

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

WRIT PETITION NO.1984 OF 2017

Manisha w/o Prakash Falke ... PETITIONER

VERSUS

The State Election Commission
and others ... RESPONDENTS

.....
Mrs. S.K. Doke, 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 learned counsel for the petitioner and Mr. Shelke learned counsel for respondent No.1. The other respondents are absent though an attempt has been made to serve them by displaying notice on the notice board of respondent No.4.

2. The nomination paper of the petitioner has been rejected on the ground that she failed to submit proof that she uses public toilet or other toilet because the house where she is residing does not have the facility of a toilet. The requirement of

Section 16(1)(p) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 is that the person residing in a house not owned by him must have a toilet and must be using it and if that house does not have a toilet such person must be using public toilet. Use of public toilet in such a contingency could also be broadly understood to be including use of similar other facilities not necessarily a public toilet. What should be done is that, such a person must be using the facility of a toilet which is accessible to other members of public. This requirement, as per this provision of law, arises when the house where such person is residing does not have the facility of toilet.

3. In the instant case, the Returning Officer has found that the petitioner has nowhere indicated in the documents submitted by her that the house where she is residing does not have any facility of toilet and that is the reason which prompted her to make use of such facility in the house of her relatives. Merely saying that the petitioner is using facility of toilet, situated in other houses, is not enough, according to the Returning Officer. As stated earlier, I find substance in such contention of the Returning Officer. Section 16(1)(p) thus indicates that the proof of use of the public toilet or other toilet accessible to members of public could be submitted only when the contingency mentioned in this Section arises. This contingency is

of absence of facility of a toilet in a house occupied by the contesting candidate and it must be sufficiently indicated by such candidate so as to enable the Returning Officer to decide appropriately the issue of compliance with this provision of law. No such material, it appears from the record of the case, was placed before the Returning Officer. The only material that was available before the Returning Officer was in the nature of the property details filled up as a part of the nomination paper. But, these details only indicate that, no immovable property or house property stands in the name of the petitioner. They do not show that the petitioner is residing in a house not owned by her and such house is not having a facility of toilet. Therefore, now the case has entered into the field of appreciation of facts, which would be possible only when appropriate proceedings are initiated after the elections are over. In this view of the matter, I find no substance in the Writ Petition. The Writ Petition is dismissed with costs. The observations made in this order are confined to the issues involved in this petition only and shall have no bearing in the appropriate proceedings that may be initiated at appropriate stage.

(S. B. SHUKRE)
JUDGE

fmp/wps1984.17