

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

WRIT PETITION NO.1974 OF 2017

Poonam w/o Rajesh Pawar,
Age 42 years, Occ. Household,
R/o Alu-wadgaon, Tq. Naigaon,
District Nanded

... PETITIONER

VERSUS

1. The Returning Officer
for the elections of 2017 of
Zilla Parishad, Tq. Naigaon,
District Nanded.
2. The State Election Commission,
New Administrative Building,
In front of Mantralaya,
Madam Kama Road,
Hutatma Rajguru Chowk,
Mumbai,
through its Under Secretary
3. Mrs. Dipali w/o Shivraj Pawar
Age 38 years, Occ. Household,
R/o Votala, Post Narsi,
Tq. Naigaon, District Nanded
4. Sulochana Ananda Tambe,
Age major, Occ. Household
R/o Manjram, Tq. Naigaon,
District Nanded.
5. Sunita Uttam Gawale,
Age major, Occ. Household,
R/o Kolambi, Tq. Naigaon,
District Nanded.
6. Surekha Shankar Tamwad,
Age major, Occ. Household,
R/o Gadga, Tq. Naigaon,
District Nanded

7. Chandrakala Ramkishan Deshmukh,
Age major, Occ. Household,
R/o Narangal, Post Kolambi,
Tq. Naigaon, District Nanded.
8. Archana Rajesh Pawar,
Age major, Occ. Household,
R/o Gadga, Tq. Naigaon,
District Nanded.
9. Krantidevi Shriram Bhakre,
Age major, Occ. Household,
R/o Gadga, Tq. Naigaon,
District Nanded.
10. Godavari Shriram Bhakre,
Age major, Occ. Household
R/o Gadga, Tq. Naigaon,
District Nanded.
11. Ashwini Babasaheb Shinde,
Age major, Occ. Household,
R/o Manjram, Tq. Naigaon,
District Nanded.
12. Raziyabi Ismile Shaikh,
Age major, Occ. Household
R/o Shamnagar, Narsi,
Tq. Naigaon, District Nanded. ... RESPONDENTS

.....
Shri R.N. Dhorde, Senior Counsel with
Shrio V.R. Dhorde, Advocate for petitioner
Shri S.T. Shelke, Advocate for respondent No.1
Shri V.D. Salunke, Advocate for respondent No.7
Shri S.B. Talekar, Advocate holding for
Shri R.A. Deshmukh, Advocate for respondent No.11
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W I T H

WRIT PETITION NO.1975 OF 2017

Poonam w/o Rajesh Pawar,
Age 42 years, Occ. Household,
R/o Alu-wadgaon, Tq. Naigaon,
District Nanded

... PETITIONER

VERSUS

1. The Returning Officer
for the elections of 2017 of
Zilla Parishad, Tq. Naigaon,
District Nanded.
2. The State Election Commission,
New Administrative Building,
In front of Mantralaya,
Madam Kama Road,
Hutatma Rajguru Chowk,
Mumbai,
through its Under Secretary
3. Maroti Ramkrushna Deshmukh
Age 25 years, Occ. Household,
R/o Narangle,
Tq. Naigaon, District Nanded
Proposer and agent of candidate
Smt. Chandrakala Ramkrushna Deshmukh
4. Kamble Sulochana Ananda,
Age major, Occ. Household
R/o Manjram, Tq. Naigaon,
District Nanded.
5. Gawale Sunita Uttam
Age major, Occ. Household,
R/o Kolambi, Tq. Naigaon,
District Nanded.
6. Tamwad Surekha Shankar,
Age major, Occ. Household,
R/o Gadga, Tq. Naigaon,
District Nanded
7. Pawar Archana Rajesh,
Age major, Occ. Household,
R/o Gadga, Tq. Naigaon,
District Nanded.

