

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

**BENCH AT AURANGABAD.**

**WRIT PETITION NO.9286 OF 2012.**

Vijaysing S/o Nathesing Rajput,  
Age : 60 Years, Occu. Agriculture,  
R/o. Sakuba Niwas, Shindhkheda,  
Tq. Shindhkheda, Dist. Dhule.

... PETITIONER

**VERSUS**

- 1) The State of Maharashtra,  
through the Secretary,  
Urban Development,  
Mantralaya Mumbai-32.
- 2) Nagarpanchayat Shindhkheda,  
Through its Administrator.
- 3) The Collector,  
Dhule.
- 4) The State Election Commission,  
Maharashtra State, Mumbai  
Through its Standing Counsel
- 5) Kiran s/o Fakira Thorat,  
Age : 35 Years, Occ. Labour
- 6) Banubai w/o Namdev Bhil  
Age : 50 Years, Occ. Labour
- 7) Shahnavaazbi Shaikh Bashir Bagawan  
Age : 50 Years, Occ. Household,
- 8) Deepak Sudhakar Desale,  
Age : 40 years, Occu. Business,
- 9) Shushma Deepak Chaudhari,  
Age : 32 years, Occ. Household,

- 10) Chandrasing Dhansingh Rajpur,  
Age : 55 Years, Occ. Agriculture
- 11) Ashokrao Shankarrao Patil,  
Age : 60 Years, Occ. Household,
- 12) Shaikh Shabnambi Shaikh Mansur  
Age : 45 years, Occu. Household
- 13) Pramilabai Dharmraj Patil,  
Age : 32 years, Occ. Household,
- 14) Sonali W/o Rakesh Mahire  
Age : 32 years, Occu. Household,
- 15) Nimbaji S/o Avchit Sonwane  
Age : 60 years , Occu. Pensioner
- 16) Ulhas S/o Shamkant Deshmukh  
Age : 35 years, Occu. Business
- 17) Mathurabai W/o Namdev Marathe,  
Age : 60 years, Occu. Household,
- 18) Tukaram S/o Chamaru Mali,  
Age : 45 years, Occu. Agriculture
- 19) Ushabai w/o Ganesh Mali  
Age : 40 years, Occ. Household
- 20) Sunanda W/o Ravindra Mali,  
Age : 40 years, Occu. Household
- 21) Nirmal W/o Yuvraj Mali,  
Age : 40 years, Occu. Household

All R/o. Shindekheda,  
Tq. Shindkheda, Dist. Dhule. ... **RESPONDENTS.**

...

Mr. B.R.Waramaa Advocate for petitioner.

Mr. Y.G.Gujarathi A.G.P. For respondent No. 1 & 3-  
State

Mr. A.D.Pawar Advocate for Respondent Nos. 5 to 8, 14  
to 17 and 21.

Mr.D.S. Bagul Advocate for Respondent No.9 to 13,18  
to 20

Mr. S.T.Shelke h/f Mr. M.B. Bharaswadkar,  
Advocate for respondent No.4.

...

**CORAM : R.D.DHANUKA AND  
SUNIL K. KOTWAL JJ.**

Reserved on : 13.09.2017

Pronounced on : 19.09.2017

**JUDGMENT ( PER R.D.DHANUKA J.)**

1] By this petition filed under Article 226 of the Constitution of India, petitioner seeks a writ of certiorari for quashing and setting-aside notification dated 23<sup>rd</sup> October, 2012, issued by the respondent Collector, Dhule under section 10 of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965 ( Hereinafter referred for short as the said Act), for holding election of respondent No.2 and further seeks that this Court shall hold and declare that the scheme of section 10 (2) of the said Act is in breach of Section

341(B) of the said Act.

