

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

**WRIT PETITION NO. 12715 OF 2016**

Sou. Megha Sagar Chalake

..Petitioner.

Vs

Returning Officer/Election Officer  
and Ors.

.. Respondents

Mr. A.Y.Sakhare, Senior Advocate i/b Mr. Abhijeet B. Desai,  
Advocate for Petitioner.

Mr. Akshay P. Shinde, Advocate for Respondent no.1 and 5.

Mr. Ganesh Sovani , Advocate for Respondent no.2.

Mr. Tejas Hilage, Advocate for Respondent no.3.

Mr. S.B.Shetye, Advocate a/w Ms D.S.Mondkar, for Respondent  
no.6.

**CORAM : R.G.KETKAR,J.**

**DATE : 16/11/2016**

**PC:**

1. Heard Mr. A.Y.Sakhare, learned senior counsel for the petitioner, Mr. Akshay Shinde, learned counsel for respondents no.1 and 5, Mr. Ganesh Sovani, learned counsel for respondent no.2; Mr. Tejas Hilage, learned counsel for respondent no.3 and Mr. S.B.Shetye, learned counsel for respondent no.6 at length. Leave to amend so as to implead State Election Commission as party respondent, is granted. Amendment shall be carried out forthwith.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order

dated 10.11.2016 passed by the learned District Judge-1, Ichalkaranji in Election Appeal No.4 of 2016. By that order, the learned District Judge allowed the Appeal preferred by respondent no.2 filed under Rule 15 of the Maharashtra Municipal Councils and Nagar Panchayats Election Rules, 1966 (for short, 'Rules') read with the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, 'Act') and rejected the nomination form of the petitioner who is contesting candidate from Ward No.28B of respondent no.5- Municipal Council.

3. The petitioner has filed her nomination form for contesting the election to the Municipal Council from Ward No.28B. Respondent no.2 also filed her nomination form in respect of the said Ward. At the time of scrutiny of nomination forms, respondent no.2 raised objections about contents of the affidavit sworn and enclosed by the petitioner herein along with her nomination form. By order dated 2.11.2016, respondent no.1- Returning Officer overruled the objections raised by the second respondent on the ground that there is no provision for rejecting the nomination form on the ground of infirmities in the affidavit to be submitted along with nomination form. Aggrieved by this order, respondent no.2 preferred Appeal before the learned District Judge. By the impugned order, the learned District Judge allowed the Appeal, as indicated earlier. It is against this order,

the petitioner has instituted the present petition.

4. In support of this petition, Mr. Sakhare has invited my attention to paragraph 27 of the impugned order. In paragraph 27, the learned District Judge observed that respondent no.2 had raised objections in writing before the returning officer at the time of scrutiny of nomination forms and there appear admitted mistakes/faulty information in the affidavit of the petitioner herein. Under such circumstances, the observations and conclusions of the Returning Officer in the impugned order that he cannot reject the application considering the contents of the affidavit cannot be accepted,.

5. Mr. Sakhare relied upon Rule 13 of the Rules. Sub-rule 2 thereof provides that the Returning Officer has to 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 enumerated in clauses (a) to (e). In the first place, Mr. Sakhare submitted that the inquiry contemplated under sub rule (2) of Rule 13 is of summary nature. Secondly, Mr Sakhare submitted that the nomination paper can be rejected only on the ground enumerated in clauses (a) to (e) of sub rule (2) of Rule 13. Sub-rule (4) thereof lays down that the Returning Officer shall not reject any nomination paper on the ground of any defect which is

not of a substantial character. Mr. Sakhare invited my attention to the order dated 3.7.2002 issued by the State Election Commission, Maharashtra and in particular clause 8(4) thereof. Clause 8(4) thereof provides that furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit or declaration as the case may be, may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the returning officer to be a defect of substantial character. In the present case, the Returning Officer did not consider that there was a defect of substantial character in the affidavit filed by the petitioner along with the nomination paper. He, therefore, submitted that the learned District Judge was not justified in rejecting the nomination form thereby allowing the appeal preferred by the second respondent. He, therefore, submitted that the petition requires consideration.

