



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ELECTION PETITION NO. 14 OF 2019

Abhijit s/o Jayprakash Adhikari,
Age 44 years, Occ. Agri.,
R/o Plot No. 5, Tirupati Residency,
Ramchandra Nagar, Aurangabad,
Tal. & District Aurangabad

... PETITIONER

VERSUS

1. [Election Commission of India
Nirvachan Sadan, Ashoka Road,
New Delhi – 110001,
Through it's Chief Election
Commissioner
2. Chief Electoral Officer and
District Collector, Aurangabad]
3. The Returning Officer for Elections to
111-Gangapur Legislative Assembly
Constituency.
4. Acchelal Ramnaresh Yadav,
Age Major, Occ. Agri.,
R/o Ranjangaon (Shen),
Tal. Gangapur, Dist. Aurangabad
5. Prashant Bansilal Bamb,
Age Major, Occ. Agri.,
R/o Lasur Station, Tal. Gangapur
District Aurangabad.
6. Santosh Annasaheb Mane Patil,
Age Major, Occ. Agri.,
R/o Jamgaon, Tal. Gangapur,
District Aurangabad.

Respondent Nos.
1 & 2 are Deleted
as per order
below Exh.8
Dt.18.01.2024

7. Ankush Baburao Kalwane,
Age Major, Occ. Agri.,
R/o Ghanegaon, Tal. Gangpur,
District Aurangabad.
8. Kashinath Haribhau Vetar,
Age Major, Occ. Agri.,
R/o Plot No. 29, Krishna Niwas,
Radhaswami Colony, Jatwada Road,
Aurangabad, Dist. Aurangabad
9. Pravin Himmatrao Ranyeole,
Age Major, Occ. Agri.,
R/o Galli No. 11, Sanjay Nagar,
Mukundwadi, Aurangabad.
10. Rahul Shivram Sonule,
Age Major, Occ. Agri.,
R/o Datta Nagar, Ranjangaon (Shen),
Tal Gangapur, Dist. Aurangabad.
11. Bharat Sukaji Jadhav,
Age Major, Occ. Agri.,
R/o Mahsul Colony, Vaijapur Road,
Gangapur, Tal. Gangapur,
District Aurangabad
12. Devidas Ratan Kasabe,
Age Major, Occ. Agri.,
R/o Jaysing Nagar, Behind Lasur Tol
Naka, Gangapur, Tal. Gangapur,
District Aurangabad.
13. Narayan Bhanudas Pawar,
Age Major, Occ. Agri.,
R/o Lamangaon, Dharankheda,
Tal. Kannad, Dist. Aurangabad
14. Babasaheb Arjun Gaikwad,
Age Major, Occ. Agri.,
R/o Waluj MIDC, Aurangabad,
Tal. & District Aurangabad.

15. Babasaheb Vishwanath Thorat,
Age Major, Occ. Agri.,
R/o Ambegaon, Post. Ashegaon,
Tal.Gangapur, Dist. Aurangabad.
 16. Bharat Atmaram Fulare,
Age Major, Occ. Agri.,
R/o Gut No.52/11, Laxmi Road,
Wadgaon (Ko.),
Tal. & District Aurangabad.
 17. Shaikh Gulam Ali Mohd. Husen,
Age Major, Occ. Business,
R/o House No. 1-11-1-152, Budhi Lane,
Aurangabad, Dist. Aurangabad.
- ... RESPONDENTS

Mr. S. G. Dodya, Advocate for the Petitioner.
Mr. Alok Sharma, Advocate for Respondent No.3

CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : 15th October, 2024

PRONOUNCED ON : 25th October, 2024

JUDGMENT:-

1. The Petitioner has instituted the present Petition under Section 81 of the Representation of People Act, 1951 seeking declaration that the election of Respondent No. 5 from 111-Gangapur Legislative Assembly Constituency declared on 24.10.2019 is illegal, null and void and further prayed to quash and set aside the same. The Petitioner further prayed for issuance of directions to hold fresh elections.

2. The Petitioner alleged that Respondent No.1, Election Commissioner had declared an election programme for the State Legislative Assembly, and in pursuance of the same, he submitted his nomination form alongwith Respondent Nos. 4 to 17 as candidates from 111-Gangapur Legislative Assembly Constituency. However, on 24.10.2019, the Respondent No. 3, Returning Officer declared Respondent No.5 as elected candidate from the said constituency.

