

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

WRIT PETITION NO. 14155 OF 2017

YOJANA BHARAT MALI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Shailesh P. Brahme.

AGP for Respondent No.1 : Mr. S. P. Tiwari.

Advocate for Respondent No.2 : Mr. Shivaji T. Shelke.

Advocate for Respondent No.3 : Mr. Gajendra Devichand Jain.

Advocate for Respondent No.4 : V. D. Sapkal.

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CORAM : **V. K. JADHAV, J.**

RESERVED ON : 11th December, 2017.

PRONOUNCED ON: 15th December, 2017.

ORDER :

. Being aggrieved by the judgment and order dated 4th December, 2017 passed by the Ad-hoc District Judge-1, Shahada, District Nandurbar in Election Appeal No.1 of 2017 reversing thereby the order passed by the Returning Officer accepting the nomination form of the present Petitioner and consequently rejecting the nomination submitted by the present Petitioner, the Petitioner has approached to this Court by filing the present writ petition.

follows:

The Petitioner was elected as a Councillor of Respondent No.3 / Municipal Council Taloda for the period of 2012-2017 and she was also elected as a President on 24th December, 2012. However, she could not complete her tenure because of the action taken under Section 55-A and 55-B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as the "Act of 1965"). She officiated the said post of President from 24th December, 2012 to 26th November, 2014. Thereafter, she ceased to be President as well as Councillor of Respondent No.3 / Municipal Council. Being aggrieved by the order of disqualification pursuant to the action under Sections 55-A and 55-B as aforesaid, the Petitioner had preferred Writ Petition No.10961 of 2014 before this Court. By order dated 22nd December, 2014, the writ petition came to be dismissed. The Honourable Apex Court was also pleased to dismiss SLP No.2490 of 2015 on 2nd February, 2015 preferred by the Petitioner. Respondent No.1 was pleased to declare the election program for Respondent No.3 / Municipal Council. As per the said program, voting was scheduled on 13th December, 2017 and the results are scheduled to be declared on 14th December, 2017. The Petitioner had submitted her nomination for the post of Councillor for

Prabhag No.1B from General (Women) category. The nomination of the Petitioner was objected by Respondent No.4 on 25th November, 2017. By order dated 25th November, 2017, Respondent No.2 / Returning Officer has overruled the said objection and accepted the nomination of the Petitioner. Being aggrieved by the said order dated 25th November, 2017, Respondent No.4 herein preferred Election Appeal No.1 of 2017. By the impugned judgment and order dated 4th December, 2017, learned Ad-hoc District Judge, Shahada pleased to allow Election Appeal No.1 of 2017 and thereby sustained the objection raised by Respondent No.4. The Petitioner held to be disqualified in view of the provisions of Section 16(1)(ba) read with Section 55-B of the Act of 1965. Hence, this writ petition.

3 The learned counsel for Petitioner submits that pursuant to the objection raised, the Principal Secretary of Maharashtra Government has conducted the inquiry and by order dated 26th November, 2014, declared the present Petitioner as disqualified for the post of President and being a Councillor in view of the provisions of Sections 55-A and 55-B of the Act of 1965. The learned counsel submits that the Principal Secretary by order dated 26th November, 2014 has removed the Petitioner from the office of the President and disqualified the Petitioner to continue as a Councillor for reminder of

her term of office as a Councillor alone and not for the further period of six years for being elected as a Councillor from the date of order of such disqualification. The learned counsel submits that, however, the learned Ad-hoc District Judge has erroneously interpreted the provisions and held that the disqualification of the Petitioner for the further period of six years for being elected as a Councillor is automatic one. The learned District Judge has also committed grave error in recording the findings in paragraph 23 of the impugned judgment that whenever there is disqualification for the remainder of term, the same as well as for further period of six years from the date of the order of disqualification in terms of Sections 55-B clause (a) of the Act of 1965. The learned counsel submits that the order passed by the learned Principal Secretary is very specific and no special reasons are recorded to indicate the further disqualification of the Petitioner for six years from the date of the order of disqualification. The learned counsel submits that since the learned District Judge has decided Election Appeal No.1 of 2017 and dealt with the provisions of Section 55-B(a) of the Act of 1965 elaborately, nothing survives to agitate in the election petition after the election is over. Thus, even though the election program is declared, the stage of accepting the nomination is still available in view of the change of election program during the

pendency of this writ petition and as such, without disturbing the election program, this writ petition can be disposed of by issuing appropriate directions.

