

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

WRIT PETITION NO. 4994/2018.

State Election Commission and others.

-VERSUS-

The State of Maharashtra and others.

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
& M. G. GIRATKAR, JJ.

DATE : OCTOBER 03, 2018.

Heard Shri J.B. Kasat, learned counsel for petitioners and Shri S.V. Manohar, learned Senior Counsel with Ms. N.P. Mehta, learned A.G.P. for respondent nos. 1 to 3.

2. It appears that when the Writ Petition was presented, Butibori Municipal Council was shown as respondent no.4, while Zilla Parishad, Nagpur was party respondent no.5. These respondents have been deleted on 04.09.2018, in terms of orders of this Court dated 27.08.2018.

3. Grievance of learned counsel on behalf of

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State Election Commission is whenever steps are initiated in discharge of its constitutional obligations by the State Election Commission, well in advance to see that new elected body becomes available for taking over the affairs of any local body, soon after its regular tenure expires, its boundaries are altered. As the boundaries are altered, voters list and other exercise consequential thereto completed by the State Election Commission becomes redundant and hence, entire election process is required to be re-scheduled. Request is, therefore, to restrain the respondents from undertaking such exercise within a period of 6 months, when the State Election Commission starts moving.

4. Learned counsel further submits that such an exercise, if necessary, must be completed before 6 months of expiry of the tenure of the elected body in office. He has placed reliance upon observations contained in paragraph nos. 22, 27 and 28 of the judgment of Hon'ble Supreme Court reported at (2006) 8 SCC 352 (Kishansingh Tomar .vrs. Municipal Corporation of the City of Ahmedabad and others and 2016 SCC Online Bom 9270

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(Grampanchayat Khargar .vrs. State of Maharashtra). He relies upon findings of Division Bench of this Court in paragraph nos. 29, 30 and 32 of the said judgment.

5. Learned Senior Counsel on the other hand submits that respondent nos. 1 to 3 have acted as per the statutory mandate in the matter. He explains that except for election of Zilla Parishad, Nagpur no other instance has been pointed out. He submits that in so far as the elections of Nagpur Zilla Parishad are concerned, separation of area from said Zilla Parishad and formation of Wanadongri and Parshioni Village Panchayats, was subject matter of Writ Petition No. 6672/2016, which has been decided by this Court on 12.01.2017, the State Election Commission was party respondent no.3, therein. He submits that in that judgment this Court has found that the State Government possessed all necessary legislative competence to issue a notification and no fundamental right of petitioner was violated.

6. Our attention is also drawn to observations on Article 243 U [3][a] contained in paragraph nos. 17 and 18 of that judgment. Submission is, statutory

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developments in the field could not have been stalled by respondents.

7. This judgment in Writ Petition No. 6672/2016 was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court on 23.02.2017, ordered status quo, which continued till 06.02.2018. After the same ceased to operate, immediately State Election Commission has issued election program. He also points out that after this date, on 14.03.2018, the State Government issued draft notification for formation of Butibori Municipal Council and the State Election Commission issued election program for conducting elections of Zilla Parishad, including Butibori as its part on 15.03.2018.

8. He also points out that the said election program was also challenged in Writ Petition Nos. 6676/2016, 2433/2018 and 5333/2018 along with other challenges. Those petitions have been disposed of on 17.08.2018.

9. We find that in later three petitions disposed of on 27.08.2018, question was – Whether reservation in excess of 50% could have been prescribed and Whether amendment to Section 12[2]

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[c] of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 to that effect was valid ?

10. In view of the statement made by the State Government, that it was taking necessary corrective measures, with directions to complete that action within three months, the challenges were disposed of. State Election Commission was party even to these three writ petitions.

11. After this judgment/order, present challenge has been taken up for consideration. It appears that this petition was filed on 12.06.2018. This Court issued notices on 27.08.2018.

12. Thus, only because of experience in the matter of Nagpur Zilla Parishad, present grievance appears to have been made. It is no doubt true that the judgment of Hon'ble Supreme Court in case of Kishansingh Tomar (supra), recognizes constitutional obligation and independent status on State Election Commission and also permits it to approach this Court, when it finds difficult to discharge that obligation.

13. Later judgment of Division Bench of this Court in case of Grampanchayat, Khargar (supra), again finds substance in similar contentions then

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raised in relation to Panvel Municipal Council.

14. However, in the light of orders/judgment delivered in the matter of Zilla Parishad, Nagpur, we at least at this stage are not in a position to find any malafides in the matter. The question – Whether the malafides alone are decisive or relevant when the petitioner Election Commission cannot complete necessary exercise within stipulated time, is kept open. After the orders of this Court, the petitioner State Election Commission can proceed further with the elections of Butibori Municipal Council. Because of challenge to the percentage of reservation, the election of Nagpur, Akola and Washim Zilla Parishad, cannot be conducted since on 27.08.2018, while giving State Government time of three months, this Court has ordered status quo.

15. We in this situation, grant petitioners leave to approach again, if any such cause of action arises.

16. Writ Petition is thus, disposed of. No costs.

JUDGE

JUDGE

Rgd.