3. The Petitioner alleged that he had submitted his nomination form to contest the election being a candidate on 04.10.2019 alongwith affidavit in the prescribed form after receiving the original AB Form from a State level political party i.e. Maharashtra Navnirman Sena (in short "MNS"), but inadvertently, he had enclosed a colour photocopy of the AB Form with the nomination form and original was retained with him. On 05.10.2019, as per schedule of scrutiny of nomination paper, he had attended the office of Respondent No. 3, but without giving any opportunity to him (petitioner) to cure the defects, Respondent No. 3 Returning Officer rejected his nomination only on ground that he has not filed original AB Form with his nomination form.

4. The Petitioner further alleged that inadvertently, the colour photocopy of original AB Form was submitted by him and when he

came to know about the said fact, he had contacted with Respondent No.3, Returning Officer on his Mobile but at that time, the Returning Officer Mr. Sandip Patil informed him that he would receive original AB Form at the time of scrutiny on 05.10.2019. However, on the next day i.e. on 05.10.2024, Mr. Sunil Yadav joined the post of Returning Officer and he refused to accept the original AB Form of the Petitioner without providing him any opportunity of hearing to remove the said defect in nomination form and passed the order dated 05.10.2019, thereby rejected his nomination form.

5. According to the Petitioner, no provision has been contemplated under the Representation of People Act, 1951 to reject the nomination paper, if a photocopy of AB Form is produced. While submitting the documents by him, inadvertently original AB Form was replaced with Photocopy. Therefore, said defect could have been cured, if proper opportunity to cure could have been offered to him. However, without considering the provisions of Section 36 of the Representation of People Act, Respondent No.3, Returning Officer rejected his nomination form. Therefore, the election of Respondent No. 5, declared on 24.10.2019, is illegal and bad in law and the same is liable to be quashed and set aside, so also, fresh election needs to be held.

6. The Petitioner further pleaded that Respondent No.1, Chief Election Commissioner had issued letters dated 16.01.2019, 07.02.2019 and 11.07.2019, whereby the Returning officers were declared unqualified. Therefore under order dated 03.10.2019, the Returning Officer Mr. Sandip Patil came to be transferred with immediate effect and Mr. Sunil Yadav, Deputy Collector (Land Reform) assumed the duty as Returning Officer in place of Mr. Sandip Patil. It further alleged that, Respondent No.1 Chief Election Commissioner, illegally and without any reason transferred Mr. Sandip Patil in the midst of submission of nomination form, which is not permissible. According to the Petitioner, his nomination form was accepted by the then Returning Officer Mr. Sandip Patil and the scrutiny was conducted by Mr. Sunil Yadav, who was subsequently joined to the post of Returning Officer. According to the Petitioner, Mr. Sunil Yadav did not undergo training and hence, he was not qualified. The newly posted Returning Officer Mr. Sunil Yadav illegally rejected his nomination without passing any reasoned order, therefore, the action on part of Respondent No. 3 is illegal and bad in law. Hence, prayed to quash and set aside the election of Respondent No. 5.

7. All the Respondents are duly served. However, only Respondent

No. 16 has filed his written statement at Exh. 7. Since Respondent Nos. 1 to 15 and 17 failed to file their written statements, therefore, on 14.09.2023, this Court passed an order below Exh. 1 and proceeded with petition without written statements on behalf of Respondent Nos. 1 to 5, 7 to 9 and 11 to 15 and 17 (wrongly mentioned as 16). Subsequently, the Respondent Nos. 1 to 3 filed an application below Exh.8 for deletion of their names. On 18.01.2024, this Court passed an order below Exh. 8 and permitted for deletion of names of Respondent Nos. 1 and 2.

8. On the basis of rival pleadings of the Petitioner and the Respondent No. 16, this Court, on 14.03.2024, has framed following Issues and I have recorded my findings thereon for the reasons stated herein below.

	ISSUES	FINDINGS
1.	Does the Petitioner proves that the Respondent No.3-Returning Officer illegally rejected his nomination paper on 05.10.2019 ?	Negative
2.	Does the Petitioner proves that attaching original 'A' and 'B' Forms with the nomination paper is not mandatory ?	Negative
3	What order ?	As per final order.

