

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9388 OF 2014

Smita Subhash Sawant	..	Petitioner
VS.		
Jagdeeshwari Jagdish Amin & Ors.	..	Respondents

Mr. B. D. Joshi with Mr. Neel Helekar for Petitioner.

Mr. G. S. Godbole with Mr. R. K. Mendadkar and Ms. Helen Koli for Respondent No. 1.

Mr. D. A. Tayshete with Mrs. M. R. Bhoir i/b. U. H. Deshpande for MCGM – Respondent No. 2.

Mr. Sachindra Shetye with Mr. Irfan Shaikh for Respondent No. 3.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 22 January 2015

Date of Pronouncing the Judgment : 09 February 2015

JUDGMENT :-

1] Rule. With the consent and at the request of the learned counsels for the parties, Rule is disposed of finally.

2] This petition is directed against the judgment and order dated 24 September 2014 made by the Court of Small Causes at Bombay in Municipal Election Petition No. 129 of 2012 holding that the election petition instituted by the respondent no.1 questioning the petitioner's election as a Councillor of the Bruhan Mumbai Municipal Corporation is within the period of limitation prescribed by Section 33 of the Mumbai Municipal Corporation Act, 1888 ("said Act").

3] The election schedule for General Election, 2012 of Councillors under the said Act was published by notification dated 2 February 2012 declaring the date of poll as 16 February 2012. The same notification declared that counting of votes will be undertaken on 17 February 2012 and the list of elected candidates along with total number of valid votes polled by them will be published in the Government Gazette on or before 21 February 2012 as required under the provisions of Sections 10, 28(k) and 32 of the said Act.

4] At the elections, which took place from Ward No. 76 on 16 February 2012, the petitioner was declared as elected at the counting which took place on 17 February 2012. Such declaration was in Form 21K referable to Rule 103 of the Municipal Corporation of Greater Bombay, Conduct of Election Rules 2006 ("Election Rules"), which is dated 17 February 2012. Thereafter, there is a gazette publication dated 21 February 2012, which declares the list of 227 elected Councillors. The name of the petitioner appears against Ward No. 76 and indicates the total number of valid votes received by her as 9278. This gazette publication makes reference to Sections 10 and 32(1) of the said Act and Rule 103 of the Election Rules.

5] The respondent no. 1, who was also a candidate from Ward No. 76 at the elections which took place on 16 February 2012, instituted election petition before the Court of Small Causes at Bombay ("Court"), under Section 33 of the said Act on 28 February 2012. Preliminary issue as to whether such an election petition was barred by Law of Limitation was framed by the Court and by judgment and order dated 24 September 2014 ("impugned order"), the Court has ruled that the election petition was instituted within the period of limitation prescribed by Section 33 of the said Act. Hence, the present petition.

6] As the entire controversy revolves around an interpretation of the provisions contained in Section 33 of the said Act, it is appropriate that the same is quoted verbatim:

"33. (1) If the qualification of any person declared to be elected for being a councillor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection [by the State Election Commissioner] of a nomination or of the improper reception or refusal of a vote, or for any other cause [or if the validity of the election of a person is questioned on the ground that he has committed a corrupt practice within the meaning of section 28F], any person enrolled in the municipal election roll may, at any time within [ten days] [from the date on which the list prescribed under clause (k) of section 28 was available for sale or inspection apply to the Chief Judge of the Small Causes Court. [If the application is for a declaration that any particular candidate shall be deemed to have been elected, the applicant shall make parties to his application all candidates who, although not declared elected, have, according to the results declared [by the State Election Commissioner] under section 32, a

greater number of votes than the said candidate, and proceed against them in the same manner as against the said candidate.]

(emphasis supplied)

7] Since Section 33 of the said Act makes specific reference to clause (k) of Section 28, it is necessary to quote the same verbatim:

“ 28. With respect to the contested ward elections, the following provisions shall have effect, namely :-

- (a)*
- (b)*
- (c)*
- (d)*
- (e)*
- (f)*
- (g)*
- (h)*
- (I)*
- (j)*

(k) [the State Election Commissioner] shall, as soon as may be, declare the result of the poll specifying the total number of valid votes given for each candidate and shall cause lists to be prepared for each ward, specifying the name of all candidates, and the number of valid votes given to each candidate. In accordance with such rules as [the State Election Commissioner] may frame for the purpose and on payment of such fees as may be prescribed by him, a copy of such list shall be supplied to any candidate of the ward and shall be available for inspection to any voter of the ward.”

