

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 31113 OF 2016**

Sou Lata Shamrao Ekshinge

..Petitioner.

Vs

State of Maharashtra and Ors.

.. Respondents

WITH

WRIT PETITION (ST) NO. 31111 OF 2016

Vilas Tukaram Gavad

..Petitioner.

Vs

State of Maharashtra and Ors.

.. Respondents

Mr. D.V.Sutar, Advocate for Petitioner.

Mr. Sachin Kankal, A.G.P for Respondent no.1.

Mr. S.B.Shetye, Advocate for Respondent no.2.

Mr. Akshay Shinde, Advocate for Respondent no.3.

CORAM : R.G.KETKAR,J.**DATE : 16/11/2016****PC:**

1. Not on Board. At the request of Mr. Sutar, taken up for admission. Heard Mr. D.V.Sutar, learned counsel for the petitioner, Mr. Sachin Kankal, learned A.G.P for respondent no.1; Mr. S.B.Shetye, learned counsel for respondent no.2 and Mr Akshay Shinde, learned counsel for respondent no.3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged order dated 2.11.2016 passed by the Returning Officer as also the Judgment and order dated 10.11.2016 passed by the learned District Judge-1, Ichalkaranji in Election Appeals preferred by the petitioners. By order dated 2.11.2016, Returning Officer rejected the nomination

form submitted by the petitioners on the ground that Annexure -II is totally blank and it does not bear name, signature and seal of the authorised officer. As the common questions of law and fact arise in these petitions, the same can be disposed of by this common order. For appreciating the controversy, the facts from Writ Petition (ST) No. 31113 of 2016 are taken into consideration.

3. In support of these petitions, Mr. Sutar submitted that Annexure-I bears seal and signature of General Secretary of C.P.I (M). It is, however, true that Annexure-II is blank. He submitted that the Returning Officer could have called upon the petitioner to rectify Annexure -II by furnishing all details therein. He invited my attention to paragraph 8 of the impugned order. In paragraph 8, the learned District Judge observed that it is not mandatory to file Annexures-I and II along with the nomination form. He, therefore, submitted that it is not necessary for a candidate to submit Annexures-I and II along with nomination form. In any case the Returning Officer could have called upon the petitioner to carry out the necessary rectification in Annexure-II instead of rejecting the same. The learned District Judge, however, observed that in terms of rule 13 of the Maharashtra Municipal Councils and Nagar Panchayats Election Rules, 1966 (for short, 'Rules') the defect is of a substantial character as contemplated under rule 13 (4) of the Rules. He, therefore, submitted that the impugned orders are liable to be set aside, thereby, accepting

nomination form of the petitioner.

4. On the other hand, Mr. Shetye supported the impugned orders. He relied upon the decision of this Court in the case of Vijaykumar Maniklal Bang Vs. State of Maharashtra, 1997 (1) Mh.L.j. 637. He submitted that list of validly nominated candidates is already published and symbols are allotted. He, therefore, submitted that no case is made out for interfering with the election process which is already set in motion.

5. I have considered the rival submissions advanced 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 submitted Annexures-I and II along with nomination form. It is equally not in dispute that Annexure-II is blank. The Returning Officer rejected the nomination form on the ground that though the petitioner has filed nomination from a recognised political party, viz. C.P.I.(M), Annexure-II is totally blank. The learned District judge has confirmed that order by holding that defect is of a substantial character. Rule 13(4) of the Rules reads thus:

“13. Scrutiny of nomination papers.-

- (1) xx xx
- (2) xx xx
- (3) xx xx

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.”

6. As noted earlier, the learned District Judge has observed that it is not mandatory to file Annexures-I and II along with

nomination form. The learned District Judge thereafter observed that the shortfall noticed by respondent no.1 can definitely be covered under the purview of defect of substantial character as laid down in rule 13.

7. Apart from that, as noted earlier, list of validly nominated candidates is already published and symbols are already allotted. In view thereof, it will not be possible at this stage to interfere with the election process which is already set in motion. Hence, petitions fail and the same are dismissed reserving to the petitioner to institute election dispute under section 21 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, if so advised. Order accordingly.

(R.G.Ketkar,J.)