

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

WRIT PETITION NO. 11923 OF 2017

AVINASH LOBHAJI PATOLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Shri Patil Vinod Prakash
AGP for Respondent 1/ State : Shri S.N.Kendre.
Advocate for Respondents 2 and 3 : Shri S.T.Shelke.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th September, 2017

Per Court:

1 The Petitioner is aggrieved by the order dated 25.09.2017 passed by the Returning Officer whereby, his nomination form has been invalidated as he does not have a fresh bank account.

2 I have considered the submissions of the learned Advocate for the Petitioner, the learned AGP for Respondent No.1/ State and the learned Advocate for Respondent Nos.2 and 3.

3 It is informed by the learned Advocate for Respondent Nos.2 and 3, on instructions from the Returning Officer who is present in the Court, that Respondent No.4 who had objected to the nomination of the Petitioner and whose nomination was validated, has now withdrawn from the election fray. As such, there is only one candidate left in the election fray, excluding the Petitioner.

4 The learned Advocate for the Petitioner, therefore, prays for leave to delete Respondent No.4. Deletion is permitted at the risk of the Petitioner and shall be carried out forthwith.

5 It is not in dispute that a candidate seeking to contest the elections directly for the post of Sarpanch of a Gram Panchayat, has to attach the proof of he having a bank account. It is equally undisputed that the Petitioner had produced the proof of having a savings bank account, which was opened in November, 2016. His nomination is invalidated as he did not have a fresh bank account to be dedicated only for the purpose of election expenses.

6 It is revealed from the impugned order that the reason for invalidation is that the State Election Commissioner directed all the District Collectors through video conferencing that they should insist for a new and separate bank account of the contesting candidates.

7 I find that there is no provision under the Bombay Village Panchayats Election Rules, 1959, as on date, to issue any such direction which is unknown to the candidates and is made a ground for invalidating the nomination paper.

8 Besides the above, the Petitioner has opened a new bank account with the Vijaya Bank, District Beed on 25.09.2017 and submitted a proof of such bank account to the Returning Officer during the scrutiny of the nomination papers.

9 The learned Division Bench of this Court, in the matter of Anant Janardan Patil vs. State of Maharashtra and others, 2002 (2) Mh.L.J. 238, has concluded that Rule 11 r/w sub-rule 2-A of Rule 11 of the Bombay Village Panchayats Election Rules, 1959 enable the Returning Officer to scrutinize the nomination papers in the presence of the candidates. In such a scrutiny, any minor defect can be cured and the Returning Officer would not be empowered to cure substantial defects. The observations in paragraphs 4 and 6 of the said judgment read as under:-

- "4. We may notice here that by reason of Article 243-O of the Constitution of India, election to Panchayat cannot be questioned except by an election petition. The bar of Article 243-O(4) fundamentally rests on two planks : (i) the election process must culminate in formal declaration of the result without intermediate interruptions; and (ii) the aggrieved party has adequate and efficient remedy under election laws in questioning the election under available grounds and that must exclude other forum. However, in the peculiar facts of the present case, though petitioner has challenged rejection of his nomination papers, he cannot now be relegated to pursue the remedy under election laws. Section 15 of Bombay Village Panchayats Act, 1958 provides that validity of any elected member can be questioned by way of election petition inter alia on the ground of wrongful rejection of nomination papers. As noted above the petitioners nomination papers were accepted under the interim order of this court and petitioner was elected unopposed being sole contestant. In the circumstances remedy under election law is not available to him in challenging the order of Returning Officer rejecting his nomination

papers and matter has to be examined by us under Article 226."

- "6. *It is seen from Form 'A' that in the case of a Ward in which seat is reserved for scheduled castes, scheduled tribes or backward class, the member of scheduled caste or scheduled tribe or backward class has to state the name of the caste or tribe or class. Neither the rules nor the prescribed form provide for a format for submission of caste certificate. Reliance placed by the Returning Officer on G. R. No. CBC. 1680/43669/D-5 dated 29-10-1960 issued by Social Welfare Department only provides that for issuance of caste certificate, prescribed specimen format shall be used. This resolution dated 29-10-1960 is to be adhered to by issuing authority. Merely because the issuing authority of caste certificate did not follow the Government resolution dated 29-10-1960, that will not render the caste certificate issued by the said authority invalid. The caste certificate has been issued by the Executive Magistrate, Uran and there being no prescribed format for tendering such caste certificate along with the nomination form, the Returning Officer could not have insisted on the caste certificate being tendered in the prescribed form. Moreover, Rule 11(2A) of Village Panchayats Election Rules in unequivocal terms provide that Returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. The defect in the caste certificate annexed by the petitioner along with the nomination form pointed out by the Returning Officer is not of substantial character and therefore, the petitioner's nomination paper could not have been rejected. As a matter of fact, the ground for rejection of petitioner's nomination paper is untenable in the eye of law."*

10 Considering the above, if this case is looked at from any angle, the Petitioner had a bank account, proof of which was tendered

along with the nomination form and he then opened a fresh bank account, proof of which was also placed before the Returning Officer during the scrutiny of the nomination papers.

11 In the light of the above, this Writ Petition is allowed. The impugned order is quashed and set aside. The Returning Officer, who is present in the Court, is directed to treat the nomination form of the Petitioner as validated and include his name in the list of validly nominated candidates eligible for contesting the elections.

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(RAVINDRA V. GHUGE, J.)