4 The learned counsel for Petitioner in order to substantiate his submissions placed his reliance on the following cases:

- a) **Rameshchandra Shankarlal Saboo Vs. State of Maharashtra through Secretary & others,** reported in, **2003 (1) Bom.C.R. 126,**
- b) **Mohd. Talib sb Mohd. Sadique (Dr.) Vs. Dr. A. S. Kuchewar,** reported in, **2007 (4) Mh.L.J. 557,**
- c) **Poonam w/o Rajesh Pawar Vs. Returning Officer for the Elections of 2017 of Zilla Parishad, Naigaon and others,** reported in, **2017 (4) Mh.L.J. 85.**

5 The learned counsel for Respondent No.4 submits that in view of the mode of challenging the election by an election petition being prescribed by the Municipalities Act, it is clear that the election could not be called in question except by an election petition as provided under the Act. The bar to interference by Courts in electoral

matters contained in Article 243-ZG of the Constitution is required to be considered. Only remedy available to challenge the election is by raising the election dispute and not otherwise.

6 The learned counsel for Respondent No.4 submits that in terms of the provisions of Section 16(1)(ba) of the Act of 1965, a person who is guilty of any misconduct or disgraceful conduct while holding the office of the President will not be qualified to become a Councillor either by election or nomination unless the period of disqualification provided under Section 55-B has lapsed. The learned counsel submits that clause (a) of Section 55-B of the Act of 1965, is required to be read with Section 16(1)(ba) as aforesaid. The learned counsel submits that in clause (a) of Section 55-B, disqualification to continue as a Councillor for the remainder of the term of office as a Councillor and also for being elected as a Councillor, till the period of six years has elapsed from the order of such disqualification, is contemplated. The learned counsel submits that there is no “or” used in the remainder of the term and further period of six years in clause (a) of Section 55-B and as such, inevitably the disqualification would follow from the remainder of the term as well as for further period of six years from the order of such disqualification. The learned counsel submits that the learned Ad-hoc District Judge has rightly interpreted

the provisions of Section 55-B(a) and accordingly allowed Election Appeal No.1 of 2017 in terms as detailed in the operative part of the order. The learned counsel submits that the order passed by the Principal Secretary dated 26th November, 2014 though speaks about disqualification for the remainder of the term, the same has to be read in the context of the provisions of clause (a) of Section 55-B and Section 16(1)(ba) of the Act of 1965.

7 The learned counsel for Respondent No.4 submits that in terms of the provisions of Article 243-U of the Constitution, the duration of Municipalities shall continue for five years from the date appointed for its first meeting and an election to constitute a Municipality shall be completed before the expiry of its duration specified in clause (1) or before the expiration of the period of six months from the date of its dissolution. The learned counsel submits that in view of the same, even on the date of filing of the nomination, the Petitioner is not qualified to file her nomination since the Principal Secretary has disqualified the Petitioner for remainder of her term.

8 The learned counsel for Respondent No.4 in order to substantiate his submissions placed his reliance on the following cases:

- a) **Jaspal Singh Arora Vs. State of Madhya Pradesh**, reported in, **1998 (9) SCC 594**,
- b) **Gurdeep Singh Dhillon Vs. Satpal and others**, reported in, **(2006) 10 Supreme Court Cases 616**,
- c) **Kurapati Maria Das Vs. M/s. Dr. Ambedkar Seva Samajan and Ors**, reported in, **AIR 2009 Supreme Court 2475**,
- d) **Prithvi Raj Vs. State Election Commission, Punjab and Ors**, reported in, **AIR 2007 Punjab and Haryana 178**,
- e) **Krishna Vishnu Vs. State Election Commissioner, Secunderabad and others**, reported in, **AIR 2000 Andhra Pradesh 274**,
- f) **Vijaykumar Maniklal Bang Vs. State of Maharashtra & others**, reported in, **1997 (1) Mh.L.J. 637**,
- g) **Yogesh Pandharinath Dalvi and another Vs. State of Maharashtra and others**, reported in,

2016 (4) Bom.C.R. 833.

9 I have also heard the learned counsel for Respondent No.2 / Returning Officer and the learned counsel for Respondent No.3 / Municipal Council as well as the learned AGP for the Respondent / State.

10 It is not a matter of dispute that the election has been declared and even final list of the candidates is prepared and symbols are also allotted to the respective candidates. Though the scheduled date of voting came to be postponed due to one or another reason, however, the entire process almost has been completed. In view of the provisions of Section 21 of the Act of 1965, no election or nomination of a Councillor may be called in question, except by a petition presented to the District Court by a candidate at the election or by any person entitled to vote at the election, within ten days from the date of publication of the names of the Councillors in the Official Gazette under Sections 19 or 20, as the case may be. In terms of Section 19 of the Act of 1955, the State Election Commissioner after counting of votes in the ward if it is a general election of the Municipality is over, shall publish the result in the Official Gazette, as soon as conveniently may be. It is thus, manifest that the election or

nomination as the case may be, can be called in question only by presenting an election petition as contemplated under Section 21 of the Act of 1955 and not before declaration of the result as provided under Section 19 of the Act of 1955. Further, Article 243-ZG of the Constitution, creates a bar to interference by Courts in electoral matters to any Municipality except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. In view of the above, the cases relied upon by the learned counsel for Respondent No.4 are not required to be referred on this point. Thus, on the settled principles, interference under Article 226 of the Constitution by the High Court is not called for because of the statutory provisions for the election petition.

