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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO. 30919 OF 2016

Sou. Rajiya Aslam Mujawar

.. Petitioner

Vs.

State Election Commission and anr.

.. Respondents

Mr. Uday P. Warunjikar i/by Ms. Kalyani Tulankar for petitioner.

Mr. S. B. Shetye for respondent nos.1 and 2.

CORAM: NARESH H. PATIL &
M. S. KARNIK, JJ.

NOVEMBER 17, 2016.

P.C.

1. The petitioner filed two nomination papers, one as independent and another as a candidate belonging to a political party. By communication dated 8/11/2016, the petitioner informed the Election Returning Officer, under Rule 17 of the Maharashtra Municipal Councils and Nagar Panchayats Election Rules, 1966 (for short Rules of 1966), that she was withdrawing her candidature. The receipt was given by the Election Returning Officer to the petitioner on 8/11/2016 in respect of her withdrawal of candidature. The petitioner thereafter filed an application to

Returning Officer dated 9/11/2016 explaining her position that she had withdrawn her candidature in respect of nomination as an independent candidate and wanted to continue her candidature as a candidate belonging to a political party.

2. By communication dated 9/11/2016, the Election Returning Officer dismissed the said application.

3. Learned counsel appearing for the petitioner submits that the petitioner's second nomination paper as a candidate belonging to political party ought to have been accepted and symbol ought to have been allotted to the petitioner.

4. Learned counsel appearing for the State Election Commission submits that under the existing Rules, there is no provision to withdraw the nomination paper. A candidate filing nomination paper would withdraw his/her candidature by notice in writing under Rule 17 of the Rules of 1966. The petitioner had accordingly withdrawn her candidature which applies to both the nomination papers filed by the petitioner. Learned counsel also refers to provisions of Rule 17(4) of the Rules of 1966.

Learned counsel submitted that Election process is already set in motion, list of validly nominated candidates is already published, symbols are allotted, the voting is to take place on 27/11/2016 and therefore, no interference is warranted.

5. We have perused the record and the Rules. Rule 17 of the Rules of 1966 specifically refers to withdrawal of candidature by a candidate and not withdrawal of nomination paper. The petitioner had issued a notice under Rule 17 of the Rules of 1966 which itself demonstrates that the petitioner had withdrawn her candidature. The election process is already set in motion, list of validly nominated candidates is already published, symbols are allotted, the voting is to take place on 27/11/2016.

6. Taking into consideration the above circumstances, there is no case made out to interfere at this stage. There is no merit in the petition. Petition is dismissed. However, the petitioner is at liberty to resort to alternate appropriate remedy after the election results are declared.

(M. S. KARNIK, J.)

(NARESH H. PATIL, J.)