8] From the aforesaid, at least one thing is clear that is the election petition can be instituted by any person enrolled in the municipal election roll, at any time, within ten days from the date of which the list prescribed under clause (k) of section 28 was available for sale or inspection. Section 28 of the said Act makes

provisions respecting contested ward elections. Sub clause (k) with which we are concerned, provides that with respect to the contested ward elections, the State Election Commissioner shall, as soon as may be, declare the result of the poll specifying the total number of valid votes given for each candidate and shall cause list to be prepared for each ward, specifying the name of all candidates, and the number of valid votes given to each candidate. It further provides that in accordance with the such Rules as the State Election Commissioner may frame for the purpose and on the payment of such fees as may be prescribed by him, a copy of such list shall be supplied to any candidate of the ward and shall be available for the inspection to any voter of the ward.

9] As noted earlier, the elections took place on 16 February 2012 and the counting took place on 17 February 2012. On the conclusion of counting, there was declaration of result under the signature of the returning officer in form 21(K) dated 17 February 2012 which is referable to Rule 103 of the Election Rules. This declaration is restricted to Ward 76 only. Further, such declaration specifies the total number of valid votes given for each candidate, names of all candidates and the number of valid votes given to each candidate. It is a case of the petitioner that such declaration in Form 21(K) dated 17 February 2012 constitutes the list or

declaration as contemplated by Section 28(k) of the said Act. It is the case of the petitioner that though such list / declaration has been signed by the returning officer, the same is in pursuance of valid delegation of powers by the State Election Commissioner therefore such declaration / list ought to be deemed as an exercise by the State Election Commissioner himself. Based upon this premise, it is the case of the petitioner that the election petition in the present case could be instituted only upto 27 February 2012. Since in the present case, the election petition has been instituted on 28 February 2012, the same is barred by the limitation prescribed under Section 33 of the said Act.

10] On the other hand, it is the case of the respondent no.1 that the declaration / list dated 17 February 2012 is not at all referable to Section 28(k) of the said Act. In any case, even assuming it to be so, the period of limitation commences not from the date of declaration or preparation of such lists under Section 28(k), but rather the period of limitation commences from the date on which such list was available for sale or inspection. The gazette notification, which also declares the list of elected candidates, together with the valid votes polled by them was published on 21 February 2012. This gazette notification indicates the price and therefore the date of such gazette notification is the date on which

the same was available for sale or inspection. On this premise, the respondent no.1 contends that the election petition could be instituted within ten days from said date i.e. 21 February 2012. Thus, the election petition instituted on 28 February 2012, was very much within the prescribed period of limitation.

11] Mr. Joshi, the learned counsel for the petitioner submitted that in the present case the respondent no. 1 was a candidate at the elections, which took place on 16 February 2012. Further, the respondent no. 1 was very much present at the time of counting and when declaration in Form 21(K) was made by the returning officer on 17 February 2012. In such circumstances, Mr. Joshi submitted that the period of limitation should commence from the date of knowledge, which is 17 February 2012. Mr. Joshi further submitted that the declaration / list dated 17 February 2012 from its tenor and contents, was clearly referable to Section 28(k) of the said Act. The period of limitation is to commence from the date on which said list was available for '*sale or inspection*'. The use of the proposition '*or*' makes it clear that either sale or inspection is sufficient to trigger the commencement of limitation. To the respondent no. 1, the declaration / list dated 17 February 2012 was available for inspection on the same date i.e. 17 February 2012. Accordingly, the limitation, at least for the respondent no. 1

commenced on 17 February 2012. The election petition instituted by the respondent no. 1 on 28 February 2012 was therefore, barred by the Law of Limitation. In this regard, Mr. Joshi placed reliance upon the decisions in the cases of (1) *Hyderabad Asbestos Cement Products & Ar. vs. Union of India & Ors.*¹, (2) *M/s. R. S. Jiwani vs. Ircon International Ltd.*² and (3) *Commissioner of Income-Tax vs. M/s. Sun Engineering Works (P) Ltd.*³