8. Bhakre Kranti-Devi Shriram,
Age major, Occ. Household,
R/o Gadga, Tq. Naigaon,
District Nanded.
9. Bhakre Godavari Shriram,
Age major, Occ. Household
R/o Gadga, Tq. Naigaon,
District Nanded.
10. Dipali Shivraj Pawar
Age 38 years, Occ. Household,
R/o Hutala, Post Narsi,
Tq. Naigaon, District Nanded.
11. Shinde Ashwini Babasaheb,
Age major, Occ. Household,
R/o Manjram, Tq. Naigaon,
District Nanded.
12. Shaikh Raziyabi Ismail,
Age major, Occ. Household
R/o Shamnagar, Narsi,
Tq. Naigaon, District Nanded. ... RESPONDENTS

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Shri R.N. Dhorde, Senior Counsel with
Shri V.R. Dhorde, Advocate for petitioner
Shri S.T. Shelke, Advocate for respondent No.1
Shri S.B. Talekar, Advocate holding for
Shri R.A. Deshmukh, Advocate for respondent No.3
.....

CORAM: S. B. SHUKRE, J.

DATED: 10th February, 2017.

J U D G M E N T :

1. These writ petitions are being disposed of by a
common judgment as both the petitions are having identical

questions, which pertain to the compliance with the mandatory provisions of the Maharashtra Zilla Parishads and Panchayat Samitis Rules, 1962 (for short Z.P. & P.S. Rules, 1962).

2. As per the election programme, today is the date fixed for allotment of election symbols. The petitioner in these petitions is the same candidate (hereinafter referred to as common petitioner), interested to contest the elections to Zilla Parishad, Nanded. Her nomination paper was accepted by the Returning Officer, but the respondent Nos.3 and 7 in Writ Petition No.1974/2017 and respondent No.3 in Writ Petition No.1975/2017 objected to the same by filing an election appeal before the District Judge. The respondent Nos.3 and 7 in Writ Petition No.1974/2017 are also the candidates who are interested to contest the elections. The respondent No.3 in Writ Petition No.1975/2017 is, however, an eligible voter in these elections. The learned District Judge, after hearing the rival parties, found that, acceptance of nomination paper of the petitioner was incorrect and against the provisions of Sections 15, 16, 18, 22 and 23 of the Representation of Peoples Act, 1951 and also relevant rules. Therefore, by the order passed on 8/2/2017, the learned District Judge allowed both the Election Appeals No.1 and 2 of 2017 and rejected the nomination paper of the petitioner. Being aggrieved by the same, the petitioner is now before this

Court by invoking its jurisdiction under Articles 226 and 227 of the Constitution of India.

3. The nomination form was submitted by the common petitioner on the ticket of Bhartiya Janata Party for being elected as a Councillor to Nanded Zilla Parishad from Manjram Zilla Parishad Block. In this block, village Alu-wadgaon from Naigaon Legislative Assembly Constituency of Nanded district and of which the common petitioner is a resident, falls. Before the Returning Officer, respondent No.3 in Writ Petition No.1974/2017 had taken an objection to acceptance of the nomination paper of the common petitioner and when it was turned down, the objection was carried in appeal before the learned District Judge, not only by respondent No.3 in Writ Petition No.1974/2017 but also by respondent No.3 in other Writ Petition No.1975/2017. For this purpose, two separate appeals, being Election Appeals No.1 and 2 of 2017 were preferred. At the appellate stage, these objectors succeeded, giving rise to these petitions. At this level, respondent Nos.7 and 11 in Writ Petition No.1974/2017 have joined the chorus of objections.

4. These petitions were listed on board for admission yesterday and immediately notice was issued for final disposal, considering the fact that today is the date for allotment of

election symbols. While the officers of the Election Commission (respondent No.3) and respondent No.11 in Writ Petition No.1974/2017 as well as respondent No.3 in Writ Petition No.1975/2017 appeared through their respective counsel, the remaining respondents in both the petitions did not appear. By the order passed yesterday i.e. 9/2/2017, liberty was granted to the petitioner to effect private service upon the respondents and the Returning Officer was also requested to make an endeavour to notify all the respondents by displaying a notice on its notice board. The petitioner has filed affidavits in both the petitions, indicating that all the respondents have been notified through paper publication and Shri Shelke, learned counsel for the officers of the Election Commission has produced before the Court a copy of the notice, which is taken on record and marked "X" for identification, which was displayed on its notice board for all the respondents to know about taking of this Writ Petition today for final disposal. In any case, the other respondents, barring the respondents who appeared through their counsel, were not the objectors who had filed appeals before the learned District Judge.

