

(2015) 07 BOM CK 0387
In the Bombay High Court
Case No : W.P. No. 7189 of 2015

Lata Dilip Kothimbire

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Citation : (2015) 6 MhLj 372

Hon'ble Judges : R.M. Borde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : Salunke Sudarshan J., for the Appellant; A.V. Gondhalekar, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard. The petitioner is objecting to rejection of his nomination paper filed for contesting election of Village Panchayat, Kothimbirwadi, Tq. Dharur, District Beed, by the Returning Officer without recording any reasons by order dated 13-7-2015. The very submission of the petitioner, that the Returning Officer has not recorded any reasons for rejecting the nomination, is not acceptable, for the reason that the Returning Officer has recorded the reasons on 13-7-2015 for rejecting the nomination separately, which have been brought to our notice. The nomination paper of the petitioner has been rejected on the ground that the name mentioned in the nomination paper, i.e. Kothimbire Lata Deelip does not find place in the voters list at Serial No. 556. The name recorded in the voters list is: Thapde Lata Shardabai. The defect, as pointed out, is of substantial character and is not liable to be corrected/cured by the Returning Officer. In exercise of the powers under Rule 11 of The Bombay Village Panchayats Election Rules, 1959 (for short, the Rules), it is expected of the Returning Officer to examine the nomination papers and decide all objections, which may be made before him to any nomination and may, either on such objection or on his own motion, after holding a summary inquiry, if any, which he considers necessary; reject the nomination form only on the ground that the candidate is disqualified

or is not qualified under the Act or the Rules for Election; or that the candidate has failed to comply with any of the provisions required by the Rules of the Act. It is further provided that the Returning Officer shall not reject any nomination form, on the ground of any defect which is not of a substantial character.

2. The counsel appearing for the petitioner contends that the defect, in question, is, recording of the name in the voters list, which according to the petitioner is, in her maiden name and the name recorded by her in the nomination paper, which has undergone change after marriage, is not the defect of a substantial character. It is further contended that in order to examine the contention of the petitioner, summary inquiry is necessary and that the Returning Officer has failed to perform his responsibility. It is observed by the Returning Officer that name of the petitioner, as recorded in the voters list, differs from the name, which is recorded in the nomination form. There is no such explanation tendered, at the time of scrutiny of the nominations; or at least such attempt on the part of the petitioner, at the relevant time, is not evident on perusal of the impugned order dated 13-7-2014 passed by the Returning Officer. The belated claim of the petitioner that the defect appearing in name is merely non-substantial character and that the Returning Officer has failed to conduct an inquiry and extend proper hearing to the petitioner, is not liable to be accepted. The counsel further states that in view of the provision contained in Rule 12(2) of the said rules, the Returning Officer shall, on the same day, endorse on each nomination paper his decision accepting or rejecting the same, and if the nomination paper is rejected, shall record a brief statement of his reasons for such rejection. It is contended that the reasons for rejection of the nomination have not been recorded on the nomination form itself and the same have been recorded separately, which violates the mandate of Rule 12(2) of the Rules. This contention does not appear to be acceptable for the reason that the Returning Officer has endorsed his decision on the nomination paper, however, has recorded the reasons on separate sheet. We do not find that there is any breach, in observing the procedure, committed by the Returning Officer in recording the reasons separately. The decision rendered by the Returning Officer, rejecting the nomination paper of the petitioner, does not appear to be perverse. Keeping the option of the petitioner, to avail of the remedies available in law, open, after conclusion of the process of election, the writ petition stands rejected.