

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO. 32703 OF 2016**

Milind Ashok Achyut

..Petitioner

Vs.

Sunil Shankarrao Shelkhe & Ors

..Respondents

Mr. S. S. Patwardhan for the Petitioner

Mr. P. M. Patil for the Respondent No.1

Mr. Ketan Joshi for the Respondent Nos.2 and 3

CORAM : R. M. SAVANT, J.

DATE : 2nd DECEMBER, 2016

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 25-11-2016 passed by the Learned District Judge-10, Pune, by which order the Appeal filed by the Respondent No.1 herein came to allowed and resultantly the order dated 21-11-2016 passed by the Respondent No.2 i.e. the Returning Officer over ruling the objections of the Respondent No.1 and accepting the nomination of the Petitioner, came to be set aside.

2 The Petitioner had filed his nomination for contesting from Ward No.7B for the elections to be held to the Talegaon Dabhade Municipal Council. The Respondent No.1 herein is also a candidate for elections from the said ward. The Respondent No.1 objected to the nomination of the Petitioner on

the ground that the Petitioner had not disclosed in the annexure to the nomination form one flat owned by his wife. The Respondent No.1 in support thereof had produced the documents by way of Index-II of the said flat. The Petitioner had filed an affidavit before the Returning Officer accepting the fact that one flat standing in his wife's name had remained to be disclosed and attributed the same to a typing mistake. The Returning Officer i.e. the Respondent No.2 ruled on the objection raised by the Respondent No.1 and by his order dated 21-11-2016 overruled the objection on the ground that at the time of scrutiny the Election Officer is not in a position to adjudicate upon the veracity of the documents and thereby directed the acceptance of the nomination form of the Petitioner.

3 In terms of the remedy available under the Maharashtra Municipal Council Elections Rules 1966 and especially Rule 15(1), thereof an Appeal was filed by the Respondent No.1 against the said order dated 21-11-2016. The Appellate Authority i.e. the Learned District Judge-10, Pune has by the impugned order dated 25-11-2016 allowed the Appeal filed by the Respondent No.1 and consequently the nomination of the Petitioner came to be rejected. The Appellate Authority has adverted to the duty cast upon the Returning Officer by Rule 12 as well as adverted to the judgment of the Apex Court in the matter of Resurgence India Vs. Election Commission of India & Anr. in Writ Petition No.121 of 2008. The gist of the reasoning of the Appellate Authority

having regard to the provisions of the Act and the Rules as well as the judgment of the Apex Court was that the Returning Officer had not scrutinised the nomination of the Petitioner in the manner postulated in the Act and the Rules and is enunciated by the Apex Court in the matter of Resurgence India (supra). The Appellate Authority held that the Petitioner inspite of being pointed out the said defect did not take steps to rectify the same. The Appellate Authority concluded that the said defect of non disclosure of one flat owned by the wife of the Petitioner, was a defect of substantial character and therefore was of the view that the nomination of the Petitioner to be rejected.

4 The Learned Counsel appearing for the Petitioner Mr. Patwardhan in support of the Petition would contend that the instant case is not a case where suppression can be alleged against the Petitioner, but is a case where on account of inadvertence one flat remained to be disclosed.

5 Per contra the Learned Counsel appearing for the Respondent No.1 Mr. Patil would seek to justify the impugned order and would seek to place reliance on the judgment of a Learned Single Judge of this Court in the matter of **Vijaykumar Maniklal Bang Vs. State of Maharashtra**¹ wherein an identical fact situation, the Learned Single Judge had held that it would not be possible in a Writ Jurisdiction to consider the illegality of the order passed by the Additional District Judge who was the Appellate Authority in the said case

1 BLR VOL-99 page 534

who had directed the rejection of the nomination form in the said case and that the same would have to be taken care of only in a properly instituted Election Petition in terms of Section 21 of the said Act.

6 Having heard the Learned Counsel for the parties, in my view, since the issue revolves around the rejection of the nomination of the Petitioner and having regard to the ground on which the nomination of the Petitioner has been rejected namely the non disclosure of one flat owned by his wife. The instant case also entails an inquiry as to whether the defect is of a minor character or a substantial nature, the same would have to be adjudicated on the touchstone of the relevant facts the provisions of the Acts, Rules and the facts. The same obviously cannot be done in the Writ Jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

7 It is also required to be noted that the final list of candidates has been declared yesterday i.e. 30-11-2016 and the symbols are to be allotted today, in that view of the matter, no case for interference is made out. The Writ Petition is accordingly dismissed.

8 However, it would be open for the Petitioner to adopt the remedy by way of an Election Petition after the elections are over in respect of his

grievance as regards the rejection of his nomination. If any such Election Petition is filed, the same would be undoubtedly tried on its own merits and in accordance with law.

[R.M.SAVANT, J]