R E A S O N S

9. **Issue Nos. 1 and 2:** Since both the issues are interlinked with

each other, I would like to deal with both these issues together.

10. Heard Mr. S. G. Dodya, the learned counsel for the Petitioner and Mr. Alok Sharma, the learned counsel for Respondent No.3- Returning Officer.

10. In order to prove both the issues, the Petitioner has filed an evidence affidavit and proved documentary evidence as under:

Exh. 25	Certified copies of documents furnished alongwith nomination form.
Exh.26	Certified copy of Scrutiny list of nomination form.
Exh. 27	Nomination form Part-I, Part II, Part II and Part III with receipt dated 04.10.2019.
Exh.28/ 1 to 11	Details of income tax return, verification, extract of pass book, declaration form, acknowledgment receipt for allotment of symbol, acknowledgment of submission of original AB Form, etc.
Exh. 29	Certified copy of order of rejection of nomination form.
Exh.30	Application submitted by the Petitioner for issuance of certified copy of order of rejection of his nomination form.
Exh. 31	Certificate under section 66 in respect of declaration of result of Respondent No. 5.
Exh. 32	Certified copy of certificate of election issued by

	Respondent No.3 in respect of 111-Gangapur Assembly constituency.
Exh. 33	Copies of transfer orders dated 03.10.2019 issued by the Deputy Secretary, State of Maharashtra, whereby Returning Officer Mr. Sandip Patil was transferred and Mr. Sunil Yadav joined as Returning Officer.

11. The learned counsel appearing for the Petitioner canvassed in vehemence that Section 100 of the Representation of People Act provides for declaration of election being void on the following grounds:

- (a) On the date of election candidate was not qualified or disqualified.
- (b) Any corrupt practice has been committed by the returned candidate or his election agent.
- (c) If the nomination has been improperly rejected.
- (d) The result of the election, insofar as returned candidate has been merely affected on ground of (i) improper acceptance nomination; (ii) any corrupt practice committed in the interests of the returned candidate; (iv) by improper reception, refusal or rejection of any vote or the reception of any vote which is void; (iv) by any non compliance with the provisions of the constitution or under the Representation of People Act or of any rules or orders made under the Act.

Therefore, it is submitted that though the Petitioner has submitted his nomination form, however, the said nomination is improperly and illegally rejected by Respondent No.3.

12. The learned counsel appearing for the Petitioner further canvassed that on 04.10.2019, Mr. Sandip Patil was holding the post of Returning Officer. The Petitioner submitted his nomination form on 04.10.2019 with the Returning Officer Mr. Sandip Patil, who issued Part IV - acknowledgment receipt of nomination form and intimated the Petitioner about scrutiny of the nomination form at 11.00 onwards on 05.10.2019. However, on the date of scrutiny i.e. 05.10.2019, without providing any sufficient opportunity to cure the said defect, Respondent No. 3 rejected the nomination of the Petitioner on the ground that original AB Form was not attached with the nomination form and when the Petitioner visited the office of Respondent No.3, at that time, some new Returning Officer Mr. Sunil Yadav had joined the post of Returning Officer but he refused to accept the original AB Form, though the Petitioner has tendered the same.

13. The learned counsel for the Petitioner further canvassed that the ground set out for rejection of the nomination form on account of non furnishing of original AB Form is not substantive defect, so also,

no other candidate claimed to have original AB Form from the State level political party “MNS”. Therefore, Respondent No. 3 could have permitted the Petitioner to cure the said defect. However, the Returning Officer, who subsequently joined, passed an order of rejection of nomination below Part-V on 05.10.20219. Therefore action on the part of Respondent No.3 is illegal and bad in law and the entire election process wherein Respondent No.5 is declared as elected candidate needs to be quashed and set aside.

