

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

912 WRIT PETITION NO. 8407 OF 2016

NANDKISHOR LAXMINARAYAN TOSHNIWAL  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Latange V. P.  
AGP for Respondents: Mr. P. S. Patil  
Advocate for Respondent No.1 : Mr. S. T. Shelke

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

**DATE : 4th August, 2016**

**ORDER:**

1. Heard learned counsel for the respective parties.

2. The petitioner is objecting to the by-election of Ward No.3A of Kalamnuri Municipal Council for the post of Councilor to fill up vacancy in the office of Councilor on account of death of the Member/councilor, who was occupying the post, on 22.02.2016. It is contended that hardly four months are remaining for completion of the term and the general elections are due on 29.12.2016. It is contended that in view of Section 48 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, since less than six months period is left, it would not be appropriate for the State Election Commission to

hold election for filling up the vacancy.

3. The argument advanced by the petitioner is not acceptable. Proviso to sub section (1) of Section 48 of the Act provides that no by-election shall be held or nomination made for filling of a casual vacancy, if the general elections are due to be held within six months of the occurrence of the vacancy. In the instant case, the vacancy occurred on 22.02.2016 and the term of the elected body is up to 29.12.2016. The declaration of programme of said election is in conformity of section 48 of the Act. The Petition is devoid of substance and stands disposed of.

**(K. L. WADANE, J.)**

**(R. M. BORDE, J. )**

JPC