

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

WRIT PETITION NO.2038 OF 2017

Dwarkabai w/o Bansilal Kharat ... PETITIONER

VERSUS

The Returning Officer and others ... RESPONDENTS

.....  
Shri S.T. Veer, Advocate for petitioner  
Shri S.T. Shelke, Advocate for respondent No.1  
Shri G.A. Kulkarni, Advocate for respondent No.3  
.....

CORAM: S. B. SHUKRE, J.

DATED: 10th February, 2017.

ORAL ORDER :

1. Heard learned counsel for the petitioner as well as Shri Shelke, learned counsel for respondent No.1. Respondent No.3, who have appeared by waiving notice on behalf of respondent No.1 and 3 respectively.

2. The nomination paper submitted by the petitioner was not taken as the nomination paper submitted by a candidate of Indian National Congress and was taken to be one of an independent candidate. It is here that the petitioner has an objection. According to her, the failure to complete the

nomination form in respect of election symbol as provided under Rule 15(2) of the Maharashtra Zilla Parishads and Panchayat Samitis Rules is not a defect of substantial character within the meaning of sub-rule (4) of Rule 19 and this fact has not been properly appreciated by the Returning Officer as well as the learned District Judge.

3. I think, the submission is misconceived. The last date of submission of the nomination form was of 1/2/2017 by 3.00 p.m. and the evidence as it stands today on record, discloses that, Form No.2-II-B of 1/2/2017 issued by Indian National Congress was in the name of son of the petitioner. This would mean that, till the time stipulated for submission of the nomination form expired, the form II-B was not issued in the name of the petitioner and it stood in the name of her son, and if this is so, it would not amount to a defect as contemplated under Rule 15(2) but would amount to submission of nomination form without support of Indian National Congress. Had it been the case that the petitioner submitted nomination form as a candidate from Indian National Congress Party and by the time fixed for submission of the nomination paper expired, Indian National Congress party had not issued Form No.II-B in favour of anybody else and had issued it only in the name of the petitioner on the next date, it would have amounted to what is called

"defect" in nomination paper, in such an eventuality, the defect arising from the failure of the petitioner to submit the necessary form may have become a defect of minor character, depending on factual scenario then prevailing. Such is not the case here. I, therefore, do not see any merit in the petition. The petition stands dismissed with costs.

4. The observations made in this order shall not come in the way of the petitioner asserting his right by questioning the validity of election by resorting to appropriate proceedings, if any.

( S. B. SHUKRE )  
JUDGE

fmp/wp2038.17