

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10401 OF 2017

Sayyad Zafar Aminoddin Sayyad Hussain
Age : 55 years, Occupation : Business,
Resident of : Qadarband Plots, Ward No. 14,
Parbhani, District Parbhani

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.
- 2] The Maharashtra State Election Commission,
Through the State Election Commissioner,
Mantralaya, Mumbai
- 3] The Returning Officer [Ward No. 14],
Parbhani Municipal Corporation,
General Elections of 2017

[Copies of Respondents no. 2 and 3
to be served upon the Standing Counsel
for the State Election Commission,
High Court, Bench at Aurangabad]

- 4] The Parbhani Municipal Corporation
Through its Commissioner,
Parbhani Municipal Corporation,
Parbhani, District Parbhani
- 5] Syed Maheboob Ali Pasha
S/o Syed Ahemad Ali,
Age : 61, Occupation : Business,
Resident of : Quadarabad Plots,
Ward No. 14,
Parbhani, District Parbhani

.. Respondents

...
Mr. Mukul S. Kulkarni, Advocate for petitioner
Mr. S.S. Wagh, Advocate h/f. Mr. S.T. Shelke, Advocate for
respondents no. 2 and 3
Mr. S.S. Bora, Advocate for respondent no. 4
Mr. A.S. Golegaonkar, Advocate with Mr. M.A. Golegaonkar,
Advocate for respondent no. 5
Mr. S.S. Dande, AGP for respondent - State
...

CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.
DATE : 30-09-2019

ORAL JUDGMENT [PER - SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.

2. The petition questions at its base, eligibility of respondent no. 5 in 2017, to contest, be elected and to continue as corporator of Parbhani municipal corporation, for, failure to procure, produce and submit validity certificate before lapse of prescribed period given under statute while he claimed status of being from other backward class and consequently, seeks setting aside of his election in 2017.

3. A little background may have to be taken into account, which runs as under,

. Respondent no. 5 is from Muslim religion and claims to be from *Julaha* community, an other backward class (OBC) category. In elections of 1991 and 1996 as well as in 2002, he

had been elected as councillor in the then municipal council, Parbhani as other backward class category (OBC) candidate. In 2007, in the election to municipal corporation as the council had been transformed into corporation, he had once again been elected as other backward class category corporator. In 2012, however, he had been elected as open category corporator.

. During the term from 2002 as a councillor, it appears that, his claim of belonging to other backward class category had been scrutinized by the caste scrutiny committee and it had passed order dated 17-06-2002. While one member (Chairman) of the committee considered it to be valid, the other two members of the committee, however, found it otherwise. It appears that respondent no. 5 had approached this court against said decision of the committee under writ petition bearing no. 3238 of 2002. On 21-10-2002, this court had issued rule and ordered *statuts-quo*.

4. Respondent no. 5 had submitted nomination as other backward class category candidate in the election to Municipal Corporation, Parbhani in 2017. He has been elected from ward no. 14 - Parbhani municipal corporation which had been reserved for other backward class category. It is in this election, validity and legality of respondent no. 5 to contest, get elected and to continue as corporator has been questioned by the petitioner. It is the case that respondent no. 5 had failed to submit caste validity certificate

within the stipulated period while section 5B of the Maharashtra Municipal Corporations Act provides a period of one year for submission of caste validity certificate lest he would be deemed to have incurred disqualification on that count retrospectively.

5. Learned counsel Mr. Mukul Kulkarni, appearing for petitioner submits that candidature of respondent no. 5 had been fraudulent. In 2017 elections, while claim to be belonging to other backward class category could not have been validly made by him, yet, he had posed to be belonging to other backward class category. The order of scrutiny committee is claimed to have been annexed to the nomination form, yet, it had not been made clear that the majority verdict had been against him and, as such, no legitimate claim could have been made as him being from other backward class category. He purports to point out that even reference to the high court's order in writ petition no. 3238 of 2002 had not been made. He further submits that even otherwise, the *status-quo* order in said writ petition would not have efficacy beyond said writ petition. He submits that, by submitting documents, it had been a fraudulent attempt made by respondent no. 5, to impress upon that one of the members of committee, higher in hierarchy, had validated his claim and, thus, he could contest the election as other backward class category candidate. He adverts to rule 18(3) of The Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic

Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 ("Caste Certificate Rules"), reading, thus,

“ 18. Hearing of Scrutiny Committee.

...
...

(3) The decision of Committee shall be by majority:

Provided that, majority decision shall be communicated as decision of Scrutiny Committee, with judgment of all the assenting members along with separate judgment by dissenting member. ”

6. He purports to refer to the factual aspects that results of the election were declared on 21-04-2017 and within six months or a year therefrom, no validity certificate could be procured and submitted by respondent no. 5 with the concerned authority and in the circumstances, by operation of law, statutorily, respondent no. 5 had been rendered disqualified and could not have continued as corporator, yet, he continues to function as corporator of Parbhani municipal corporation, which is absolutely unauthorized and is illegal.