5. In these circumstances, these writ petitions have been taken up for final disposal at admission stage.

6. Heard Shri Dhorde, learned Senior Counsel for the common petitioner, Shri S.T. Shelke, learned counsel for respondent Nos.1 and 2 in both the petitions, Shri V.D. Salunke, learned counsel for respondent No.3 and 7 in Writ Petition No.1974/2017 and respondent No.3 in Writ Petition No.1975/2017 and Shri S.B. Talekar, learned counsel for respondent No.11 in Writ Petition No.1974/2017, who are the contesting parties.

7. There has been a strong objection about maintainability of these petitions, taken on behalf of respondent Nos.3, 7 and 11 in Writ Petition No.1974/2017 as well as respondent No.3 in Writ Petition No.1975/2017. These respondents have placed heavy reliance upon the series of judgments of the Hon'ble Apex Court, taking a view that ordinarily Court should not invoke its jurisdiction under Article 226 of the Constitution of India to make interference in an ongoing election process and the only remedy available in such a case involving issue of irregular rejection of nomination paper, would be in the nature of an election petition or election dispute contemplated in law. In the instant case, the relevant Section is Section 27 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Act, 1961 for short), which permits raising of such a dispute. On merits of the petitions, it is submitted that,

the learned District Judge has rightly rejected the nomination paper on the ground that common petitioner did not comply with the requirement of Rule 14(5) of the Z.P. and P.S. Rules, 1962 read with Section 33(5) of the Representation of People Act, 1951 (R.P. Act, 1951 for short).

8. The objection is that, name of the common petitioner appears in the voters list of Northern Legislative Assembly Constituency at Fule Nagar, Shivaji Nagar, Taluka Nanded, District Nanded at Sr.No.371 and her name also appears in another voters list maintained for Naigaon Legislative Assembly Constituency at Sr.No.417 and as the common petitioner did not furnish a copy of the voters list of Northern Legislative Assembly, as required under the rules, her nomination form was liable to be rejected.

9. On the other hand, Shri Dhorde, learned Senior Counsel for the petitioner submits that, as a matter of general principle, a Court should not interfere in the process of election, but, there are certain exceptions which would permit the Court to undertake such an exercise and set right the illegality, which comes out manifestly from the impugned order or act of the Returning Officer. He submits that, if the Court corrects such an illegality or perversity at the initial stage itself, it would not

amount to making interference with the election process, rather it would be seen as a step taken for promoting the progression of the elections. As regards the contentions on merits of the petitions, learned Senior Counsel submits that, there is no force in these contentions as the learned District Judge has committed a patent illegality, manifest from the impugned order itself, by not following the law settled by the Hon'ble Apex Court, which law, in fact, was rightly applied by the Returning Officer when he accepted the nomination paper of the petitioner. He too places reliance upon several judgments of the Hon'ble Apex Court and Division Bench of this Court to bolster up his arguments.

10. Mr. Talekar, learned counsel for respondent No.11 in Writ Petition No.1974/2017 submits, at this stage, which is the time of about 3.19 p.m., that the time for withdrawal of the nomination papers has lapsed and, therefore, now the election process has assumed an irreversible form so far as this aspect is concerned. I must say, withdrawal of nomination form is not an issue involved in these petitions and the issue is about acceptance of the nomination paper correctly or otherwise by the Returning Officer and as election symbols are yet to be allotted, the process would not be affected by a decision at this juncture in these petitions.

11. Having considered the rival submissions, the law laid down by the Hon'ble Apex Court, the decisions rendered by the Division Bench of this Court and peculiar facts and circumstances of this case, I am of the view that, these petitions are maintainable before this Court and, therefore, warrant consideration on merits of the case. The reasons for this conclusion are stated in the foregoing paragraphs compositely with the findings recorded in respect of the merits of the case. Hence, Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the contesting parties.

12. To begin with, I must state that, both the petitions do not involve any disputed question of fact as the petitioner admits that her name finds place in the voters list for two Legislative Assembly Constituencies, Northern Legislative Assembly Constituency, Nanded at Sr.No.371, and Naigaon Legislative Assembly Constituency, Nanded at Sr.No.417. It is also not in dispute that, the common petitioner filed her nomination paper for contesting election to Nanded Zilla Parishad as a Councilor from Manjram Block, falling in Naigaon Legislative Assembly Constituency, Nanded and that, at the time of filing her nomination paper, she had also submitted a copy of the voters list showing her name in the electoral roll of Naigaon Legislative Assembly Constituency. There is also no dispute about the fact

