

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8569 OF 2014
WITH
CIVIL APPLICATION NO.16156 OF 2015,
CIVIL APPLICATION NO.71 OF 2016
AND
CIVIL APPLICATION NO.72 OF 2016

Shobha Raosaheb Deshmukh,
Age 42 years, Occ. Household
R/o Umapur, Tq. Georai,
District Beed.

..Petitioner

Versus

1. Election Returning Officer,
Zilla Parishad and Panchayat Samiti,
General Election 2012, Tq. Georai,
District Beed - Shri Shinde A.M.,
Age major, Occ. Service Regional
Officer, MIDC, Aurangabad.

2. Assistant Election Officer,
Zilla Parishad and Panchayat Samiti,
General Election 2012, Tq. Georai,
District Beed / Tahsildar,
Tahsil Officer, Georai, Tq. Georai,
District Beed.

3. Savita w/o Madan Aher,
Age major, Occ. Household,
R/o Umapur, Tq. Georai, Dist.Beed.

4. Zilla Parishad Beed, through
C.E.O., Zilla Parishad Office, Beed.

..Respondents

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Advocate for Petitioner : Shri Deshmukh Sachin S.
Advocate for Respondents 1 & 2 : Shri Shelke S.T.
Advocate for Respondent 3 : Shri Shelke M.U.
Advocate for Respondent 4 : Shri Dama P.P.
Advocates for intervenors : S/Shri Kulkarni M.S.
and Bangar N.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 06, 2016

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the judgment and order dated 20.9.2014, delivered by the learned District Judge - 1, Beed by which the Misc. Civil Application filed under Section 27 of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 (in short, "1961 Act") was partly allowed and though respondent No.3 - the originally elected candidate was unseated, the prayer made by the petitioner for "being declared elected unopposed" is rejected.

5. The petitioner submits that the elections for the Electoral Division No.3 Umapur, Tq. Georai, District Beed was held and the result of the elections were announced on 17.2.2012, by which respondent No.3 - Savita Madan Aher was declared elected.

6. The petitioner herein challenged the said election by preferring Misc. Civil Application No.101 of 2012. Contention was that respondent No.3 belongs to the Maratha caste and the election for the Electoral Division

No.3 Umapur was reserved for women belonging to the backward class. The petitioner claims to be from the backward class category.

7. By the impugned judgment, the trial Court, set aside the election of respondent No.3 on the basis of evidence before it, as well as on the basis of the decision of the competent caste scrutiny committee dated 13.1.2014 under the Maharashtra Scheduled Castes, Scheduled Tribes, De Notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No.XXIII of 2001) invalidating the caste claim of respondent No.3. It was, therefore, a foregone conclusion that respondent No.3 did not belong to the caste as claimed by her and hence could not have contested the elections.

8. It is stated that on 18.9.2014, respondent No.3 filed a purshis before the trial Court declaring that the petition filed by the petitioner be allowed and she be declared elected in place of respondent No.3.

9. Shri Deshmukh, learned Advocate for the petitioner submits that the moment the caste claim of respondent No.3 is set aside, her candidature is rendered insignificant and as such, she could not continue as an elected candidate. In this backdrop, as the petitioner was the sole candidate left in the fray, the trial Court had no option but to declare her as the returned candidate. According to him, Sections 27(2) read with 27(5)(a) empower the Judge to declare the petitioner as a returned candidate. Having failed

to do so, the impugned judgment calls for interference.

10. Shri Deshmukh has relied upon the judgment of the Apex Court in the case of Madhukar G.E.Pankakar etc. Vs. Jaswant Chobbildas Rajani and others etc. [(1977) 1 SCC 70]. He places reliance upon paragraph Nos.4 and 43 to 45 of the said judgment.

11. Shri M.U.Shelke, learned Advocate appearing on behalf of respondent No.3 submits that the said respondent had filed a purshis on 18.9.2014 and had prayed that the petitioner be declared elected in her place. He further submits that this petition could be allowed as the disqualification of respondent No.3 leaves the petitioner as the sole eligible candidate for the said electoral division.

12. Shri S.T.Shelke, learned Advocate appearing on behalf of respondent Nos.1 and 2 has frankly stated that this is not an adversarial litigation to the Election Commission. Respondent Nos.1 and 2 would only be assisting the court to the extent of the interpretation of Section 27(2) and 27(5)(b) of the 1961 Act.

