

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

901 WRIT PETITION NO. 1 OF 2021

**MACHINDRA YESHWANT PADALE
VS
THE STATE ELECTION COMMISSION THR COLLECTOR
AHMEDNAGAR AND ANOTHER**

Mr. V. D. Salunke, Advocate h/f Mr. M. V. Salunke, Advocate for the petitioner

Mr. A. B. Kadethankar, Standing counsel for respondent No.1

Mr. R. D. Sanap, AGP for respondent No. 2

CORAM : RAVINDRA V. GHUGE, J.

DATE : 02-01-2021

P. C.

1. I have heard learned counsel for the petitioner and the learned standing counsel for the respondents. With their assistance, I have gone through the petition papers and have perused Rule-11, especially Rule-11(2-A) of the Bombay Village Panchayats Election Rules, 1959 which mandates the Returning Officer to refrain from rejecting the nomination papers on the ground of any defect which is not of a substantial character. So also, the Hon'ble Apex Court has taken a view in the matter of *Ram Awadesh Singh Vs Sumitra Devi reported in 1972 AIR (SC) 580* (Para 13) and which view has been followed by the learned Division Bench of this Court in the matter of *Suresh Bhagwanrao Mohite and others Vs State of Maharashtra and others reported in 1987 Mah LR 774*.

2. I have perused the nomination form at page 11 of the petition paper book. The learned counsel for the respondents does not dispute that the Returning Officer has marked on the scrutiny paper that the petitioner has submitted an affidavit declaring that no criminal case is pending against him and there is no conviction. Details about his property are also mentioned. However, by the impugned order dated 31-12-2020, the same Returning Officer has rejected the petitioner's nomination form on the ground that such affidavit is not filed. It is obvious from the record that the Returning Officer did not follow the mandate of Rule-11 (2A) of permitting the petitioner to cure the defect which, earlier, he had held to be a non existing defect while scrutinizing the nomination papers.

3. In view of above, this petition is allowed on the condition that the petitioner would tender an affidavit with regard to Serial No. 4 of Page-11 and handover the said affidavit to the Returning Officer in the court or in the office of the Returning Officer before 12.00 noon on 04-01-2021.

(3)

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4. Since the order has been dictated in the open court, the parties need not wait for the order to be uploaded on the official website of Bombay High court.

[RAVINDRA V. GHUGE, J.]

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