

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4135 OF 2016
(Shaikh Ahmed s/o Shaikh Iliyas Vs.The State of Maharashtra and
others)

Mr.A.S.Bayas, learned counsel for the petitioner.
Mr.S.R.Yadav, learned AGP for the State.
Mr.Zia-Ul-Mustafa, learned counsel for respondent No.5.
Respondent No.4 absent.
Respondent Nos. 1, 2 and 6 served.

(CORAM : M.S.Sanklecha, J.)

DATE : 13/04/2017

PER COURT :

1. This petition challenges the order dated 31/01/2015 passed by the Civil Judge, S.D.Aurangabad. By the impugned order, the petitioner's application to be added as a petitioner in the Election Petition No.7/2010 filed by Mr.Neel Patil (respondent No.6) challenging the election of Dr.Khan (respondent No.5) to Aurangabad Municipal Corporation, was rejected.

2. The impugned order rejects the petitioner's application to be added as a co-petitioner on the ground that the petitioner had not filed any election petition on the rejection of its objection by the Returning Officer in accepting the nomination of Dr.Khan nor after the declaration of the election results. Further any election petition

now would be time barred as the mandatory requirement u/s 16 of the Maharashtra Municipal Corporations Act, 1949 (Act) is to file a petition within 10 days from the declaration of the election results.

3. Mr.Bayas, learned counsel appearing for the petitioner submits that the elected candidate Dr.Khan was having more than 2 children at the time when he filed his nomination for the elections in the year 2010. Thus he was disqualified from contesting the elections. It is submitted that the petitioner was unable to challenge the election of respondent No.5 Dr.Khan by filing an election petition in view of his party compulsion. However, it is stated that he did provide all the essential information to respondent No.6 Mr.Neel Patil, the petitioner in the election petition. It is pointed out that the impugned order came to be passed as a consequence of an earlier writ petition filed by him, as also by Mr.Neel Patil, (the petitioner in the election petition) bearing Writ Petition Nos.760/2013 and 2209/2013 against the order of the Civil Judge, S.D. dismissing the election petition. This Court, by an order dated 07/05/2014 passed in the above two petitions, set aside the order of the Civil Judge, S.D. dismissing the election petition filed by respondent No.6 Mr.Neel Patil and restored the issue to the Civil Judge for fresh disposal. The above order dated 07/05/2014 granted liberty to the petitioner herein to file an

application before the Civil Judge, S.D. to be added as a party to the election petition filed by Mr.Neel Patil challenging the election of Dr.Khan. It was the application made consequent to the above liberty, that has led to the impugned order dated 31/01/2015. It is further submitted that the petitioner should be made a co-petitioner and be permitted to canvass his case to advance the cause of truth. This is necessary according to applicant as the successful candidate/ respondent No.5 Dr.Khan herein and the election petitioner Mr.Neel Patil, respondent No.6 herein have now colluded and the truth would be a victim as a result thereof.

4. It is noted that the impugned order records that the application to be joined as a co-petitioner could not be entertained as an independent application by the petitioner would be barred by virtue of Section 16 of the Act. Further this Court, in its order dated 07/05/2014 in the writ petition Nos.760/2013 and 2209/2013 while setting aside the order of the Civil Judge, S.D. dismissing the election petition and restoring the petition before him for fresh disposal, has observed as under :-

“So far as Writ Petition No.760/2013 is concerned, in the revisional jurisdiction of this Court, it cannot be accepted that a witness can be termed to be an aggrieved person to challenge

the outcome of a petition to which he is not a litigating party. The petitioner Ahmed may exercise the liberty of moving an application, if at all the same is permitted in law, before, Trial Court, to be added as a party to the proceedings. Nevertheless, this petition, at his instance cannot be entertained. I am, therefore, inclined to accept the contention of Mr.Mustafa and hence, this petition is dismissed with costs, quantified at Rs.10,000/- (Rs.Ten thousand only), to be paid to respondent Jafar in the Trial Court.” (emphasis supplied)

5. From the above, it is very clear that the Court did not give any direction to add the petitioner as a co-petitioner to the election petition. In fact this Court very clearly stated that the petitioner who was witness cannot claimed to be a litigating party to the petition. All that this Court by order dated 07/05/2014 in the earlier writ petition did was it granted liberty to the petitioner to make an application to the Trial Court if at all the same is permitted in Law. The impugned order, on the basis of Section 16 of the Act and coupled with the conduct of the petitioner, has taken a view that the application of the petitioner to be joined as a co-petitioner cannot be accepted. The application for being joined as a co-petitioner was not a bonafide one but as it get over the bar of limitation provided under the Act. The very fact that the petitioner had not challenged the election petition on his own, amounts to a waiver of his rights, if any, to challenge it

subsequently.

6. The impugned order dated 31/10/2015 of the Civil Judge, S.D. is not an order which could be said to be an order no person trained in law could have passed so as to enable me to exercise jurisdiction under Article 227 of the Constitution of India.

7. In the above view, the petition is dismissed.

(M.S.Sanklecha, J.)