13. He submits that the impugned judgment cannot be faulted for the reasons that the Act empowers the Judge conducting the enquiry to declare the other candidate elected if the election of the returned candidate is set aside under Section 27(5)(b). No such power flows from Section 27(5)(a) and, therefore, the learned Judge has rightly delivered the impugned

judgment.

14. He further submits that Section 27(2) has to be read in harmony with 27(5)(a) with regard to the instances set out in sub-Section 5(a). He further submits that there ought to be a harmonious interpretation of Section 27(2) and 27(5)(a) so as to ensure that the intent of the Legislature behind these provisions is not defeated.

15. He further submits that neither does Section 27(2) nor 27(5)(a) enable a Judge to declare the other candidate elected if the election of the returned candidate is set aside notwithstanding that there is no third candidate in the fray. The power flowing from sub-section 5(b), by which, the unsuccessful candidate can be declared elected does not find place in sub-section 5(a). He relies upon the judgment of this Court in the case of Manisha Sanjay Waskar Vs. Anil @ Bajirao Balaso Dhawan [2010 (5) Mah.L.J. 100]. He, therefore, prays that this petition to be dismissed.

16. I have heard Shri Mukul Kulkarni and Shri M.P.Bangar, learned Advocates, who are before the Court with two Civil Applications for seeking intervention. Both fairly submit that though the applications have been sworn on oath, they are yet to be filed. Notwithstanding the said situation, they expressed a desire to assist the Court in this matter.

17. Both have submitted that the judgment of this Court in the case of Manisha (supra) is squarely applicable to this case. This Court has referred

to Section 33(2) of the Bombay Municipal Corporation Act, which was a subject matter of the judgment of this Court, delivered on 5.4.2004 in Writ Petition No. 8546 of 2003 in the case of Sarika Shrimant Kamble Vs. Sau. Mangal Bajirao Satpute and others. They, therefore, submit that the power under Section 33(2) of the BMC Act to declare the next candidate, who has polled second highest number of valid votes, as being deemed to have been elected in the event the election of the returned candidate is set aside, is not found either in Section 27(2) or in Section 27(5)(a).

18. It is, therefore, submitted that Section 27(2) can be interpreted only to mean that the Judge, at best, could set aside the result of the election, but could not and cannot declare the petitioner as elected, even if she happens to be the sole candidate post dis-qualification of the elected candidate. It is, hence, canvassed that the contentions of the petitioner are fallacious and do not find any base in Section 27(2) and 27(5)(a).

19. I have considered the submissions of the learned Advocates as have been recorded herein above.

20. Respondent No.3 who has suffered disqualification by the impugned judgment has accepted the verdict to the extent of her election result being set aside. She has not challenged the said judgment in this Court, is the statement made by the learned Advocate on instructions from respondent No.3, present in the Court.

21. To consider the rival submissions of the learned Advocates, it would be apposite to reproduce Section 27 of the 1961 Act in its entirety, as under:-

“Section 27 - Determination of validity of elections; enquiry by Judge; procedure

(1) If the validity of any election of a councilor or the legality of any order made or proceedings held under section 26 is brought in question ¹[by any candidate at such election or by] any person qualified to vote at the election to which such question refers ²[such candidate or person] may, at any time within fifteen days after the date of the declaration of the result of the election or the date of the order or proceeding apply to the District Judge of the district within which the election has been held, for the determination of such question.

(2) An enquiry shall thereupon be held by a Judge, not below the rank of an Assistant Judge, appointed by the State Government either specially for the case or for such cases generally; and such Judge may, after such enquiry as he deems necessary, pass an order confirming or amending the declared result of the election or the order of ³[the officer empowered by the ⁴[State Election Commission]] in that behalf under section 26, or setting the election aside. For the purposes of the said enquiry, the Judge may exercise any of the powers of a Civil Court, and his decision shall be conclusive. If the election is set aside, a date for holding a fresh election shall forthwith be fixed under section 14.

(3) All applications received under sub-section (1)--

(a) in which the validity of the election of Councillors to

represent the same electoral division is in question, shall be heard by the same judge; and

(b) in which the validity of the election of the same Councillor elected to represent the same electoral division is in question shall be heard together.