6. On the other hand, Mr Shetye relied upon the decision of the Apex Court in the case of Union of India Vs. Association of Democratic Reforms, (2002) 5 SCC 294. He invited my attention to the order dated 3.7.2002 which was issued by the State Election Commission, Maharashtra in pursuance of the decision of the Apex Court in the case of Union of India (supra). He also invited my attention to paragraph 8 of the said order. He also

relied upon the decision of this Court in the case of Vijaykumar Maniklal Bang Vs. State of Maharashtra, 1997 (1) Mh.L.J.637 to contend that this Court will decline to exercise powers under Article 227 of the Constitution of India as in the present case, list of validly nominated candidates is published, symbols are also allotted and polling is scheduled on 27.11.2016. Mr Sovani supported the impugned order. He has taken me through the impugned order and submitted that the learned District Judge rightly allowed the appeal.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. In the case of Union of India (supra), after considering several decisions dealing with Article 324 of the Constitution of India, the Apex Court observed in paragraph 52 as under:

“52. Finally, in our view this Court would have ample power to direct the Commission to fill the void, in absence of suitable legislation, covering the field and the voters are required to be well-informed and educated about contesting candidates so that they can elect proper candidate by their own assessment. It is the duty of the executive to fill the vacuum by executive orders because its field is conterminous with that of the legislature, and where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. Therefore, if the candidate is directed to declare his/her spouse's and dependants' assets immovable, moveable and valuable articles it would have its own effect. This Court in *Vishka v. State of Rajasthan*, AIR

1997 SC 3011 dealt with incident of sexual harassment of a woman at work place with resulted in violation of fundamental right of gender equality and the right to life and liberty and laid down that in absence of legislation, it must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of independence of Judiciary in the LAWASIA region. The decision has laid down the guidelines and prescribed the norms to be strictly observed in all work places until suitable legislation is enacted to occupy the field. In the present case also, there is no legislation or rules providing for giving necessary information to the voters. As stated earlier, this case was relied upon in *Vineet Narain's case (supra)* where the Court has issued necessary guidelines to the CBI and the Central Vigilance Commission (CVC) as there was no legislation covering the said field to ensure proper implementation of rule of law."

8. In paragraph 53, the Apex Court summed up the legal and Constitutional position as under:

"53. To sum up the legal and constitutional position with emerges from the aforesaid discussion, it can be stated that:-

1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.

2. The limitation on plenary character of power is when the Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar's case*, the Court construed the expressions "superintendence, direction and control" in Article 324(1) and held that a

direction may mean an order issued to a particular individual or a precept which may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the election commission to issue such orders."

9. In pursuance of the decisions of the Apex Court in Union of India (supra), the State Election Commission has issued order dated 3.7.2002. Paragraph 8 (1) provides that every candidate at the time of filing his nomination paper for any election or bye-election for electing a Member or Members of any Panchayat or Municipality, shall furnish full and complete information in regard to all the five matters, in affidavit in the format annexed hereto as Annexure-I to that Order. Annexure -I provides for candidate to furnish details about movable assets including cash, deposit in Banks, Financial Institutions and non-Banking Financial Companies among others. It also obligates candidate to furnish details of immovable assets.

10. In the present case, after considering the material on record, the learned District Judge has observed in paragraph 17 that the petitioner herein has mentioned figure '0' (zero) in the column of income of her husband. In paragraph 18, the learned District Judge referred to reply Exhibit-12 filed by the petitioner herein to the effect that there was a technical error in the software provided for on-line submission of the nomination forms and as such though she had filled up relevant information, the said did not appear in the nomination form and supporting

affidavit and on the other hand figure 0 (zero) was printed at various columns of on-line form. In paragraph 20, the learned District Judge noted that as the Returning Officer received certain complaints from candidates, time was extended till 29.10.2016 till 4 pm instead of 28.10.2016 and candidates were given option to file manual /online applications. In paragraph 22 , the learned District Judge referred to affidavit at Exh.12 filed by the petitioner to the effect that despite of her filing correct information in the column of her/husband's assets, it was printed as '000' at certain places. If at all she realised the said fact after filing application on-line, she could have filed correct information. However, no such attempt was made by her. In paragraph 23, the learned District Judge has recorded a categoric finding that the plea raised in reply Exh.12 is an after thought as regards mistakes/wrong information in the affidavit under the garb of system failure.

11. Mr. Sakhare submitted that the error, if any in the affidavit does not amount to defect of substantial character. I do not find any merit in this submission. In the case of Union of India (supra) the Apex Court has held that the voters have fundamental right to receive information as regards assets of candidates. In pursuance of that decision, the State Election Commission has issued order dated 3.7.2002 in tune with the said decision. It, therefore, cannot be said that the defect in the affidavit is not of

a substantial nature. In view thereof, I do not find that any case is made out for interfering with the impugned order.

12. That apart, as noted earlier, list of validly nominated candidates is already published and the symbols are allotted. In view of the decision of this court in the case of Vijaykumar Manikla Bang,(supra), it is not possible to interfere with the election at this stage. Liberty is reserved to the petitioner to file election dispute, if so advised. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)