

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1677 OF 2017

Sadguru Mahadev Kadam

.. Petitioner

Vs.

The Election Officer/Returning Officer and ors. .. Respondents

Mr.A.Y.Sakhare, Senior Advocate i/b Mr.V. V. Salunkhe, for the
Petitioner.

Mr.D.R. More, for Respondents No.1 & 4.

Mr.S.B.Shetye, for Respondent No.2.

Ms.R.A. Salunkhe, AGP for State.

**CORAM : NARESH H. PATIL &
M.S.KARNIK, JJ.**

17th FEBRUARY, 2017

P.C. :

. The petitioner's nomination papers came to be rejected on the ground that he failed to sign on one of the declarations stating therein that in case he would get elected, he would serve the Municipal Corporation as member of the Corporation. The said declaration form is annexed at page 17 of the paper book. Learned Counsel for the petitioner submits that petitioner inadvertently missed to sign on the said declaration

form on which the petitioner was to sign at 3 places, but the petitioner signed at 2 places. The petitioner requested to allow him to sign on the remaining declaration forms, but he was not allowed to do so and the Returning Officer rejected the nomination paper by passing order on 04/02/2017.

2. Learned Counsel for the petitioner placed his reliance on *Resurgence India Vs. Election Commission of India and anr., (2014) 14 Supreme Court Cases, 189*. Paragraph 29 of the said case reads thus .

“29. What emerges from the above discussion can be summarized in the form of following directions:

29.1 The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognized. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.

29.2 The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

29.3 Filing of affidavit with blank particulars will render the affidavit nugatory.

29.4 It is the duty of the Returning Officer to check whether

the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

29.5 We clarify to the extent that Para 73 of *People's Union for Civil Liberties* case will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.

29.6 The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank.

29.7 Filing of affidavit with blanks will be directly hit by Section 125A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalised for the same act by prosecuting him/her."

3. Learned Counsel submits that State Election Commissioner had also issued guidelines directing the Returning Officer to point out such defects which could be cured by a candidate while filing nomination papers. Learned Counsel submits that the petitioner's candidature was backed by the Indian National Congress. Unfortunately, the petitioner lost opportunity to contest the election and party which backed the petitioner's candidature failed to nominate any other candidate

to contest the election from the said ward.

4. Learned Counsel appearing for the State Election Commissioner-Mr.Shetye states that the State Election Commission has taken note of such cases occurring in the State of Maharashtra. Learned Counsel states that appropriate steps would be taken to train the Returning Officers and take remedial steps in future.

5. We have perused the record, impugned order passed by the Returning Officer and judgment in the case of **Resurgence India** (*supra*). The election process is already set in motion. The voting is scheduled on 21/02/2017. In this view of the matter, we are not inclined to interfere at this stage. However, the petitioner is at liberty to resort to appropriate statutory remedy as prescribed under Section 16 of the Maharashtra Municipal Corporation Act, 1949.

6. Rules 9 & 10 of the Maharashtra Municipal

Corporations Act read as under :

9. Provisions regarding nomination of candidates.

(1) A person who is qualified to be elected as a Councillor under the provisions of the Act may be nominated as a candidate at the ward election.

(2) The form of every nomination paper shall be prescribed by the State Election Commission, which shall be supplied by the Returning Officer to any voter, on payment of the price which shall be fixed by the State Election Commission.

(3) Nomination papers duly filled in shall be submitted by the prospective candidate to the Returning Officer concerned either in person or by his proposer or seconder, between 11.00 a.m. and 3.00 p.m. during the first seven days, starting from the first day of filing of nomination papers and on the eighth day, which shall be the last day for filing of nominations, between 11.00 a.m. And 2.00 p.m.

(4) Any person who is qualified to vote and whose name is included in the voter's list of the ward for which is candidate is seeking nomination may subscribe as a proposer or seconder :

Provided that, no such voter shall subscribe as a proposer or, as the case may be, seconder for more than one nomination paper :

Provided further that, if a voter subscribes as a proposer or, as the case may be, seconder for more than one nomination paper, all such nomination papers except the first received by the Returning Officer, shall be treated as invalid and shall be liable to be rejected by the Returning Officer :

Provided also that, the same candidate may file, more than one but not exceeding four nomination papers for the same seat, subscribed by different proposers and seconders.

(5) A candidate contesting a seat reserved for the candidates belonging to the Scheduled Castes, Scheduled tribes or the Backward Class of citizens, shall not be deemed to be qualified to be elected unless he files a declaration along with his nomination papers, specifying particularly the cast to which he belongs and that the said caste is declared as a Scheduled Caste, or as the case may be, Scheduled Tribe or Backward Class of Citizens.

(6) Where the election are to be held for more than one wards of the city, a person duly qualified to be nominated may contest election in any of those wards:

Provided that, the same candidate shall not contest election

for more than one seat in a particular ward.

(7) On receipt of the nomination paper under sub-rule (3), the Returning Officer shall enter on the same its serial number and the date and time on which it is delivered to him. The Returning Officer shall also inform the person delivering the nomination paper the day, time and place fixed for the scrutiny of nomination and shall certify that the intimation has been so delivered. The Returning Officer shall also cause to be affixed in some conspicuous place of his office, the day, time and place fixed for scrutiny of nominations.

