

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

PUBLIC INTEREST LITIGATION NO.158/2016

Rajkumar Shivnarayan Dube and others

..Vs..

State Election Commission and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Shashikant Borkar, counsel for the petitioners.
Shri M.K. Pathan, A.G.P. for respondent No.3.

CORAM : B.R. GAVAI AND V.M. DESHPANDE, JJ.

DATED : 16.11.2016.

Shri Shashikant Borkar, learned counsel for the petitioners submits that out of six Municipal Councils, the election for Bhandara-cum-Gondia Local Authorities' Constituency is to be held on 19.12.2016. He further submits that insofar as the other five Municipal Councils are concerned, the elections are due in the month of January, 2017.

He, therefore, submits that insofar as one Municipal Council / Nagar Panchayat is concerned, the elected representatives would not have a right to cast their votes in the said election. He further submits that insofar as the other Municipal Councils are concerned though the Members are likely to retire in the month of January, 2017 still they would have a right to vote in elections in the month of November. He further contends that per contra, the Members elected in the

next month would be deprived of their valuable right to caste the vote. He, therefore, submits that such an action on the part of the Election Commission of India is totally illegal.

To contest an election or to vote in an election is neither a fundamental nor constitutional nor a common law right. It is absolutely a statutory right.

The perusal of the notification issued by the Election Commission of India would reveal that the elections are to be held during the period from 19th November, 2016 to 24th November, 2016 so as to ensure that elections are completed before 5th December, 2016 on which date the present incumbent would retire. It would, thus, be seen that the Election Commission has notified that elections are to be held during the period from 19th November, 2016 to 24th November, 2016 so as to ensure that they are held prior to 5th December, 2016.

Any interference by this Court at this stage or issuing direction to hold the elections after the present incumbent retires would not only amount to an encroachment on the jurisdiction of the Election Commission but would amount to directing it to do something which is contrary to the Statutes.

It appears that the grievance of the petitioners is that the Members who are likely to retire within a short period would be enjoying their valuable right whereas the member who would be elected in the next month would be deprived of such a valuable right. However, in the political democracy such causalities are

not uncommon.

Merely on account of deprivation of some presumed valuable right of presumed elected Councillors, the Court cannot be expected to interfere in the election matters. In any case, in view of the judgment of the Apex Court in the case of Election Commission of India V/s. Ashok Kumar reported in **2000 (8) SCC 216** it will not be permissible for this Court to interfere in the election matter unless the case of patent fraud is made out.

In that view of the matter, the petition is absolutely without substance. It is **dismissed** accordingly.

JUDGE

JUDGE