

(2019) 03 BOM CK 0045
In the Bombay High Court
Case No : 907 Writ Petition No. 3595 Of 2019

Sushila Sukram Naik

APPELLANT

Vs

State Election Commission Maharashtra State And Ors

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Maharashtra Village Panchayats Act, 1959 — Section 14(1)(j5)
Bombay Village Panchayats Election Rules, 1959 — Rule 11(2A)
Constitution of India, 1950 — Article 226

Citation : (2019) 03 BOM CK 0045

Hon'ble Judges : P.R. Bora, J

Bench : Single Bench

Advocate : Vijay B. Patil, S.K.Tambe, S.T. Shelke, A.S. Sawant

Final Decision : Allowed

Judgement

P.R.Bora, J

1. Rule.
2. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.
3. The petitioner has filed the present petition being aggrieved by rejection of her nomination for the post of Member of Gram Panchayat Daul, Tq.Shindkheda, Dist.Dhule, the elections of which are scheduled on 24.03.2019. The petitioner claims to be belonging to 'Bhil' caste, which is a Scheduled Tribe. She has submitted her nomination for contesting the election of Member of village Panchayat, Daul from Ward No.1 of the said Gram Panchayat in category 'B', which is reserved for Scheduled Tribe Women.
4. The nomination of the petitioner was objected-to by respondent No.4 on various grounds. One of the grounds was that the petitioner does not have a toilet constructed in her house. Upholding the said objection, the Returning Officer has rejected the nomination of the petitioner. The Returning Officer has

noted that the petitioner has not complied with the requirements under Section 14(1) (j-5) of the Maharashtra Village Panchayats Act, 1959 (hereinafter referred to as the Act of 1959). In the impugned order, it is observed that alongwith the certificate under the signature of Gram Sevak, the petitioner has not annexed either resolution of the Gram Sabha or the certificate of the Chief Executive Officer or an Officer designated by the Chief Executive Officer, or her self certificate, certifying that she regularly uses a public toilet. Aggrieved by the rejection of her nomination on the aforesaid ground, the petitioner has approached this Court by invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

5. Shri V.B.Patil, learned Counsel appearing for the petitioner submitted that the Returning Officer has rejected the nomination of the petitioner on erroneous grounds. The learned Counsel pointed out that the petitioner has submitted the certificate under the signature of the Gram Sevak certifying that the petitioner uses a public toilet. The learned Counsel submitted that, the Returning Officer, in the impugned order itself, has mentioned that the petitioner is using a public toilet. The learned counsel submitted that the nomination appears to have been rejected by the Returning Officer only on the ground that the petitioner has not appended alongwith the certificate issued by the Gram Sevak, any of the document envisaged under Section 14(1) (j-5) of the Act of 1959. The learned Counsel submitted that the defect so pointed out is not of substantial character. The learned Counsel submitted that the documents on record support the contention of the petitioner that she uses a public toilet. In the circumstances, the learned Counsel prayed for setting aside the impugned order and the consequent direction to the Returning Officer to accept the nomination of the petitioner.

To support his contention, the learned Counsel has relied upon the following Judgments:-

- a) Anant Janardhan Patil Vs. State of Maharashtra & Others [2002 (2) Mh.L.J. 238].
- b) Judgment passed by this Court on 20th February 2015, in Writ Petition No.1778 of 2015 and connected matter.
- c) Judgment passed by this Court on 26th November 2018, in Writ Petition No.12877 of 2018.

6. Shri A.S.Sawant, learned Counsel appearing for respondent No.4 resisted the submissions advanced on behalf of the petitioner. The learned Counsel raised a preliminary objection that the rejection of the nomination cannot be the subject matter in the Writ Petition under Article 226 of the Constitution of India. The learned Counsel placing his reliance on the Judgment of Division Bench of this Court in the case of Bharsakade Vs. Returning Officer, Akot and another [2003 (4) Mh.L.J. 359] submitted that the petition is liable to be rejected being not maintainable and the only remedy for the petitioner would be to file an election

petition. The learned Counsel pointed out that rejection of the nomination for wrong reasons can be a good ground for challenging the election as has been held by the Division Bench of this Court in the aforesaid matter. The learned Counsel also relied upon the Judgment of learned Single Judge of this Court in the case of