12] Mr. G. S. Godbole, the learned counsel for the respondent no. 1, at the outset submitted that the issue involved in the present petition is no longer *res integra*, in view of the decision of the Division Bench of this Court in the case of *Rajendra Dhanji Sakhala vs. State Election Commission & Ors.*⁴ In any case, Mr. Godbole submitted that the notification dated 2 February 2012, by which the election schedule came to be declared, had itself made it clear that the list of elected candidates along with total number of valid votes polled to them will be published in the Government Gazette on or before 21 February 2012 as required, *inter alia* by the provisions of Section 28(k) of the said Act, and therefore there is nothing wrong in the Court taking the view that the gazette publication dated 21 February 2012, itself constitutes the list as contemplated by Section 28(k) of the said Act. Further, since the gazette publication makes

1 2000 (1) SCC 426

2 2010 (1) ALL MR 605

3 AIR 1993 SC 43

4 2008(1) Mh.L.J. 398

reference to the price, it is reasonable to presume that the date of the gazette publication constitutes the date on which the list as contemplated by Section 28(k) of the said Act became available for sale or inspection. Mr. Godbole pointed out that in terms of Section 33 of the said Act, an election petition can be instituted not merely by a candidate at such election, but also by any person enrolled in the municipal election roll. For this reason, factual aspects like date of knowledge or physical presence at the time of counting are irrelevant factors. There cannot be one date for a candidate within which to institute an election petition and another for a person enrolled in the election roll. Such position was neither intended by the legislature nor would any such interpretation be conducive in the scheme provided for questioning the election of an elected councillor. In any case, Mr. Godbole submitted that the benefit of the ambiguity in the provisions as also its interpretation should go to the respondent no. 1, as otherwise a good cause would stand thrown out on the touchstone of technicalities. For all these reasons, Mr. Godbole submitted that the impugned order may not be interfered with in the light of legal position as also the facts and circumstances of the present case. Mr. Godbole placed reliance upon number of decisions, some of which shall be referred to in the course of this judgment and order.

13] The rival contentions now fall for my determination.

14] In the case of *Rajendra* (supra) the general elections to the Mumbai Municipal Corporation were held on 1 February 2007. The election results were declared on 2 February 2007. In this context, the Division Bench of this Court observed thus :

“9. Section 33(1) of the Act says that if the qualification of any person declared to be elected as councillor is disputed then any voter may within 10 days (ten days) from the date on which the list of the elected candidates is published under clause (k) of section 28 of the Act may apply to the Chief Judge of the Small Causes Court. In the present case the list of elected candidates was published on 7th February, 2007. Therefore, the application for challenging the election (election petition) ought to have been filed within 10 days from 7th February, 2007, i.e. on or before 17th February, 2007. The election petition in question is filed on 21st September, 2007 and is hopelessly barred by limitation. As such no valid election petition was pending on the date of impugned notification nor can it be said to be pending even on the date of filing of the present writ petition.”

15] As noted above, the election petition in the case of *Rajendra* (supra) had been instituted on 21 September 2007, when the results of elections held on 1 February 2007 were declared on 2 February 2007 and the list of candidates was published on 7 February 2007. In the said case, there was really no occasion for interpretation of the provisions contained in Section 33(1) of the said Act. Therefore, this Court is unable to accept Mr. Godbole's contention that the issue raised in the present petition is no longer

res integra in view of the decision of this Court in the case of *Rajendra* (supra).

16] In the case of *M/s. Sun Engineering Works (P) Ltd. (supra)*, the Supreme Court has cautioned against an interpretation which involves reading a judgment totally out of the context in which the question arose in decision in that case. The Supreme Court has observed that it is neither desirable nor permissible to pick out a word or a sentence from the judgment divorced from the context of the question under consideration and to treat it to be the complete law declared by the Court. The judgment must be read as a whole and observations from the judgment have to be considered in the light of the questions which were before the Court. A decision takes colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Court must carefully try to ascertain the true principle laid down by the decision of the Court and not to pick out words or sentences from the judgment divorced from the context of the questions under consideration by the Court, to support their reasonings. Further, in the case of *Madhav Rao Jiwaji Rao Scindia Bahadur vs. Union of India*⁵, the Supreme Court cautioned :

“It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law

5 AIR 1971 SC 530

on a question when the question did not even fall to be answered in that judgment.”

17] Applying the aforesaid tests, it cannot be said that the issue raised in the present petition either arose or was decided by the Division Bench of this Court in the case of *Rajendra* (supra), the issue shall therefore have to be independently examined in the light of the legal provisions contained in Sections 33(1) and 28(k) of the said Act.

