

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11691 OF 2018

01 Rohidas s/o Shankarrao Gadekar,
age: 63 years, Occ: Agriculture,
President, Municipal Council,
Shirur (K), R/o Shirur (K),
Taluka Shirur (K), Dist.Beed.

02 Pathan Ruqsana w/o Isaq Khan
Pathan,
age: 55 years, Occ: Agriculture,
Vice-President, Municipal Council,
Shirur (K), R/o Shirur (K),
Taluka Shirur (K), Dist. Beed.

Petitioners

Versus

01 The State of Maharashtra,
through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

02 The State of Maharashtra,
through the Division Commissioner,
Aurangabad Division, Aurangabad.

03 The State of Maharashtra,
through the Collector, Beed,
District Beed.

04 The State of Maharashtra,
through the Sub Divisional
Officer, Patoda, District Beed.

Respondents

AND

01 Arun Laxman Bhalerao,
age: 35 years, Occ: Agril.,
R/o Ward No.11,
Shirur Kasar, Tal.Shirur Kasar,
District Beed.

02 Mira Dattatraya Gadekar,
age: 47 years, Occ: Agri.,
R/o Ward No.3,
Shirur Kasar, Tq.Shirur Kasar,
District Beed.

Interveners

Mr.G.K.Naik Thigale, advocate for petitioners.
Mr.A.B.Girase, Government Pleader for Respondents.
Mr.Suhas R. Shirsat, advocate for intervenor.

**CORAM : R.M.BORDE &
MANGESH S. PATIL, JJ.
DATE : 24th October, 2018**

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 Petitioner no.1 is the elected President whereas, petitioner no.2 is elected Vice President of Municipal Council, Shirur (Kasar). General elections to the Municipal Council were held in the year 2015 and on completion of first two and half years' term of the elected President and Vice President, petitioners were elected as President and Vice President, respectively, during second term on 25.05.2018.

3 It is pointed that one councilor by name Bhimrao Deorao Gaikwad has suffered disqualification within the framework of Sections 16 and 44 of the Maharashtra Municipal Council, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as 'the Act of 1965') on the ground that a

fourth child was born to the couple after the cut off date i.e. 12.09.2001. The said councilor challenged the order holding him disqualified by presenting an appeal to the Hon'ble Minister of State. Since, interim relief was not granted and the elections to the posts of President and Vice President were round the corner, said councilor by name Bhimrao Gaikwad approached this Court by presenting Writ Petition No.4924 of 2018 and Civil Application No.6313 of 2018 came to be presented seeking liberty to exercise right to vote at the meeting convened on 25.05.2018 for electing President and Vice President of the Municipal Council. The application tendered by councilor Bhimrao Gaikwad was considered by the learned Vacation Judge and he was allowed to cast vote in the election for the posts of President and Vice President, scheduled to be held on 25.05.2018. It is clarified in the order passed by the learned Vacation Judge that the election result shall be subject to the final outcome of the proceedings pending in the form of appeal before the learned Minister.

4 The elections to the post of Vice President and President, as scheduled on 25.05.2018, were held and petitioners are elected as President and Vice President, respectively. On perusal of proceedings of the meeting, it is noticed that each of the rival contesting candidates for the Posts of President and Vice President received 8 votes, whereas, present petitioners received 9 votes in their favour and as such were declared elected. The votes were cast by show of hands at the meeting. One councilor – Bhimrao Gaikwad, who suffered disqualification and was permitted to cast vote, has voted in favour of petitioners.

5 The appeal presented by Bhimrao Gaikwad was heard and disposed of by the Hon'ble Minister who dismissed the same by an order dated 29.08.2018. Consequent upon dismissal of the appeal, the Collector, Beed, on misinterpretation of the interim order passed by the learned Vacation Judge on 25.05.2018, proceeded to issue notice convening Special Meeting of the elected councilors of the Municipal Council, Shirur (Kasar) for electing President and Vice President. The meeting is scheduled to be held on 30.10.2018.