7. The learned Counsel, on merits of the petition contended that the Returning Officer has rightly rejected the nomination of the present petitioner since she has not complied with the mandatory requirements as envisaged in Section 14 (1) (j-5) of the Act of 1959. The learned Counsel submitted that it was mandatory on part of the petitioner to annex with the certificate allegedly secured by her from Gram Sevak certifying that she is using public toilet, any of the document prescribed in Section 14(1) (j-5) of the Act of 1959. The learned Counsel submitted that since the petitioner failed in fulfilling the said requirement, which is mandatory in nature, no fault can be found in the order passed by the Returning Officer thereby rejecting the nomination of the present petitioner. The learned Counsel in the circumstances, prayed for rejecting the petition.

8. Shri S.T.Shelke, learned Counsel appearing for respondent Nos.1 to 3 submitted that the request made by the petitioner in the present petition cannot be considered at this stage when as per the election programme, the final list of the contesting candidates has been published by the Returning Officer and the election symbols have also been allotted. The learned Counsel submitted that only one stage is now remaining that is of casting votes, which is scheduled on 24.03.,2019. The learned Counsel submitted that in such circumstances, no relief is liable to be granted in favour of the present petitioner. The learned Counsel further submitted that even on merits, the petitioner has not made out any case in her favour. The learned Counsel submitted that the Returning Officer has rightly rejected her nomination for non-compliance of mandatory requirements as are enumerated under Section 14(1) (j-5) of the Act of 1959. The learned Counsel, therefore, prayed for rejecting the petition.

9. I have given due consideration to the submissions made by learned Counsel appearing for the respective parties. Though, the nomination of the petitioner was objected by respondent No.4 on various grounds, perusal of the impugned order reveals that her nomination has been rejected only on the ground that she has not complied with the requirements under Section 14 (1) (j-5) of the Act of 1959. I deem it appropriate to reproduce the said Section, which reads as under:-

"14 Disqualifications:- (1) No person shall be a member of Panchayat and continue as such, who - (j-5): fails to submit a certificate of the concerned Panchayat, alongwith the resolution of the Gram Sabha [or of the Chief Executive Officer or an officer designated by him; or a self-certificate) certifying that, -

(i) he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or

(ii) he resides in a house not owned by him and has a toilet in such house and he

regularly uses it or he has no such toilet but regularly uses the public toilet:

...."

10. In the present matter, it is the specific case of the petitioner that village Daul is already declared a 'Open Defecation Free Village'. The petitioner has placed on record the certificate as well as the 'Sanman Patra' issued in favour of the said Gram Panchayat in that regard. The impugned order also reveals that before the Returning Officer the said fact was submitted by the present petitioner that village Daul is already declared as free from open defecation.

11. The questions still remain (i) Whether the certificate as has been submitted by the petitioner under signature of Gram Sevak certifying that petitioner regularly uses public toilet shall be held to be sufficient compliance of the requirement under Section 14 (1) (j-5) of the Act of 1959, and (ii) Whether the ground of defect on the basis of which the Returning Officer has rejected the nomination of the petitioner is of a substantial character ?

12. It was sought to be contended by Shri Sawant, learned Counsel for respondent No.4, that the mandatory nature of the requirement as provided by Section 14 (1) (j-5) of the certificate by Gram Panchayat to be annexed with either of the three documents referred in the said Section has been underlined by the clarification issued by the Rural Development Department of the State. The learned Counsel has tendered the said clarification on record. The learned Counsel submitted that since it was found impracticable to have said certification accompanied with resolution of Gram Sabha, some relaxation was given and accordingly it was provided that in such cases if the self certificate is annexed by the candidate concerned with the certificate issued by Gram Panchayat, it would be held enough compliance. It was therefore the contention of the learned Counsel that non-filing of such self certificate has rendered the certificate issued by Gram Panchayat meaningless and the petitioner cannot be said to have complied with mandatory requirement of Section 14 (1) (j-5) of the Act of 1959. Similar submissions are made by Shri Shelke, learned Counsel appearing for respondent Nos.1 to 3.