18] There is however much substance in the contention of Mr. Godbole that factual aspects like '*date of knowledge*' of the declaration of the result, cannot be made the basis for commencement of period of limitation, particularly in election petitions. The provisions of Section 33 of the said Act entitle any person enrolled in the municipal election roll to prefer election petition. This right is not restricted merely to a candidate but extends even to a voter enrolled in the municipal election roll. Intention of the legislature is obviously to provide a specific date, when the period of limitation is to commence to question an election. Intention of the legislature is obviously not to provide for varied dates stretched over some indeterminate period up to which an election could be questioned, depending upon the knowledge of the election petitioner as to the result of the election. Such an

interpretation, would obviously lead to chaos, as the result of the election would depend upon uncertain factors like date of knowledge of the person enrolled in the municipal election roll. Accordingly, it is not possible to hold that the election petition in the present case is barred by Law of Limitation, because the respondent no. 1 had knowledge about the declaration of result on 17 February 2012 and that the period of limitation ought to commence from the date of such knowledge. The phraseology employed in Section 33(1) of the said Act is not that the election petition may be filed at any time within ten days from the date of either the declaration of the result or the date of knowledge of the declaration of the result. Rather, Section 33(1) of the said Act provides that any person enrolled in the municipal election roll, may, at any time within ten days from the date of which the list prescribed under clause (k) of Section 28 was available for sale or inspection institute the election petition to the Chief Judge of the Small Causes Court. Such phraseology employed by the legislature shall have to be respected and interpreted.

19] There is also no substance in the contention of Mr. Joshi that since the provisions contained in Section 33(1), make reference to '*sale or inspection*', it is sufficient if either one of the contingencies are complied with, for the purpose of commencement of period of limitation. Mr. Joshi submitted that the list prescribed under clause

(k) of Section 28 was available to the respondent no.1 for inspection on 17 February 2012, particularly as the respondent no. 1 was a candidate present at the time of counting, therefore the period of limitation should commence from 17 February 2012 itself. In this regard, Mr. Joshi placed reliance upon the decision of the Supreme Court in the case of *Hyderabad Asbestos Cement Products* (supra), which lays down that where the two clauses of proviso are separated by the use of an 'or', then the availability of one of the two alternatives would suffice. This decision, rather than support Mr. Joshi's contention, to a certain extent, goes against it. This is because the legislature, in enacting Section 33(1) of the said Act has not stated that an election petition can be filed within ten days from the date on which the list prescribed under clause (k) of Section 28 was available for sale or inspection '*whichever is earlier*'. Rather, the phraseology employed is that an election petition can be instituted '*at any time*' within ten days from the date on which the list prescribed under clause (k) of Section 28 was available for sale or inspection. This means that there is no bar to institution of an election petition within ten days from the date when the list was available for sale or within ten days from the date on which the list was available for inspection. In the light of the decision of the Supreme Court in the case of *Hyderabad Asbestos Cement Products* (supra), this is the only reasonable manner, in which the

provisions contend in Section 33(1) of the said Act shall have to be interpreted. In interpreting an 'or' the Supreme Court has held that availability of two alternatives would suffice. Be that as it may, if Mr. Joshi's contention is to be accepted, then the same would lead to acceptance of multiple dates, upon which an election petition may be instituted. In respect of voters or candidates who may not be present at the stage of declaration of results, the period of limitation shall have to commence from the date when the list prescribed under clause (k) of Section 28 was available for sale. Whereas, in the case of voters or candidates who may be present at the stage of counting, the period of limitation may commence from the date of the list being available for inspection. This could never have been intended by the legislature. Besides, in the context of the provisions contained in Section 33(1) of the said Act, it does appear that the legislature intended that the date on which the list prescribed under Section 28(k) was to be available for sale or inspection, would be one and the same. The legislature did not intend that there might be one date for such list being available for sale and another for inspection. In such circumstances, there would arise no question of satisfaction of any one of the alternatives. Accordingly, it is not possible to accept Mr. Joshi's contention premised upon the interpretation of 'or' appearing between sale and inspection in Section 33(1) of the said Act

20] The crucial issue, which arises in this case is what should be the date on which the list prescribed in clause (k) of Section 28 can be said to be available for sale or inspection? Related to this question, would be the question as to which of the two lists i.e. the list dated 17 February 2012 or the list dated 21 February 2012 qualifies to be described as the list prescribed under clause (k) of Section 28 of the said Act?

21] Mr. Joshi contends that the list prepared on 17 February 2012 meets with all the attributes prescribed under clause (k) of Section 28 of the said Act. *Per contra*, Mr. Godbole contends that the list published in the official gazette on 21 February 2012, is the list as prescribed under clause(k) of Section 28 of the said Act.

