

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5291 OF 2017

Sameer Janardan Shedge,]
Age 45 years,]
Occ. Agriculture and Business,]
R/of Moreali Roha, Taluka Roha,]
District Raigad.] Petitioner

Versus

1. Santosh Shankar Potphode]
Age 52 years,]
Occ. Agriculture and Business,]
R/of Ashtamikasar Ali, Roha,]
Taluka Roha, District Raigad.]
2. Sandeep Anil Tatkare,]
Age 35 years,]
Occ. Agriculture and Business,]
R/of At and Post Varase,]
Tal. Roha, Dist. Raigad.]
3. Lalatprasad Buddhiprasad Kushwah,]
Age 55 years, Occ. Business,]
R/of Roha Bazarpeth,]
Opp. Roha Police Chowki,]
Tal. Roha, Dist. Raigad.]
4. Safdar Ayub Gajage,]
Age 37 years, Occ. Business,]
R/of Khalacha Mohalla, Roha,]
Tal. Roha, Dist. Raigad.]
5. Motilal Hastimal Jain,]
Age 50 years, Occ. Business,]

R/of Roha Bazarpeth, Roha,	]	
Tal. Roha, Dist. Raigad.	]	
6. Vinesh Balaji Shinde,	]	
Age 40 years, Occ. Business,	]	
R/of Baudhwada, Dhavir Road, Roha,	]	
Tal. Roha, Dist. Raigad.	]	 Respondents

Mr. Girish Godbole, Senior Counsel, i/by Mr. Atharva A. Dandekar, for the Petitioner.

Mr. Pradeep M. Patil, a/w. Mr. Sachin D. Bagul, for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4TH APRIL, 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith, Heard finally, at the stage of admission itself, by consent of Mr. Godbole, learned Senior Counsel for the Petitioner, and Mr. Patil, learned counsel for Respondent No.1.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 25th April 2017 passed by the District Judge-1, Mangaon-Raigad, below the application at “Exhibit-74” filed in Election Petition No.3 of 2016.

3. The application at “Exhibit-74” was filed by the present Petitioner, who is Opponent No.1 before the Trial Court, for dismissal of the Election Petition on the ground that, it was premature. The Trial Court has, after considering the submissions advanced at bar, allowed the said application and dismissed the Election Petition on the sole ground of it being filed at the premature stage and hence, the instant Writ Petition.

4. The undisputed facts of the case are to the effect that, the Petitioner herein has filed Election Petition, under Section 21 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, challenging the election of Respondent No.1 as ‘President’ of the Roha Municipal Council during the ‘Election’ of 2016. The election results were declared on 28th November 2016. The relevant ‘Notification’ of the declaration of the election results was signed on 8th December 2016 and it was published in the Official Gazette on the next date i.e. on 9th December 2016. However, the Election Petition came to be filed on 8th December 2016 itself.

5. According to Section 21(1) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, (*for short, “the Act”*), any dispute in respect of the Election and/or Nomination of Councillor has to be filed within ten days from the date of publication of the name of the Councillor in the Official Gazette, under Section 19 or 20,

as the case may be, of the said Act. The relevant provisions of Section 21(1) of the said Act read as under :-

“Section 21(1) - No election, co-option 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 Section 19 or 20, as the case may be.”

6. Therefore, the necessary requisite for starting the period of 10 days for the purpose of counting the limitation for filing such Election Petition, is the date on which the name of the elected Councillor is published in the Official Gazette. The significance of the provision, that the name of the elected Councillor should be published in the Official Gazette, is considered by this Court in the case of *Sabbirbhai Fakroddin Vs. Abdul Latif Din Mohammad and Ors., 1993 Mh.L.J. 1708*. In that Petition also, the controversy raised was similar to the one raised in this Petition. The Petitioner was elected as 'Councillor' to the Akola Municipal Council and his name was published in the Official Gazette on 5th December 1991. However, on 4th December 1991 itself, the Election Petition was filed, under Section 21 of the Maharashtra Municipalities Act, challenging his election. Naturally, the preliminary objection was, raised contending that, the Election Petition filed on 4th December, 1991 was premature, as the names of the elected Councillors were published