(4) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Judge shall not permit--

(a) any application to be compromised or withdrawn, or

(b) Any person to alter or amend any pleading.

unless he is satisfied that such application for compromise or withdrawal or application for such alteration or amendment is bona fide, and not collusive.

(5) (a) If on holding such enquiry, the judge finds that a candidate has, for the purpose of election, committed a corrupt practice within the meaning of sub-section (6) ⁵[or submitted a false claim or a false caste certificate], he shall declare the candidate disqualified for the purpose of that election and of such fresh election as may be held under sub-section (2) and shall set aside the election of such candidate if he has been elected.

(b) If in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the Judge, after a scrutiny and computation of the votes recorded in favour of each candidate, is of opinion that in fact any candidate in whose favour the declaration is sought has received the highest number of the valid votes, the Judge shall after declaring the election of the returned candidate to be void declare the candidate in whose favour the declaration is sought, to have been duly elected:

Provided that, for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt

practice was committed by any person, known or unknown, in giving or obtaining it:

Provided further that, after such computation if any equality of votes is found to exist between any candidates and the addition of one vote will entitle any candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in favour of such candidates selected by lot drawn in the presence of the Judge in such manner as he may determine.

(6) Any of the corrupt practices specified in section 123 of the Representation of the People Act, 1951, shall be deemed to be corrupt practices for the purpose of this section subject to the following modification in the said section 123, that is to say-

(a) in clause (1), in sub-clause (B), In the explanation, the words and figures "and duly entered in the account of election expenses referred to in section 78" shall be deleted ;

(b) in clause (5), for the words, figures and brackets "provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll" the words "or any place fixed for poll in accordance with the provisions of rules made by the State Government in that behalf" shall be substituted :

(c) clause (6) shall be deleted:

(d) [in clause (7), for the words "any person in the service of the Government" the words, brackets, letter and figures, "any person in any District Service referred to in clause (b) of section 239 of the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 or from any person in the service of the Government" shall be substituted, and in item (g)] for the word "prescribed" the words "prescribed by rules made by the State Government in this behalf" shall be substituted.

(7) If the validity of any election is brought in question only on the ground of an error made by the officer charged with carrying out the rules made in this behalf under sub-section (2) of section 12 or of section 14, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election.

(8) If the Judge sets aside an election under clause (a) of sub-section (5) he may, if he thinks fit, declare any person by whom any corrupt practice has been committed within the meaning of this section to be disqualified from being a member of any Zilla Parishad for a term of years not exceeding five and the decision of the Judge shall be conclusive:

Provided that, no such declaration shall be made unless such person has been given a reasonable opportunity to be heard."

22. The phraseology used in Section 27(2) gains significance. For the said purpose, I am reproducing Section 27(2) with certain words underlined as they are important for deciding the issue raised in this petition.

"(2) An enquiry shall thereupon be held by a Judge, not below the rank of an Assistant Judge, appointed by the State Government either specially for the case or for such cases generally; and such Judge may, after such enquiry as he deems necessary, pass an order confirming or amending the declared result of the election or the order of [the officer empowered by the [State Election Commission]] in that behalf under section 26, or setting the election aside. For the purposes of the said enquiry, the Judge may exercise any of the powers of a Civil Court, and his decision shall be conclusive. If the election is set aside, a date for holding a fresh election shall forthwith be fixed under section 14."

23. It is, therefore, apparent that an enquiry has to be held by a Judge and the said enquiry could lead to a finding that a candidate has submitted a false claim or false caste certificate, which would be the sole basis for declaring the said candidate disqualified “for the purpose of that election” and “of such fresh election” as may be held under sub-section (2).

24. In my view, neither Section 27(2) and Section 27(5)(a) could be segregated from each other, nor could they be interpreted in isolation. The Legislature has devised a specific scheme to deal with the validity of the elections under Section 27 and in determination of such validity, the Judge conducting the enquiry is empowered to pass a consequential order and, therefore, grant consequential relief. It requires no debate that the Judge dealing with such matters has to ensure that justice is not only done, but also appears to have been done.

