

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2560 OF 2015

Sakib Khalil Gore. ... Petitioner.
V/s.
The State Election Commission through
Under Secretary and others. ... Respondents.

M.M.Vashi, Senior Advocate i/b. P.M.Arjunwadkar for the petitioner.

Sachindra B.Shetye for respondent No.1.

D.B.Khaire, Addl.GP with Vikas Mali, AGP for respondent Nos.2 and 3.

Dinesh P. Adsul for respondent No.4.

**CORAM : NARESH H. PATIL AND
VL. ACHLIYA, JJ.**

DATED : 19th March 2015.

PC.

The petitioner has challenged communication dated 7th February 2015 thereby reserving ward No.21 for Backward Class (open). The elections are to be conducted to constitute respondent No.4- Kulgaon Badlapur Municipal Council. Earlier reservation lots were drawn in which ward No.21 was allotted to Other Backward Class (Women). This was objected to and after considering the record, the State Election Commission allotted ward No.21 to OBC General.

2. The learned senior counsel appearing for the petitioner submits that entire allotment of wards is as per rotation and the State Election Commission has no sole authority to reserve ward. Such an exercise is contrary to the settled procedure of reservation of wards and allotment of seats to such wards. Learned counsel submits that foundation of election gets affected and entire election process would get vitiated. Learned counsel further submits that this petition was heard on merits on the last occasion by another Division Bench of this Court. Due to change of assignment this petition is assigned to this Court and, in between, the State Election Commission declared election programme yesterday i.e. 18th March 2015 which action is unfair and not in good taste as the matter was *sub judice*. The Election Commission ought to have waited for further orders.

3. The learned counsel appearing for the Election Commission submits that the State Election Commission realized their mistake in respect of allotment of ward No.21 and to set right the record, in exercise of powers conferred, fresh order was passed allotting ward No.21 to the open Backward Category (General). It is submitted that by this exercise none of the reserved categories is exceeding the reservation quota. No other category of ward reserved for different class gets affected due to impugned order passed by the Election Commission. According to the learned counsel, the impugned order would facilitate smooth process of election in accordance with the reservation of seats and allotments of wards done on the basis of rotation. Learned counsel, on instructions, submits that yesterday the Election Commission has declared election

programme. The election process is set in motion. Therefore, no interference is called for in the present proceedings initiated under Article 226 of the Constitution of India.

4. In view of the fact that this petition was heard afresh by this Court after change in assignment, the State Election Commission ought to have, by way of propriety, intimated its intention to declare election programme or could have waited for a day. But the explanation given by learned counsel appearing for the Election Commission is that election process was to be completed within 45 days, as such there was no time to wait than to declare the election programme. We do not express any opinion.

5. On merits we find that as the election process is already set in motion, we are not inclined to entertain this petition. We leave all the contentions raised by the contesting parties open for its redressal before appropriate forum after election results are declared. With this observation petition is disposed of.

(VL. ACHLIYA, J.)

(NARESH H. PATIL, J.)