

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5287 OF 2014

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Dhamma s/o Ramesh Ghobale,
age 31 years, Occ. Business,
R/o Sangharsha Nagar,
Mahatma Phule Nagar,
Gangakhed, Tq. Gangakhed,
Dist Parbhani.

Petitioner.

VERSUS

1. The Returning Officer,
Municipal Council, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.
2. Rajkumar s/o Trimbakrao Sawant,
age 37 years, Occ. Business,
R/o Gangakhed, Tq. Gangakhed,
Dist Parbhani.
3. Bhimrao s/o Tulshiram Salve,
age major, Occ. Nil, r/o Rajan Niwas,
Krishna Nagar, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.
4. Nilawantibai w/o Rukhmaji Ghobale,
age major, Occ. Household,
R/o Mahatma Phule Nagar,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.
5. Sheshrao s/o Sitaram Parvel,
age major, Occ. Business,
R/o Mahatma Phule Nagar,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.

6. Sumanbai w/o Sambhaji Kamble,
age major, Occ. Household,
R/o Mahatma Phule Nagar,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.
7. Kalawatibai w/o Govindrao Ghobale,
age 55 years, Occ.nil, R/o Vijaydurg,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.
8. Gajanan s/o Trimbakrao Sawant,
age 34 years, Occ. Nil,
R/o Gangakhed, Tq. Gangakhed,
District Parbhani. Respondents.

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Advocate for Petitioner : Mr Sachin S Deshmukh
Advocate for Respondent No.1 : Mr S.V. Mundhe
Advocate for Respondent 2,8 : Mr P D Bachate
Respondent Nos. 3 to 8 served-absent.

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CORAM : V.K. JADHAV, J.

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Date of reserving the judgment : February 16, 2016
Date of Pronouncing the judgment : March 02, 2016.

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JUDGMENT :-

1. The petitioner was one of the contesting candidate in the election of Municipal Council, Gangakhed, from Ward No.6-A. Respondents No. 2 to 8 had also contested the election from the same ward. In the nomination form of respondent no.2 his name is mentioned in voting list at Serial No. 2868. According to the petitioner, respondent no.2 is pretending himself to

be 'Gajanan s/o Trimbakrao Sawant.' The petitioner further states that, respondent no.2 had placed identity proof of 'Rajkumar s/o Trimbakrao Sawant' thereby, he has made impersonation in the name of 'Gajanan s/o Trimbakrao Sawant.' The petitioner further contends that, respondent no.2 does not have any nick name. It is the case of the petitioner that, respondent no.2 has knowingly furnished false information in his nomination form, and thereby, he has committed corrupt practices for his election. Respondent no.2 was declared as elected member from ward No.6-A of Municipal Council, Gangakhed, and, the petitioner, therefore, by filing Election Petition bearing No.6 of 2011 before the learned District Judge, at Gangakhed, sought declaration that the election of respondent no.2 is null and void and to declare the petitioner as duly elected member from ward No.6-A of Municipal Council, Gangakhed. In the alternative, the petitioner prayed for re-polling at ward no.6-A of Municipal Council, Gangakhed.

2. Respondents No.2 and 8 (same person) filed written statement at Exh.18 and, strongly resisted the

election petition. The other respondents did not appear before the learned District Judge-1, Gangakhed, and, the petition thus, proceeded ex-parte against them. In order to substantiate his claim, the petitioner examined himself by filing his affidavit of evidence at Exh.21 and he closed his evidence by filing purshis at Exh.52. The petitioner had placed on record several documents which are almost admitted by respondent no.2. Respondent no.2 has also examined himself. The learned District Judge-1, Gangakhed by judgment and order dated 24.04.2014 dismissed the petition with costs. Hence, this writ petition.

3. The learned counsel for the petitioner submits that, name of respondent no.2 appears at Serial No.3057 in the electoral roll of the voters list in the name as 'Rajkumar Trimbakrao Sawant'. Learned counsel submits that, name of respondent no.2 as 'Rajkumar Trimbakrao Sawant' has been entered in all the documents maintained under the statute i.e. Income Tax Act, Arms Act, Motor Vehicles Act, Secondary School Code, Pass Port Act, Registration Act, Insurance Act.