2] The petitioner also seeks a writ of mandamus thereby directing the respondent No.3 Collector to hold afresh the process for formation of wards to the election of Nagar Panchayat Shindkheda, District Dhule and for a writ of Certiorari for quashing and setting-aside the election result declared on 14<sup>th</sup> January 2013 of the said Nagar Panchayat Shindkheda declaring the respondent Nos. 5 to 25 elected. The petitioner also seeks an order and direction against the respondent No.4 to hold the election of the respondent No.2 Nagar Panchayat afresh and as per scheme of section 341-B of the said Act.

Some of the relevant facts for deciding this petition are as under :-

3] The petitioner is Ex-member of Village Panchayat, Sindkheda and Panchayat Samiti, Shindkheda and is active in political movement and democratic process of election. The name of the petitioner is included in voters list of last Assembly election and election of village

panchayat, Sindkheda i.e. in ward No.2 held in 2010 and had exercised his right to vote in last election of village panchayat, Sindkheda held in 2010.

4] Village Panchayat, Shindkheda is abolished and Nagar Panchayat is constituted by the State of Maharashtra by issuing notification dated 17-07-2012. The State of Maharashtra appointed Administrator to look after the business of Nagar Panchayat, Sindkheda.

5] As per the letter dated 13<sup>th</sup> September, 2012, the State Election Commission, Maharashtra State-Respondent No.4 herein started the process of formation of wards vide letter dated 13-09-2012 and published a detailed programme for formation of wards and allotment of reservations of seats. By the said letter, the Collector, Dhule was required to submit draft proposal for formation of wards on or before 24-09-2012. Last date for according sanction to the draft proposal for formation of wards by Regional Director, Municipal Administration, Nashik Region, Nashik was 28-09-2012. The last date for

publication of draft of formation of wards and maps was fixed as 08-10-2012. Last date for inviting objections to the draft proposal of formation of wards from the voters was 16<sup>th</sup> October, 2012. The date of hearing of the objections was scheduled on 18<sup>th</sup> October, 2012. Last date for final submission of final opinion on objections of the Regional Director was 20<sup>th</sup> October, 2012. Date for Publication of final notification u/s 10 was 23<sup>rd</sup> October, 2012.

6] The respondent No.3 published a draft plan for formation of wards on 6<sup>th</sup> October, 2012. Pursuant to the said draft plan issued by respondent No.3, the petitioner submitted his objection for formation of wards on 16<sup>th</sup> October, 2012 and raised various objections. It is the case of the petitioner that, he was present in the office of the Respondent No.3 on 18<sup>th</sup> October, 2012 but Respondent No.3 did not attend the hearing. On 18<sup>th</sup> October, 2012, Respondent No.3 rejected the objection raised by the petitioner. The petitioner was informed about the said rejection of the application by letter dated

18<sup>th</sup> October, 2012 which letter was received by the petitioner on 20<sup>th</sup> October, 2012. In para No. 7 of the petition, the petitioner has summarized eight objections raised by the petitioner before the respondent No.3 in the letter dated 16<sup>th</sup> October, 2012.

7] Mr. B.R. Waramaa, the learned counsel for the petitioner filed a compilation of judgments and also written submissions for consideration of this court. He also made oral submissions before this Court, which are summarized in the written arguments along with compilation of documents. The learned counsel placed reliance on letter dated 6<sup>th</sup> October, 2011 issued by the respondent No.4 annexed at (Exh.'L') to the petition and further submits that Article 243-ZA of the Constitution of India applies to the election of the Municipalities. He submits that, section 341(1)(B) of the said Act, postulates constitution of Nagar Panchayat. He relied upon Section 10 of the said Act and submits that the said provision has limited application to the election of Nagar Panchayat i.e. to the tune of reservation of seats. He

invited our attention to the definition of Nagar Panchayat under Section 2 ( 25)(A) of the said Act.

