

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11866 OF 2017

ANITA BAHIRNATH NETAKE
VERSUS
THE STATE ELECTION COMMISSION AND ANOTHER

WITH

WRIT PETITION NO. 11875 OF 2017

GITANJALI NAMDEO PALVE
VERSUS
THE STATE ELECTION COMMISSION AND ANOTHER

WITH

WRIT PETITION NO. 11878 OF 2017

KARNA BABURAO JAWALE
VERSUS
THE STATE ELECTION COMMISSION AND ANOTHER

...

Advocate for Petitioner : Shri Katneshwarkar P.R.
h/f Shri Andhale Sandip R.
Advocate for Respondent 1 : Shri Shelke S.T.
AGP for Respondent 2 : Shri Bhagat N.T.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: September 27, 2017

...

PER COURT :-

1. In these three petitions, which have been circulated with dying urgency as the last date for acceptance of the nomination form and preparation of the contesting candidates ballot papers

is after 27.9.2017, the petitioners have challenged the rejection of their nomination form on 25.9.2017 for identical reasons that the proof evidencing the submission of the caste claim for validation was not filed along with the nomination forms dated 22.9.2017.

2. There is no dispute in so far as the contentions of these petitioners and the contesting respondents, who are the State Election Commission and the Returning Officer, that on the date of scrutiny, which was 25.9.2017, these petitioners were before the Returning Officer and the Returning Officer has acknowledged that the proof of submitting the caste claim for validation to the concerned Caste Claim Validity Committee under Maharashtra Scheduled Castes, Scheduled Tribes, De Notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No.XXIII of 2001), was tendered during the scrutiny of the nomination papers.

3. Shri Shelke, learned Advocate for the Election Commission and Returning Officer has drawn my attention to Section 10(1A), proviso thereunder and the two exceptions

carved out thereunder for supporting his contention that Section 10(1A) requires the Caste Certificate to be tendered along with the nomination papers and a true copy of the application preferred by the candidate to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such an application to the Scrutiny Committee. He vehemently submits that the language used in Section 10(1A) and its proviso mandates that the proof of submission of claim for validity must accompany the nomination papers.

4. Rule 11 of the Bombay Village Panchayat Elections Rules, 1959 indicates that at the time and place appointed for the scrutiny of nominations, the intending candidates or other persons, duly authorized, shall be allowed to examine the nomination papers. The Returning Officer shall examine such papers and decide all objections made before him or on his own motion and after a summary enquiry would consider whether a candidate has failed to comply with any of the provisions required by the Rules. Rule 11(2A) enables the Returning Officer to reject a nomination paper only on the ground of any such defect, which is of a substantial character.

5. In all these three cases, the Returning Officer has rejected

the nomination papers since the proof of pending caste claim for validation was tendered before him on 25.9.2017 and not on 22.9.2017.

6. In the matter of Anant Janardhan Patil Vs. State of Maharashtra [2002 (2) Mh.L.J. 238], this Court has concluded that a defect in the Caste Certificate was not a substantial defect, so as to reject the nomination form. In the instant case, on the date fixed for scrutiny of the nomination papers and to find out whether there is any defect that is curable and not of a substantial nature, these petitioners have tendered the proof of having submitted their caste claims for validation. Had no such proof been tendered, it would have tantamounted to a defect of a substantial nature in the light of Clause (i) below the proviso to Section 10(1A) of the Act.

7. Shri Shelke submits that Article 243-O prohibits this Court from interfering in the election programme and from disturbing the elections. These arguments would not cause an impediment in this matter, since no interference in the election programme is being caused by this order and the error committed by the Returning Officer is being cured.

8. Considering the above these petitions are allowed by quashing and setting aside the order of the Returning Officer dated 25.9.2017. The nomination papers of three petitioners stand accepted. The learned counsel for the Election Commission and the Returning Officer shall act on this order, which is dictated in the open Court and shall not wait for obtaining the copy of this order.

(RAVINDRA V. GHUGE, J.)

...

akl/d