in the Official Gazette on 5th December 1991. The Trial Court, in the said Election Petition, had held that, it was not premature, though it was presented on 4th December 1991, i.e. prior to publication of the names of the elected Councillors in the Official Gazette, as the limitation provided under Section 21 of the said Act was only for the purpose of showing the outer limit, within which the Petition challenging the election can be filed. However, when this matter reached upto this Court, then the learned Single Judge of this Court [*Coram : V.S. Sirpurkar, J.*], after considering the provisions of Section 21(1) of the Maharashtra Municipalities Act, was pleased to hold as under :-

“6. The language of the section is extremely clear and admits of no doubt. In fact, the words in the last clause of the section beginning from the words within ten days from the date of publication of the names of the councillors in the official gazette clearly bring out a position that an election petition shall be filed only within a time span of two points – the first point starting on the day on which the names of the elected candidates have been published in the official gazette and the second point ending after the lapse of ten days therefrom. In fact, the language of the whole section is in the negative terms suggesting that an election cannot be challenged except by a petition which is to be presented to the District Court within ten days from the date of publication of the names of the councillors. When the law specifically directs the presentation of the petition within ten days from the date of publication, it presupposes that the petition could not be presented earlier. Section 21 provides for the

presentation of an election petition and relates to the election law and will have, therefore, to be strictly construed. The language also suggests the strict construction of the section, firstly because of its negative character and secondly because of its clarity. The word 'within' has been defined in the Chambers Twentieth Century Dictionary as under :

*“within : in or to the inner part of (arch.) :
inside in the limits of : not going beyond : on
the inner side of*”

The Dictionary meaning 'in the limits of' would support the view expressed by Shri Lodha, because the word 'within' is thereafter followed by the words 'ten days from the date of publication' which clearly suggests the creation of two points of time during which the election petition has to be filed. Election Petition, which is filed even prior to the publication of the names would, therefore, be rendered premature.”

7. While arriving at this conclusion, the learned Single Judge of this Court has placed reliance on the Judgment of the Division Bench of this Court in the case of *Narayan Bansi Vs. Ratanlal Jankilal and Ors., 1960 Nagpur Law Journal 38*, wherein also Section 20-A of the C.P. and Berar Municipalities Act, which is containing the provision *para materia* to the present provision, was for consideration. As per the said Section 20-A(2) of the Act, “*no Election Petition shall be admitted, unless it is presented within fourteen days from the date on which the result of such election was notified*”. The Election Petition was filed, however, before publication

of the results of the Election was made in the Official Gazette by the Deputy Commissioner and hence, the question before the Division Bench was, *'as to whether an Election Petition filed prior to the publication of the 'Notification' of the result of the 'Election' was premature or not?'*

8. The argument advanced was that, Section 20-A of the Act only fixed the posterior limit and did not prohibit the institution of an Election Petition prior to the date of 'Notification' of the result of the 'Election' and, therefore, an Election Petition can be filed at any time, after the result of the 'Election' has been declared by the Supervising Officer, but not later than the limit prescribed in the Section i.e. from the date of 'Notification'. In that case, the limit was of fourteen days.

9. After taking stock of various sections under the said Act, it was categorically held that, if the 'Election Petition' is allowed to be filed even prior to the date of 'Notification' of the result of the 'Election', then, a confusion was likely to be caused, which has to be avoided in all cases. Hence, ultimately, in paragraph No.22 of the said Judgment, it was observed as under :-

“22. In our Judgment, therefore, the right conferred under Section 20-A of the Act to challenge an election arises only on the result of the election being notified. The view taken by us would ensure smooth progress of election proceedings and their completion within the time schedule, as provided in the Act and the Rules framed

thereunder.”