that at the time of submission of the nomination paper, the common petitioner did not submit copy of the voters list, maintained for Northern Legislative Assembly Constituency, Nanded. It is the contention of the petitioner that, she did not submit copy of the voters list for Northern Legislative Assembly Constituency, where her name additionally finds place, for the reason that she had submitted her nomination form on the basis that her name found place in Naigaon Legislative Assembly Constituency and the requirement of submission of copy of the voters list from the other Constituency would have arisen had she submitted her nomination paper at a place where her name was not included in the voters list and was included in the voters list maintained for some other place. So, these petitions revolve around only a pure question of law and fixated at the issue of applicability or non-applicability of Section 33(5) of the R.P. Act, 1951 and Rules 13 and 14(1) and (5) of the Z.P. and P.S. Rules, 1962. Of course, learned District Judge has found that the common petitioner has not complied with the requirements of Sections 15, 16, 17, 18, 22 and 23 of the R.P. Act, 1950 and also the relevant rules, but the learned District Judge has not clarified which rules have been complied with by the petitioner. Having regard to the nature of objection raised against acceptance of the nomination paper of the common petitioner by the Returning

Officer, I find that learned District Judge has wrongly placed reliance upon the aforesaid Sections of the R.P. Act, 1950 as they relate to electoral roll for every Constituency, disqualification for registration in an electoral roll, prohibition against registration of name of a person in the electoral roll in more than one Constituency or more than once in any Constituency, conditions necessary for registering name of a person in the electoral roll for a Constituency, correction of entries in electoral rolls and inclusion of name in electoral rolls. However, on considering the impugned judgment and order as a whole, I also find that, thrust of the reasoning given by the learned District Judge is upon the breach committed by the common petitioner of the provisions of Section 33(5) of the R.P. Act, 1951 and Rules 13 and 14(1) and (5) of the Z.P. and P.S. Rules, 1962. In fact, as stated earlier, the objection of the objectors is also founded upon these provisions of law. It would, therefore, be useful to consider these provisions of law, in the light of the law laid down by the Hon'ble Apex Court. These provisions, are reproduced thus :

Representation of People Act, 1950

33. Presentation of nomination paper and requirements for a valid nomination:-

.....

.....

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

Rule 13 and Rule 14(1) of the Maharashtra Zilla Parishads and Panchayat Samitis Rules, 1962 are reproduced below :-

13. Nomination of candidates:-

(1) Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Act.

(2) Every nomination paper presented under Rule 14 shall be completed in Form II;

Provided that, a failure to complete or defect in completing, the declaration as to symbols shall not be deemed to be a defect of a substantial character within the meaning of sub-rule (4) of Rule 19.

(3) A nomination paper shall be supplied by the Returning Officer to any voter on demand.

14. Presentation of nomination paper and requirements for valid nominations :-

(1) On or before the date appointed under clause (a) of sub-rule (1) of Rule 11, each candidate shall either in person or by his proposer deliver to the Returning Officer during the time and at the place specified in the order made under Rule 11, a nomination paper completed as provided by Rule 13 and signed by the candidate and by a voter of the electoral division as proposer.

.....
.....

(5) Where the candidate is a voter of a different electoral division, a copy of the list of voters of that electoral division or of the relevant part thereof or a certified copy of the relevant entries in such list of voters shall, unless it has been filed along with a nomination paper be produced before the Returning Officer at the time of scrutiny.

13. It would be clear from the above provisions that, an

interested candidate, while submitting nomination paper, must submit it, duly completed in Form II, and must comply with every condition as stipulated in these provisions. Section 33(5) of the R.P. Act, 1951 requires that, an interested candidate should also submit a copy of the electoral roll of a different constituency in which his or her name finds place in the electoral roll of that constituency. This provision, as it can be seen, is in pari materia with provision of Rule 14(5) of the Z.P. & P.S. Rules, 1962. These provisions mandatorily lay down a similar requirement as those of Section 33(5) of the R.P. Act, 1951. Rule 19(2)(c) of the Z.P. & P.S. Rules, 1962 lays down that, a nomination paper is liable to be rejected by the Returning Officer if there is a failure to comply with any of the provisions of Rule 14. In other words, compliance with the provisions of Rule 14(5) is mandatory and there is no escape from it. Now the question would be, in what situation this mandatory requirement of submitting a copy of the voters list of a different constituency at the time of filing of a nomination paper for being elected as a Councilor from another place, would be applicable? This question fell for consideration of the Hon'ble Apex Court in the case of **Baburao Vs. Manikrao & anr.** reported in **AIR 1999 SC 2028(1)**. The Hon'ble Apex Court, considering the provisions of Section 33(5) of the R.P.A. Act, 1951, answered the question in terms that, this requirement

