

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11565 OF 2015

- 1) Kailash s/o Dattatraya Wakchaure,
Age-Major, Occu:Social Service,
R/o-Shivaji Nagar, Sangamner,
Tq-Sangamner, Dist-Ahmednagar,
- 2) Ganesh s/o Sayanna Madas,
- 3) Shaikh Shakil Yunus,
- 4) Chabuseeth s/o Radhakisan Bobde,
- 5) Afzal Mansurbhai Shaikh,
- 6) Kalyan s/o Budhmal Kunkulol,
- 7) Dattatraya s/o Savleram Sable,
- 8) Subash s/o Vitthalro Gangad,
- 9) Sanjay s/o Bansi Udamale,
- 10) Shaikh Chand Humayun (Maniyar),
- 11) Asif Yusuf Inamdar,
- 12) Rajendra s/o Murlidhar Zaware,
- 13) Asgar Ali Kamruddin Syeed,
- 14) Dr. Dattatraya s/o Shamrao Mule,
- 15) Shivaji s/o Amrutrao Gondkar,

16) Ganesh s/o Babasaheb Bhos,

17) Abdul Rehman Gulabbhai Daruwale (Shaikh)

...PETITIONERS

VERSUS

- 1) The Union of India,
Through its Secretary,
Law Department, New Delhi,
- 2) Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi, Through it's
Returning Officer i.e.
District Collector, Ahmednagar,
- 3) Electoral Registration Officer/
District Collector, Ahmednagar,
- 4) State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

...RESPONDENTS

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Mr. V.J. Dixit, Senior Counsel with Mr. A.N.
Nagargoje Advocate for Petitioners.
Mr. S.B. Deshpande, Assistant Solicitor
General for Respondent Nos.1 and 2.
Mr. C.V. Dharurkar, A.G.P. for Respondent
Nos.3 and 4.

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**CORAM: R.M. BORDE AND
A.I.S. CHEEMA, JJ.**

DATE : 7TH DECEMBER, 2015

ORDER :

1. The Petitioners who are the nominated members of the Municipal Councils, have an apprehension that their names would not be included in the final list of voters as a consequence of issuance of directions by Election Commission of India on 27th May 2013, more particularly, the directions relating to Procedure for Enrollment contained in Paragraph No.2. The Petitioners contend that the directions contained in Paragraph No. 2.1.2 are contrary to the legal provisions and which may have an effect of keeping the Petitioners' away from the election process.

2. The relevant directions dated 27th May 2013, contained in Paragraph No. 2.1.2 reads thus:

"2.1.2 Electoral Rolls of Local Authorities' constituencies are not revised. But they are kept up to date by correction being made by the Electoral Registration Officer concerned on the basis of the changes which are brought to their notice by the Executive Officers of

the Local Authorities concerned. All ex-officio and nominated members, if any, of the Local Authorities are entitled to be included in the Electoral Rolls along with elected members. In the case of members of one Local Authority some of whom are ex-officio members of other Local Authorities; their names should appear only once where they are members. However, the facility of being enrolled in electoral rolls and voting in elections extended to the ex-officio and nominated members is subject to the conditions provided in the state laws pertaining to the said Local Authorities in the concerned state."

3. It is not a matter of dispute that the Petitioners have tendered their applications and have filled in forms in accordance with the relevant rules for inclusion of their names in the Electoral Rolls which are being prepared for the election of Legislative Council of State.

4. Article 171 of the Constitution of India prescribes for composition of Legislative Council. It is provided that the total number of members in the Legislative Council of a State having such a

Council shall not exceed one-third of the total number of members in the Legislative Assembly in that State, provided that the total number of members in the Legislative Council of a State shall in no case be less than forty. Clause (2) of Article 171 provides that until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3). Clause (3) of Article 171 provides that, of the total number of members of the Legislative Council of a State - (a) as nearly as may be, one-third shall be elected by electorates consisting of members of Municipalities, District Boards and such other Local Authorities in the State as Parliament may by law specify.

5. The Petitioners are the members of the Municipalities and according to them, they have right to elect members to the Legislative Council in accordance with the constitutional provisions,

referred to above.

6. Section 2(7) of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 provides for definition of "Councillor". It reads thus:-

"(7) "Councillor" means a person duly elected as a member of the Council, the directly elected President and includes the nominated Councillor, who shall not have the right,-

(i) to vote at any meeting of the Council and Committees of the Council; and

(ii) to get elected as a President of the Council or a chairperson of any of the Committees of the Council."

7. The Petitioners apprehend that in view of the restrictions imposed in the local law in respect of their right to exercise vote, they would be kept away from the process of election of the Legislative Council.

8. According to us, the apprehension expressed, is ill-founded because neither the constitutional provision nor the provisions of the Representation of the People Act, 1950 provides for such restriction. Section 27 of the Representation of the People Act, and more particularly Sub-section (2) (b) provides that, every member of each such local authority within a local authorities' constituency shall be entitled to be registered in the electoral roll for that constituency. The electoral rolls of the Legislative Council/Assembly are required to be prepared and published in view of the provisions of the Representation of People Act and the Rules framed thereunder.

9. Learned senior counsel appearing for the Petitioners has invited our attention to the provisions of the Registration of Electors Rules, 1960, more particularly Rule 30, which provides that, roll of every local authorities'

constituency shall be prepared and maintained in such form, manner and language or languages as the Election Commission may direct. It is provided under Proviso to Sub-Rule (2) of Rule 30 that, where an application referred to in Sub-Rule (1) of Rule 26 is received by the Electoral Registration Officer, he shall refer such application to the Chief Executive Officer of the Local Authority concerned and on receipt of information in relation thereto from the Chief Executive Officer, the Electoral Registration Officer shall act in accordance with clause (d) of Sub-Section (2) of Section 27 of the Representation of People Act, 1950.

10. It is the contention of the Petitioners that the Chief Executive Officer has already tendered the list of the local members of the Local Body, which includes the names of the Petitioners. It is thus, expected of the Electoral Registration Officer to act in accordance with

clause (d) of sub-section (2) of Section 27 of the Representation of People Act, 1950. At this stage of proceedings, we are of the considered opinion that the Electoral Registration Officer is expected to act in accordance with the Constitution and legal provisions, and the apprehension expressed by the Petitioners founded upon the directions issued by Election Commission of India dated 27th May 2013, and more particularly in Paragraph No. 2.1.2, is ill-founded. The Electoral Registration Officer is under obligation to take appropriate decision in accordance with the provisions of law. At this stage of proceedings, no interference is called for, since there is no accrual of cause of action.

11. The Writ Petition, accordingly, stands disposed of.

[A.I.S. CHEEMA, J.]

[R.M. BORDE, J.]