25. The underlined terms under Section 27(2), therefore, enable the Judge, post an enquiry under 27(5)(a) to pass an order either (a) confirming the result of the election or (b) amend the declared result of the election or (c) set aside the election. It is, therefore, apparent that there are three types of orders that a Judge could pass under Section 27(2) after conducting an enquiry under Section 27(5)(a).

26. The Oxford Dictionary (Eighth edition) defines the word “amend” as follows:-

*“ To change a law, document, statement, etc. to slightly correct an order or correct a mistake or improve upon it.
An improvement to be made, to repair.”*

The Black's Law Dictionary (Ninth Edition) also defines the word "amend" as follows:-

“ To make right; to correct or rectify <amend the order to fix a clerical error>, to change the wording of; specif., to formally alter (a statute, constitution, motion, etc.) by striking out, inserting , or substituting words <amend the legislative bill>”

Further, New Webster's Dictionary defines the word "amend" as under:-

“ To make better, or change for the better; to alter, as a bill, constitution, motion, etc., by formal procedure; to correct; to improve; to reform; to alter or modify an order, plan, or the like, to grow or become better by reformation or rectifying something wrong in manners or morals.”

Further, Wharton's Law Lexicon, Fifteenth Edition, defines the word "amend" as under:-

“ is to make right, to correct or rectify e.g. amend the order to fix a clinical error. To change the wording of, specific, to alter (a Statute Constitution, etc.) formally by adding or deleting a provision or by modifying the wording e.g. amend the Legislative Bill.”

27. Section 27(2) clearly indicates that if the Judge concludes that the elected candidate deserves to be unseated, he may further amend the declared result of the election. It is trite law that if there are more than

two candidates in the fray and an Election Petition leads to the disqualification of the returned candidate, the candidate who has garnered second highest votes cannot, *ipso facto* be declared as deemed elected. It is significant to note in this case that there were only two candidates contesting the elections for a position which was reserved for women belonging to the backward class. Respondent No.3 having been unseated by the judgment of the trial Court left the petitioner alone in the fray.

28. The petitioner has placed reliance upon the judgment of the Apex Court in the case of Madhukar (supra) and Chandrakant (supra). Paragraph Nos. 4, 6, 42, 43, 44 and 45 read as under:-

“4. The resume of relevant facts sufficient to appreciate the contentions may straightway be set out. We are confining as suggested by counsel, to the twin appeals relating to Bassein since the fate of Bhibandi must follow suit. Three candidates, including the two already mentioned, had filed nomination papers on October 21, 1974 for the presidential election of the Municipal Council. At the time of the scrutiny which took place two days later, no objection was raised to the nomination of Dr. Parulekar by anyone and, on the withdrawal of the third candidate within time, there was a straight fight between the appellant and the first respondent. The poll battle which took place on 17-11-74 found the appellant victor and he was so declared. The frustrated first respondent and his supporter, 2nd respondent, challenged the return of the appellant by separate election petitions under Section of the Municipal Act. The whole ground on which the petitions were founded was that Dr. Parulekar, the returned candidate, was disqualified under Section 16(1)(g) of the Municipal Act, the lethal

vice alleged against him being that on the date of nomination he was holding an office of profit under the Government, as he was then, admittedly, working as a panel doctor appointed under the Employees' State Insurance Scheme (acronymically, the ESI scheme), a beneficial project contemplated by the Employees Insurance Act, 1948. Of course, the appellant doctor submitted his resignation on November 5, 1974 and this was accepted on 11-11-1974. Thus, before the actual polling took place, but after the nomination, he had ceased to be on the ESI panel. Another circumstance which may have some significance in the overall assessment of the justice of the case, although of marginal consequence on the law bearing upon the issues debated at the bar, is that the appellant has been a councilor of the aforesaid municipality since 1962 and he has also been a doctor on the ESI panel throughout the same span of years and no one has chosen to raise the question of disqualification on this score up-till the 1st respondent fell to his rival and had no other tenable ground of attack. Necessity is the mother of invention and the respondents, aided by the cute legal ingenuity, maybe, dug up the disqualification of 'office of profit' and, indeed, wholly succeeded before the Election Tribunal, the Joint Judge of Thana. The trial Judge not merely voided the appellant's election but declared the 1st respondent President since he was the sole surviving candidate. This order of the Joint Judge has been assailed before us in the two appeals, after securing leave under Article 136.