of law is applicable only when a person files his nomination paper for being elected from a place falling in a constituency in which his name does not find place in the voters list and his name is registered in the voters list of another constituency, and that the nomination paper when filed on the basis that candidate's name finds place in that constituency only, such requirement of law would have no relevance. Relevant observations of the Hon'ble Apex Court, as they appear in paragraph Nos.15 and 16 of the judgment, in this case, are reproduced thus :

"15. There is nothing to suggest in Section 16 of the 1950 Act that if a person's name finds place in more than one constituency that would automatically entail disqualification from contesting in any one of the constituencies. It is relevant to note that Section 2(1)(e) of 1951 Act refers disqualification under Section 16 of 1950 Act alone while interpreting the word "Elector" and has not mentioned any contravention of Section 17 as disqualification. No doubt Section 17 of 1950 Act expressly states that no person shall be entitled to be registered in the electoral roll for more than one constituency. But if a person's name finds a place in more than one constituency does it automatically entail the disqualification under Section 16? We do not think so. Objection under Section 17 could have been successfully raised to prevent respondent No.1's name from

being included in Nilanga Constituency.

16. Likewise, a reading of other sections also does not come to the help of the appellant to sustain his contentions. We are unable to find any ground after reading Section 16 of the 1950 Act and Articles 173 and 191 of the Constitution of India to hold that the nomination of the first respondent ought to have been rejected. The contention based on Section 33(5) of the 1951 Act is misconceived. As the respondent No.1 did not file his nomination to the 211 Nilanga Constituency on the basis of his name finding a place in 206 Latur Constituency. On the other hand he filed the nomination to 211 Nilanga Constituency only on the basis of his name finding a place in that Constituency. That being the position, the contention based on Section 33(5) cannot be accepted and the citations have no relevance. Likewise, after reading Section 100 of the 1951 Act we are unable to declare the election of the first respondent void under any one of the grounds set out therein. It is not in dispute that the appellant did not raise any objection before the Electoral Registration Officer about inclusion of the name of the first respondent in 211 Nilanga Constituency. After carefully going through the judgment cited by the learned counsel for the appellant, we find that that have no application to the facts of this case."

14. The case of Baburao was considered by the Hon'ble Apex Court in the case of **Pothula Rama Rao Vs. Pendyala Venkata Krishna Rao & ors.**, reported in **AIR 2007 SC 2924** and the Hon'ble Supreme Court reiterated the principle stated in the case of Baburao. It would be thus clear that, requirement of Rule 14(5) to the effect that, at the time of filing of the nomination paper a candidate must submit a copy of the voters list of a different constituency applies only when he chooses to be nominated from a constituency where his name does not find place in the voters list and finds place in the voters list for another constituency and that if his name is already there in the voters list of the constituency from which he wishes to be elected, such requirement would not be applicable and it would be enough for him to submit along with nomination paper a copy of the voters list of the constituency showing inclusion of his name therein, in respect of which he has filed his nomination paper. While the Returning Officer has correctly applied this law when he accepted the nomination paper of the common petitioner, the learned District Judge did not, and this illegality is manifest from the impugned judgment and order of the District Judge.

15. Shri S.B. Talekar, learned counsel for respondent No.11 in Writ Petition No.1974/2017 submits that, the decisions

in the cases of Baburao and Pothula were rendered on merits of the case in election petition and, therefore, at an intermediate stage like the present one, the decisions rendered on merits of the case could not be pressed into service. With due respect, I must say that, learned counsel is not completely right in his submission. What is binding in a decision is its ratio decidendi, the principle that emerges for application to similar set of facts and circumstances and when, the facts and circumstances are not disputed, the ratio of the decision could be applied to them, if found to be applicable on account of similarity of facts established. Situation, however, would be different when the facts are in a state of flux and require consideration on merits for their being established, but, once the facts are established and they can be established even at an intermediate stage when such establishment is the result of admissions given by the parties, a Court would be bounden in its duty to apply the ratio to facts established in this way. I have already found that these petitions do not involve any disputed questions of facts and so, the established facts being what they are, and have been discussed earlier, I find that the principle of law laid down in the said cases as applicable to the established facts and so, should have been followed by the learned District Judge in reaching his conclusions. This has not been manifestly done by the learned District Judge

and, therefore, I find that a patent illegality has been committed by the learned District Judge.

