of India were not complied with and, therefore, the Returning Officer had passed order on 3rd November, 2016 declaring the nomination

paper as invalid. Taking into consideration the material placed on record and the mandate of provisions of Article 329 of the Representation of People Act, we are not inclined to interfere in the matter at this stage. However, the petitioner is at liberty to resort to appropriate alternate remedy as permissible in law after the elections are over.

7. With aforesaid observations, Petition is dismissed.

(M.S. KARNIK, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.