22] The perusal of clause (k) of Section 28 would indicate that the State Election Commissioner shall, as soon as may be, declare the result of the poll specifying total number of valid votes given for each candidate. Further, the State Election Commissioner shall cause lists to be prepared for each ward, specifying the name of all candidates, and the number of valid votes given to each candidate. Further, in accordance with such Rule as the State Election Commission may frame for the purpose and on payment of such fees as may be prescribed by him, a copy of such list shall be

supplied to any candidate of the ward and shall be available for inspection to any voter of the ward. This means that clause (k) of Section 28 of the said Act can be broadly divided into three parts :

- (a) The first part, enjoins upon the State Election Commissioner, as soon as, may be to declare result of the poll, specifying total number of valid votes given for each candidate;
- (b) The second part is where the State Election Commissioner shall cause lists to be prepared for each ward, specifying the name of all candidates, and the number of valid votes given to each candidate;
- (c) The third part is where, in accordance with the said Rules as the State Election Commissioner may frame for the purpose of and on payment of such fees as may be prescribed by him, a copy of such list shall be supplied to any candidate of the ward and shall be available for inspection to any voter of the ward.

23] In the present case, the list dated 17 February 2012 has been prepared by the Returning Officer and not the State Election Commissioner. Mr. Godbole therefore contends that this list cannot relate to clause (k) of Section 28, which requires the list to be prepared by the State Election Commissioner. Mr. Godbole may not be right in his contention. This is because, there is on record notification, by which the State Election Commissioner has

delegated certain functions to the Returning officer. That apart, clause (k) of Section 28 merely requires the State Election Commissioner to '*cause lists to be prepared*'. There is no requirement that the State Election Commissioner, himself has to prepare such lists. Further, the list dated 17 February 2012, pertains to ward in question, specifies names of all candidates, and the number of valid votes given to each candidate. Thus, the list dated 17 February 2012 can be said to substantially comply with the attributes prescribed under the second part of clause (k) of Section 28 of the said Act. Mr. Joshi is undoubtedly right in his submission to this extent.

24] However, Section 33(1) of the said Act, does not provide that the period of limitation will commence from the date of preparation of the list prescribed in clause (k) of Section 28. Rather, the section provides that the period of limitation will commence from the "*date of which the list prescribed under clause (k) of Section 28 was available for sale or inspection*". The further question which therefore arises is whether the list prepared on 17 February 2012 can be said to have been available for sale or inspection on 17 February 2012 itself, not just to the candidates who may be present at the time of counting or at the time of preparation of such list, but to any person enrolled in the municipal election roll?

25] In the aforesaid regard, it is necessary to advert to the third part of clause (k) of Section 28 of the said Act. This part makes reference to rules to be made by the State Election Commissioner and fees to be prescribed by him, in the matter of sale and inspection of lists prepared under the second part of clause (k) of Section 28. Admittedly, neither have any rules been framed by the State Election Commissioner nor has any payment of fees been prescribed by him for the said purpose. The third part, as aforesaid provides that copies of the lists shall be supplied to any candidate of the ward and shall be available for inspection to any voter of the ward in accordance with such rules and on payment of such fees as may be prescribed. In the absence of any rules or prescription of fees, it is difficult to accept that the list as prescribed under clause (k) of Section 28 of the said Act was either available for sale or inspection to any person enrolled in the municipal election roll on 17 February 2012 itself. Reluctantly therefore reference shall have to be made to the list published in the official gazette on 21 February 2012, which not only indicates the price at which such list can be purchased, but further, being a gazette publication, can be said to be available for inspection to any person enrolled in the municipal election roll, from the date of its publication.

26] Mr. Sachindra Shetye, the learned counsel for the State Election Commissioner, based upon instructions, and also otherwise submitted that the date of gazette publication i.e. 21 February 2012 would be the date on which the list prescribed under clause (k) of Section 28 of the said Act was available for sale or inspection. The election petition, which has been admittedly instituted within ten days from such date, cannot therefore be said to have been barred by limitation.