6 The petitioners object to the notice of the meeting convened by the Collector for the purpose of holding elections to the post of President and Vice President. It is the contention of the petitioners that the term of office of the President, in view of Section 51 of the Act of 1965 (prior to amendment), is two and half years. The term of the elected President and Vice President commenced from the date of the election i.e. 25.05.2018 and they are entitled to continue for a period of two and half years. Section 51 of the Act of 1965 (prior to amendment) provides that:

51 Election of President :

(1) Subject to the provisions of section 51-1A every Council shall have a President who shall be elected by the elected Councillors from amongst themselves.

(2) The Collector shall, within twenty-five days from the date on which the names of the Councillors elected to a Council are published or, as the case may be, first published under sub-section (1) of section 19, in the Official Gazette , convene a special meeting of the

Councillors for election of a President :

Provided that, a meeting under this section shall not be held before the expiry of the term of office of the outgoing Councillors.

(3) The meeting called under sub-section (2) shall be presided over by the Collector or such officer as the Collector may by order in writing appoint in this behalf. The Collector or such officer shall, when presiding over such meeting, have the same powers as the President of a Council when presiding over a meeting of the Council has, but shall not have the right to vote : Provided that, notwithstanding anything contained in this Act for regulating the procedure at meetings (including the quorum required thereat), the Collector or the officer presiding over such meeting may, for reasons which in his opinion are sufficient, refuse to adjourn such meeting.

(4) Any Councillor aggrieved by any decision of the Collector or such officer, accepting or rejecting any nomination paper, may, within forty-eight hours from intimation of such decision, present an appeal to the Regional Director of Municipal Administration concerned and simultaneously give notice of such appeal to the Collector or such officer. Such appeal shall be disposed of by the Regional Director, as expeditiously as possible, after giving a reasonable opportunity of being heard to the parties concerned. The decision of the Regional Director on such appeal, and subject only to such decision (if any), the decision of the Collector or such officer, as the case may be, accepting or rejecting the nomination of candidate shall be final and conclusive and shall not be called in question in any Court.

(5) If, in the election of the President there is an equality of votes, the result of the election shall be decided by lots to be drawn in the presence of the Collector or the officer presiding in such manner as he may determine.

(6) Any dispute regarding election of the President shall be referred to the State Government whose decision in that behalf shall be final.

(7) After election of the President, the Council shall continue its meeting for the purpose of [electing Vice-President].

(9) If, there is a vacancy in the office of the President due to any reason whatsoever, then for subsequent election of a President, the same procedure as laid down in sub-sections (2) to (6) (both inclusive) shall apply except that the special meeting shall be called by the Collector within twenty-five days from the date on which the vacancy occurs.]

[(10) The subsequent election to the post of the President after expiry of the first term of the two and a half years of the President elected under the provisions of sub-section (2), shall be held within a period of eight days prior to the expiry of the said term of the earlier President :

Provided that, the newly elected President shall take charge on the last day of the term of the outgoing President or next day thereafter.]

7 Section 51 (prior to amendment) provides that subject to the provisions of Section 51-1A every Council shall have a

President who shall be elected by the elected Councilors from amongst themselves. Sub-section (3) of Section 51 provides that the meeting called under sub-section (2) shall be presided over by the Collector or such officer as the Collector may by order in writing appoint in this behalf. The Collector or such officer shall, when presiding over such meeting, have the same powers as the President of a Council when presiding over a meeting of the Council has, but shall not have the right to vote. Sub-sections (9) and (10) of Section 51 are material in the instant matter. Sub-section (9) lays down that if there is a vacancy in the office of the President due to any reason whatsoever, then for subsequent election of a President, the same procedure as laid down in sub-sections (2) to (6) (both inclusive) shall apply.

8 In the instant matter, it cannot be construed that any vacancy has arisen for the post of President or Vice President. As has been recorded above, tenure of the President and Vice President is two and half years which commenced from 25.05.2018 and tenure of the office has not yet come to an end. Sub-section (10) provides that The subsequent election to the post of the President after expiry of the first term of the two and a half years of the President elected under the provisions of sub-section (2), shall be held within a period of eight days prior to the expiry of the said term of the earlier President :

(emphasis supplied)

9 What is contemplated by sub-section (10) of Section 51 is that the subsequent election to the post of President shall be held after expiry of first term of two and half years of the erstwhile

President. Thus, Section 51 protects term of the President elected on the first and second occasions during term of the Municipal Council and each of the President holding office, during first and second term, shall be entitled to be in the office for a period of two and half years. There is no controversy that the term of office of the President i.e. petitioner no.1 and Vice President i.e. petitioner no.2, which is for a period of two and half years, has not come to an end and merely few months have passed after the election of the President and Vice President. It was, thus, impermissible for the Collector to convene a Special Meeting for electing the President and Vice President, since office of the President and Vice President has not yet fallen vacant and there is no vacancy in the office of President and Vice President within meaning of sub-section (9) of Section 51 of the Act of 1965.