8] It is submitted by the learned counsel that respondent No.3 had illegally framed the wards and thus entire election process was vitiated. He submits that the process of holding and completing election of Respondent No.2 Nagar Panchayat also was illegal. The respondent No.4 has ignored mandate of law and acted arbitrarily. In the absence of any legal provision in the statute, the respondent Nos.3 and 4 had no power to hold election contrary to the scheme of Section 341-B of the said Act. It is submitted that under Section 341(B) of the said Act, each ward shall elect one Councillor. He submits that in this case, the State Election Commissioner had fixed 17 Councilors to be elected for Nagar Panchayat, Shindkheda, to be elected. He submits that said 17 Councilors were elected in four wards. Five seats are allotted in the ward No.2. It is submitted that in each ward, more than one Councilor was elected in view of the illegal direction issued by the respondent no.4. The

respondent No.3 has committed basic illegalities in formation of the wards.

9] It is submitted by the learned counsel for the petitioner that, in ward No.4, five candidates were permitted by the Election Commission without amending Section 341(B) of the Act Same process was permitted in all four wards and one voter was permitted to cast more than one vote to elect more than one Councilors.

10] It is submitted by the learned counsel for the petitioner that respondent No.3 had formed Multiple Member Wards illegally. He invited our attention to the fresh notification dated 13<sup>th</sup> June, 2017, issued by the Election Commissioner, announcing the election of the said Nagar Panchayat. He submits that in the said notification, the State Election Commissioner has now directed that there shall be one Councilor for each ward. The learned counsel for the petitioner invited our attention to the order passed by this Court on 30-01-13 allowing the petitioner to carry out amendment to the

writ petition and to implead the successful candidates in the election. He submits that writ petition was admitted by this Court on 3<sup>rd</sup> September 2013. He invited our attention to the order dated 13<sup>th</sup> September, 2013 passed by this Court while admitting the writ petition refuse to grant ad- interim relief.

11 ] It is submitted by the learned Counsel that since the entire election process initiated by the respondent No.4 was totally illegal and was contrary to the Section 341(B) of the said Act, the election result of the respondent Nos. 5 to 21 shall be declared as illegal and requires to be set-aside. The petitioner is entitled to challenge the said illegalities committed by the respondent Nos.1 to 4 by filing this writ petition and to seek various reliefs.

12] It is submitted that in any event since the writ petition has been already admitted by this Court and since the petitioner was even permitted to carry out the amendment in the writ petition, the respondents cannot

be allowed to raise a plea in the affidavit in reply that the writ petition is not maintainable at this stage. In support of this submission, the learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of *K. Venkatchalam Vs. A.Swamickan* (**AIR 1999 SC 1723**) the judgment of this court in case of *Baburao Wadikar Vs. State* (**1985(2) BCR 655**) and the judgment of this court in the case of *Baburao Koli Vs. State* (**2007(6) BCR 6.**)

13] Mr. Y.G. Gujrathi, learned AGP for respondent Nos.1 and 3, invited our attention to the Section 341 (B) (4) of the said Act. He placed reliance on Sections 9 and 10 of the said Act and submits that these provisions provide for composition of the Councillors and development of Municipal area into wards and reservation of the wards for women amongst schedule castes and scheduled tribes and are also required to be applied to the election to Nagar Panchayat under Section 341 (B) of the said Act. He invited our attention to the

letter of objection filed by the petitioner with respondent No.3 and would submit that no objection was raised by the petitioner before the respondent No.3 that one voter in a ward could not have been allowed to cast more than one vote in favour of different candidates in the multiple wards. He submits that those objections raised by the petitioner cannot be allowed to be raised by this Court across the bar. Learned AGP invited our attention to the draft order issued by the State Election Commission prescribing general description of the wards and seats reserved for each of the ward in respect of those 17 wards. He submits that no illegality is committed by the authorities.