16. This would take me to another issue as to whether or not, at this stage of the election process, this Court should make any interference or leave the parties to agitate the issue by raising an election dispute after declaration of the result, as per Article 243-O of the Constitution of India read with Section 27 of the Act, 1961. If the answer to the issue is going to be of no interference at this stage, these petitions would not be maintainable and this is what Shri Shelke, Shri V.D. Salunke and Shri S.B. Talekar, learned counsel for contesting respondents submit. Shri Talekar, in particular, for his such submission, places reliance on the cases of **N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. & four ors.**, reported in **AIR 1952 SC 64**, **Election Commission of India Vs. Shivaji & ors. Vs. Shivaji & ors.**, reported in **(1988) 1 SCC 277**, **Vijaykumar Maniklal Bang Vs. State of Maharashtra & ors.**, reported in **1997(1) Mh.L.J. 637**, **Shri Sant Sadguri Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & anr. Vs. State of Maharashtra & ors.**, reported in **(2001) 8 SCC 509** and **Pundlik Vs. State of Maharashtra & ors.**, reported in **(2005) 7 SCC 181**.

17. Striking a discordant note, Shri Dhorde, learned Senior Counsel for the petitioner argues that, this is the stage where interference is urgently required, to prevent miscarriage of justice and further damage especially when, it is permissible as well as possible to do so. He draws support from the decisions of the Division Bench of this Court in the cases of **Dr. Mohd. Talib s/o Mohd. Sadique Vs. Dr. A.S. Kuchewar,** reported in **2007(3) ALL MR 99, Pandurang Hindurao Patil Vs. State of Maharashtra & ors.,** reported in **1983 Mh.L.J. 1081** and **Batu Lalu Patel Vs. P.S. Malvankar, District Judge, Amravati & ors.,** reported in **1964 Mh.L.J. 650.**

18. In the case of N.P. Ponnuswami (supra), the Hon'ble Apex Court has held that the right to vote or stand as a candidate for election is not a civil right, but is a creation of statute and special law and must be subject to the limitation imposed by it. It has also held that, it is the sole right of the legislature to examine and determine all matters relating to the election of its own members and if the legislature takes it out of its own hands and places in a special Tribunal and entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with law, which creates it.

Holding thus, the Hon'ble Apex Court observed that, the State High Courts would have no jurisdiction under Article 226 of the Constitution of India to entertain the petitions regarding improper rejection of nomination papers.

19. Similar view has been taken by the Hon'ble Apex Court in the cases of Shivaji & ors. (supra) and Shri Sant Sadguru (supra), which has been followed by learned Single Judge of this Court (as the Hon'ble Judge then was), in the case of Vijaykumar Maniklal Bang (supra). At this stage, I must acknowledge the fairness of Shri S.B. Talekar, learned counsel for respondent No.11 in Writ Petition No.1974/2017 for also pointing out to this Court the decision of the Hon'ble Apex Court in the case of Pundlik (supra). This decision, it is seen, clarifies the decision of the Hon'ble apex Court in the case of Sant Sadguru (supra) and upholds a view that when breach of mandatory provision of law, in that case, it was Rule 5(2) of the Maharashtra Specified Co-operative Societies (Elections to Committees) Rules, 1971 conferring right upon a Society to change name of its delegate authorised to vote on its behalf, being noticed at the intermediate stage and such breach is manifest from the record, the High Court would be justified in making interference and granting relief to the aggrieved party or otherwise the provision of mandatory rule would become

nugatory and otiose. In doing so, the Hon'ble Apex Court also drew support from the view taken by it in the decision rendered in the case of **Ahmednagar Zilla S.D. and P. Sangh Ltd. & anr. Vs. State of Maharashtra & ors.**, reported in **AIR 2004 SC 1329**. Relevant observations of the Hon'ble Apex Court appearing in this regard in paras 17 and 18, are reproduced as below :

