

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12133 OF 2016

Shri Mainuddin S. Bagwan
Age 43 years, Occupation Social Service and
Business, R/o Bagwan Galli, Taluka Miraj,
District Sangli

... Petitioner

v/s

- 1) Shri Ayyaj Illiyas Naikwadi
Age 53 years, Occupation Poultry
Business, R/o Hadco Colony, Miraj,
District Sangli
- 2) Maharashtra State Election Commissioner,
New Administrative Building, in front of
Mantralaya, Mumbai-32
- 3) Principal Election Commissioner and
Commissioner, Sangli, Miraj and Kupwad
City Municipal Corporation, Sangli
- 4) Sangli, Miraj and Kupwad Municipal
Corporation, Sangli

... Respondents

**WITH
WRIT PETITION (ST) NO.6744 OF 2016**

Shri Mainuddin S. Bagwan
Age 43 years, Occupation Social Service and
Business, R/o Bagwan Galli, Taluka Miraj,
District Sangli

... Petitioner

v/s

- 1) Shri Jahurahmed Munir Bagwan
Age 34 years, Occupation Social
Service, R/o Bagwan Galli, Miraj,
District Sangli
- 2) Shri Jamil Shamshoddin Bagwan,

- Age 47 years, Occupation Business,
R/o Bagwan Galli, Miraj Taluka, Miraj,
District Sangli
- 3) The Commissioner
Sangli, Miraj and Kupwad Municipal
Corporation, Sangli
- 4) Maharashtra State Election Commissioner,
New Administrative Building, in front of
Mantralaya, Mumbai-32 ... Respondents

**WITH
WRIT PETITION (ST) NO.6746 OF 2016**

Shri Mainuddin S. Bagwan
Age 43 years, Occupation Social Service and
Business, R/o Bagwan Galli, Taluka Miraj,
District Sangli ... Petitioner
v/s

- 1) Shri Khutbuddin Abdulkadar Kaji
Age 49 years, Occupation Business,
R/o Momin Galli, Miraj,
District Sangli
- 2) Shri Jamil Shamshoddin Bagwan,
Age 47 years, Occupation Business,
R/o Bagwan Galli, Miraj Taluka, Miraj,
District Sangli
- 3) Shri Jahurahmed Munir Bagwan
Age 34 years, Occupation Social
Service, R/o Bagwan Galli, Miraj,
District Sangli
- 4) The Commissioner
Sangli, Miraj and Kupwad Municipal
Corporation, Sangli
- 5) Maharashtra State Election Commissioner,
New Administrative Building, in front of
Mantralaya, Mumbai-32 ... Respondents

Shri A.A. Kumbhakoni, Senior Counsel i/b Shri A.M. Kulkarni for Petitioners in all Petitions.

Mrs D.S. Mondkar Hule i/b Shri S.B. Shetye for State – Election Commission in all Petitions.

Shri Mujahid S. Ansari i/b Shri Sharif N. Jamil for Respondent No.1 in WP No.12133 of 2016.

Shri Sudhir Prabhu for Respondent No.4 in WP No.12133 of 2016.

CORAM : R. M. SAVANT, J.

DATE : 1st February 2017

ORAL JUDGMENT :-

1 In the above Petitions, notice for final disposal came to be issued on 10th March 2016. That is how the Petitions are taken up for final hearing.

2. The Respondent No.1 in Writ Petition No.12133 of 2016 is represented by the Advocate. However, none appears for Respondent No.1 in other two Petitions though served.

3. Rule, having regard to the nature of the challenge raised, made returnable forthwith and heard.

4. The writ jurisdiction of this Court is invoked against the judgment and order dated 12th February 2016 (subject matter of Writ Petition No.12133 of 2016) and the order dated 12th February 2016 (subject matter of Writ Petition (St) Nos.6744 and 6746 of 2016). The said order has been passed in

view of the judgment and order dated 12th February 2016 passed in Election Petition No.17 of 2013. Since the Petitions involve common facts and an identical challenge, they are all heard together. The facts in Writ Petition No.12133 of 2016 are referred to for the sake of convenience.

5. The Petitioner was elected as a Municipal Corporator of the Respondent No.4 – Municipal Corporation from Ward No.26A for the term 2012-13 to 2016-17. The Respondent No.1 in each of the above Petitions raised an objection to the acceptance of the nomination of the Petitioner on the ground that the Petitioner has been convicted of a criminal offence and hence is disqualified as such for contesting the elections. The said objection was overruled by the Returning Officer. The Petitioner thereafter contested the elections from Ward No.26A and was elected. After the Petitioner's election as a Municipal Corporator, the Respondent No.1 in each of the above Petitions filed Election Petitions. In so far as Writ Petition No.12133 of 2016 is concerned, the concerned Election Petition is Election Petition No.17 of 2013 and so far as the other two Petitions are concerned, they are Election Petitions Nos.2 and 3 of 2013.

6. In so far as the Election Petitions are concerned, they are founded on the common ground invoking section 10 of the Maharashtra Municipal Corporation Act 1949 and specially clause 10(1)(ii) thereof. The

disqualification of the Petitioner is sought on the ground that the Petitioner having been convicted in a criminal case stands disqualified on the application of the said section 10(1)(ii) of the said Act. The necessary averments in so far as Election Petition No.17 of 2013 is concerned, are in paragraph 4 of the said Election Petition where the Respondent No.1 i.e. the Election Petitioner has adverted to Criminal Case No.141 of 2008 which was filed under sections 143, 147, 341 r/w section 149 of IPC and section 3 of Prevention of Damage to the Public Premises Act 1984. It appears that the Petitioner did not file his reply to the said Election Petition and it is the case of the Petitioner that the reply was not accepted as it was sought to be filed beyond the time stipulated by the Court. It seems that the refusal of the Trial Court to take the reply on record was challenged by the Petitioner in this Court by way of Writ Petition No.1281 of 2015. A learned Single Judge of this Court did not deem it appropriate to interfere with the order passed by the Trial Court, however, granted liberty to the Petitioner to raise the ground in the Appeal that would be required to be filed against the final */order that would be passed in the Election Petition. The learned Civil Judge, S.D., Sangli who was in soisin of the said Election Petition Nos.2 of 2013, 3 of 2013 and 17 of 2013 proceeded to adjudicate upon the same and by the impugned order dated 12th February 2016 allowed the said Petition and thereby issued a declaration which is contained in clauses 2 and 3 of the operative part of the impugned order which for the sake of ready reference read as under :-