14] Mr. A.D. Pawar, learned counsel for the respondent No. 5 to 8, 14 to 17 and 21 also invited our attention to the letter of objection raised by the petitioner before the respondent No.3 and submits that the issue of one voter having allowed to cast more than one vote in the same election, was not raised in the said letter of objection. It is submitted that on 13.06.2017, the State Election

Commission has already issued fresh notification for ward formation. Objections were invited on 24<sup>th</sup> June 2017. On 5<sup>th</sup> August, 2017, the Collector has already decided the objection raised by various parties. He submits that the elections are likely to be held in the month of October, 2017 and thus interference with the election already held on 14<sup>th</sup> January 2013, can not be permitted this Court at this stage.

15] Mr. D.S. Bagul, learned counsel for the Respondents No. 9 to 13 and 18 to 20 adopted the submissions made by the learned counsel for respondent No. 5 to 8, 14 to 17 and 21.

16] Mr. S.T. Shelke, learned counsel for the Respondent No.4 i.e. State Election Commission, submits that, election to Nagar Panchayat Shindkheda was held in the year 2012. The petitioner had submitted his objections, which were dealt with in detail by the respondent No.3 and rejected. The petitioner was present for the hearing on 18<sup>th</sup> October, 2010 before the

respondent No.3. He was heard by the respondent No.3. The learned counsel invited our attention to the documents at Exh 'F' to the petitioner showing the name of the petitioner and his signature at Sr. No.5 on the said document.

17] Learned counsel for the respondent No.4 invited our attention to the order dated 02<sup>nd</sup> October, 2012 passed by the respondent No.3 for formation of various wards by exercising powers under the said Act and also to the draft order under Section 9 of the said Act. He submits that there were 17 wards specified in the order passed by the respondent No.3 for the said Nagar Panchayat Shindkheda election. There were 17 candidates elected for those 17 wards, which was in compliance with Section 341(B)(3). He submits that, there is no provision in the said Act prescribing any restrictions on voters to cast more than one vote in case of there being multiple wards. He submits that said order passed by respondent No.3 was published in the Gazette. There were therefore, 17 wards for which

seventeen councillors were elected.

18] The learned Counsel for the respondent No.4 also invited our attention to the result of the successful candidate in the said Nagar Panchayat Shindkheda for the year 2012. He submits that, 17 wards were announced by the respondent No.3 under four 'Prabhag'. He placed reliance on Article 343(B) and 343(C) of the Constitution of India. He also placed reliance on Section 341(A), 341(B) & 341(C) of the said Act. He also invited our attention to the Article 243 ZG of the Constitution of India and submits that there is a complete and absolute bar in considering any matter relating to the Municipal Election on any ground whatsoever after the publication of the notification for holding Municipal elections.

19] It is submitted that the only remedy of the petitioner for challenge the election was by way of filing election petition and not a writ petition. In support of this submission, learned Counsel for the Respondent

No.4 placed reliance on the decision of Supreme Court in *Anugrah Narain Singh and another Vs. State of U.P and others* **1997(1) Mh.L.J 132 (SC)** and in particular para Nos. 12 and 24. He submits that the issue relating to the Delimitation of the wards cannot be questioned in the Court of law and more particularly in a writ petition. He submits that formation of wards were finalized after inviting and considering objections raised by various parties including the petitioner and cannot be questioned in the court of law after publication of notification.

20] Learned Counsel for the respondent No.4 also placed reliance on the judgment of this court in the case of *Jadhav Shankar Dyandeo and another Vs. Collector, Satara and another* **(2010(6) Mh.L.J. Page 109)** and in particular para Nos. 12 and 13 and would submit that delimitation of area formed or wards formed by respondent No.3 Collector cannot be entertained by this Court in a writ petition. He submits that a writ petition is totally barred in case of election dispute. The learned

Counsel for the respondent No.4 distinguished the judgment relied upon by learned counsel for the petitioner. In so far as the judgment of the Supreme Court in case of *K.Venkatachalm Vs. A.Swamickan* (supra) relied upon by learned Counsel for the petitioner is concerned, it is submitted by the learned Counsel that facts before the Supreme Court in the said judgment were totally different. The Supreme Court held that when a disqualified person is elected, bar of jurisdiction of the Court does not apply.

