

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

960 WRIT PETITION NO.4767 OF 2019

SUHAS JAYWANT NATAVADKAR
VERSUS
THE RETURNING OFFICER 1 NANDURBAR AND ANOTHER

...

Advocate for Petitioner : Mr. D.S. Bagul
Advocate for Respondent No.1 : Mr. Alok Sharma

...

**CORAM : P.R. BORA, J.
DATED : 16th APRIL, 2019.**

PER COURT:-

. Heard Shri D.S. Bagul, the learned counsel appearing for the petitioner and Shri Alok Sharma, the learned counsel appearing for respondent no.1.

2. The petitioner has filed the present petition taking exception to the order passed by respondent no.1. The learned counsel submitted that respondent no.1 has illegally accepted the nomination of respondent no.2 for the election of Lok Sabha for the Nandurbar constituency. The learned counsel submitted that specific objections were raised by the present petitioner against the nomination of respondent no.2 however, none of the said objection has been considered by the Returning Officer. The learned counsel inviting my attention to the affidavit allegedly filed

by respondent no.2 before respondent no.1, submitted that mere perusal of the said document reveals that several material particulars are lacking. The stamp does not show the source and purpose of its purchase. The learned counsel referring to Section 17 of the Maharashtra Stamp Act submitted that, in the instant matter the requirements under the said section are not fulfilled. The learned counsel further submitted that apart from the above, the petitioner has submitted incomplete information. It is further contended that not only that the information provided by the petitioner in her nomination form is incomplete, it is false also. The learned counsel invited my attention to the columns in the nomination form wherein, particulars as about the dependents on the candidate are to be filled in. The learned counsel submits that the father is also shown to be dependent by the candidate and his income is shown more than the candidate.

3. The learned counsel further submitted that the candidate herself has not shown her income from all the sources and the income from the source of agriculture only has been shown. The learned counsel also invited my attention to certain other irregularities in the nomination form. The learned counsel submitted that having regard to

the objections so raised, in no case the Returning Officer could have accepted the nomination of respondent no.2. The learned counsel submitted that this Court has ample power and jurisdiction under Article 226 of the Constitution of India to set right the things and to set aside the order passed by the Returning Officer, which perse has been passed without considering the material on record and without application of mind. The learned counsel sought to rely upon the Division Bench judgment of this Court in the case of **"Dalsing s/o Shamsing Rajput Vs. State of Maharashtra and Ors, 2006(3) Mh.L.J., 592."**

4. Shri Alok Sharma, the learned counsel appearing for respondent no.1 raised the objection as about the maintainability of the petition. The learned counsel relied upon the judgment of the Constitution Bench of the Hon'ble Apex Court in the case of **"N.P. Ponnuswami Vs. The Returning Officer and Ors, AIR 1952 SUPREME COURT 64"**. The learned counsel referring to the discussion made in the judgment and more particularly referring to para-13 of the judgment submitted that once the process of election has commenced, the only remedy for the petitioner is to file the election petition. The learned counsel also referred to the provisions of the Representation of the People Act.

5. I have given due consideration to the submissions made on behalf of the petitioner as well as the respondents.

6. In the case of "N.P. Ponnuswami" (cited supra), similar argument was made before the Madras High Court that the jurisdiction of the High Court is not affected by Article 329(b) of the Constitution and that the petitioner is entitled to writ of certiorari in the circumstances of the case. The argument so made was rejected by the Hon'ble Madras High Court whereupon, the petitioner had approached the Hon'ble Apex Court and the Constitution Bench of the Hon'ble Apex Court then ruled that rejection or acceptance of nomination paper cannot be called in question under Article 226 of the Constitution of India.

7. Relying upon the judgment of the Division Bench of this Court in the case of "Dalsing s/o Shamsing Rajput" (cited supra), it was sought to be contended by Shri Bagul that the Court can prevent respondent no.2 from contesting the election without disturbing the election programme. It is however difficult to accept the argument so made by the learned counsel. I deem it appropriate to reproduce herein-below paras 8 and 9 from the judgment of the Hon'ble Apex Court in the case of "N.P. Ponnuswami" (cited supra) which

read thus:

"8. The next important question to be considered is what is meant by the words "no election shall be called in question". A reference to any treatise on elections in England will show that an election proceeding in that country is liable to be assailed on very limited grounds, one of them being the improper rejection of a nomination paper. The law with which we are concerned is not materially different, and we find that in S.100 Representation of the People Act, 1951, one of the grounds for declaring an election to be void is the improper rejection of a nomination paper.

9. The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and an other after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any

Court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question Article 392(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be` urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Art.329 (b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it."

8. Considering the argument advanced on behalf of the petitioner, I also deem it appropriate to reproduce herein-below para 13 of the judgment of the Hon'ble Apex Court which reads thus:

"13. It was argued that since the Representation

of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Art.226 of the Constitution. This argument however, is completely shut out by reading the Act along with Art.329(b). It will be noticed that the language used in that article and in S.80 of the Act is almost identical, with this difference only that the article is proceeded by the words "notwithstanding anything in this Constitution." I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress."

9. Having regard to the discussion made and the finding recorded by the Constitution Bench of the Hon'ble Apex Court, I have no hesitation in holding that the rejection or acceptance of the nomination paper for the election of Lok Sabha cannot be called in question under Article 226 of the Constitution of India. I am, therefore, not inclined to entertain the present petition. The same therefore stands rejected. It need not be stated that it would be open for the petitioner to file the election petition, if so required and if he so desires. In the said petition he may very well take 'improper acceptance of nomination' as one of the grounds to set aside the election of respondent no.2. As requested

by the learned counsel for the petitioner, it is clarified that this Court has not expressed any opinion as about the merits of the petition.

(P.R. BORA, J.)

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