

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 16192 OF 2015
IN
WRIT PETITION NO. 11795 OF 2015**

Makrand alias Nandu Shursen Raje Nimbalkar ...Applicant

versus

The State of Maharashtra & ors ...Respondents

.....
Mr. Rajendra S. Deshmukh, Advocate for applicant
Mr. A.V. Deshmukh, A.G.P. for respondent/State
Mr. N.B. Khandare, Advocate for respondent No. 5
.....

CORAM : N.W. SAMBRE, J.

DATE : 14th DECEMBER, 2015

ORAL ORDER :

In the order dated 07/12/2015 in paragraph-6, in stead of pages 241 to 243, it be read as 259 to 262.

2. This Court on 07/12/2015 has stayed the election of the President of Municipal Council, Osmanabad, when it was impressed by the submissions on the aspect of non compliance of the principles of natural justice.

3. The Collector, Osmanabad, pursuant to the above referred order of stay, has postponed the election.

4. On 9/12/2015 the Collector issued communication to the President, Vice-President, and Chief Officer of Municipal Council calling upon the present petitioner to hand over the charge to Vice-President, failing which the action under the provisions of Section 57(4) of the Act was threatened to be initiated.

5. It appears that the provisions of Section 57(2) of the Act provide that the President is required to voluntarily hand over the charge to the Vice President and failure to do so, shall result in attracting the provisions of Section 57(4) of the Act, wherein the Collector is required to pass order independently.

6. What is noticed in the present case is, without taking the recourse to the provisions of Section 57(4) of the Act, i.e. in absence of specific order from the Collector directing the petitioner to hand over the charge to Vice President, the charge is handed over by the Chief Officer, Municipal Council, Osmanabad, who has hardly any powers under the said provisions, to the Vice President.

7. *Prima facie*, in my opinion, the provisions of Section 57(4) of the Act are not complied with.

8. In view thereof, it will be appropriate, in my opinion, to grant ad-interim relief in terms of prayer clause (D) and (E). However, it is made clear that no policy decision should be taken by the petitioner till further hearing of the matter.

[N.W. SAMBRE, J.]