21] In so far as the judgment of this Court in the case of *Baburao Shankarrao Wadikar and others Vs. State of Maharashtra and others* (supra) relied upon by learned Counsel of petitioner is concerned, it is submitted that the said judgment was delivered by this Court prior to the constitutional amendment i.e. Article 243 and 243-ZA in the Constitution of India and thus is clearly distinguishable.

22] In so far as the judgment of this Court in case

of *Baburao Kalu Koli Vs. State of Maharashtra and others*

**2007(6) Bom.C.R.6** relied upon by the petitioner is concerned, the learned counsel for the respondent No.4 distinguished the said judgment on the ground that the facts before this court in the said judgment were totally different. Division bench of this Court dealt with the provision of Bombay Village Panchayats ( Number of Members, Divisions into Wards and Reservation of Sea) Rules. 1966 The foundation of challenge to election was based on manipulations.

23] Learned Counsel for the respondent No.4 also placed reliance on the notification dated 13<sup>th</sup> June, 2017 issued by Respondent No.4 and would submit that the elections are due shortly and thus this Court shall not interfere with election held as far back as on 14<sup>th</sup> January 2013 at this stage.

**REASONS AND CONCLUSIONS :-**

24] A perusal of the record indicates that the respondent No.3 had issued notification on 19-07-2012, abolishing village Panchayat Shindkheda and

constituting Nagar Panchayat by the State Government. Process of formation of wards started on 13<sup>th</sup> September, 2012. Objections were invited by the respondent No.3 to the draft proposal of formation of wards from the voters. The petitioner has submitted his objection on 16-10-2012 on eight grounds. The petitioner did not raise any objection before the respondent no.3 that one voter in a ward cannot be allowed to cast more than one vote in different wards. The respondent No.3, after hearing the petitioner as well as other objections, rejected the objections by passing a detailed order. The elections thereafter are held by the respondent No.4. It is not in dispute that the petitioner did not raise any such objection about the number of votes allowed to be cast by voters before the respondent No.3.

25] A perusal of the order dated 03<sup>rd</sup> September, 2013 passed by this Court while admitting the writ petition indicates that this Court has recorded that challenge in the petition is only on the ground that a voter is not entitled to cast 3 votes and was expected to cast only one

vote, the petitioner has put in total 3 votes and thus two of his votes need to be ignored. This Court also noticed that the petitioner was a voter and had not contested the election and had also cast three votes.

26] It is thus clear that the petitioner did not advance any other submissions before this Court other than the submissions that voters were not entitled to cast three votes and other two votes were required to be ignored. Admittedly, this ground is not even raised in the writ petition. A perusal of the additional affidavit filed by the petitioner before this Court on 3<sup>rd</sup> March, 2017, clearly indicates that the petitioner himself has admitted that the name of the petitioner was included in Ward No.4 and he did allegedly cast five votes to elect five different candidates/councilors. Same process was alleged to have been permitted in all four wards and one voter was permitted to cast more than one vote to elect more than one Councilors. The petitioner admittedly did not raise this objection before the respondent No.3, and on the contrary, had alleged to have casted five votes to elect

five different Councilors as admitted by the petitioner in the said additional affidavit filed before this Court.

27] The petitioner could not point out any proof to show that the 17 wards formed by the respondent no.3 were illegal or that petitioner could not have cast more than one vote. The petitioner could not demonstrate before this Court that he was actually allowed to cast more than one vote to elect more than one candidate/councilor or that he had actually voted for five candidates. We are thus not inclined to accept this objection raised by the petitioner firstly at the stage of admission and now across the bar at the stage of final hearing. This Court cannot even otherwise go into this factual issue as to whether the petitioner was in fact allowed to cast more than one vote or not in this writ petition for want of pleadings and proof.

Under section 341(B) of the said Act it is clearly provided that

- (i) A Nagar Panchayat shall consist of seventeen directly elected Councillors.

