

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

MCA (CAR) NO. 828 OF 2017 AND
WRIT PETITION NO. 3940 OF 2017

(Dinesh Panjabrao Gawande & Anr. vs. The State of Maharashtra thr. Ministry of Urban
Department & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
ROHIT B. DEO, JJ.
AUGUST 04, 2017.**

Heard Shri M.V. Samarth, learned counsel for the petitioners, Shri N.H. Joshi, learned AGP for respondent Nos. 1, 2 & 4, Shri Anand Parchure with Shri Deshpande, learned counsel for respondent Nos. 3 & 7 and Shri M.I. Dhattrak, learned counsel for respondent No. 5.

2. As the order dictated on 01.08.2017 is already cancelled and wiped out, Misc. Civil application is disposed of as infructuous. No costs.

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Heard finally with the consent of respective parties.

2. The submission is, in view of provisions of Rule 3 and Rule 5 of the Maharashtra Municipal Councils and Nagar Panchayats (Qualifications and Procedure for

Appointment of Nominated Councillors) Rules, 2010 (hereinafter referred to as the 2010 Rules), the petitioners who represent Congress Municipal Party in Municipal Council, Nagbhid, are entitled to have one nominated member and the other Municipal Party viz., Bhartiya Janta Party (BJP) can have only one nominated member. Respondent No. 7 – President of Municipal Council has arbitrarily nominated Respondent Nos. 5 & 6 of BJP as nominated members of Municipal Council.

3. The learned AGP does not dispute the mathematical exercise.

4. Shri Dhatrak, learned counsel states that respondent No. 5 is the first nominated member on behalf of BJP Municipal Party and hence his name needs to be retained.

5. Nobody appears for respondent No. 6, the other member nominated by BJP Municipal Party.

6. Shri Deshpande, learned counsel appearing for respondent No. 7 – President, submits that instructions from respondent No. 7 are still awaited.

7. A perusal of provisions of Rule 3 & Rule 5 of 2010 Rules clearly show that fraction, if it is one half (0.5) or above, needs to be rounded off to full. If it is less, it needs to be ignored. The total strength of elected

Councillors in Municipal Council, Nagbhid is 18. 10 out of it belong to BJP while 8 belong to Congress Municipal Party. Thus, the proportion of representation insofar as determination of number of nominated Councillors is concerned, it works out to 1.11 : 0.88. Thus, the portion 0.11 in above equation needs to be ignored. As Congress Municipal Party is entitled to nominate 0.88 candidate, rounding off, it becomes one. Thus, Congress as also BJP, both are entitled to have one nominated Councillor.

8. In this situation, we retain Respondent No. 5 as nominated Councillor of BJP Municipal Party. Respondent No. 3 shall accept the nomination made by Congress Municipal Party and accept its nominee as its nominated Councillor on Municipal Council, Nagbhid. This exercise shall be completed within next three weeks.

9. Writ Petition is thus allowed and disposed of. No order as to costs.

JUDGE

JUDGE

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