"17. In our opinion, the learned counsel for the appellant is also right in submitting that if the order passed by respondent No.2 is upheld, the provisions of sub-rule(2) of Rule 5 will become nugatory and otiose. When the rule-making authority conferred power on the Sangh to change the name of its representative/ delegate by expressly permitting the change of representative/ delegate and intimating the said fact to the Collector, such right cannot be taken away or interfered with. Since the last

date as per the communication of respondent No.2 the Collector was 10.6.2005, the action of the respondent Sangh was within the four corners of Rule 5(2). The High Court was, therefore, in error in not allowing the petition and granting relief to the appellant.

18. We are also supported in taking this view by a recent three-Judge Bench decision in Ahmednagar Zilla S.D.V. & P. Sangh Ltd. Vs. State of Maharashtra. In that case, the electoral roll was prepared on the basis of bye-laws which were held to be illegal. When the action was challenged, it was contended that the Court could not interfere with the list of voters prepared in accordance with the provisions of the Rules and the only remedy available to the aggrieved party was to file election

petition after the election was over. Reliance was placed on Sant Sadguru Janardan Swami. The Court, however, distinguished Sant Sadguru Janardan Swami and held that where the voters' list had been prepared on the basis of non-existent rules, it would be illegal and the Court could interfere under Article 226 of the Constitution.

20. In the cases of Batu Lalu Patel (supra), Pandurang Hindurao Patil (supra) and Dr. Mohd. Talib, different Division Benches of this Court have held that, although as a matter of general principle it would not be permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, ignoring the machinery set for adjudication of the election disputes, exceptional or extraordinary circumstances, may justify by-passing of the alternate remedy and the writ petition challenging rejection of nomination of a candidate would be maintainable. In the case of Dr. Mohd. Talib, in particular, the Division Bench of this Court found that the extraordinary circumstances justifying invocation of Article 226 of the Constitution of India would lie in factual scenario of each

case. If the case discloses no involvement of disputed questions of fact as well as commission of patent illegality resulting from non following the mandatory provisions of law, and it is manifest from the record of the case, the situation would be one of exceptional circumstances warranting interference, so held the Division Bench. The Division Bench was also of the opinion that, one must understand that there is a vital difference between improper rejection of a nomination paper and improper acceptance of a nomination paper and that, in the former, the entire electorate is deprived of its right to vote for a candidate qualified to stand and in the latter, with all candidates including the unqualified one competing at the polls, there would be no deprivation of right of the electorate to choose a candidate of its choice and, therefore, the proper stage to correct the mistake would be the first available opportunity rather than putting the entire election process in jeopardy and waiting for the inevitable to happen. The Division Bench further observed that, instances of rejecting nomination forms on technical grounds are not uncommon and there are also instances where the illegally elected body, most of the time, completes its tenure in the office even before the election dispute is decided on merits and, therefore, it would be justified to correct the mistake by making interference. The observations of the Division Bench, which I

find to be relevant here, and which appear in paras 21 and 22 of its judgment are reproduced as below :-

"21. In the above backdrop, let us examine whether this case would fall in the exception warranting exercise of writ jurisdiction. In the factual scenario of the case sketched hereinabove, it is clear that no disputed questions of facts are involved in the instant case. The identity of the person is not in dispute. It is not uncommon 'Mohd.'" Is an abbreviation of the word, 'Mohammad'. There was hardly any justification of the Returning Officer to reject the nomination form of the petitioner. The petitioner has established iron-cast case.

22. Once the election process is allowed to be completed and then dispute of the instant nature is allowed to be raised, the possibility of entire election getting set aside in the peculiar facts of this case cannot be ruled out. One has to bear in mind that there is, however, a vital difference between improper rejection and improper acceptance of a nomination. In the former case the entire electorate is deprived of its right to vote for a candidate who was qualified to stand. In the latter case, all the candidates including the unqualified one, usually compete at the polls and the electorate gets an opportunity of voting for a candidate of its choice. Under these

circumstances, this is a proper stage wherein the mistake committed by the Returning Officer needs correction instead of placing the entire election process in jeopardy after completion thereof."

