

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.14703 OF 2019

RAM BAPURAO NARWATE
VERSUS
SARJERAO RAMDAS POUL AND OTHERS

WITH

WRIT PETITION NO.14704 OF 2019

RAM BAPURAO NARWATE
VERSUS
GAJANAN BAPURAO NAGARGOJE AND OTHERS

WITH

WRIT PETITION NO.14705 OF 2019

RAM BAPURAO NARWATE
VERSUS
PRALHAD RAJENDRA KADAM AND OTHERS

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Advocate for Petitioners : Mr.Bhushan B. Kulkarni

Advocate for Respondent No.1 : Mr.A.B.Kadethankar

Advocate for Respondent No.2 in W.P.No.14703 & 14704 of
2019 : Mr.V.B.Jadhav

Advocate for Respondent No.2 in W.P.No.14705 of 2019 :
Mr.R.S.Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 5th December, 2019.

PER COURT :-

1. In all these petitions, the same petitioner has challenged the judgment of the District Judge-1, Ahmedpur by which, Election Appeal Nos.3/2019, 4/2019 and 5/2019 have been allowed under Rule 19-A of Maharashtra Panchayat Samitis (Electoral Divisions And Conduct of Election) Rules, 1962. By the impugned judgment, the orders of the Returning Officer invalidating the nomination forms of the original appellants, have been quashed and set-aside and the learned District Judge has concluded that the rejection of the nominations was unsustainable, the nomination forms of the appellants were legal and valid and they were permitted to contest the election of Khandali Panchayat Samiti Block. The polling is scheduled on 12/12/2019.

2. I have considered the strenuous submissions of the learned Advocates for the petitioner and respondent Nos.1 and 2.

3. The grievance raised is that any person, who

intends to contest the election of the Panchayat, has to submit a certificate of the Panchayat along with the resolution of the Gram Sabha or the certificate by the Chief Executive Officer or an Officer designated by him or his nominee certifying that the person has a toilet in his own house and he regularly uses the same or he uses a public toilet regularly since he does not have a toilet in his own house. Failure to submit such a certificate attracts disqualification under Section 14(1)(j-5) of the Maharashtra Village Panchayats Act. Section 14(1)(j-5) reads as under:-

"fails to submit a certificate of the concerned panchayat, alongwith the resolution of the Gram Sabha [or of the Chief Executive Officer or an officer designated by him; or a self-certificate] certifying that,-

(i) he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet: or

(ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public

toilet;

[Provided that, no member of a panchayat shall be disqualified under this clause, if he submits such certificate to the Block Development Officer, within a period of one year from the 10th January 2011, being the date of commencement of the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010 :]

[Provided further that, nothing contained in this clause shall affect the member holding office on the 10th January 2011, who has not submitted the certificate within a period of ninety days from the said date, as required under the provisions of this Act, as amended by the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010 (Mah. XXXIII of 2010); and he shall not be deemed to be disqualified and shall continue to hold his office for a period of one year from the said date, unless he is disqualified under any other provisions of this Act or any other law for the time being in force; or]"

4. The petitioner, identical in these three matters, had raised objections to the nomination forms submitted by the respondents/candidates, contending that though they have tendered a self certificate declaring that they have a toilet constructed in their own home and are using the same regularly, there was no resolution of the Grampanchayat, which is required in addition. Based on this solitary objection, the Returning Officer rejected the nomination forms of the original appellants who, under the scheme of law, approached the learned District Judge by filing their election appeals.

5. After hearing the learned Advocates for the respective sides, the learned District Judge delivered the impugned judgment by relying upon an amendment dated 31/01/2017 introduced by the State of Maharashtra with regard to the submission of the Village Panchayat resolution concerning the

existence of a toilet or a candidate using a public toilet. It was concluded that the nomination forms of these candidates were valid in all respects, except the controversy with regard to the lacuna of Grampanchayat resolution, which was non-existent.

6. My attention is drawn to the said amendment introduced by the State of Maharashtra vide Ordinance No.V of 2017 dated 31st January, 2017. It clearly mentions that though a resolution of the Gram Sabha (that a particular candidate has a toilet in the house and he is using it or he is using a public toilet regularly) is required in an ideal situation, it so happens that when the elections are declared, a Gram Sabha, which is to be convened at least on four occasions/quarterly, in a financial year, may not be convened and this would cause manifest inconvenience and grave hardships to desirous candidates. Looking at such cumbersome

situations, it was provided that, such candidates may then obtain such a certificate from the Chief Executive Officer of the Zilla Parishad or through a person to whom he has delegated the power or through a person, who is nominated by him. It is informed that the Maharashtra State Ordinance No.V of 2017 has not been subjected to any challenge to the extent of its validity and in my view, the said ordinance would, therefore, be squarely applicable. These appellants have obtained such a certificate from a person nominated by the C.E.O. and as such, I do not find that the impugned judgment concluding that the nomination papers are valid, could be branded as being erroneous and perverse.

7. These petitions being devoid of merits are, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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