14. The learned counsel for the Petitioner further canvassed that vide orders dated 16.01.2019, 07.02.2019 and 11.07.2019, the State Election Commissioner had informed about those Returning Officer who were not qualified to hold the said post. Accordingly, on 03.10.2019, the Secretary of the State Government issued transfer order and thereby posted Mr. Sunil Yadav on the Post of Returning Officer for 111-Gangapur Legislative Assembly Constituency and earlier Returning Officer Mr. Sandip Patil was immediately relieved, without conducting any hearing prior to rejection of nomination form. Respondent No.2-District Collector, Aurangabad immediately informed about transfer of Shri Sandip Patil on 03.10.2019 and Mr. Sunil Yadav joined the post of Returning Officer who was not eligible for the said post. The unqualified Returning Officer Mr. Sunil Yadav

conducted the election and declared Respondent No.5 as elected candidate.

15. The learned counsel appearing for the Petitioner further canvassed that as per the procedure laid down under the Representation of People Act as well as the Hand-book of Returning Officer issued by the Election Commission of India, if the nomination form is accepted by a particular Returning Officer, then such acceptance of nomination from cannot be scrutinized and cannot be rejected by the other Returning Officer, other than the Returning Officer who has accepted the nomination form. However, Mr. Sandip Patil, the then Returning Officer who had accepted the nomination form was transferred on 03.10.2019 and on 05.10.2019, another unqualified Returning Officer Mr. Sunil Yadav scrutinized and rejected the nomination form of the Petitioner. Therefore, the entire process of election is illegal, bad in law and liable to be quashed and set aside.

16. To buttress his submissions, the learned counsel appearing for the Petitioner has placed reliance on the following case laws:

- (I) *Surendra Nath Khosla and another Vs. Dalip Singh and others, AIR 1957 SC 242.*
- (II) *Union of India and others Vs. Hitender Kumar Soni, AIR 2014 SC 3574.*

- (III) AIR 2009 SC 2975, Uttamrao Shivdas Jankar Vs. Ranjitsinh Vijaysinh Mohite Patil.***
- (IV) (1999) 2 SCC 489, Rakesh Kumar Vs. Sunil Kumar***
- (V) (2014) 5 SCC 312, Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari and others***
- (VI) Ram Awadesh Singh Vs. Smt. Sumitra Devi and others, (1972) 3 SCC 131.***
- (VII) Rajeev Kapoor and another Vs. Karan Pal Singh, (2013) 14 SCC 202.***

17. Per contra, Mr. Alok Sharma, the learned counsel for Respondent No.3, Returning Officer canvassed in vehemence that the nomination form specifically provides for giving 10 Proposers, however, the Petitioner has not given the names of 10 proposers as required. So also, the Petitioner failed to submit the original AB Form as per the provisions of the Election Symbols (Reservation and Allotment) 1968, despite the Petitioner had submitted his nomination form for the State recognized political party "MNS". So also, the Petitioner failed to fill up the nomination form properly and did not furnish the extract of voters list to show, at which serial number and in which part, the name of the Petitioner is shown as voter. The Petitioner had furnished information in Annexure No. 26-affidavit showing that he is voter from 108-Aurangabad (West) Legislative Assembly Constituency at Serial No. 967 in Part No. 197, but no certified copy of voter list was furnished. Therefore, the Returning

Officer rejected the nomination form of the Petitioner, which is just and proper and there is no illegality on the part of Respondent No. 3 while rejecting the nomination from of the Petitioner.

18. It is further canvassed that the Petitioner himself admitted in his cross examination about filing nomination form the State recognized political party "M.N.S." to contest the election from 111-Gangapur Legislative Assembly Constituency, for the year 2019, however, the Petitioner had submitted a colour photocopy of AB Form and original AB Form was retained with him. The Petitioner himself admitted that, inadvertently he had enclosed the colour photocopy of AB Form. The Petitioner further admitted about not enclosing the copy of voter list in which his name is enlisted being a voter of 108-Aurangabad, State Legislative Assembly Constituency. Therefore, as per the admissions given by the Petitioner, the nomination form of the Petitioner was incomplete and the Respondent No.3-Returning Officer has rightly rejected the same, therefore, prayed for dismissal of the Petition.

19. Mr. Alok Sharma, the learned counsel appearing for Respondent No.3 further canvassed that, on 05.10.2019, the Petitioner had tendered an application for seeking permission to

enclose original AB Form with his nomination form, but the Petitioner did not tender the AB Form prior to passing of the rejection order dated 05.10.2019. Therefore, considering the provisions of Allotment of Symbol Order, 1968, the Returning Officer has properly rejected the nomination of the Petitioner. Therefore, no any illegality was committed by the Respondent No.3.

20. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. It is not in dispute that in the year 2019, General Election of Maharashtra State Legislative Assembly was declared by the Election Commission of India. It is also not in dispute that from 111-Gangapur Legislative Assembly Constituency, Mr. Sandip Patil was holding the post of Returning Officer. It is an admitted fact that on 04.10.2019, the Petitioner submitted his nomination form Exh. 27 in Form 2B Rule 4. On perusal of Exh. 27, it is clearly proves that, the Petitioner has filled the nomination form by giving his name as candidate from 111-Gangapur-Khultabad Legislative Assembly Constituency. However, in the column of the contesting candidate, he has given the name of another person namely Sonusing Dhansing Rajput who appears to be the proposer. The Petitioner must have to fill the column in respect of 10 proposers in the nomination form, however, the Petitioner has

made a statement that said column is not applicable to him. Further certified copy of the voters list enlisting petitioner's name as voter of particular constituency was also not enclosed with the nomination paper. As per Scrutiny sheet Exh. 25, the Petitioner was required to furnish necessary documents including certified copy of the voters list in which name his name is enlisted as a voter.

21. The Election Symbols (Reservation and Allotment) Order, 1968 provides reservation of symbols for the National recognized political party and State recognized political party. The Petitioner claims that Maharashtra Navnirman Sena is a State recognized political party. No doubt, the Petitioner had submitted his nomination being the candidate of the State recognized political party i.e Maharashtra Navnirman Sena (MNS), therefore, it was mandatory on the part of the Petitioner to enclose the original AB Form issued by the authorized person of the State recognized political party. The Petitioner himself pleaded and stated in his evidence affidavit that though he was having original AB Form issued by the State recognized political party i.e MNS, but inadvertently, he had enclosed the colour photocopy of AB Form and original was retained with him. Therefore, this admission itself proves that the Petitioner was negligent while filling his nomination form properly.

22. Indeed, during the course of scrutiny of the nomination paper, Respondent No.3, Returning Officer noticed deficiencies in the nomination paper. So also, on 05.10.2019, primarily, the Returning Officer was found deficiency that original AB Form was not furnished till last date. Therefore on 05.10.2019, the Returning Officer passed the order and thereby rejected the nomination form of Petitioner on following grounds:-

- (a) The Petitioner filled up the part of the nomination showing proposer namely Shri Karamchand Subhash Rajput, but did not filled the Part II of the nomination form.
- (b) The Petitioner has neither given the names of 10 Proposers nor furnished the original AB Form of his Political party i.e. Maharashtra Navnirman Sena until 3.p.m. of the last date i.e. 04.10.2019.
- (c) The Petitioner has not furnished voters list showing in which part and at what Serial Number his name is enlisted as voter. In form No. 26 affidavit, the Petitioner shown that his name is enlisted in 108-Aurangabad (West) constituency in Part No. 197 Serial No. 967, but no such voter list was produced.

23. Needless to say that the Petitioner has produced the Photocopy

copy of only first page of the order dated 05.10.2019 with the petition but intentionally he did not produce the second page of the said order. So also, the Petitioner failed to prove Order dated 05.10.2019 passed by the Respondent No. 3 Returning Officer, which shows suppression of material fact on the part of the Petitioner. Though the Petitioner relied on the note-sheet Exh. 37 maintained by the Returning Officer during the course of Scrutiny but said note sheet is not the reasoned order as required under section 36 of the Representation of the People Act. Therefore, the contention raised by the Petitioner is not acceptable to me.