21. Clarifying the law laid down in Ponnuswami's case (supra), the Hon'ble Supreme Court, in the case of **Mohinder Singh Gill & anr. Vs. The Chief Election Commissioner, New Delhi & ors.**, reported in **(1978) 1 SCC 405**, classifying the decisions relating to election proceedings into two categories, held that, it is not every decision sought and rendered that will amount to "calling in question" an election. The Hon'ble Apex Court held that, there are two types of decisions and two types of challenges, with the first relating to proceedings which interfere with the process of election and the second accelerating the completion of the election and acting in furtherance of an election. It also held that, anything done towards the completion of the election proceedings, such as a decision by Returning Officer on objections made to any nomination, cannot be described as questioning the election. Relevant observations of the Hon'ble Apex Court, as they appear in para No.28, are reproduced thus :

"28. What emerges from this perspicacious reasoning, if we may say so with great respect,

is that any decision sought and rendered will not amount to "calling in question" an election if it subserves the progress of the election and facilitates the completion of the election. We should not slur over the quite essential observation "*Anything done towards the completion of the election proceeding* can by no stretch of reasoning be described as questioning the election". Likewise, it is fallacious to treat "a single step taken in *furtherance* of an election" as equivalent to election."

22. It can be thus seen from the above discussion that, whenever exceptional circumstances exist, where the need is to prevent a mandatory provision of law, being rendered nugatory and otiose, where the decision challenged belongs to a category which, if corrected, would amount to progression of the election and would be in furtherance of an election, and where no disputed questions of fact are involved, as determined from the facts and circumstances of each case, writ jurisdiction of the High Court under Article 226 of the Constitution of India could be invoked. In the peculiar facts and circumstances of this case, already noted in the earlier paragraph, I am of the view that, this Court would be justified in correcting the patent illegality committed by the learned District Judge, which is so manifestly clear from the impugned judgment and order, at this stage itself,

rather than waiting for the election process to be completed, lest the mandatory provisions of Rule 14(5) would be rendered nugatory and otiose. This patent illegality seen now is also of the nature that if it is removed, such correction would not amount to interference in the process and it would only facilitate the process of election and, therefore, relying upon the law clarified and laid down by the Hon'ble Apex Court in the cases of Mohinder Singh (supra) and Pundlik (supra) as well as the view taken by different Division Benches of this Court in the cases of Dr. Mohammad Talib, Pandurang and Batu, I find that these petitions are maintainable and interference with the impugned judgment and order passed by the learned District Judge is necessary.

23. Learned Senior Counsel for the common petitioner has also placed reliance upon the case of **Deoraj Vs. State of Maharashtra & ors.**, reported in **AIR 2004 SC 1975** and the order dated 8/2/2017, passed by Division Bench of this Court at Bombay in the case of **Shri Datta Ranganath Bahirat Vs. Maharashtra State Election Commission & ors.**, (Writ Petition No.1704/2017), to support his argument that in such exceptional cases, granting of interim writ is also permissible. The interim order dated 8/2/2017 passed in the case of Shri Datta by the Division Bench of this Court has been challenged before the Hon'ble Apex Court and the judgment of the Hon'ble

Apex Court is reserved, as pointed out by Shri S.B. Talekar, learned counsel for respondent No.11 and though in the other case of Deoraj indicates that in the facts and circumstances peculiar to a case, interim writ could be granted, the occasion to grant such a relief in these petitions having not arisen, these cases would be of no assistance to the case of the common petitioner.

24. In the result, I find that, the petitions are maintainable and the impugned judgments and orders being patently illegal, warranting interference in the peculiar facts and circumstances of this case, as discussed earlier, need to be quashed and set aside by allowing both the Writ Petitions.

25. The writ petitions are allowed. The orders of learned District Judge, impugned herein, are quashed and set aside. The petitioner be allowed to contest the election. No costs.

26. The observations made in this order shall not come in the way of objectors in their pursuing any other remedy available under the law, on its own merits.

27. Mr. Talekar, learned counsel for respondent No.11 in Writ Petition No.1974/2017, at this stage, submits that, effect

and operation of this order be stayed to enable the parties to approach the Hon'ble Apex Court for challenging this order. However, considering the stage at which the elections are, it may not be appropriate to stay the effect of this order and so the request is rejected.

28. Authenticated copy be furnished to the rival parties.

(S. B. SHUKRE)
JUDGE

fmp/wp1974.17