

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

WRIT PETITION NO.12880 OF 2018

Pathan Jubedabi Afzal Khan ... Petitioner

Versus

The State Election Commission
& another ... Respondents

Mr. S.P. Shah, Advocate for the Petitioner.

Mr. S.T. Shelke, Advocate for both respondents.

Coram : N.M. Jamdar, J.

Date : 26 November 2018.

Oral Order :

1. By this petition, the petitioner has challenged rejection of his nomination paper on the ground that petitioner has not signed below the clause verification above the signature of the notary.

2. Learned counsel for the petitioner submitted that the signature below the verification clause was not necessary as the petitioner has already signed the affidavit in the earlier part. Learned counsel for the petitioner submits that the view is taken by the learned

Single Judge of this Court in the case of Shamrao R. Khangal V. District Deputy Registrar, Co-operative Societies and others in Writ Petition Nos.1778/2015 and 1779/2015 decided on 20 February 2015 that such absence of signatures are merely defects of technical nature. He contends that the Apex Court in the decisions in the case of *M. Kamalam Vs. Dr. V.A. Syed Mohammed*¹, *Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar and others*² and *G.M. Siddeshwar Vs. Prasanna Kumar*³ and even in the case of election under Representation of People Act has noted such composite affidavit is a mere duplication. Learned counsel submitted that since rejection of the nomination paper by the Returning Officer suo motu is only of technical nature, it is uncalled for.

3. Learned counsel appearing for Election Commission has placed on record the Notifications issued by the State Election Commission on 15 March 2004 and 13 August 2018. Notification dated 13 August 2018 is issued pursuant to the directions issued by the Apex Court in W.P. No.784 of 2015 dated 16 February 2018. The Apex Court has issued certain directions to bring in transparency in the election process and make it mandatory to the contestants to

1 (1978) 2 Supreme Court Cases 659

2 (2005) 2 Supreme Court Cases 188

3 (2013) 4 Supreme Court Cases 776

disclose certain particulars which the citizens are entitled to know. To place burden upon such candidates to ensure that the disclosure is true and correct, a format of affidavit specifying signatures at two places has been issued by the Election Commission. The format mandates that not only the candidate should sign the form but must sign it at a particular place that declares that the affidavit is true and correct. Considering the context in which the Apex Court has issued directions, which have been incorporated by the Election Commission to require the candidate to sign at two places, the defect cannot be considered as of technical nature. The declarations are solemn statements and cannot be trivialised as mere formality. Even otherwise, by Notification dated 15 March 2004 the authorities, before whom such verification is to be given is specified. None of the decisions, which are cited by the learned counsel are in the context of the new format issued by the Election Commission pursuant to the directions of the Apex Court.

4. The argument that petitioner was not aware of the meaning of words in the verification clause, is stated to be rejected. These forms were widely published by the Election Commission. Had the petitioner any doubt regarding the same, petitioner should have sought legal advice. Petitioner should have studied the forms

carefully. By permitting the absence of signature, where the petitioner was supposed to sign, Returning Officer could not have given go by to the mandate.

5. In these circumstances, there is no merit in the petition. Petition stands rejected.

N.M. Jamdar, J.