

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4809 OF 2018
(Jijabai w/o Dagadu Bhil Vs. Returning Officer and others)

Mr.U.S.Patil, Advocate for the petitioner.
Mr.N.T.Bhagat, AGP for the respondent/State.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 22/01/2019

PER COURT :

1. The petitioner/defeated candidate from the S.T.category of Ward No.1 is aggrieved by the judgment and order dated 31/10/2017 delivered by the Trial Court by which her Election Petition No.02/2015 has been rejected.

2. The learned Advocate for the petitioner has strenuously contended that a format ballot paper of the contesting candidates was prepared. There were 2 seats in Ward No.1. One was for the OBC category and one was for the S.T.cateogry. The petitioner canvassed in the elections on the election symbol of "BAT". Her opponent Sunita contested on the symbol "KITE". There were only 2 candidates contesting the said elections for the post reserved for Scheduled Tribe. Another post in the same Ward was reserved for the OBC where again only 2 candidates were contesting with the

election symbol of "TABLE" and "CEILING FAN".

3. It is submitted that most of the voters including the petitioner are illiterate and they cannot read or write. While canvassing, the lower half of the ballot paper was for the S.T. Category and the Upper half was for the OBC category. Grievance is that when the ballot paper was pasted on the EVM, the upper half was shown to be meant for the S.T. Category and the lower half was shown for the OBC category. In the OBC category, Ganpat having the symbol "TABLE" polled 217 votes and Pushraj having the symbol of "CEILING FAN" Polled 138 votes. In the ST category, the petitioner Jijabai with the symbol "BAT" polled 156 and the other candidate with the symbol "KITE" polled 109 votes. Each voter had to cast 2 votes, one for each candidate from the S.T. category and from the OBC category. Further grievance is that because the ballot paper showed the ST category in the upper half and the OBC category in the lower half, the 217 votes cast in favour of Ganpat in the OBC category were actually meant for Jijabai and the votes cast in favour of Jijabai were meant for Ganpat. It is submitted that the rules mandate that the ballot paper as is provisionally prepared, should appear on the EVM machine.

4. I find the contention of the petitioner to be fallacious for several

reasons.

5. There was no error in showing the contesting candidates in the two categories. There was no error in exhibiting the election symbol of each candidate. Even if it is believed that all the voters are illiterate, they were at least aware about the election symbol which is a part of the campaigning that has become a common practice in the elections in this country. The voters can therefore easily identify the election symbol and cast the vote. Moreover, the number of votes cast was 371. Each voter has cast 2 votes in the two categories. The total of the votes cast and which are valid including from the NOTA category (None of the above), is 371. The symbol "TABLE" received 217 votes and the "CEILING FAN" received 138 votes in the OBC category. In the ST Category, the symbol "BAT" received 156 votes and the symbol "KITE" received 190 votes.

6. As such, even if there was some irregularity in pasting the two portions of the ballot paper on the EVM machine, the illiterate voters seem to have voted by looking at the symbol and the literate voters must have voted by reading the names of the candidates.

7. I, therefore, do not find any error in the impugned judgment by

which the Trial Court has concluded that there was no evidence on record to indicate that the voters were confused.

8. It also cannot be ignored that the petitioner who claims to be illiterate, has seen her ballot paper pasted on the EVM. She has not raised any objection. Her election symbol was prominently visible. It was only after the declaration of the result that the petitioner started complaining, having realized that she was defeated.

9. As such, this petition, being devoid of merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)