“2) It is hereby declared that respondent No.4 Mainuddin Shamshuddin Bagwan r/o Bagwan Galli, Miraj is disqualified candidate for the post of Councillor of the election of S.M.K.C. held in the year 2013.

3) It is further declared that respondent No.4 being disqualified candidate, is not entitled to continue to act as a Councillor of the Ward No.26-A of the S.M.K.C. Corporation.”

7. However, in the context of disqualification as covered by section 10, what is significant to note is the observation made by the Trial Court in paragraph 15 of the impugned judgment which reads thus :-

“15. Taking into consideration the above observation at this stage this Court is unable to decide the offences of which the respondent No.4 has convicted comes under the ambit of definition 'moral turpitude' as petition is non-contested.”

8. However, notwithstanding the said observation, the learned Judge has thereafter in paragraph 26 concluded by holding that since the Petitioner is

convicted in criminal offence levelled against him, is disqualified for being a Councillor in S.M.K.C. Ward No.26-A, Miraj. The said paragraph 26 of the impugned judgment reads thus :-

“26) In view of above observations I come to conclusion that the respondent No.4 being convicted in Criminal offences levelled against him, therefore, he is disqualified for being a Councillor in S.M.K.C. Ward No.26-A, Miraj, hence, I answer point No.1 in the affirmative and proceed to pass the following order.

ORDER

- 1) Petition is allowed.
- 2) It is hereby declared that respondent No.4 Mainuddin Shamshuddin Bagwan r/o Bagwan Galli, Miraj is disqualified candidate for the post of Councillor of the election of S.M.K.C. held in the year 2013.
- 3) It is further declared that respondent No.4 being disqualified candidate, is not entitled to continue to act as a Councillor of the Ward No.26-A of the S.M.K.C. Corporation.
- 4) Remaining prayers of the petition stand rejected.
- 5) No order as to costs.”

9. Hence, a conjoint reading of the said paragraphs would disclose that there is a contradiction in terms in the order passed by the learned Civil Judge, S.D., Sangli as on the one hand, he has stated that he is not in a position to decide whether the offence of which the Respondent No.1 has been convicted comes under the ambit of moral turpitude. However, at the same time, he has found it appropriate to disqualify the Petitioner on the ground that he is convicted of criminal offence. In so far as section 10 of the said Act is concerned, the same would get attracted only when a person who has been convicted of offence involving moral turpitude seeks to contest the election or has been elected. Hence, the sine-qua-non for attraction of section 10 is the conviction for an offence involving moral turpitude. In the instant case, in the light of the observations made by the learned Judge in paragraph 15, the said ingredient can be said to be missing. The learned Judge could not have disqualified the Petitioner without first deciding that the conviction of the Petitioner is for offences involving moral turpitude.

10. Shri Kumbhakoni, learned Senior Counsel appearing on behalf of the Petitioner draws my attention to the order dated 6th September 2013 passed by a learned Single Judge of this Court in Criminal Writ Petition No.3199 of 2013. The said Writ Petition was filed by a person who was involved in the self same incident as the Petitioner in the instant Petition. The incident was of an agitation in front of the building of the Respondent No.4 –

Municipal Corporation so as to draw the attention of the authorities to the plight of the residents on account of the bad roads within the jurisdiction of the Respondent No.4. The Petitioner in the said criminal writ petition was tried for offences under sections 143, 147, 341 r/w section 149 of IPC and section 3 of Prevention of Damage to the Public Premises Act 1984 and convicted. The said Writ Petition was filed by the Petitioner seeking a stay of his conviction. In the course of granting relief to the said Petitioner, the learned Single Judge observed that this was purely a political/social agitation and was in the interest of public at large and no moral turpitude was involved in any manner. It is after making such observation that the Learned Judge stayed the conviction of the Petitioner in the said case. The learned Senior Counsel sought to rely on the said order so as to buttress his submission that it has already been held that the conviction does not involve any moral turpitude. In my view, it is not necessary for this Court to delve into the said aspect at this stage having regard to the nature of directions that this Court proposes to issue in the instant Petition. For the reasons aforestated, the impugned orders are quashed and set aside and the Election Petitions are relegated back to the learned Civil Judge, S.D., Sangli for a de novo consideration in terms of the observations made hereinabove. The learned Judge shall record a specific finding in regard to section 10A of the said Act on remand.

11. Since this Court whilst considering the final order passed in the

Election petition has set aside the said order and since all interim orders can be said to have merged into the said final order, it would now be just and proper to permit the Petitioner to file his written statement. The same to be done within two weeks of the parties appearing before the Trial Court. The parties to appear before the Trial Court on 14th February 2017. The learned Civil Judge, Senior Division, Sangli thereafter may decide the Election Petition latest by 30th April 2017. Needless to state that the contentions of the parties are kept open for being urged before the Trial Court. The Election Petitions would be tried on their own merits and in accordance with law. Petitions are allowed to the aforesaid extent. Rule is accordingly made absolute. Parties to bear their respective costs of the Petitions.

[R.M.SAVANT, J]