

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.1958 OF 2017

Sau. Aruna w/o Ankush Shinde ... PETITIONER

VERSUS

The Returning Officer and others ... RESPONDENTS

.....
Shri V.D. Salunke, Advocate for petitioner
Shri S.T. Shelke, Advocate for respondent No.1
.....

WITH

WRIT PETITION NO.1978 OF 2017

Prayagbai w/o Sambhaji More ... PETITIONER

VERSUS

The State Election Commission and others ... RESPONDENTS

.....
Shri E.P. Sawant, Advocate holding for
Shri M.P. Kale, Advocate for petitioner
Shri S.T. Shelke, Advocate for respondent No.1
.....

WITH

WRIT PETITION NO.1997 OF 2017

Laxman s/o Bhaguji Zine ... PETITIONER

VERSUS

The Returning Officer and others ... RESPONDENTS

.....

Shri R.V. Gore, Advocate for petitioner
Shri S.T. Shelke, Advocate for respondent No.1

.....

W I T H

WRIT PETITION NO.2049 OF 2017

Madan s/o Sheshrao Shisode ... PETITIONER

VERSUS

The State Election Commission and others ... RESPONDENTS

.....

Shri P.P. Dawalkar, Advocate for petitioner
Shri S.T. Shelke, Advocate for respondent Nos.1 and 2

.....

CORAM: S. B. SHUKRE, J.

DATED: 10th February, 2017.

ORAL ORDER :

1. Heard learned counsel for the petitioners and learned counsel for the Returning Officer.

2. The question is whether failure to sign the verification, forming part of Part I of the prescribed nomination form, amounts to defect of substantial character or not. According to learned counsel for the petitioners, it is not a defect of substantial character as the nomination form itself have been signed by the petitioners and that along with the nomination form, all other declarations as well as documents and certificates

have been signed and submitted. Learned counsel for the petitioners submit that, it was a case where the nomination papers were accepted by the Returning Officer and at the time of the scrutiny, when nobody has raised any objection, the Returning Officer on his own found out some defect in the nomination forms and proceeded to reject the same on the ground, which is of purely technical nature. Learned counsel for the petitioners further submit that, even the Circular of the Election Commission permits such exercise. In support, they refer to Rules 15 and 16 of the Maharashtra Panchayat Samiti Committee Election and Conduct of Election Rules, 1962.

3. Learned counsel for the petitioners also rely upon the view taken by this Court in a bunch of Writ Petitions starting with Writ Petition No.9428/2012 (Bappasaheb s/o Rajendra Hawale Vs. The State Election Commission & ors., etc., decided on 20th November 2012.

4. Learned counsel for the Returning Officer submits that, the Rules i.e. Rules 15 and 16 do not say that failure to complete the nomination form would be defect not of substantial character. He further submits that, the defect in the nomination form pertains to its Part I and since the verification is not complete, it will have to be taken submission of incomplete

nomination form and not defective form, which could have been allowed to be cured at the time of scrutiny by the Returning Officer. He relies upon other view taken by this Court in the case of **Baghele Narottam Gendlal Vs. State of Maharashtra & ors.,** reported in **2016(4) Mh.L.J. 353.** He further submits that, even though it was not permissible for the Returning Officer to invite attention of the petitioners to the defect, the Returning Officer did in fact bring this fact to the notice of the petitioners, but it was not taken cognizance of by the petitioners.

5. So far as the factual aspects of these cases are concerned, largely there is no dispute. The nomination form is in four parts and the first part relates to the details to be filled in by the proposer and the verification as well as declarations to be signed and given by a candidate. The lacuna, which is termed as technical defect by the petitioners and which has been disagreed to by learned counsel for respondent No.1, lies in the absence of signature below the verification column of this Part I of the nomination form. Now, whether such absence of signature below the verification column should be treated as a defect of substantial character or otherwise, I think, since this verification is forming an essential part of the first portion of the nomination form, it cannot be considered as a defect of any kind, rather it will have to be treated as submission of incomplete Part I of the

nomination form. If the Part I of the nomination form is incomplete, it would not be a defect and it would only amount to non-submission of the nomination paper. Therefore, this lacuna could not be treated as a defect, within the meaning of Rules 15(2) and 16(3) of the Rules, 1962. Similar view has been taken by this Court in the case of Baghele Narottam Gendlal (supra).

6. In the decision rendered learned Single Judge of this Court in a bunch of Writ Petitions starting with Writ Petition No.9428/2012 (Bappasaheb s/o Rajendra Hawale Vs. The State Election Commission & ors., etc.), decided on 20th November 2012, there was no dispute about the Part I of the nomination form being incomplete in all respects, and the lacuna pertained to non signing of some declarations which were forming part of other portions of the nomination form. Such is not a case here and, therefore, I am of the view that the law laid down in the case of Bappasaheb etc. (supra) would be of no help to the case of the petitioners in the facts of the case.

7. The petitioners have also taken an exception to the fact that the copy of the reply filed before the appeal proceedings was not furnished to the petitioners and, therefore, prejudice has been caused to the petitioners. On going through the orders of the District Judge, it appears that, no objection in that regard

was taken by the petitioners. To this, learned counsel for the petitioners submit that, there was no reason for the petitioners to have raised any objection in that regard as the petitioners were not aware that any reply was filed by the Returning Officer. It may be true as well, but since there is denial in this regard by the Returning Officer, it would be a disputed question of fact and I do not think, at this stage, that such a question could be appropriately resolved in exercise of writ jurisdiction of this Court.

8. In the result, I find no substance in the petitions. The Writ Petitions stand dismissed with costs.

9. However, it is made clear that, all questions of facts as well as law are kept open to be adjudicated upon in the appropriate proceedings as and when they are initiated and in case they are initiated, the competent Court shall not be influenced by the observations made in this order.

(S. B. SHUKRE)
JUDGE