(8) The date of scrutiny of nomination papers shall be the next date following the last date of filing of nomination papers. The candidates along with one proposer each and one other person duly authorised, may attend the scrutiny of nominations. The Returning Officer shall give such persons all reasonable facilities for examination of nominations.

(9) On the date fixed for the scrutiny of the nominations the Returning Officer shall examine the nomination papers and shall decide objection if any, and may, either on such objections or on his own motion, after such summary enquiry as he thinks necessary, reject any nomination paper on any of the following grounds, namely :-

(a) that the candidate is not qualified to be elected or is disqualified under the Act ;

(b) that the proposer or seconder is not duly qualified to nominate the candidate ;

(c) that there is failure or comply with any provisions of the Act or rules made thereunder or any order of the State Election Commission;

(d) that the identify of the candidate or, as the case may be, of the proposer or seconder, cannot be established with their electoral number as specified in the nomination paper;

(e) that the signature of the candidate or, as the case may be the proposer or seconder, on the nomination paper, is not genuine or that the same is obtained by fraud.

(f) if a candidate has filed more than one nomination papers, nothing contained in clauses (c), (d) and (e) shall apply to his other nomination papers and his nomination shall not be rejected only on the ground that one of his nomination papers has been rejected under this rule.

(10) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of substantial nature.

(11) The scrutiny of the nomination papers shall be held on the date fixed in that behalf and no adjournment shall be allowed except when the proceedings are disturbed by natural calamities, riots or such other circumstances beyond the control of the Returning Officer :

Provided that, where there is any objection to the filing of nomination paper of a candidate by the Returning Officer or some other person, the candidate concerned may be allowed time up to the next following working day, to rebut the same and Returning Officer shall record his decision on such adjourned day.

(12) The result of the scrutiny of nomination papers shall be recorded by the Returning Officer on each nomination paper and if the nomination paper is rejected, the reasons for such rejection shall also be recorded.

(13) Immediately after scrutiny of the nomination papers is over, the Returning Officer shall prepare a list of validly nominated candidates and shall affix the list on his notice board and shall also record the date and time when it was so affixed.

9A. Provisions regarding withdrawal of candidature

(1) After the list of validly nominated candidates is published under rule 9, any such candidate may withdraw his candidature by writing subscribed by him and delivered to the Returning Officer, before 3.00 p.m. of the last date of withdrawal of candidature. The notice in this behalf may be given by the candidate in person, or by his proposer or seconder or any other authorised person.

(2) The Returning Officer shall, on receipt of the notice under sub-rule (1), verify its genuineness and the identity of the person delivering the same and thereafter cause the copy the same to be affixed on his notice board

10. Deposit by candidates

(1) On or before the date appointed for the nomination of candidates for a ward election, each candidate shall deposit or cause to be deposited with the Returning Officer, in cash, a sum of five thousand rupees; and no candidate shall be deemed to be duly nominated unless such deposit has been made:

Provided that, where the candidate belongs to the Scheduled Castes or Scheduled Tribes or Backward Class of Citizens, or is a Woman, the amount of deposit shall be two thousand and five hundred rupees, if such candidate

produces his Caste Certificate issued by the Competent Authority and the Validly Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, Donotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000:

Provided further that, where the candidate has filed more than one nomination papers for the same sent, it shall not be necessary to deposit a separate amount in respect of each nomination paper.

(2) The deposit shall be returned if,--

(a) the candidate is declared or is deemed to be duly elected.
(b) the candidate signifies his intention in writing to the Commissioner not later than (three days) after the day appointed for the nomination of candidates not to contest the election.

(c) the nomination of the candidate is declared invalid.

(d) the candidate dies, after the scrutiny of nomination papers and before the commencement of the poll, or

(e) the candidate fails to be elected but secures valid votes in excess of the number specified in sub-rule (4).

(3) The deposit shall be returned to the person by whom it was made. If a candidate dies before the day fixed for the poll, the deposit, if made by him, shall be returned to his legal representatives or, if not made by the candidate, shall be returned to the person by whom it was made.

(4) If a candidate is not elected and if the number of valid votes polled by him does not exceed one-eights of the total number of valid votes polled divided by the number of councillors to be elected in the ward for which the candidate is nominated, the deposit shall be forfeited to the Corporation.

(5) The deposit shall, if it is not forfeited, be returned as soon as may be after the declaration of the result of the election under rule 39:

Provided that if a candidate is duly nominated at a general election in more than one ward, nor more than one of the deposits made by him or on his behalf shall be returned and the remainder shall be forfeited to the Corporation.”

7. We direct the State Election Commission to call for explanation from the Returning Officer in respect of the contentions raised by the petitioner herein and take further remedial steps so that such incidents do not occur in future. The Registry is directed to forward copy of this order to the State Election Commissioner.

8. With these directions the petition stands disposed of.

(M.S.KARNIK, J.)

(NARESH H. PATIL, J.)