

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

WRIT PETITION NO.2347/2015

Shri Sheikh Sarwar Sheikh Shalu

...Versus...

Collector, Chandrapur, Office of the Collector, Chandrapur Distt. Chandrapur
and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Prashant Gode, Advocate for petitioner
Ms T.H. Udeshi, AGP for respondent nos.1 and 2
Shri M.I. Dhatrak, Advocate for respondent no.3
Mrs. Kirti Satpute, Advocate for respondent no.4

CORAM : SMT. VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.

DATE : 16.11.2015

By this petition, the petitioner seeks a declaration that the nomination of the respondent no.4 as a Councillor of the Municipal Council, Gadchandur is void and illegal. The petitioner seeks a declaration that the petitioner is entitled to be nominated as a Councillor of the respondent no.3 – Municipal Council.

The learned Counsel for the respondents have raised a preliminary objection to the tenability of the writ petition. It is stated that the petitioner has challenged the nomination of the respondent no.4 as a Councillor of the respondent – Municipal Council. It is stated that the petitioner could have as well raised a dispute in regard to the nomination of the Councillor under

Section 21 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965. It is stated that if the petitioner was aggrieved by the nomination of the respondent no.4 as a Councillor, the petitioner could have presented a petition to the District Court, challenging the nomination. It is stated that several disputed questions of facts arise for consideration in this writ petition and the same should not be entertained in view of the existence of an alternate efficacious remedy.

We uphold the preliminary objection raised on behalf of the respondents. The dispute in respect of the nomination of Councillor could be presented to the District Court by a person who seeks his nomination or is entitled to vote, under Section 21 of the Act. Since according to the petitioner, the respondent no.4 does not have the requisite experience in Municipal administration and since this fact is seriously disputed by the respondents, it is all the more necessary for the petitioner to avail the alternate remedy. The petitioner could have raised the dispute before the District Court, wherein the issues of facts and law could have been decided. The judgment reported in **(1999) 4 Supreme Court Cases 526** and relied on by the Counsel for the petitioner cannot be made applicable to the facts of this case. The submission made on behalf of the petitioner that there is a violation of the provisions of Section 9 of the Act and Rule 4 of the Maharashtra Municipal Councils and Nagar Panchayats (Qualifications and Procedure for Appointment of Nominated Councillors) Rules, 2010 and therefore the writ petition should be entertained is liable to be rejected, more so, when the issue in

regard to the violation of the said provisions is also based on certain facts which are seriously disputed. The question in respect of the violation of the provisions of the Act and Rules, pertaining to the qualifications, could also be looked into by the District Court in a dispute under Section 21 of the Act.

In view of the aforesaid, we decline to entertain the writ petition. The writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

Wadkar