



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2009 of 2015

Sau. Maina Anna Manvar,
aged 49 years, Occ. Home-maker,
R/o. Post Karli, Tq. Manora,
Distt. Washim.

PETITIONER

...VERSUS...

- 1] Returning Officer cum Naib Tahsildar,
Tahsil Office Manora,
Distt. Washim.
- 2] Tahsildar,
Tahsil Manora, Distt. Washim
- 3] Collector, Distt. Washim.

RESPONDENTS

Shri U.J.Deshpande, counsel for Petitioner.
Shri A.D.Sonak, AGP for Respondents

CORAM: R. K. DESHPANDE, J.

DATE : 20th APRIL, 2015 .

ORAL JUDGMENT

Rule made returnable forthwith.

Heard the matter finally by consent of the
learned counsels appearing for the parties.

2] On 10th April, 2015, this court had passed an order as under.

“ The petitioner submitted her nomination form for election to the seat reserved for Scheduled Caste candidate from Ward No.3 of Gram Panchayat Karli, Tahsil Manora, District Washim. The said nomination form has been rejected by the Returning Officer on the ground that the caste certificate is in the name of Kumari Maina Ramchandra Bhagat, whereas the name of the petitioner is Sau. Maina Anna Manvar. The petitioner had given an undertaking before the Returning Officer stating that her maiden name was Kumari Maina Ramchandra Bhagat and after marriage, her name is changed to Sau. Maina Anna Manvar. According to the petitioner, the caste certificate produced is, therefore, on her own name. The Returning Officer has passed an order rejecting the nomination form of the petitioner on 8.4.2015 and the last date for withdrawal is 10.4.2015.

Shri Sonak, the learned AGP appearing for the respondents, was given time to take instructions in the matter. He has urged that in the decision of the Division Bench of this Court in the case of Vinod Pandurang Bharsakade v. Returning Officer, Akot and another, reported in 2003(4) Mh.L.J. 359, it has been held that improper rejection or acceptance of nomination paper can be made the subject matter of challenge in an election petition under Section 15 of the Bombay Village Panchayats Act, 1958, and a petition under Article 226 of the Constitution of India against the rejection of nomination paper cannot lie.

Shri Deshpande, the learned counsel appearing for the petitioner, has relied upon the subsequent two decisions of this Court (i) in the case of Sudhakar Vitthal Misal v. State of Maharashtra and others, reported in 2007(6) ALL MR 773; and (ii) in the case of Deepak s/o Vishwasrao Khule v. Collector, Akola and others, reported in 2009(3) Mh.L.J. 966. In the first decision in Sudhakar Misal's case, the earlier decision of the Division Bench in Vinod Bharsakade's case has been considered. The decision in Deepak Khule's case follows the decision in Sudhakar Misal's case. It has been held that in cases of rejection of nomination paper, the petitioner comes before the Court to assert his right to contest the election and not to call in question the election. The learned counsel for the petitioner submits

that the bar to interference by Courts in electoral matter is provided under Articles 243-O(b) and 329(b) read with Sections 15 and 15A of the Bombay Village Panchayats Act.

In view of this, issue notices for final disposal of the matter, to the respondents, returnable on 20.4.2015.

Shri Sonak, the learned AGP, waives service of notices for the respondents.

By way of interim order, the respondents are directed to provisionally accept the nomination form of the petitioner to contest the election to the seat reserved for Scheduled Caste candidate from Ward No.3 of Gram Panchayat Karli, Tahsil Manora, District Washim, if it is otherwise, in accordance with law.

The entire process of the election of the petitioner shall be subject to the result of this petition.

Hamdast granted.

The learned AGP to communicate this order to the concerned Authorities "

3] In response to the aforesaid order, the nomination form of the petitioner has been provisionally accepted to contest the election to the seat reserved for Scheduled Caste candidate from Ward No. 3 of Gram Panchayat Karli, Tahsil Manora, Distt. Washim. Although it was permissible for the respondents to reject the nomination on any other ground, if available in law, it is not the case that the nomination form was required to be rejected on any such ground. In fact, it is also not rejected.

4] There was an error apparent on the face of record in rejecting the nomination form of the petitioner on the ground that there is a discrepancy in the name appearing in the caste certificate and in the nomination form. The caste certificate is in the name of Ku. Maina Ramchandra Bhagat, whereas the name of the petitioner as shown in the nomination form is shown as Sou. Maina Anna Manvar. The petitioner has given an undertaking before the Returning Officer stating that the caste certificate is in her maiden name. The nomination form, therefore, should have been accepted and the order impugned cannot, therefore, be sustained.

5] In the result, writ petition is allowed. The order dated 08.04.2015 passed by the Returning Officer rejecting the nomination form of the petitioner is hereby quashed and set aside. The nomination form of the petitioner has been provisionally accepted pursuant to the interim order passed by this Court.

The Rule is, therefore, made absolute in terms of the interim order passed by this Court, confirming provisional acceptance of the nomination form of the

petitioner. No orders as to cost.

JUDGE

Rvjalit