

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

WRIT PETITION NO. 3922 OF 2017

Prakash Panjumaal Kukreja ... Petitioner

V/s.

Ulhasnagar Municipal Corporation & ors. ... Respondents

Mr. R.S. Apte, Senior Counsel i/b. Mr. J.S. Chandnani for the petitioner.

Mr. S.M. Kamble for the Corporation.

Ms. R.A. Salunkhe, AGP for the State.

Mr. N.R. Bubna for Intervenor.

**CORAM : NARESH H. PATIL AND
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

4th April, 2017.

P.C.

The petitioner who submitted a nomination paper for getting nominated as member of Ulhasnagar Municipal Corporation prays for directions to the respondents, to consider application of the petitioner as Nominated Councillor, if found eligible from the category of 'Advocate' or 'Retired Municipal Officer' as per clause (e) and (f) of Rule 4 of the Maharashtra Municipal Corporation (Qualifications and Appointment of

Nominated Councilors Rules 2012) (Rules) (hereinafter referred to as Rules of 2012, for short). The petitioner further prays for direction to respondents 1 and 2 directing them to ensure that all the five Nominated Councillors from 5 different categories are appointed in accordance with the rules and the qualifications set out in clauses (a) to (g) of Rule 4 of the Rules of 2012. The petitioner prays for writ of prohibition. Learned Counsel appearing for petitioner referred to the provisions of Section 5 (1) (b) of the Maharashtra Municipal Corporation Act which reads as under:-

“5(1)(b) such number of nominated councillors not exceeding five, having special knowledge or experience in Municipal Administration to be nominated by the Corporation in such manner as may be prescribed.”

Learned Counsel submits that according to Rules 4(a) to (g) of Rules of 2012, a recognized registered medical practitioner, retired Professor, lecturer, retired educationist, Chartered Accountant, Cost Accountant, retired engineering degree holder and the person in the field of law and others are expected to be nominated to the Corporation. There is obvious purpose for nominating the persons from specific class of Society. Learned Counsel submits that past experience shows that Corporation has violated these provisions and nominations were not made in accordance with law. Learned Counsel, therefore, submits that

necessary directions be given in this regard.

2 Learned Counsel appearing for respondent submits that the process for nominating the persons is already set in motion. Tomorrow first meeting of the elected representatives of the Corporation is scheduled to be held in which names of nominated persons would be finalised. Learned Counsel submits that in case the petitioner is aggrieved after persons are nominated, then there is a alternate statutory remedy available to the petitioner under Section 16 of the MMC Act. Reliance is placed on the Full Bench judgment of this Court (Coram: S.C. Dharmadhikari, K.R. Shriram & B.P. Colabawalla, JJ) ***in Writ Petition No. 11278 of 2012 dated March 11, 2016*** in the case of ***Shri Anil (Vidyardhi) Chanderlal Ailani v/s. State of Maharashtra & ors.***

3. Learned Counsel appearing for petitioner referred to judgment passed by Division Bench of this Court (Coram: Mohit S. Shah, CJ & S.B.Deshmukh, J) in the case of ***Pratima Prabhakar Rao Borikar v/s. State of Maharashtra & ors.*** on 26th March, 2013 and judgment of Division Bench of this Court (Coram: A.S. Oka, & A.A. Sayed, JJ) in the case of ***Sharanbasappa Rachappa Khambad vs. State of Maharashtra & ors. in Writ Petition No. 8962/2013.***

4. We have perused the record placed before us and statutory provisions and the rules. It seems around 19 persons filed their papers for getting them nominated. The provisions of law stipulate the categories of persons to be nominated. Therefore, we need not do anything more on that issue. It is for the elected members and the Commissioner to take appropriate decision.

5. Learned Counsel for the petitioner raised issue that it is past experience that ineligible persons were nominated under this category, contrary to the express provisions of law. Merely on the said statement and apprehension we would not interfere into the on-going election process and stall the same. The petitioner may have substance in his apprehension, that cannot be a foundation for interfering into the process.

6. Full Bench of this Court was constituted to answer following question:-

“ Whether a remedy of election dispute under Section 16 of the said Act or Section 21 of the said Act of 1965 is available to a voter who is entitled to vote in General Ward Elections for challenging the election/nomination of a nominated Councillor?”

7. The Full Bench by judgment dated March 11, 2016 (cited supra) answered the above question in paragraph-96 as under:

“96. In the light of the above discussion, we answer the question referred in the following words:-

(i) The remedy of election dispute under section 16 of the MMC Act or section 21 of the Municipal Councils Act is available to a voter entitled to vote in general Ward election to dispute or question the nomination of nominated Councillor.

(ii) We clarify that the availability of this remedy to a candidate at the said election would depend upon the language of the two provisions and the difference therein as outlined by us in the forgoing paragraphs of this judgment in detail.”

8. The petitioners have effective statutory remedy after the persons are nominated. All issues on merits are kept open. In the facts, no interference is warranted. Writ Petition is accordingly rejected.

(DR. SHALINI PHANSALKAR-JOSHI, J)

(NARESH H. PATIL, J.)