

(2012) 02 BOM CK 0240
In the Bombay High Court
Case No : Writ Petition No. 1026 of 2012

Shri Dnyaneshwar Ravso Shinde

APPELLANT

Vs

The Election Returning Officer Zilla Parishad and Others

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Election Symbols (Reservation and Allotment) Order, 2000 — Rule 15A
Maharashtra Zilla Parishads (Electoral Divisions and Conduct of Election) Rules, 1962
— Rule 15, 22(7)

Citation : (2012) 3 BomCR 296

Hon'ble Judges : G.S. Godbole, J

Bench : Single Bench

Advocate : A.A. Kumbhakoni and Mr. U.R. Mankapure, for the Appellant; S.B. Shetye for the Respondent Nos. 1 and 3 and Ms. P.S. Cardozo, AGP for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Godbole, J.—Not on Board. Taken on Board on production.

2. Heard Mr. Kumbhakoni for the Petitioner, Mr. Shetye for the Respondent Nos. 1 and 3 and learned AGP for the Respondent No. 2.

3. Rule. Rule is made returnable forthwith and heard by consent of the parties.

4. By the present Petition, the Petitioner is challenging the Order dated 31.01.2012 passed by the Collector, Sangli under Sub-Rule 7 of Rule 22 of the Maharashtra Zilla Parishads (Electoral Divisions and Conduct of Election) Rules, 1962.

5. Certain facts are admitted and the same are as under :

i) Elections are scheduled to be held on 7th February, 2007.

ii) The Petitioner had submitted three nominations papers; on 19.01.2012 claiming to be an independent candidate, on 20.01.2012 again claiming to be an

independent and on 23.01.2012 wherein no party was indicated but electoral symbol of Hand was stated to have been opted for.

iii) Nomination papers were to be submitted only till 23rd January, 2012. Scrutiny was to take place on 24th January, 2012 and the last date for withdrawal was fixed on 30th January, 2012. The allotment of the symbol was scheduled on 30th January, 2012.

iv) Thus when the Petitioner's nomination was scrutinized, he was scrutinized as an independent candidate, not belonging to any party.

v) On 30th January, 2012 before 3 p.m., the Petitioner submitted Form- A and Form- B to the Returning Officer which Forms are contemplated under the provisions of the Election Symbols (Reservation and Allotment) Order, 2000 read with Rule 15-A of the aforesaid Rules. By these Forms the Petitioner wanted that the symbol of NCP (Nationalist Congress Party), namely, "Clock" should be allotted to him. This Application was partly rejected by the Returning Officer, leading to the filing of the Revision Application before the Collector under Sub-Rule 7 of Rule 22 of the aforesaid Rules.

6. Mr. Kumbhakoni strongly relied upon clause 11 of the Election Symbols (Reservation and Allotment) Order 2000 and contended that in respect of Zilla Parishads and Panchayat Samitis, a notice as contemplated by clause 11 can be delivered to the Returning Officer not later than 3 p.m. on the last date of withdrawal of candidature under the Election Rules. He submitted that there was no other candidate claiming to be a NCP nominee and there was, therefore, no prejudice which was going to be caused to any other candidate. He further submitted that if the relief is to be granted to the Petitioner that will not halt the process of the ensuing Election.

7. On the other hand, the learned Advocates for the Respondents opposed the Petition by pointing out that in the nomination Form which has to be filled up under Rule 15 of the aforesaid Rules in Form No.2, it is necessary to indicate the name of the political party if a candidate is set up by a political party. They pointed out that the Petitioner had filled up three nomination Forms as an independent candidate and hence, scrutiny was done on that basis. Sub-Clause (b) of clause 11 of the Election Symbols Order, 2000 cannot be read in isolation and entire clause 11 will have to be read.

8. I have considered the rival submissions. In find merit in the submission of the learned counsel for the Respondents. The Petitioner had filed three nominations and if the Petitioner was the candidate set up by NCP nothing prevented the Petitioner from making such a declaration in the nomination papers. The declaration which was made by the Petitioner was to the effect that he is an independent candidate. Rule 15 of 1962 Rules specifically provide for a separate declaration to be made by a candidate who is set up by any recognized political party or Aghadi. Admittedly, the Petitioner had never made such a declaration.

9. Apart from this, Sub-clause (b) of Clause 11 of the Symbol Order, 2000 cannot be read in isolation. The relevant portion of Sub-clause (a) of Clause 11 reads thus :

11. When a candidate shall be deemed to be set up by a political party.--- For the purpose of this Order, a candidate shall be deemed to be set up by a political party, Aghadi or Front if, and only if,--

(a) the candidate has made declaration to that effect in nomination paper;

Thus if a candidate wants to claim benefit of Sub-clause (b) of Clause 11, he must show that he has complied with entire Clause 11 and merely compliance with Sub-clause (b) is not sufficient.

10. The Petitioner having chosen to fill up nomination as an independent candidate, his nomination having been scrutinized as an independent candidate at the last moment the Petitioner should not have claimed to be a candidate set up by the NCP on the basis of A and B Forms submitted on 30th January, 2012.

11. Hence, no error has been committed by the Collector in passing the impugned order. Petition has no merit and the same is rejected.