5.

6. It is plain democratic sense that the electoral process should ordinarily receive no judicial jolt except where pollution of purity or contravention of legal mandates invite the court's jurisdiction to review the result and restore legality, legitimacy and respect for norms. The frequency of, forensic overturning of poll verdicts injects instability into the electoral system, kindles hopes in worsted

candidates and induces post-mortem discoveries of 'disqualifications' as a desperate gamble in the system of fluctuating litigative fortunes. This is a caveat against overuse of the court as an antidote for a poll defeat. Of course, where a clear breach is made out, the guns of law shall go into action, and not retreat from the Rule of Law.

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42. *We hold, not without hesitation, that the appellant suffered no disqualification on the score of holding an office of profit under government. Is it not a sad reflection on legislative heedlessness that, notwithstanding forensic controversy for a long period not a little legislative finger had been moved to clarify the law and preempt litigation? Judicial pessimism persuades us not to be hopeful even after this judgment. The Court and the Legislature have no medium of inter-communication under our system. Its desirability was emphasised by Justice Cardozo, way back in 1921 (when he addressed the Association of the Bar of the City of New York and proposed an agency to mediate between the courts and the legislature). In characteristically beautiful prose he said:*

The Courts are not helped as they could and ought to be in the adaptation of law to justice. The reason they are not helped is because there is no one whose business it is to give warning that help is needed ... We must have a courier who will carry the tidings of distress ... Today courts and legislature work in separation and aloofness. The penalty is paid both in the wasted effort of production and in the lowered quality of the product. On the one side, the judges, left to fight against anachronism and injustice by the methods of judge-made law, are distracted by the conflicting promptings of

justice and logic, of consistency and mercy and the output of their labors bears the tokens of the strain. On the other side, the legislature, informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend. Legislature and courts move on in proud and silent isolation. Some agency must be found to mediate between them.

43. *In the light of the conclusion we have reached, the other two grounds raised may not strictly arise for consideration. However, since arguments have been addressed, we had better briefly express our view. It was argued by Shri Bhatt that when the ground for invalidation of the election is a disqualification for membership, the proper procedure is to invoke Section and not to resort to an election petition under Section. On a close study of the two provisions in the light of the ruling of this Court in [1953] 4 SCR 1144 we are satisfied that an election petition under Section is all-inclusive and not under-inclusive. What we mean is that even if the invalidation of the election is on the score of the disqualification under Section it is appropriate to raise that point under Section which is comprehensive. All grounds on the strength of which an election can be demolished can be raised in a proceeding under Section. The language of the provision is wide enough. Maybe that supervening disqualifications after a person is elected may attract Section but we are unable to agree that the latter provision cuts back on the width of the specific section devoted to calling in question an election of a councilor (including the President). We agree in this regard with the Full Bench decision in Dattatraya AIR 1975 Bom 205. Likewise is the fate of the feeble argument that because there is a provision for challenging the nomination of a*

candidate and for appealing against the decision of the returning officer regarding that objection, it is not permissible to urge a ground then available, later before the Election Tribunal.

44. *In the present case there was no decision by the Returning Officer about the nomination paper, and so we are not confronted by the appellate adjudication by the District Judge about the validity or otherwise of the nomination and its resuscitation before the Election Tribunal. In this view, we do not accede to the contention of the appellant based on Section or Rule 15.*

45. *The third plea, not aimed at salvaging the poll success of the appellant but in unseating the respondent who has been declared elected by the Tribunal also has no merit from a legal angle although it is unfortunate that in a situation where there are only two candidates and the election of one is set aside by the Tribunal, the other automatically gets returned, without resort to polls. Anyway, in the present case, if the appellant's election were invalid, there is only a single survivor left in the field, i.e., the first respondent. Naturally, in any constituency where there is only one valid nomination, that nominee gets elected for want of contest."*

29. The facts before the Apex Court in the above referred judgment are quite similar to the facts of the case in hand. In the case before the Apex Court, the polls took place on 17.11.1974 and the appellant was declared a victor. The first respondent and his supporters challenged the result of the election by filing separate election petitions. The Tribunal set aside the election and declared the first respondent as the successful candidate as he was the sole surviving candidate. The Apex Court interfered with the decision and concluded that the appellant is not disqualified and allowed

the appeals for the reasons set out in the said judgment. However, in doing so, it has observed in paragraph No.45 that when in a given situation there are only two candidates and the election of a candidate is set aside by the Tribunal, the other automatically gets returned without resort to polls. If the appellant's election is held to be invalid, there is only a single candidate left in the field that is the first respondent and naturally, in any constituency where there is only one valid nomination, that nominee gets elected. The facts of the case in hand are quite similar.

