

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

WRIT PETITION NO. 12297 OF 2017

AMBADAS KASHINATH KALKUTAGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri Dhanure Bramhanand M..
AGP for Respondents 1 and 2 : Shri N.T.Bhagat.
Advocate for Respondents 3 and 4 : Shri S.T.Shelke.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th October, 2017.

Per Court:

1 The Petitioner is aggrieved by the rejection of his nomination form by the Returning Officer vide order dated 03.10.2017.

2 The grievance is that the reason for rejection of the nomination form that the Petitioner has not signed the declaration form as regards the number of children, cannot be sustained as the signature on the declaration form was to be placed in the presence of the Returning Officer.

3 The contention of the Petitioner is that the declaration form with regard to the number of children is a peculiar form and which mentions that the contesting candidate must sign the said form in the presence of the Returning Officer. This is possible only during the scrutiny

period when the contesting candidate comes face to face with the Returning Officer. The Petitioner was under a bonafide belief that such signature has to be made only in the presence of the Returning Officer. This is established by the fact that the Petitioner has signed on every page of the nomination form wherever the candidate is expected to sign and not a single place, which requires signature of the Petitioner, is kept vacant, except the declaration form.

4 Reliance is placed upon the judgment delivered by the Delhi High Court in the matter of Saroj vs. Delhi State Election Commission, Writ Petition (C) No.3057/2017, judgment dated 08.05.2017. Specific reliance is placed on paragraphs 24, 40 and 44 wherein the Delhi High Court has, placing reliance upon various judgments of the Honourable Supreme Court, concluded that the Returning Officer is obliged to grant an opportunity to the contesting candidate during the scrutiny to correct all minor defects and such lapses which can be said to be insignificant.

5 The contention of the Petitioner, therefore, is that the Returning Officer did not grant such an opportunity to the Petitioner. Though the Petitioner insisted that he desires to sign the declaration form, the Returning Officer bluntly said that he would not be permitted.

6 Insofar as the number of children is concerned, the Petitioner concedes that in the first pregnancy of his wife, she had delivered twins on 20.04.1998. The third child, according to the Petitioner, namely, Sandip

was born on 29.03.2001. The cut off date actually being 13.09.2000, has been given extension of one year and the cut off date, therefore, now is 12.09.2001. The third child Sandip was born prior to that buffer period of one year.

7 Shri Shelke, learned Advocate for the Returning Officer and the State Election Commission, submits, on the basis of the copy of the school admission record of the third child Master Sandip, which was produced by the objector before the Returning Officer, who is present in the Court, that Sandip was born on 26.12.2001, which is apparently after the cut off date 12.09.2001. Consequentially, the Petitioner would be debarred from contesting the election as he is the biological father of three children, one of whom is born after the cut off date.

8 Shri Shelke then submits that the contention of the Petitioner is misconceived that the Returning Officer did not permit him to sign the declaration form. In fact, every contesting candidate signs the declaration form and the Returning Officer, while conducting the scrutiny of the forms, signs the declaration form to indicate that he has inspected the said declaration. Shri Shelke submits that the objector as well as the Petitioner were present during the scrutiny and the Petitioner was granted an opportunity to sign. Having not signed, compelled the Returning Officer to invalidate the nomination form.

9 I find that firstly, the Petitioner has raised disputed issues,

which cannot be considered in the writ/ supervisory jurisdiction of this Court, especially when the election process has commenced and the matter before this Court is with regard to the rejection of the nomination form. Secondly, the school record of the third child Sandip indicates that he is born on 26.12.2001. The record of birth and death is not before the Court. The Petitioner has not placed any such record before the Court which could be a part of the statutory record in which the birth of the child is mentioned.

10 Considering the above, this Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)