24. Needless to say that the Petitioner tried to challenge the order of rejection of nomination form Exh.37, which is note-sheet maintained by the Returning Officer at the time of scrutiny, on ground that, on 04.10.2019, Mr. Sandip Patil accepted his nomination form, however, on 05.10.2019, another Returning Officer Mr. Sunil Yadav, without providing him an opportunity to cure the defect in his nomination, passed the order and rejected his nomination. It is further alleged that, on 27.09.2019, the Divisional Commissioner had issued an order with approval of the Chief Election Commissioner and transfer order dated 03.10.2019 was issued whereby, Mr. Sandip Patil, the then Returning Officer was transferred with immediate

effect and relieved without hearing the Petitioner. The said order of transfer was served upon Respondent No.2, District Collector Aurangabad, who informed about the transfer of Mr. Sandip Patil immediately on 03.10.2019 itself. Therefore, on 03.10.2019, Mr. Sandip Patil was relieved from the post of Returning Officer and Mr. Sunil Yadav immediately joined the post as Returning Officer of 111-Gangapur Legislative Assembly Constituency. The newly joined Returning Officer was not imparted proper training for scrutiny of nomination forms and as such an untrained Returning Officer illegally rejected his nomination form on 05.10.2019.

25. Needless to say that merely because one Returning Officer who had accepted the nomination form but due to his immediate transfer and joining of another Returning Officer who made a scrutiny and rejected the nomination form on the ground of deficiencies and non compliance of mandatory requirement, the order of rejection of nomination paper does not vitiate.

26. In the case of **Uttamrao Shivdas Jankar** (*supra*), the Hon'ble Supreme Court has held in paragraph Nos. 27 and 35 as under :

“27. Section 100 of the Act provides for the grounds for declaring election to be void inter alia in a case where a nomination has been improperly rejected. Improper rejection of a nomination, on a plain reading of the

aforementioned provision, in our opinion, would not mean that for the said purpose an election Petitioner can only show an error in the decision making process by a Returning Officer but also the correctness of the said decision. Indisputably, there exists a distinction between a decision making process adopted by a statutory authority and the merit of the decision. Whereas in the former, the court would apply the standard of judicial review, in the latter, it may enter into the merit of the matter. Even in applying the standard of judicial review, we are of the opinion that the scope thereof having been expanded in recent times, viz., other than, (i) illegality, (ii) irrationality and (iii) procedural impropriety, an error of fact touching the merit of the decision vis-a-vis the decision making process would also come within the purview of the power of judicial review.

35. The presumption of correctness of the nomination paper being statutory in nature, as intention of the Parliament as also the Election Commission was that even if somebody had filed an improper nomination, but for which he can be given benefit of doubt being a possible subject matter of an election petition where the question would be gone into in details, it was for the respondent herein to prove that the nomination paper prima facie did not contain the signatures of the proposers and, thus, were liable to be rejected.”

27. In case of **Arikala Narasa Reddy** (*supra*) the Hon’ble Supreme Court has held that, it is settled legal proposition that the instructions contained in the Handbook for Returning Officer are issued by the Election Commission in exercise of its statutory functions and are therefore, binding on the Returning Officers.

28. In case of **Rakesh Kumar** (*supra*), the Hon'ble Supreme Court has held as under:

“The Returning Officer would have been justified in rejecting the nomination paper of the respondent, had the respondent not sought an opportunity to rebut the objection raised by the Returning Officer or was unable to rebut the objection within the time allowed by the Returning Officer. Since the respondent had by his written application, filed at the time of scrutiny of the nomination paper itself claimed to be the *official candidate* set up by BJP, which claim was not disputed by anyone else during the scrutiny, and had sought time of 24 hours to provide relevant material in support of his submission, it was obligatory on the part of the Returning Officer to allow time to him to rebut the objection, *suo motu*, raised by the Returning Officer. The refusal to grant an opportunity to the respondent and rejecting his nomination paper was clearly an arbitrary exercise of the discretion vested in the Returning Officer. The Returning Officer has also not given any cogent reasons for his refusal to grant an opportunity as prayed for by the respondent. The Returning Officer appears to have been labouring under some misconception when he recorded that the scrutiny. Under the proviso to Section 36(5), the scrutiny itself would have been postponed to the adjourned time and, therefore, it was not a case of meeting the objection after scrutiny of the nomination papers. The failure to exercise his jurisdiction to postpone the decision

as to the validity of the nomination paper of the respondent, even after the respondent had sought time to meet the objection indeed rendered the rejection of the nomination paper of the respondent both improper and illegal.”

