

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1182 OF 2017

Vijay S/o Raghunath Gaikwad.
...Petitioner..

Versus

Election Commission of India and
another.
...Respondents...

.....
Shri R.R. Karpe and Shri S.D. Munde, Advocates for
petitioner.
Shri Alok Sharma, Standing Counsel for respondent nos.1
and 2.

.....

**CORAM: V.M. KANADE &
SANGITRAO S.PATIL, JJ.**

DATE: 24.01.2017

ORDER :

- 1] Heard learned counsel appearing for the parties.
- 2] The petitioner is aggrieved by the order passed by the Returning Officer, who has not permitted the petitioner to cure the defect, which remained in the nomination paper namely putting his signature in the first part of the nomination paper. It is submitted that the petitioner has made substantial compliance with the

- 2 -

procedure required to be followed and the petitioner ought to have been allowed to put his signature, which was a formal defect. It is submitted that, however, the petitioner, though heard, was not given an opportunity to cure that defect.

3] Reliance is placed on the judgment of the Apex Court in the case of *Resurgence India v. Election Commission of India* (2014 (14) SCC 189). The petitioner submitted that though the election process has started, since the cause of action has arisen on account of Returning Officer not permitting the petitioner to put his signature, the petitioner is entitled to challenge the same. He submitted that the voting is to take place on 3.2.2017.

4] The learned counsel for the petitioner also invited our attention to the provisions of Section 36(4) & (5) of the Representation of People Act, 1951.

5] We have also heard learned counsel appearing on behalf of respondent nos.1 & 2. He submitted that the Manual which is prepared for the benefit of the officers who conduct the elections merely mentions in Chapter VI the grounds on which nomination paper has to be rejected. He submitted that Clause No.10(viii) clearly mentions

- 3 -

that if the nomination paper has not been signed by the candidate, then the nomination paper has to be rejected. The noting made by the Returning Officer in respect of the petitioner's candidature clearly shows that he has noticed that the petitioner had not signed part first of the nomination form and this point was brought to his notice and he was present. There is no reference that the petitioner had come forward to sign that part. The petitioner, however, has made an averment that no such opportunity was given to him. Ultimately, it is difficult to arrive at a conclusion whether the petitioner's contention is right or the Returning Officer's contention is right.

6] We are of the view that since the elections are to be held on 3.2.2017 and in view of Clause 10(viii) of the Manual, it will not be possible now to interfere with the election process or direct any change to be made in the same. Lastly, improper rejection of nomination paper is one of the grounds, which is available for the purpose of challenging the election by filing an election petition. Section 100(1)(c) of the Representation of People Act clearly mentions that improper rejection of a nomination

- 4 -

paper is a ground for filing an election petition.

7] Taking into consideration all these facts, we are not inclined to interfere with the order passed by the Returning Officer. Reserving the right of the petitioner to file an election petition, the petition is disposed of. No costs.

(SANGITRAO S.PATIL, J.)

(V.M. KANADE, J.)

ndk/c2411716.odt