11 In the case of *Mohd. Talib sb Mohd. Sadique (Dr.) Vs. Dr. A. S. Kuchewar* (supra), the Division Bench of this Court while considering the challenge to a rejection of nomination by the Returning Officer for the post of Member under the provisions of the Maharashtra State Veterinary Council Rules, in paragraph 22 of the judgment has made the following observations:

“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.”

12 In view of the observations made in the above cited case, even if the judgment and order passed by the learned Ad-hoc District Judge-1, Shahada, District Nandurbar in Election Appeal No.1 of 2017 is considered, I do not find any fault in the impugned order. In view of the provisions of Section 55-B read with Section 16(1)(ba) (which is relevant for the present discussion), the disqualification for becoming a Councillor is prescribed unless the period of disqualification provided under Section 55-B has lapsed.

13 Section 16(1)(ba) and Section 55-B of the Act of 1965 are reproduced hereinbelow:

“Section 16(1)(ba): has been found guilty of misconduct in the discharge of his duties, or being guilty of any disgraceful conduct while holding the office of the President or Vice-President of the Council unless the period of disqualification provided under Section 55B has lapsed.

...

Section 55B. Disqualification for continuing as Councillor or becoming Councillor on removal as President or Vice-President

Notwithstanding anything contained in section 55A, if a Councillor or a person is found to be guilty of misconduct in the discharge of his official duties or being guilty of any disgraceful conduct while holding or while he was holding the office of the President or Vice-President, as the case may be, the State Government may, –

(a) disqualify such Councillor to continue as a Councillor for the remainder of his term of office as a Councillor and also for being elected as a Councillor, till the period of six years has elapsed from the order of such disqualification;

(b) disqualify such person for being elected as a Councillor till the period of six years has elapsed from the order of such disqualification.”

14 Though the Principal Secretary by order dated 26th November, 2014 disqualified the Petitioner to continue as a Councillor for the remainder of the term of office as a Councillor, in terms of the provisions of Section 55-B clause (a), the said disqualification would operate not only for the remainder of the term of office as a Councillor, but also for being elected as a Councillor, till the period of six years has elapsed from the order of such disqualification. The provisions of Section 16(1)(ba) are very specific and in terms of the said provisions, if the Councillor found guilty of misconduct in the discharge of his duties, or being guilty of any disgraceful conduct while holding the office of the President or Vice-President of the Council, he shall not be qualified to become a Councillor either by election or nomination unless the period of disqualification provided under Section 55-B has lapsed. Section 55-A of the Act of 1965, contemplates removal of President and Vice-President by the Government for misconduct in the discharge of his duties, or for neglect of or incapacity to perform, his duties or for being guilty of any disgraceful conduct, and the President or Vice-President so removed shall not be eligible for reelection or reappointment as President or Vice-President as the case may be, during the remainder of the term of office of the Councillor and in terms of the provisions of Section 55-B, which consist of clause (a)

notwithstanding contained in Section 55-A, provides disqualification of such Councillor to continue as a Councillor for the remainder of his term of office as a Councillor and also for being elected as a Councillor, till the period of six years has elapsed from the order of such disqualification. Thus, there is no escape from the provisions of clause (a) of Section 55-B in its entirety. The Principal Secretary has passed the order under clause (a) of Section 55-B and by virtue of the provisions of clause (a) of Section 55-B read with Section 16(1)(ba), the disqualification of the Petitioner for the remainder of the term of office as a Councillor and also for being elected as a Councillor, till the period of six years has elapsed from the order of such disqualification is inevitable. In view of the above, I do not find any fault in the order passed by the learned District Judge.

15 The learned counsel for Respondent No.4 has also submitted that in terms of Article 243-U(3) (a) and (b) of the Constitution, on the date of submission of the nomination, the term of Municipality is not expired and as such, even if the order passed by the Principal Secretary read as it is, the disqualification would operate for a remainder of the term of the Petitioner. I do not find any substance in this submission for the reason that the election to constitute a Municipality is required to be completed in terms of clause (a) of Article

243-U (3) of the Constitution, before the expiry of its duration specified in clause (1) and in terms of clause (1) of Article 243-U, every Municipality shall continue for five years from the date appointed for its first meeting and no longer unless sooner dissolve. If the Councillor is disqualified from continuing as a Councillor for the remainder of his term of office, then it would be illogical to say that his remainder of term would extend till completion of election to constitute a Municipality.

16 In view of the discussion in the foregoing paragraphs, the writ petition is liable to be dismissed. Hence, I proceed to pass the following order:

ORDER

The writ petition is hereby dismissed. No costs.

[V. K. JADHAV, J.]

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