

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

7 WRIT PETITION NO.1525 OF 2018

SANTRAM PRABHAKAR MUNDHE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. J. M. Murkute, Advocate for the Petitioner.

Mr. S. K. Tambe, AGP for Respondents-State.

Dr. R. R. Deshpande and Mrs. Priyanka Deshpande
with Mr. Milind Patil, Advocate for Respondent
No.3.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 6th MARCH, 2019.

PER COURT:-

1. The petitioner assails Section 17(1) of the Maharashtra Public Universities (Procedure for Conduct of Elections to Various Authorities and Bodies of University) Uniform Statute, 2017 (hereinafter referred to as 'Statute 2017' for the sake of brevity).

2. According to the learned counsel the provision of recounting has not been provided under Section 17(1) of the Statute 2017. The same is against the principles of natural justice. The petitioner and respondent no.3 secured equal votes. The recounting ought to have been made permissible.

Section 17(1) of the Statute 2017 violates the right of the petitioner and as such the said section is null and void. According to the learned counsel recounting of votes is the fundamental right and the same is violated by Section 17(1) of Statute 2017. According to the learned counsel seven candidates had contested election for Senate of respondent no.2-University. The petitioner and respondent no.3 secured equal votes that is 793. The Election Officer has not properly counted the second and third preference votes. The learned counsel submits that even under the representation of Peoples Act, 1951, the provision of recount of votes finds place. The bar encrafted under Section 17(1) of Statute 2017 is erroneous. The learned counsel relies on the judgment of the Apex Court in a case of **Arikala Narasa Reddy Vs. Venkataram Reddy Reddygari** reported in **AIR 2014 SCC 1290** and submits that the Court has to be more careful when the margin between contesting candidates is very narrow. The learned counsel submits that the Election Officer did not count all preferential votes and thereby arrived at erroneous conclusion in declaring respondent no.3 elected.

3. We have also heard the learned counsel for respondents.

4. The statutory provision can be challenged as ultra virus only on the ground of lack of

legislative competence and/or the same being arbitrary and violative of Article 14 of the Constitution of India. No arguments are advanced with regard to the legislative competence of the State to enact the statute.

5. Reference can be had to Sub-section 10 of Section 72, sub-section 13 of Section 71 and Section 67 of the Maharashtra Public Universities Act, 2016. The Statute 2017 has been enacted to regulate the procedure for conduct of election to various Authorities and Bodies of the Universities. Section 71 deals with the statute and their subjects. It provides that subject to the provisions of this Act, the statute may provide for all or any of the following matters. Sub-section 13 provides for the procedure for conduct of election for various Authorities and Bodies. Section 72 prescribes the manner in which the Statute Committee shall be constituted by Management Council. Section 67 provides for the election to be held in accordance with the system of proportional representation. To achieve the said purpose the Statute 2017 has been enacted. The Government of Maharashtra as such possesses the legislative competence to enact Statute 2017. Section 17 of the Statute 2017 does not impose a blanket prohibition. The candidate is entitled to raise objection at the end of particular count, if he so desires. However, he is precluded from

raising any objection if process of counting is entered into the next round.

5. In the present case the petitioner has not raised objection after end of each round. The petitioner has also not be in a position to demonstrate how the same would be violative of Article 14 of the Constitution of India. The candidate has been given an opportunity to raise objection at the end of every round. It is only if no objection is raised the prohibition is imposed upon him for recount.

6. The petitioner had filed an Appeal against the declaration of the result declaring respondent no.3 as elected. The appeal has been preferred only on the ground that recounting ought to have been done and votes are improperly cast. Save and apart the above, no other ground is raised in the Appeal agitating the election and declaration of respondent no.3 as elected candidate.

7. Considering the above, no case for interference is made out. Writ Petition is accordingly dismissed. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE