

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

WRIT PETITION NO. 54 OF 2021

Sangita Anil Gaikwad,
Age 48 years, Occ. Household,
R/o. A/P. Wakadi, Tq. Jamner,
District Jalgaon.

... **Petitioner.**

VERSUS.

1) The State of Maharashtra.,
General Administration Department,
Mantralaya, Mumbai – 32.
Through its Chief Secretary.

2) District Collector, Jalgaon,
Tq. & Dit. Jalgaon.

3) The Returning Officer,
Group Grampanchayat Wakadi,
Tq. Jamner, Dist. Jalgaon.

4) The State Election Commission.

... **Respondents.**

...

Advocate for Petitioner :Mr. Azizoddin Syed, h/f Mr. Brahme Shailesh P.

AGP for Respondents No. 1 & 2 : Mr. S.B. Pulkundwar.

Advocate for Respondents No. 3 and 4 : Mr. A.B. Kadethankar.

CORAM : MANGESH S. PATIL, J.

DATE : 04.01.2021.

ORAL JUDGMENT :

Leave is granted to correct the name of respondent No. 4.

2. Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

3. Nomination form filled by the petitioner for ward No. 3C of Group Grampanchayat Wakadi has been rejected by the impugned order on the

ground that she failed to submit the affidavit about change of her name after marriage, within time.

4. The learned advocate for the petitioner points out that the impugned order does not specify at what time the Returning Officer had undertaken the scrutiny but the impugned order shows that the affidavit was already before him and still he chose to reject the nomination. The ground being put forth by the Returning Officer is not legal and proper and would deprive the petitioner an opportunity to contest the election.

5. Learned advocate Mr. Kadethankar for the Election Commission submits that as far as factual aspects are concerned, there was no opportunity for the Returning Officer to allow the petitioner to make amends by tendering the affidavit. It is his version that when he undertook the scrutiny there was no such affidavit filed by her about change of her name which left him with no other alternative but to reject the nomination.

6. As can be seen from the impugned order, one can easily make out that the objection raised by the Returning Officer is only as regards not filing the affidavit in time. Conspicuously, he does not mention as to within what time he was expecting her to file the affidavit. The order is vague in that respect. It also does not mention as to at what time the Returning officer undertook the scrutiny. If the affidavit was already before him even before passing of the impugned order, the rejection of nomination of the petitioner by him is clearly illegal being contrary to Rule 11 (2-A) of the Village Panchayat Election Rules and is liable to be quashed and set aside.

7. The Writ Petition is allowed. The impugned order is quashed and set aside. The Returning Officer shall accept the nomination of the petitioner as valid and undertake the further process.

8. The learned advocate Mr. Kadethankar for the Election Commission as well as the learned advocate for the petitioner are instructed to

communicate this order to the Returning Officer. The petitioner shall file affidavit before the Returning Officer to this effect.

9. The Returning Officer shall proceed to act on the basis of the affidavit to be tendered by the petitioner.

10. The rule is accordingly made absolute in above terms.

(MANGESH S. PATIL, J.)

mkd/-