

VERSUS

- Mr. V. D. Salunke, Advocate for the petitioner,
Mr. M. B. Bharaswadkar, AGP for the Respondents-State.
Mr. S. T. Shelke, Advocate for respondents 1 and 2.
Mr. A. V. Hon, Advocate for respondent No.3.
Mr. Mohd. Waseemullah, Advocate for respondent No.4
Mr. A. N. Irpatgire, Advocate for respondent No.6.

**CORAM : R. M. BORDE &
K. L. WADANE, JJ.**

DATE : 17th June, 2016

ORAL JUDGMENT (Per Borde, J.):

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith and the petition is heard for final disposal by the consent of learned counsel for the respective parties.
3. The petitioner is taking exception to the action of the Returning Officer directing inclusion of names of 651 voters in the list prepared for elections to Ward No.11-B of the Municipal Corporation, Latur. The programme for the election to the aforesaid Ward 11-B of the Municipal Corporation was published on 11.03.2016 by the State Election Commission. As per the schedule, before finalization of voters list, the programme for preparation of voters list was published on 20.02.2016. Preliminary voters list was to be declared on 04.03.2016. Objections to the voters list were called and the last date for submission of objection was 11.03.2016 and after consideration of the objections, final list of voters was scheduled to be published on 16.03.2016. It is not the matter of dispute that final voters list was published on

16.03.2016, wherein the names of 651 voters from Ward No.11-B did not find place. It is the stand taken by the Returning Officer that since the names were not inadvertently forwarded while preparation of the voters list and the mistake was noticed at the later stage, the same has been ratified and the names of 651 voters have been incorporated in the final list of voters.

4. As per the programme of election, the stage of acceptance of nomination papers was up to 29.03.2016. Scrutiny of the nomination papers was scheduled on 30.03.2016 and list of validly nominated candidates was to be published on the same day. The last date for withdrawal of nomination papers was prescribed as 01.04.2016 and the date prescribed for allotment of symbol was 02.04.2016. The final list of contesting candidates was to be published on 03.04.2016, whereas the votes were to be recorded on 17.04.2016. It is also not a matter of dispute that the list of voters was amended and direction was issued for incorporation of names of 651 voters on 13.04.2016 i.e. after almost all the stages of the election were over and only stage of recording votes was to be completed. It is not permissible under the relevant Election Rules to cause amendment to the list of voters after the same has been

finally published.

5. In the instant matter, the respondents have failed to point out as to under which provision, names of 651 voters are directed to be included after the stage of publication of final list of contesting candidates and when only the stage of recording of votes remained to be completed. The action taken at the belated stage by the Returning Officer of directing incorporation of large number of voters is not authorized by the Law. It may not be necessary to go into the reasons as to why the directions was issued by the Returning Officer for inclusion of the names of 651 voters at such a belated stage. Since it is impermissible in law to direct inclusion of names for whatever the reasons, the action of the Returning Officer of directing inclusion of large number of voters in the final list after its publication is unsustainable. The writ petition therefore deserves to be allowed and the same is accordingly allowed in terms of prayer clause (B).

6. It is informed that in pursuance to the directions issued by this Court on 16.04.2016, the votes of 651 voters are kept in separate box. Since

this Court has ruled against their entitlement to cast votes, such of those votes which are separately maintained in EVM machines need not be considered and it would be permissible for the Returning Officer to take appropriate steps in that regard.

7. It would be open for the respondents to declare the results of the election.

8. Rule is made absolute accordingly.

9. There shall be no order as to costs.

(K. L. WADANE, J.)

(R. M. BORDE, J.)