13. I, however, find it difficult to agree with the submissions so made by the learned Counsel for the respondents. The clarification issued by the Rural Development Department of the State in pursuance of the decision of the Cabinet taken in its meeting held on 31.01.2017, is as under:-

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14. The sum and substance of the aforesaid clarification is that the requirement of the certificate of the concerned Gram Panchayat to be accompanied with the resolution of gram Sabha is done away with. Sub-clause (j-5) of Section 14(1) of the Act of 1959, if read in light of the clarification as above, the requirement as envisaged in the said sub-clause can be complied with by any of the following mode:-

- (i) Certificate of the concerned Gram Panchayat; or
- (ii) Certificate of Chief Executive Officer or of the Officer designated by him; or
- (iii) a self certificate.

In the present matter admittedly the petitioner has filed on record the certificate

of the concerned Gram Panchayat under the signature of Gram Sevak of the said Gram Panchayat. In view of the clarification referred to herein above, the same can be said to be a sufficient compliance of the requirement under clause (j-5) of Section 14(1) of the Act of 1959.

15. Moreover, when alongwith the nomination form the petitioner has furnished a certificate under the signature of the Gram Sevak certifying that she regularly uses a public toilet, it can be reasonably inferred that the said certificate was sought by the petitioner from Gram Sevak for the purpose of annexing the same alongwith her nomination. A further inference has also to be reasonably drawn that when Gram Sevak has issued the said certificate, the same has been issued at the first instance on the information provided by the petitioner herself that she is using a public toilet and secondly that Gram Sevak has made due enquiry in that regard before issuance of the said certificate. In the above circumstances, according to me filing of self certificate merely remains a formality and not filing of such certificate cannot be held to be a defect of a substantial character so as to reject the nomination of the petitioner on that ground.

16. The object behind bringing in statute clause (j-5) was to deprecate defecation in open. The villagers were accordingly encouraged by introducing schemes for construction of toilets at their houses and the public toilets were also constructed in the villages. It is the matter of common knowledge that being encouraged by the schemes of the Government and after realizing the true spirit in making such provisions in the Act of 1959, the villages one after another were declared to be villages free from open defecation. Village Daul is one of such villages, which has been declared to be a village 'free from open defecation'. Certificates in that regard are placed on record by the petitioner. In the circumstances, unless any allegation against the petitioner is made that she is still defecating in open, it has to be presumed that either she has a toilet in her house and she is using it or that she regularly uses a public toilet.

17. I have carefully gone through the contents of the objection raised by respondent No.4 to the nomination of the petitioner. In the said objection, it is nowhere the contention of the objector that the present petitioner is still resorting to the practice of defecating in open. The objection raised only relates to the fact that the petitioner is not having a toilet in her house. It is not the case of the petitioner also that she is having a toilet in her house. The petitioner has consistently maintained that she is using a public toilet. Not having a toilet in house could not have been a ground for rejecting the nomination of the petitioner. In the circumstances, in fact the objection raised by respondent No.4 was not liable to be considered by the Returning Officer and must have been rejected at threshold.

18. Rule 11(2-A) of the Bombay Village Panchayats Election Rules 1959, provides that "the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

19. The Division Bench of this Court in the case of Anant Janardhan Patil (supra) has held that if the defect is not of a substantial character, the nomination paper cannot be rejected. In the said matter, the nomination paper was rejected for non annexing of caste certificate. The Division Bench held that there being no prescribed format for tendering such caste certificate alongwith nomination form, the Returning Officer could not have insisted upon it. It is further held that the defect is not of a substantial character and the Returning Officer could not have rejected the nomination on the said ground.

20. In the instant matter also, as I noted herein above, non annexing of self certificate by the petitioner is not a defect of substantial character and as such the Returning Officer could not have rejected the nomination of the petitioner on the said ground.

21. On a query made by me with Shri Shelke, learned Counsel appearing for respondent Nos.1 to 3, he informed that the voting scheduled on 24.03.2019 will be by two modes; with the aid of Electronic Voting Machines and ballot papers will also be printed for postal ballots. The learned Counsel further informed that the ballot papers are not yet printed. The learned Counsel also informed that the Returning Officer is present before the Court.

Considering the facts as above, it does not appear to me that there may be any difficulty in including the name of the petitioner in the list of the contesting candidates by allotting her the election symbol. It may not disturb the election schedule. In the result the following order is passed:-

ORDER

I) The petition is allowed.

II) Respondent No.2 is directed to accept the nomination of the petitioner and to include her name in the list of contesting candidates by allotting her a symbol from out of the available symbols.

III) Rule is made absolute in the aforesaid terms.