10 Referring to the interim order passed by the learned Vacation Judge on 25.05.2018, it is contended that since result of the election is subject to final outcome of the proceedings pending in the form of an appeal before the Hon'ble Minister and since appeal presented by one of the councilors – Bhimrao Gaikwad has been dismissed, there is need to convene Special Meeting for electing the President and Vice President.

11 Firstly, as a result of the rider provided in the interim order that the result of election of the President and Vice President shall be subject to the final outcome of the appeal pending before the Hon'ble Minister, the elections of the President and Vice President cannot be said to have been vitiated. What would be the effect of disqualification of Bhimrao Gaikwad has to be judicially

scrutinised. It is evident on perusal of the proceedings of the meeting that petitioner no.1, who is elected as President and petitioner no.2, who is elected as Vice President have secured 9 votes each, whereas, the defeated candidates have secured 8 votes each. Assuming for a moment that by virtue of dismissal of appeal presented by Bhimrao Gaikwad, the councilor who suffered disqualification, had no entitlement to cast vote and even if his vote is kept out of consideration, the contesting parties would be relegated to the position that each of the contesting candidates have bagged 8 votes each. In such a situation, the consequences, as provided under sub-section (5) of Section 51 of the Act of 1965 shall ensue.

12 It is vehemently contended on behalf of the respondents that the proceedings of the meeting convened by the Collector for electing President and Vice President of the Municipal Council on 25.05.2018 are concluded and by virtue of the rider provided in the interim order passed by the learned Vacation Judge on 25.05.2018, the final outcome of the proceedings of the meeting would depend upon the decision in the appeal presented by Bhimrao Gaikwad to the Hon'ble Minister. The net result of dismissal of appeal presented by Bhimrao Gaikwad, according to the State, is that the entire proceedings of the Special Meeting convened for the purposes of holding elections to the post of President and Vice President, are vitiated and there is need to conduct fresh meeting. The argument advanced on behalf of the State is devoid of substance.

13 For the reasons recorded in the above referred paragraphs and those are: firstly, there is no vacancy in the office of President and Vice President which necessitates calling upon a special meeting and even otherwise, if the vote cast by Bhimrao Gaikwad is kept out of consideration, the parties would be relegated to a situation, which is required to be dealt with in accordance with sub-section (5) of Section 51 of the Act of 1965.

14 Another development, which has taken place during intervening period, also deserves to be taken note of. The decision rendered by Hon'ble Minister, in the appeal, confirming disqualification of elected councilor Bhimrao Gaikwad, is subjected to challenge in Writ Petition No.4924 of 2018 and the said writ petition is stated to be pending for consideration before the learned Single Judge. On perusal of the order passed by the learned Single Judge, it is evident that the said writ petition is set on for final disposal on 25.10.2018 i.e. tomorrow. There is no finality attached to the decision rendered by the Collector, which has been confirmed by the Hon'ble Minister holding councilor – Bhimrao Gaikwad as disqualified to continue to hold the office of Member of the Municipal Council. If the Collector is permitted to convene Special Meeting, then with regard to the petition presented by Bhimrao Gaikwad, it would set at naught the decision of the learned Single Judge in the event of allowing of the writ petition. Even otherwise, in the event of dismissal of the writ petition also, the parties would be relegated to the position as stated above, which can be dealt with under sub-section (5) of Section 51 of the Act of 1965.

15 For the reasons recorded above, writ petition deserves to be allowed and same is accordingly allowed. The notice of Special Meeting issued by the Collector for the purposes of holding elections to the post of President and Vice President of Municipal Council, Shirur (Kasar), is quashed and set aside.

Rule is made absolute accordingly. There shall be no order as to costs.

MANGESH S. PATIL
JUDGE

R.M.BORDE
JUDGE

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