10. After taking into consideration the decision of the Division Bench of this Court in the case of *Narayan Bansi (Supra)*, the learned Single Judge of this Court has then turned to the provisions of the Maharashtra Municipalities Act, 1965, and after taking a short resume of those provisions, held that, as the Councillor enters his office only after the publication of his name in the Official Gazette, till such an eventuality takes place, it is not possible for anybody to challenge his election by way of an Election Petition. It was categorically held as follows :-

“10. As has been found by the Division Bench in Narayan Bansi's case, under the provisions of the Maharashtra Municipalities Act also, the election proceedings are complete only after the names are published in the Official Gazette and an election petition could be allowed only after the election proceedings are complete. The principles enunciated in the decision of Narayan Bansi, therefore, apply with full force to the present situation, though the C.P. and Berar Municipalities Act is no more on the statute-book and has been replaced by the Maharashtra Municipalities Act, 1965. In fact, the situation has been clarified more by the amendment of Section 19 by the Maharashtra Act No.10 of 1967 vide Section 3-A, wherein the specific provision is made that the Council shall be deemed to be duly constituted only after the results are published in the Official Gazette. Such was not the position in the C.P. and Berar Municipalities Act and the clarification added by the Amending Act of 1967 has dispelled the whole

controversy and set it at naught.”

11. Thus, there is authoritative pronouncement of the learned Single Judge of this Court, which is made relying on the decision of the Division Bench of this Court in the case of *Narayan Bansi (Supra)*, that the Election Petition has to be filed within a period of ten days from the date of publication of the result of the 'Election' in the Official Gazette. The relevant date for starting the limitation is *'the date of publication of the names of the elected Councillors in the Official Gazette'*.

12. Hence, in the present case, the period of ten days cannot start counting, unless the names of the elected Councillors were published in the Official Gazette on 9th December 2016. As the Election Petition was filed on a day before i.e. 8th December 2016, it is manifestly premature and, therefore, the Trial Court has rightly dismissed the Election Petition.

13. Learned counsel for the Petitioner has, however, tried to distinguish these two Judgments on the count that, the publication of the names of the elected Councillors in the Official Gazette is merely a ministerial act and it cannot override the provisions of the Maharashtra Municipalities Act. It is urged that, as the Petitioner came to know about the election of Respondent No.1, on 8th December 2016 itself, when the

Gazette Notification was signed, it has to be held that, from that very day itself, the cause of action arose. According to him, the Election Commissioner may declare the results of the 'Election' and names of the elected Councillors in the Official Gazette as per his own convenience, but that cannot stop the further consequences.

14. However, in my considered opinion, this argument cannot be accepted for then simple reason that, when Section 21(1) of the Maharashtra Municipalities Act clearly provides for the cause of action for filing of Election Petition as that of the publication of names of the elected Councillors in the Official Gazette, the Court has to give meaning to these plain words and cannot assume that the Legislature in its wisdom, did not anticipate the eventuality pointed out by learned counsel for the Petitioner. If the Legislature categorically says that the period of ten days is to be from the date of publication of the names of the elected Councillors in the Official Gazette, then, it goes without further interpretation or elaboration that the starting period of ten days is only when the names of the elected Councillors are published in the Official Gazette and it cannot be from the date when the 'Notification' was signed or when the Petitioner came to know the names of the elected Councillors. Thus, as the Legislature has made its intention very clear and this Court has in its two earlier decision given effect to interpretation thereof, those words by in its true spirit, there is

absolutely no scope for this Court to take any other view of the matter.

15. The Trial Court has, thus, rightly considered the relevant provisions of the Maharashtra Municipalities Act, 1965, and dismissed the Election Petition, finding it to be premature. In the writ jurisdiction, therefore, no interference is warranted in the impugned order passed by the Trial Court. The Writ Petition, therefore, stands dismissed.

16. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]