

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No. 544/2017.

Vilas Gorakhnath Khadse

-VERSUS-

The Election Commission of India and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : B.P. DHARMADHIKARI &
MRS. SWAPNA JOSHI, JJ.

DATE : JANUARY 25, 2017.

Heard Shri V.A. Kothale, learned Counsel
for the petitioner, Ms. Choube, learned Counsel for
respondent no.1 and Ms. T. Khan, learned A.G.P. for
respondent nos.2 and 3.

2. Perused order dated 18.01.2017, passed by
respondent no.3, rejecting nomination paper of the
petitioner on the ground that affidavit is not sworn
before the competent officer as prescribed in Rule 4A
of the Conduct of Elections Rules, 1961 (herein after
referred to as "the 1961 Rules" for short).

Second reason assigned is, affidavit is

2

incomplete in as much as several columns were kept vacant/blank, without writing anything.

3. Shri Kothale, learned Counsel for the petitioner states that affidavit was sworn before the Executive Magistrate and Naib Tahsildar, who is competent to administer oath in terms of Oaths Act. He further submits that second reason that several columns were left blank, shows non-application of mind, as any particular column number has not been specified.

4. Ms. Choube, learned Counsel for respondent no.1 submits that after the affidavit was received, in preliminary scrutiny, defects were noticed and accordingly placed on record on 17.01.2017 only. Had petitioner remained present then, he could have taken note of the same. He was given opportunity to cure those defects by 18.01.2017. Petitioner did not remain present even on 18.01.2017.

5. Shri Kothale, learned counsel in reply submits that petitioner was present at the time of scrutiny.

6. Impugned order clearly mentions that he was absent at the time of scrutiny on 18.01.2017.

3

Several forms may have been scrutinized on that day and petitioner could have remained present when his form was scrutinized.

7. Similarly, perusal of Rule 4A of the 1961 Rules, reveals that the affidavit is to be sworn before a Magistrate of First Class or a Notary. Petitioner has not sworn his affidavit before these authorities. His affidavit is before Executive Magistrate/Naib Tahsildar. Contention that said Executive Magistrate or Naib Tahsildar is Oath Commissioner under Oaths Act, is not being substantiated. It is to be noted that while recording first reason, respondent no.3 has observed that affidavit submitted was not sworn even before oath commissioner.

8. Perusal of affidavit which has been sworn before the Executive Magistrate reveals that it is a computerized document where at two places mark “x” has been put by hand to enable the deponent to put his signature there. In that affidavit, blank space where the place of swearing is to be mentioned is, not filled in and it is kept blank. The date on which affidavit is sworn in is recorded as 12.01.2017.

9. In this situation, we find that respondent

4

no.3 has not either committed any jurisdictional error or acted with perversity. No case is made out for interference. Writ Petition is, therefore, rejected. No costs.

JUDGE

JUDGE

Rgd.