

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2501 OF 2016

AMOL NANA PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. P.R. Katneshwarkar
Advocate for respondent No. 5 : Mr. D.B. Thoke
GP for respondent Nos. 1 and 2 : Mr. A.B. Girase.

CORAM : S.V. GANGAPURWALA &
K.K. SONAWANE, JJ.

DATE : 7th APRIL, 2016.

PER COURT:

1] Heard. Mr. Aute, and Mr. Chavan, learned counsel for the respondents raised an objection that the petitioner has a remedy by way of Election Petition, to challenge the nomination. Mr. Katneshwarkar, learned counsel for the petitioner states that the law, as it stood, when the petitioner filed the present petition and as interpreted by this Court in the case of ***“Sharanbasappa Rachappa Khambad Vs. State of Maharashtra and ors.”*** in W.P. No. 8962 of 2013 delivered on 10th June, 2014 is that, remedy by way of an election petition is not available to challenge the appointment of nominated councillors. The judgment in the case of ***“Ashok Bodha vs. Municipal Corporation of the City of Ulhasnagar”*** passed in W.P. No. 5665 of 2002, was under the provisions of the Maharashtra Provincial Municipal Corporations Act. Under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the dictum in case of Sharanbasappa, referred to supra, was holding the field.

2] According to learned counsel, the controversy is resolved by the Full Bench of this Court in W.P. No. 11278 of 2012, vide judgment dated 11th March, 2016 i.e. after filing of the present writ petition.

3] There is no dispute that the present writ petition was filed bonafide and in good faith on the premise that the remedy by way of election petition would not be available. However, the said controversy stands resolved by the Full Bench decision in W.P. No. 11278 of 2012, vide judgment dated 11th March, 2016.

4] The petitioner may file an Election Petition. The authority may consider the time spent in prosecuting the present writ petition in case of applicability of section 14 of the Limitation Act. The authority may consider to dispose of the election petition, that may be filed by petitioner, expeditiously after hearing all parties concerned, in accordance with law. Writ petition is accordingly disposed of. No costs.

[K.K. SONAWANE,J.]

[S.V.GANGAPURWALA,J]

grt/-