27] Mr. Joshi, however submitted that the list which is published in the official gazette on 21 February 2012 basically relates to section 10 of the said Act and has no nexus whatsoever with the list prescribed under clause (k) of Section 28 of the said Act. Section 10 of the said Act provides that the names of all persons elected to be councillors shall be published by the State Election Commissioner, in the official gazette. Mr. Joshi also pointed out that the list published on 21 February 2012 does not fulfill the attributes of clause (k) of Section 28, but rather fulfills the attributes of Section 10 of the said Act. Mr. Joshi therefore contended that the date upon which the list dated 21 February 2012 was made available for sale or inspection is quite irrelevant for the purposes of determining whether the election petition, in the present case, came to be instituted within the period of limitation prescribed under Section 33(1) of the said Act.

28] On the other hand, Mr. Godbole, by reference to the election schedule for the general election of 2012, which has provided that the list of elected candidates along with total number of valid votes polled by them will be published in Government Gazette on or before 21 February 2012, as required under the provisions of Sections 10, 28(k) and 32 of the said Act, submitted that the list published on 21 February 2012 is clearly relatable to Section 28(k) of the said Act and therefore the same should form the basis for commencement of period of limitation. In the present case, Mr. Godbole contended that the State Election Commissioner can be deemed to have caused such a list to be prepared and published for the purposes of sale and inspection.

29] Now, the perusal of the list dated 21 February 2012 indicates that the same has been issued under the signature of the Municipal Commissioner and not the State Election Commissioner. Further, the said list makes specific reference to Sections 10 and 32(1) of the said Act apart from Rule 103 of the Election Rules. There is no reference to Section 28(k) of the said Act. Further, the said list does not specify the names of all the candidates from the concerned wards and the number of valid votes given to each candidate. Viewed thus, the list is consistent with the provisions contained in

Section 10 of the said Act which requires the names of all persons elected to be Councillors to be published by the State Election Commissioner in the Official Gazette.

30] Therefore, a situation arises wherein the list dated 17 February 2012, though substantially complies with the attributes of a list under Section 28(k) of the said Act, there is no date upon which such list was made available for sale or inspection. Instead, with regard to list dated 21 February 2012, which does not substantially comply with the attributes of Section 28(k), there is some date upon which the same was made available for sale or inspection. It is obvious that the authorities enjoined to conduct the elections have not strictly adhered to the requirements of the said Act, in the matter of indicating with clarity and precision, the date on which the list prescribed under Section 28(k) was available for sale or inspection. The respondent no. 1, or for that matter any person enrolled in municipal election roll, cannot be made to suffer on account of this. The benefit of the ambiguity, which has arisen more on account of failure on the part of the authorities to adhere to the provisions, shall have to go to the respondent no. 1, who has instituted the election petition on 28 February 2012 i.e. well within the period of ten days from the date on which the list dated 21 February 2012 was available for sale or inspection. Even if we

proceed on the basis that there is some ambiguity in the statutory provisions themselves, then such ambiguity shall have to be resolved in favour of a cause being regarded as within limitation than without. For this reason, no case is made out to interfere with the impugned order.

31] In order that such issues do not arise in future, it would be appropriate if the State Election Commission, as contemplated by Section 28(k) frames rules for the purposes of sale and inspection of lists prepared under the said section and further adhere to the same. Even in the absence of Rules, it is always possible for the State Election Commissioner, whilst declaring a schedule of elections, to indicate with precision the date upon which the list prescribed under clause (k) of Section 28 is to be made available for sale or inspection. This will, possibly, reduce, if not totally eliminate any ambiguity in the matter of the precise date on which the limitation for institution of election petitions shall commence. In the present case, however, since the State Election Commissioner or other authorities enjoined to conduct the election have failed to specify with precision, the date on which the list prescribed under clause (k) of Section 28 was to be made available for sale or inspection, there is no case made out to fault the impugned order or to upset the conclusion that the election petition instituted by the

respondent no. 1 was within the prescribed period of limitation. Although the opinion of the State Election Commissioner may not be binding upon this Court, nevertheless it is necessary to record that the State Election Commissioner, through Mr. Sachindra Shetye did, submit that the date of gazette publication i.e. 21 February 2012 would be the date of which the list prescribed under clause (k) of Section 28 of the said Act can be said to be available for sale or inspection.

32] For all the aforesaid reasons, this petition is dismissed. Rule is discharged. There shall however be no order as to costs.

Chandka

(M. S. SONAK, J.)

33] The learned counsel for the petitioner seeks a stay upon this judgment and order. Pending this petition, ad-interim relief had been declined. Further, this Judgment and order merely holds that election petition instituted by the respondent no. 1 was within the prescribed period of limitation. Accordingly, motion for stay is declined.

Chandka

(M. S. SONAK, J.)