Learned counsel submits that, undoubtedly, respondent no.2 himself is the source for all these documents and, on the strength of the information provided by him, his name has been recorded as 'Rajkumar' everywhere. Learned counsel further submits that, however, entry of the name appears at Sr.No. 2868 in the name of 'Gajanan Trimbakrao Sawant'. Learned counsel submits that, admittedly, when respondent no.2 appears in the name of 'Rajkumar' everywhere, however, for the first time, in the election of the Municipal Council, Gangakhed, respondent no.2 posing himself as 'Gajanan', presented his nomination and contested the election. Initially, the petitioner had raised objection to the nomination of respondent no.2, however, same was turned down. The learned counsel further submits that, respondent no.2 presented his written statement in the election petition, and, equally accepted the service on behalf of respondent no.8. Respondent no.2, while admitting the documents produced on record by the petitioner, respondent no.2 admitted that the name at serial no.2868 as 'Gajanan Sawant' in Ward No.2 and the name at serial no.3057 as 'Rajkumar' in the same

ward is of his own which was recorded in different names. Learned counsel submits that, respondent no.2 unequivocally admitted the documents wherein his name is recorded as 'Rajkumar'. Learned counsel submits that, in light of the admission in cross-examination, coupled with admission in written statement, the petitioner had established his case in respect of fraud, false claim and corrupt practice as contemplated under Section 22(4) of The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Hereinafter referred to as the 'Act of 1965'). Learned counsel further submits that, respondent no.2 has made false declaration in respect of his claim. Learned counsel submits that, in view of the provisions of Section 18 of The Representation of the People Act, 1950 ('Act of 1950') **no person shall be entitled to be registered in the electoral roll for any constituency more than once and no person shall be entitled to be registered in the electoral roll in any constituency, more than once.** Learned counsel further submits that, respondent no.2 has admitted

that his name is appearing twice in the electoral roll (voters list) in different names which is in contravention with section 18 of the Act of 1950. Learned counsel submits that, therefore, nomination of respondent no.2 for election of Municipal Council, Gangakhed, is void. Learned counsel submits that, breach under section 17 and 18 of the Act of 1950 has been duly established in the case. Learned counsel submits that, overlooking the entire evidence, the learned District Judge-1, Gangakhed, by its impugned order dated 24.4.2014 dismissed the election petition.

4. Learned counsel appearing for respondents no.2 and 8 submits that, for the election of the Municipality, Gangakhed, for the year 2011, a voter list was prepared and made final. In the said voters list, name of the petitioner is recorded at serial no.2868 as 'Gajanan Trimbakrao Sawant' and also at serial No.3057 as 'Sawant Rajkumar Trimbakrao' from ward No.2. Learned counsel submits that, the petitioner had filed election petition on false grounds. Learned counsel submits that, respondent no.2 is the son of Trimbakrao

Sawant, who happened to be a Member of Legislative Assembly of Maharashtra State from Gangakhed Constituency and also the member of Parliament of India for one time. Learned counsel submits that, nick name of 'Gajanan Trimbakrao Sawant' is 'Rajkumar' and is popularly known by that name in the Society. Learned counsel submits that, respondent no.2 had filed his nomination in the name of 'Sawant Gajanan Trimbakrao' from National Congress Party, and said Congress Party had issued 'A', 'B' form to respondent no.2 in the name of 'Sawant Gajanan Trimbakrao' and accordingly, respondent no.2 had submitted said 'A' and 'B' forms with nomination. Learned counsel further submits that, respondent no.2 had also filed affidavit alongwith his nomination form and clarified that, Gajanan and Rajkumar are the same persons. Learned counsel submits that, by taking disadvantage regarding name of respondent no.2 recorded at two times in the voter list in the different name's and at serial No.2868 his photo is not affixed, the petitioner filed a false objection before the Returning Officer. The Returning Officer has rejected the objection on the day of