29. In case of **Ram Avdesh Singh** (*supra*), the Hon’ble Supreme Court has held as under:

“From a, combined reading of Sections 33 and 36, it is clear that a mis-description as to electoral number of the candidate or of the proposer or their name in the nomination paper is not to be considered as a material defect in the nomination paper. The very fact that the law requires the Returning Officer to look into the nomination paper, when filed and get any mistake regarding the name or electoral number of the candidate or his proposer corrected shows that the mistake regarding them is not a material defect. The High Court was not justified in allowing the election petition on the ground that his nomination was improperly accepted.”

30. In case of **Rajiv Kapoor** (*supra*), the Hon’ble Supreme Court has considered that the word “immediate effect” means the date of the order so passed.

31. In case of **Union of India Vs. Hitender Kumar Soni** (*Supra*), the Hon’ble Supreme Court has considered the words 'with immediate effect' and observed that, “On a joint reading of clauses (3) and (4)

of office memorandum dated 11.02.1983 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, can be safely inferred that depending upon the facts and circumstances of a case and nature of request made in a resignation letter, the Government has the power to accept the resignation so as to bring about a severance of relationship of master and servant “with immediate effect”. But in cases where the letter of resignation itself specifies a future date for being relieved or where, as indicated in clause (2) the concerned Government servant is engaged on work of importance etc., the resignation may not be accepted straightaway. It is in such circumstances only that Government may exercise its power to accept the offer but defer the date from which resignation would become effective. The normal rule, however, remains that Government has the power to accept a resignation with immediate effect. In case the Government for some reasons wishes to defer or specify the date from which resignation would become effective, it is entitled to take work from the concerned Government servant till he is relieved in accordance with the facts and requirements of the case.”

32. In the case of **Surendra Nath Khosla** (*supra*), the Hon’ble Supreme Court held as under:

"Though the words of S. 100 as it stood before the

Amending Act 27 of 1956, are in general terms with equal application to the case of improper acceptance, as also of improper rejection of nomination paper, case law has made a distinction between the two classes of cases. There is a presumption in the case of improper rejection of a nomination paper that it has materially affected the result of the election. Apart from the practical difficulty, almost the impossibility, of demonstrating that the electors would have cast their votes in a particular way, that is to say that a substantial number of them would have cast their votes in favour of the rejected candidate, the fact that one of several candidates for an election had been kept out of the arena is by itself a very material consideration. Cases can easily be imagined where the most desirable candidate from the point of view of electors and the most formidable candidate from the point of view of the other candidates may have been wrongly kept out from seeking election. On the other hand, in the case of an improper acceptance of a nomination paper proof may easily be forthcoming to demonstrate that the coming into the arena of an additional candidate has not had any effect on the election of the best candidate in the field. The conjecture therefore is permissible that the legislature realising the difference between the two classes of cases has given legislative sanction to the view by amending S.100 by the Representation of the People (Second Amendment) Act, 27 of 1956, and by going to the length of providing that an improper rejection of any nomination paper is conclusive proof of the election being void.”

33. In the case in hand the nomination form of the Petitioner was rejected vide order dated 05.10.2019 with a reasoned order. Though the Petitioner failed to prove said order in his evidence, but the Petitioner himself has produced the photocopy of first page of the order dated 05.10.2019 with the petition under list of document Exhibit-4. During the course of argument, the learned counsel appearing for the Returning Officer has produced the certified copy of the nomination form alongwith reasoned order dated 05.10.2019 passed by the Returning Officer, which proves that the nomination form of the Petitioner came to be rejected on three deficiencies (a) to (c) described in para 22 herein above. However, the Petitioner only proved the Note-sheet Exh. 37, wherein note about rejection of nomination paper and grounds are mentioned. The Petitioner himself admitted that he had submitted his candidature from State recognized political party i.e. Maharashtra Navnirman Sena and he had submitted colour photocopy of the said AB Form and had retained the original AB Form with him. Therefore, this fact itself proves that the Petitioner was negligent while filling his nomination form and failed to fulfill mandatory requirement of the nomination form. Therefore, the order of rejection of nomination form of the Petitioner does not appear to be illegal and bad in law. Hence, I answer the Issue Nos. 1 and 2 in negative.

34. In view of the above discussion, I proceed to pass the following order:

::ORDER::

1. The Election Petition No. 14 of 2019 is hereby dismissed.
2. Parties to bear their own costs.

(Y. G. KHOBRADE, J.)

Chavan