

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

WRIT PETITION NO.1973 OF 2017

Gayabai w/o Eknath Bodkhe ... PETITIONER

VERSUS

The Returning Officer,
Panchayat Samiti Election-2017, Paithan
and others ... RESPONDENTS

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

CORAM: S. B. SHUKRE, J.

DATED: 10th February, 2017.

ORAL ORDER :

1. Heard Mr. Gore, learned counsel for the petitioner and Mr. Shelke, learned counsel for respondent No.1. The nomination paper of the petitioner has been rejected on the ground that the original copy of the resolution passed by Grampanchayat in respect of the toilet was not submitted along with the nomination paper and the verification-cum-declaration forming part of the annexures to the nomination paper, has not been signed by the petitioner.

2. Learned counsel for the petitioner submits that, at the time of scrutiny, the petitioner had submitted the original copy of the resolution of Grampanchayat regarding existence of toilet and the statement made by the petitioner, but it was not accepted by the Returning Officer. This is completely denied by the Returning Officer, which is something which would require adjudication on the question of facts which cannot be done in exercise of writ jurisdiction of this Court. Therefore, the submission of the petitioner in this regard is rejected.

3. About the absence of signature below the declaration-cum-verification, I must say that, such defect could not be considered to be technical defect not having any substantial character for the reason that this verification has been notarised by Advocate, Notary Government of Maharashtra. Once it is notarised, though in blank, the defect cannot be permitted to be cured. I do not understand as to how the concerned Notary could notarise it and attest the swearing in of the affidavit in his absence.

4. Even in the case of **Resurgence India V. Election Commission of India & Anr.** reported in **AIR 2014 SC 344**, the Hon'ble Apex Court has taken a view that declaration which is

required to be made on oath must be duly signed and made properly without any defects, otherwise such lacuna will render it nugatory. In view of the above, i find no substance in the Writ Petition and it deserves to be dismissed with costs. The Writ Petition stands dismissed with costs.

5. However, it is made clear that the observations made in this order are confined to the terms of challenge raised in this petition only at the time when the election process is going on and if any proceedings questioning the validity of elections are challenged, all the points would be decided appropriately in the light of facts and circumstances of those proceedings, without being influenced by the observations made in this order.

(S. B. SHUKRE)
JUDGE

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