30. None of the respondents have cited any judgment before this Court, which can be said to have laid down a law that if there are two candidates involved in an election and if the elected candidate is unseated, the Court cannot declare the surviving candidate as elected.

31. The respondents along with the learned Advocates for the intervenors have placed reliance upon the judgment of this Court in the case of Manisha (supra).

32. The issue before this Court in the Manisha's case (supra) involved four candidates in the election to Block No.40 - Panchagaon of Kolhapur Zilla Parishad. The number of votes polled by each of these candidates are set out in paragraph No.2 of the Manisha's judgment (supra). It is, therefore, obvious that there were more than two candidates in the Manisha's case.

33. So also, this Court has clearly observed that the Manisha's case is in

relation to Section 27(5)(b) and not Section 27(5)(a). Considering the fact that the election of the returned candidate was invalidated under Section 27(5)(b), the Court declined to declare any other candidate and especially the candidate receiving the second highest number of votes, as elected since this Court concluded that this would amount to reading what is not there in the Section. I do not find from any angle that the judgment of this Court in the case of Manisha (*supra*) is a pronouncement on Section 27(2) or on Section 27(5)(a). Learned Advocates fairly submit that they have not come across a judicial pronouncement of this Court, interpreting Section 27(2) either in isolation or in conformity with Section 27(5)(b) of the 1961 Act.

34. If the contention of the learned Advocates for the respondents that Section 27(2) does not enable the Judge to alter the result of the election is accepted, then the words "amending the declared result of the election" would be rendered otiose. It requires no debate that the said words find place in Section 27(2) since the Legislature intended to empower the Judge to amend the declared result of the election. The three types of orders that a Judge could pass in the form of (a) confirming the result, (b) amending the declared result of the election and (c) setting the election aside, indicates the intent and object of the Legislature. In my view, the learned Advocates for the respondents are turning a Nelson's eye to the second type of order, which the Judge could pass post enquiry under Section 27(5)(a).

35. I have considered the conclusions of the learned trial Judge set out in paragraph Nos.21 and 22 to the extent of whether the prayer of the petitioner for grant of relief in the nature of she being declared elected could be granted or not. I do not find that the trial Court has dealt with its powers flowing under Section 27(2) to amend the declared result of the election post an enquiry under Section 27(5)(a). What appears to have been canvassed before the learned Judge is that the said Court had the power either to confirm the election or set aside the election under Section 27(2) read with Sub-section 5(a). There appears to be no reference to the power of the Court to amend the declared result of the election under Section 27(2) as is provided.

36. It, therefore, appears that the Court below was given the impression that only two eventualities were possible under Section 27(2) and as a consequence of which, the learned Judge lost sight of the third possibility of "amending the declared result of the election". In my view, the trial Court can declare the sole candidate elected, post unseating the elected candidate, by "amending the declared result of the election".

37. I, therefore, have no hesitation in concluding that the conclusions of the trial Court in paragraph Nos.21 and 22 are rendered perverse and erroneous. Considering the totality of the circumstances, the power flowing from Section 27(2) read with Section 27(5)(a) and the law laid down by the Apex Court in paragraph No.45 of the Madhukar's judgment (supra), the impugned judgment of the trial Court stands set aside only to the

extent of its refusal to declare the petitioner as being elected unopposed.

38. This petition is, therefore, allowed. The petitioner is declared elected in place of respondent No.3 for the remainder period of the term from Electoral Division No.3, Umapur, Taluka Georai, District Beed.

39. Rule is made absolute.

40. Needless to state, the proposed election by notification dated 21.11.2015 is not required to be conducted.

41. Intervention Applications stand rejected.

42. Application for stay do not survive and accordingly stands disposed off.

(RAVINDRA V. GHUGE, J.)

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