

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10620 OF 2017

Ajay Jagalu Chavan
Age 22 years, Occ. Agriculture,
R/o Hanuman Nagar,
Dharangaon, Dist. Jalgaon. ..Petitioners

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Regional and Town Planning
Department, Mantralaya,
Mumbai. 32.

2. The Returning Officer,
District Planning Committee
Election, Jalgaon.

3. The District Collector,
Jalgaon. ..Respondents

...

Advocate for Petitioner : Shri Patil Vinod P.
AGP for Respondents: Shri Tambe S.K.

...

WITH
WRIT PETITION NO. 10622 OF 2017

Suryakant Banti Tukaram
Thakur, Age 37 years, Occ. Service
R/o 3, Yashodai, Saint Rohidas
Society, Chalisgaon, Dist. Jalgaon. ..Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai 32.

2. The District Collector, Jalgaon.

3. The Returning Officer /
Additional Collector,
Jalgaon at Jalgaon for the
Election of Jalgaon District
Planning Committee, Jalgaon.

..Respondents

...
Advocate for Petitioner : Shri Thoke D.B.
AGP for Respondents: Shri Tambe S.K.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: August 24, 2017

...

ORAL JUDGMENT :-

1. Both these matters are not on the daily board. Learned Advocates for the petitioners moved a motion expressing grave urgency and hence the matters were taken on production board.

2. Heard the learned Advocates for the respective parties.

3. Rule.

4. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

5. In both these petitions, the petitioners are aggrieved by the impugned order dated 16.8.2017 passed by respondent No.3

Returning Officer, thereby, rejecting their nomination papers. They are also aggrieved by the order dated 21.8.2017 passed by respondent No.2 - District Collector, rejecting their respective appeals.

6. Both these petitioners are contesting the election to the Small Urban Area District Planning Committee and for the same post, which is reserved for the Scheduled Tribe category. By consent of both the petitioners these petitions are being heard together as the result in either of these petitions would affect the another petitioner.

7. Both the petitioners claim to belong to the Scheduled Tribe category. Both the petitioners claimed to have been elected to the Nagar Parishad, Dharangaon and Nagar Parishad, Chalisgaon respectively on the post reserved for the Scheduled Tribe category. If this be the position, then both of them would be eligible for contesting the elections due on 7.9.2017, subject to the prescription of Rule 16(3) of the Maharashtra District Planning Committee (Elections) Rules, 1999 framed under the Maharashtra District Planning Committee (Constitution and Functions) Act, 1990.

8. Rule 16(3) reads as under:-

"In the case of a reserved seat, a candidate qualified to contest the election to such seat, should produce certificate from the respective Authority certifying that he is elected to the respective body against; the reserved seat. Authority – Chief Executive Officer of the Zilla Parishad or Chief Officer of the Municipality, or the Nagar Panchayat and Commissioner of the Municipal Corporation."

9. It is obvious from Rule 16(3) that each of these petitioners has to submit a specific certificate issued by the competent authority clearly indicating that he/she is elected to the respective bodies against a reserved category post. The authority is defined under Rule 16(3) to mean the Chief Executive Officer of the Zilla Parishad or the Chief Officer of the Municipality or Nagar Panchayat and the Commissioner of the Municipal Corporation.

10. Admittedly, both the petitioners have not annexed a certificate issued by any of these authorities along with their nomination forms. The petitioner in the first petition - Ajay indicates that he did have such a certificate issued on 16.8.2017 though the same was not annexed to the nomination form as the certificate issued by the Returning Officer under the State

Election Commission Maharashtra, mentions that he was elected against a Scheduled Tribe seat. The petitioner in the second petition - Suryakant does not have such a certificate, though he submits on oath in this petition that he was elected to the reserved post.

11. The learned AGP submits that no leniency can be shown in matters of reservation and the policies of the Government aimed at providing adequate representation to the backward classes and communities. He strenuously submits that the certificate as is prescribed under Rule 16(3) alone can be accepted. If the said provision is diluted, it would open flood gates and candidates will start bringing in different certificates which are not prescribed under Rule 16(3).

12. He further submits that no loss is likely to be caused to both these petitioners because they are the only candidates elected to the Scheduled Tribe posts in their respective municipal councils and because of the rejection of their nominations, the posts for the Small Urban Area Constituency would go vacant and there would be a bye-election in the near future. Both these candidates can apply for such elections by filing their nomination papers and can place on record the appropriate certificate as is

prescribed under Rule 16(3). If they do so, and if there is no other legal impediment, their nominations would be validated and both could then contest against each other for the said solitary post.

13. I find much merit in the contention of the learned AGP for the reason that a certificate as is prescribed by law needs to be produced and this Court while dealing with such petitions, can neither dilute the effect of the Rules, nor show any sympathy in favour of the petitioners. A certificate specifically prescribed will have to be tendered so as to enable the Returning Officer to deal with the nomination papers in accordance with the Rules.

14. Considering the above, both these petitions are dismissed. However, it is made clear that in the event of a bye-election to the post at issue, in the Small Urban Area Constituency, both these petitioners can file their nomination papers supported with documents as are required by the Rules and in such case, the Returning Officer would consider their nomination papers on their merits. Needless to state, the above observations would not preclude any other eligible candidate from contesting the said elections.

15. Rule, in both the petitions, stand discharged.

(RAVINDRA V. GHUGE, J.)

...

akl/d