nomination itself. Respondent no.2, thereafter, declared elected in the election of Municipality, Gangakhed for the year 2011 from ward No.6-A. Learned counsel further submits that, thereafter, the petitioner has also filed an appeal against the order of Returning Officer dated 23.11.2011 and, the same was dismissed on 30.11.2011 by the District Judge-1, Gangakhed, bearing Election Appeal No.1 of 2011. Learned counsel submits that in terms of section 14 of the Act of 1965, *no person shall be entitled to vote at a general election in more than one ward, notwithstanding that his name may appear in the list of voters for more than one ward, and if a person votes in more than one ward his votes in all wards shall be void.* No person shall be entitled to vote at any election in the same ward more than once, notwithstanding that his name may appear in the list of voters for that ward more than once, and if he does so vote, all his votes in that ward shall be void. Learned counsel submits that, in terms of provisions of the Act, 1965, the name of a person may appear more than once in electoral roll, but, that person is not entitled to cast his vote more than once, therefore, merely on this

ground, the election of respondent no.2 is not liable to be declared void. Learned counsel submits that, there is no substance in the writ petition, and the writ petition is liable to be dismissed with costs.

5. Though respondents no. 3 to 7 duly served, none appears for them.

6. I have carefully examined the Record and Proceedings of the Election Petition. It appears that, respondent no.2 has submitted his nomination on 21.11.2011 in the name of 'Gajanan Trimbakrao Sawant' by referring his serial number in voters list as 2868. It also appears from the record that, alongwith nomination form, respondent no.2 has submitted various documents and affidavits as provided under the Act. It also appears that, alongwith nomination form respondent no.2 has also filed a separate affidavit mentioning therein that his nick name is 'Rajkumar'. He is popularly known in the village by that name. I do not find that respondent no.2 has made a false declaration at the time of his nomination. There are

certain documents placed on record such as caste certificate, identity card issued by the Election Commission, etc. It appears that, name of respondent no.2 is mentioned as 'Gajanan Trimbakrao Sawant' since 1994. Some of the documents as referred by the petitioner do reflect that those documents are issued in the name of 'Rajkumar Trimbakrao Sawant' which according to respondent no.2 is his nick name, is not sufficient to hold that respondent no.2 indulged in impersonation. The petitioner has also not come with a case that, 'Gajanan Trimbakrao Sawant' and 'Rajkumar Trimbakrao Sawant' are the two different persons and, respondent no.2 by posing himself as 'Gajanan' contested the election. I do not find that respondent no.2 has committed any fraud.

7. It is true that, the voters list to be used for elections of the Municipal Council is the voters list as in vogue for the Assembly, as revised from time to time, under the Scheme of the Act of 1950 and Rules of 1960. Any scheme and mechanism for preparation of a separate voters list for election is not provided. Even the

machinery acting under Representation of People Act, 1950 and Registration of Elector's Rules, 1960 have not been fastened with any obligation under Representation of People Act, 1950 and Registration of Electors Rules, 1960, independently or when read with MMC to revise the list and do additions or amendments in the list of voters specially for the purpose of Municipal Council elections. In terms of the provisions of Maharashtra Municipalities Act, the name of a person if appears more than once in electoral roll, the person is not entitled to cast his vote more than once, and if a person votes in more than one ward, all his votes in that wards shall be void. Even, a person is not entitled to vote at any election in the same ward more than once, notwithstanding his name may appear in the list of voters for that ward more than once and if he does so, all his votes in the ward shall be void. The learned District Judge-1, Gangakhed, has, therefore, rightly taken a view that, merely on this ground alone, election of Respondent No.2 is not liable to be declared void.

8. In view of the above discussion, the impugned Judgment and Order calls for no interference. There is no substance in the writ petition, and the writ petition is, thus, liable to be dismissed. Hence, following order.

ORDER

- I. Writ Petition is hereby dismissed. Rule discharged.
- II. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV)
JUDGE.

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AAA/-