

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

905 WRIT PETITION NO. 11908 OF 2017

**LAXMI SURESH CHAFEKAR
VERSUS
THE MAHARASHTRA STATE ELECTION COMMISSION THROUGH
ITS UNDER SECRETARY AND OTHERS**

**WITH
906 WRIT PETITION NO. 11909 OF 2017**

**MACHINDRA NAGORAO MALI
VERSUS
THE MAHARASHTRA STATE ELECTION COMMISSION THROUGH
ITS UNDER SECRETARY AND OTHERS**

**WITH
910 WRIT PETITION NO. 11916 OF 2017**

**GANGABAI GANGARAM NIMALWAD
VERSUS
GRAM PANCHAYAT GALEGAON AND OTHERS**

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Advocate for the Petitioners : Shri S.S.Manale in first two petitions and
Shri P.G.Godhamgaonkar h/f Shri M.D.Godhamgaonkar in the third
petition.

AGP for the Respondents/State : Shri N.T.Bhagat.

Advocate for the Respondents/ State Election Commission and Returning
Officers : Shri S.T.Shelke and Shri M.B.Bharaswadkar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th September, 2017

Per Court:

1 These three matters are being taken up together since the
Petitioners are identically placed.

2 The learned Advocates for the Petitioners submit that the
other Respondent candidates are not objectors before the Returning
Officer. Hence, leave to delete is sought. Deletion is permitted at the risk
of the Petitioners.

3 These three Petitioners are aggrieved by the rejection of their
nomination forms at the hands of the Returning Officers thereby,
precluding them from contesting the elections to the respective Village
Panchayats, which are scheduled on 07.10.2017.

4 The only reason for rejecting their nomination papers is that
they did not submit a certified copy of the Caste Certificate along with the
nomination form.

5 Shri Shelke and Shri Bharaswadkar, learned Advocates
appearing for the State Election Commission and the Returning Officer,
strenuously submit that Section 10-1A of the Maharashtra Village
Panchayats Act mandates that certified copies of the Caste Certificate as
well as the Caste Validity Certificate have to be placed on record along
with the nomination form. The First Proviso below Section 10-1A has been
subsequently introduced whereby, a candidate, who is not equipped with

the Caste Validity Certificate, is permitted to tender a document issued by the Competent Authority acknowledging that the Caste or Tribe claim of such candidate is pending before the Caste/ Tribe Certificate Scrutiny Committee for validation under the 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 (for short "the Act of 2000"). Both these documents are, therefore, mandatorily required.

6 There is no dispute that when a specific provision of law prescribes the type of document that needs to be annexed to the nomination form, it would not be appropriate to permit any candidate to have his nomination form validated though a particular document has not been annexed to the nomination form. However, this analogy may not be applicable in these three cases for the following reasons:-

- (a) Each of these Petitioners have tendered copies of their Caste Validity Certificates issued by the competent Scrutiny Committee under the Act of 2000. The said Caste Validity Certificates issued on 18.05.2010, 05.04.2004 and 27.11.2013, respectively in these three petitions, clearly indicate the dates on which the claims for validation were tendered.
- (b) The Caste Validity Certificates even mention the numbers and

dates of the Caste Certificates tendered for validation including the names of the Authorities who have issued the said Caste Certificates.

- (c) The Caste Validity Certificates specifically mention the castes to which the claimants belong.
- (d) The candidate, who applies for validation of his caste/ tribe claim, has to necessarily submit the original caste certificate along with his claim papers and the said original caste certificate is preserved by the Scrutiny Committee dealing with the claim for validation. Whenever the claim is invalidated on the ground that the claimant does not belong to a particular caste, the said caste certificate is then confiscated by the Scrutiny Committee.

7 In the light of the above, it is obvious that though Section 10-1A of the Maharashtra Village Panchayats Act would demand the filing of the certified copy of the Caste Certificate along with the Caste Validity Certificate, in the face of the submission of the Caste Validity Certificate, the presumption is that the Caste Certificate is in the custody of the Scrutiny Committee.

8 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, prescribe a scrutiny of the nomination papers on a particular date. The purpose of such scrutiny is to ensure that the nomination form of a candidate is scrutinized in his presence and if minor defects are noticed and are curable, it gives an opportunity to the candidate cure those defects. It is further concluded that a defect of a substantial nature cannot be cured in the scrutiny process and therefore, the Returning Officer cannot cure such substantial defect.

9 The observations of this Court in paragraphs 4 and 6 of the Anant Janardan Patil (supra) 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 The learned Division Bench has thus held that the bar of Article 243-O of the Constitution of India fundamentally rests on two planks:- firstly, the election process must culminate in a formal declaration of result without intermediate interruption and secondly, the aggrieved party has an adequate and efficient remedy under the Election Laws in questioning the election on the available grounds. It is, therefore, concluded that in the matters of challenging the rejection of nomination papers, the candidate cannot be relegated to pursue the remedy under the Election Laws.

11 Considering the above, these three Writ Petitions are allowed. The impugned orders dated 25.09.2017 in all these three petitions stand quashed and set aside. The nomination papers of these Petitioners, namely, LAXMI SURESH CHAFEKAR, MACHINDRA NAGORAO MALI and GANGABAI GANGARAM NIMALWAD stand validated. The Returning Officer shall include their names in the list of valid candidates eligible for contesting the elections.

12 Since this order is dictated in open court and the Returning Officer has to act speedily, he shall act on the basis of the instructions of the learned Advocate without waiting for receiving the copy of this order.