(ii) For the purpose of elections a transitional area shall be divided into such number of territorial constituencies, to be known as wards, as there are Councillors.

28] It is thus clear that based on these provisions, the Collector had formed 17 wards by dividing transitional area into number of four constituencies knowing as wards to match with the number of councilors required to be elected from each ward. It is not the case of the petitioner that more than 17 Councilors were declared elected for those 17 wards formed under Section 341 (B) (2). In our view the said provision under Section 341(B) of the said Act has to be read with sections 9 and 10 to the extent provided in section 341(B)(4) which in this case is fully satisfied by the respondent No.3 and 4.

29] Article 243-ZA of the Constitution of India provides complete and absolute bar in considering any matter relating to the Municipal Election on any ground whatsoever after the publication of the notification for

holding Municipal Election. The Supreme Court in the case of *Anugrah Narain Singh and another Vs. State of U.P and others* (supra) has considered this issue in detail and held that the said bar imposed by Article 243-ZA is two-fold. Validity of laws relating to delimitation and allotment of seats made under Article 243-ZA cannot be questioned in any Court. No election to a Municipality can be questioned except by an election petition. It is held that if the election is imminent or well under way, the Court should not intervene to stop the election process, and if this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the Court and stall the elections.

30] In our view, the judgment of the Supreme Court in case of *Anugrah Narain Singh and another Vs. State of U.P and others* (supra) is squarely applicable to this case. We are respectfully bound by this judgment. The election process was already started when the petitioner filed this writ petition. During the pendency of this writ

petition, the results were already declared. The term of the elected councilors is likely to be over. There was no interim relief granted by this Court. In our view this writ petition is this not maintainable in respect of the reliefs as claimed.

31] In so far as submissions made by the learned Counsel for the petitioner that since this Court has already admitted this writ petition and has also granted leave to the petitioner to amend the writ petition by impleading elected candidates as respondents to the petition and thus writ petition cannot be dismissed on the ground of alternative remedy is concerned, in our view, filing of election petition was the only remedy available to the petitioner which was not an alternate remedy. Filing of this writ petition itself was not maintainable at the threshold. Various judgment thus relied on by learned counsel for the petitioner in support of submissions that since the writ petition was admitted and the petitioner was allowed to amend the writ petition the same cannot be dismissed on the ground that

alternative remedy exists, would not assist the case of the petitioner.

32] The respondent No.4 has already issued a notification dated 13<sup>th</sup> June, 2017 announcing election. The objections have been already invited on 24<sup>th</sup> July, 2017 for formation of new wards and also decided on 05<sup>th</sup> August, 2017. The elections are likely to be held shortly. It is not in dispute that by the said notification dated 13<sup>th</sup> June, 2017, the respondent No.4 has now even otherwise declared that councilor shall be elected in respect of each ward. In these circumstances we are not inclined to grant any relief in respect of election held in the year 2012 for Nagar Panchayat, Shindkheda at this stage.

33] Be that as it may, in our view, whatever objections, were raised by the petitioner were already decided by the respondent No.3 after giving hearing to the petitioner and this Court not having found any infirmity with the said order, no interference with the result of election declared on 14<sup>th</sup> January, 2013 is

warranted. The petitioner himself has claimed to have casted five votes to get five different candidates elected, cannot be allowed to raise this issue across the bar or even otherwise. The judgment in case of *Anugrah Narain Singh and another Vs. State of U.P and others* (supra) delivered by the Supreme Court and in the case of *Jadhav Shankar Dyandeo and another Vs. Collector, Satara and another* delivered by this Court do not assist the case of the petitioner. In our view, the petition is totally devoid of merit and does not warrant any interference, We therefore, pass the following order.

ORDER

Writ Petition No. 9286 of 2012 is dismissed.  
Rule is discharged. There shall be no order as to costs.

(SUNIL K. KOTWAL)  
JUDGE

( R.D. DHANUKA)  
JUDGE

YSK/