

(2018) 08 BOM CK 0181
In the Bombay High Court
Case No : Writ Petition No. 2218 Of 2018

Suresh Atmaram Shirsat

APPELLANT

Vs

Divisional Commissioner Amravati And Ors

RESPONDENT

Date of Decision : 09-08-2018

Acts Referred:

Maharashtra Village Panchayats Act, 1959 — Section 14(1)(j5)

Citation : (2018) 08 BOM CK 0181

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : Rahul Dhande, B.M. Lonare, S.D. Chopde

Final Decision : Allowed

Judgement

01] Rule. Rule made returnable forthwith. Heard finally by consent.

02] The requirement of Section 14(1)(j-5) of the Maharashtra Village Panchayats Act (hereinafter referred to as the ""Act"" for short) is that at the

time of submission of the nomination paper, a candidate must submit a certificate of the concerned Panchayat accompanied by a resolution of the

Gram Sabha certifying that the candidate resides in a house owned by him and has a toilet in such house, which he/she regularly uses or a candidate

resides in a house not owned by him, but has a toilet which is regularly used by him or it is not regularly used by him but some other public toilet is

regularly used by him. In other words, the nomination form must be accompanied by two documents, namely, a certificate of the concerned Panchayat

and a resolution of the concerned Gram Sabha certifying what is contemplated under this provision of law. If the nomination form is filed without both

or any one of these documents, it would be an incomplete nomination form. This is also the view taken by the learned Single Judge of this Court in the

case of Vijay Ramchandra Raut & others vs. Divisional Commissioner & others - 2015 (1) Bom.C.R. 766. This is, however, disputed by the learned

Counsel for respondent Nos.4 & 5. According to him, this was not the ratio of this case. However, on going through the observations made in

paragraph 7 of this judgment, I find that the view has been taken in a no uncertain terms that the petitioners in that case were required to produce a

certificate of the concerned Gram Panchayat along with the resolution of the Gram Sabha certifying what is required under Section 14(1)(j-5) of the

Act. Therefore, it cannot be said that there is no expression of view as referred to earlier in the case of Vijay Ramchandra Raut (supra).

03] In the present case, at the time of filing of the nomination forms, a certificate of the concerned Gram Panchayat as contemplated under Section

14(1)(j-5) of the Act was indeed filed. I have gone through this certificate, a copy of which is available in the paper book. The certificate issued

fulfills one of the requirements of Section 14(1)(j-5) of the Act. But, the nomination forms were not accompanied by the resolutions of the Gram

Sabha. The nomination forms not being filed along with Gram Sabha resolutions is a fact not in dispute. What is in dispute is whether such Gram

Sabha resolution is mandatorily required to be filed along with the certificate of the concerned Gram Panchayat or not.

04] According to the learned Counsel for respondent Nos.4 & 5, such is not mandatorily required by law. I beg to differ with him. The phraseology of

Section 14(1)(j-5) of the Act clearly shows that the requirement of submission of both the documents is mandatory. If any one of those documents is

missing, the nomination form would be incomplete and, therefore, would be liable to be rejected.

05] The learned Counsel for respondent Nos.4 & 5 has invited my attention to the judgment delivered by this Court in the case of Smt. Kavita

Rajendra Shirgare vs. The Returning Officer & another in Writ Petition No.2196/2016 on 12th April, 2016. According to him, this judgment takes a

view that if nomination form is filed along with the certificate and not along with the Gram Sabha resolution, it would be a substantial compliance with

the provision of Section 14(1)(j-5) of the Act, as the facts of that case would show that the nomination form was filed along with the certificate of the

concerned Panchayat, but was not accompanied by a resolution of the Gram Sabha and yet this Court found that the nomination form was in order.

06] It is true that the facts of the case of Smt. Kavita Shirgare (supra) disclose that the nomination form was filed along with only the certificate of Gram Panchayat and it was not filed along with the Gram Sabha resolution. But, the other facts of that case were entirely different. In that case, what was thought to be a compliance with the requirement of Section 14(1)(j-5) of the Act by the Returning Officer in case of one set of candidates, was seen by the Returning Officer as no compliance with other set of candidates. There were some candidates who had not submitted the Gram Sabha resolutions at the time of submission of nomination papers and yet there papers were accepted. But, the Returning Officer rejected the nomination papers of similarly situated candidates. The acceptance of nomination papers, though incomplete, was not challenged by anybody and those candidates were also not parties before this Court and so no declaration and no order could have been made by this Court in respect of those candidates. The situation left the Court with the only alternative available before it by pinning down the Returning Officer to only one yardstick and preventing him from adopting double standards in case of similarly situated candidates. This being the background of the decision rendered in the said case of Smt. Kavita Shirgare, the direction issued in that case cannot be considered to be a ratio of that case, which would emerge as a precedent to be followed in future. Therefore, the decision in the said case of Smt. Kavita Shirgare would render no assistance to the case of respondent Nos.4 & 5 here.

07] The learned Counsel for respondent Nos.4 & 5 submits that on and from 15th April, 2017, there is an amendment made to Section 14(1)(j-5) of the Act. This amendment has been made whereby an additional option has been given to the candidates. According to this additional option, a candidate, in stead of the resolution of the Gram Sabha, can also file along with the nomination form his own certificate. This amendment, according to the learned Counsel for respondent Nos.4 & 5, would alleviate the situation and, therefore, the nomination forms submitted by respondent Nos.4 & 5 be considered as properly filed. This issue was never raised before the authorities below, nor is it the case of respondent Nos.4 & 5 that there was self-certification by them, when they filed the nomination papers. The argument, therefore, cannot be rejected, though it could be considered later in a case where the issue really arises for it's adjudication.

08] In the result, I find that this was not a fit case for remanding the matter to the Collector for reconsideration of the issue. The issue could have been decided on the basis of the facts and circumstances established on record, which has not been considered by the learned Commissioner in any manner. Therefore, the impugned order passed by the learned Commissioner cannot be sustained in the eye of law.

09] The writ petition is allowed. The impugned order is quashed and set aside. The order passed by the learned Collector is confirmed.

(S.B. SHUKRE, J.)

Shri Chande, learned Counsel for respondent Nos.4 & 5 prays for grant of protection to respondent Nos.4 & 5. This has been opposed by the learned Counsel for the petitioner.

The protection cannot be granted for the reason that after respondent Nos.4 & 5 were disqualified by the Collector on 06/09/2017 and the order of

disqualification of respondent Nos.4 & 5 was not stayed by the Divisional Commissioner, Amravati and the appeal filed before the Divisional

Commissioner, Amravati was disposed of on 06/02/2018. So, it is clear that for a period of five months, there was no protection granted to respondent

Nos.4 & 5. Even in the writ petition, the interim relief was only in the nature of stay to the further proceedings before the Collector.

In view of this fact, it would not be possible for this Court to grant any protection to respondent Nos.4 & 5, which has never been granted to them

during the interregnum. The prayer is, therefore, rejected.