

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

WRIT PETITION NO.592 OF 2019

**SANDIPSINGH SHANKARSINGH GADIWALE
VERSUS
THE RETURNING OFFICER 1, NANDED WAGHALA CITY
MUNICIPAL CORPORATION AND OTHERS**

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Advocate for the Petitioner : Smt. C. S. Deshmukh
Advocate for Respondent Nos. 1 and 2 : Shri R. K. Ingole Patil
Advocate for Respondent No. 3 : Shri Anuj Ajay Fulfagar h/f.
Shri A. A. Pimpalgaonkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 16th JANUARY, 2019.

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PER COURT :

1. I have heard the learned Advocates for the respective sides.
2. The issue is as regards the 'No Written Statement' order passed by the court below on 06/01/2018.
3. These litigating sides were before this Court in Writ Petition No. 6999/2018 (Balaji Vithalrao Jadhav Vs. The Returning Officer and others). While dismissing the petition, certain directions were issued for the expeditious disposal of

the Election Petition 2/2017. One such direction set out in paragraph 6 was that, as a 'No Written Statement' order was passed against the returned candidate (who is the petitioner in this petition), he was permitted to tender an application for vacating the 'No Written Statement' order, on or before 28/10/2018.

4. This Court, while passing the said order on 08/10/2018, therefore, granted almost 20 days for this petitioner to file an application. He waited him till the last date and co-incidentally, the last two dates i.e. 27/10/2018 and 28/10/2018 were a non working Saturday and a Sunday. He, therefore, filed his application on 29/10/2018 and by the impugned order, the said application is rejected on the ground that it was filed belatedly and it was not accompanied by a written statement.

5. It is clarified by the learned Advocate for the petitioner that the said written statement was subsequently tendered on 15/11/2018 by filing a separate application Exhibit 71 and that application also has been rejected on account of Exhibit

67 having been rejected.

6. The learned Advocates for the respondents vehemently opposed this petition and contended that the petition deserves to be dismissed by imposing costs of Rs. 50,000/-. It is further contended that the petitioner waited till the last date i.e. 28/10/2018. Even if it is assumed that the last two dates were holidays and the period could be enlarged by two days under Section 148 of the Code of Civil Procedure, the written statement was not filed alongwith Exhibit 67.

7. In my view, the contention of the respondents regarding the written statement not being annexed to Exhibit 67 is a sustainable submission. However, considering the peculiar facts as above and since the trial in the said Election Petition is to conclude by 31/12/2019, ends of justice could be met by imposing costs on the petitioner with further directions so as to ensure that he, being a returned candidate, would not delay the proceedings.

8. The learned Advocates for the respondents graciously

state that the costs may be donated for the treatment of the poor patients in the Ghati Hospital, Aurangabad.

9. In view of the above, this petition is allowed with the following directions :-

(a) Both the impugned orders dated 26/11/2018 are quashed and set aside.

(b) Exhibit 67 is allowed by imposing costs of Rs. 5,000/- (Rs. Five Thousand only).

(c) Application Exhibit 71 is allowed by imposing costs of Rs. 2,500/- (Rs. Two Thousand Five Hundred only).

(d) The total costs of Rs. 7,500/- (Rs. Seven Thousand Five Hundred only), shall be deposited by the petitioner with the Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft, to be drawn in the name of "Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad" on or before 31/01/2019.

(e) Receipt of such deposit shall be produced by the petitioner before the Trial Court on or before 08/02/2019.

(f) Since issues have already been cast, the litigating sides would request the Trial Court to re-cast the issues and/or

frame additional issues after perusing the written statement of the petitioner – returned candidate, on or before 31/03/2019.

(g) The parties shall proceed to lead evidence in the matter from April 2019.

(h) The Trial Court would be at liberty to reject adjournment applications, if they are found to be based on frivolous or unreasonable grounds.

(i) The final argument of the litigating sides shall be concluded on or before 15/11/2019 and considering the earlier directions of this Court in order dated 08/10/2018, the Election Petition shall be decided on or before 31/12/2019.

(RAVINDRA V. GHUGE, J.)

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