7. Taking into account the resistance on behalf of respondent no. 5, as could be taken out from the affidavit-in-reply filed on his behalf, learned counsel Mr. Kulkarni in support of his claims in writ petition, takes support of certain citations. He refers to *Gokul Chandanmal Sangvi V. State of Maharashtra and others* reported in 2018(4) Mh.L.J. 911, whereunder, it has been held thus,

“ 14. Mr. Sapkal, learned counsel for the respondents argued that, the disqualification order would prohibit respondent No. 5 from contesting the election of only Zilla Parishad or Panchayat Samitee and not the election of Sarpanch of Gram Panchayat. Section 13 which provides for qualification to contest the election reads as follows :

Section 13. Persons qualified to vote and be elected. - (1) Every person whose name is in the list of voters shall, unless disqualified under this Act or any other law for the time being in force, be qualified to vote at the election of a member for the ward to which such list pertains.

(2) Every person (who is not less than 21 years of age on the last date fixed for making nomination for every general election or bye-election and) whose name is in the list of voters shall, unless disqualified under this act or under any other law for the time being in force, be qualified to be elected for any ward of the village. No person whose name is not entered in the list of voters for such village shall be qualified to be elected for any ward of the village.

(3) Subject to any disqualification incurred by a person, the list of voters, shall be conclusive evidence for the purpose of determining under this section whether any person is qualified or is not qualified to vote, or as the case may be, is qualified or is not qualified to be elected, at any election.

15. This section clearly lays down that if any person is disqualified under the Maharashtra Village Panchayats Act or under any other law, he would not be entitled to contest the election of Sarpanch. As per order of Collector, Dhule dt. 3-11-2014, the petitioner had not disclosed his expenses of the election held for membership of Zilla Parishad in 2013. Even after show-cause notices he failed to submit the expenses within time and therefore he was disqualified.

17. We find that, the Returning Officer has taken a stand totally contradictory to the provisions of law while upholding the nomination of respondent No. 5. Since respondent No. 5 was disqualified but was allowed to contest the election, the whole election stands vitiated.

18. The disqualification of respondent No. 5 will not lead to declaring the petitioner as Sarpanch as the election itself stands vitiated. Therefore, the prayer for declaring the petitioner as elected Sarpanch deserves to be rejected.

19. Since we are disqualifying the respondent No. 5 on the ground of fraud committed by him by concealing the election expenses, he shall forfeit the benefits accrued under the post and his election to the post would be void ab initio. ”

He refers to also that challenge to said decision had failed before the apex court.

8. While *locus standi* of petitioner is questioned, he refers to paragraphs no. 25 and 26 of decision of supreme court in the case of *K. Venkatachalam Vs. Swamickan and another* reported in (1999) 4 S.C.C. 526 reading, thus,

“ 25. In the present case the appellant was not an elector in the electoral roll of Lalgudi Assembly Constituency. He, therefore, could not be elected as a Member from that constituency. How could a person who is not an elector from that constituency represent the constituency? He lacked the basic qualification under clause (c) of Article 173 of the Constitution read with Section 5 of the Act which mandated that a person to be elected from an Assembly Constituency has to be an elector of the constituency. The appellant in the present case is certainly disqualified for being a member of the Legislative Assembly of Tamil Nadu. His election, however, was not challenged by filing an election petition under Section 81 of the Act. The appellant knows he is disqualified. Yet he sits and votes as a Member of the Legislative Assembly. He is liable to penalty of five hundreded rupees in respect of each day on which he so sits or votes and that penalty is recoverable as a debt due to the State. There has not been any adjudication under the Act and there is no other provison of the Constitution as to how penalty so incurred by the appellant has to be recovered as a debt due to the State. The appellant is liable to penalty nevertheless as he knows he is not qualified for membership of the Legislative Assembly and yet he acts contrary to law.

26. **The question that arises for consideration is if in such circumstances the High Court cannot exercise its jurisdiction under Article 226 of the Constitution declaring that the appellant is not qualified to be a Member of Tamil Nadu legislative Assembly from Lalgudi Assembly Constituency. From the finding recorded by the High Court it is clear that the appellant in his nomination form impersonated a person known as “Venkatachalam, s/o Pethu” taking advantage of the fact that such a person bear his first name. The appellant would be even criminally liable as he filed his nomination on an affidavit impersonating himself. If in such circumstances he is allowed to continue to sit and vote in the Assembly his action would be a fraud on the Constitution. ”**

9. He also presses into service the observations in paragraphs no. 33, 44 and 61 from the judgment of supreme court

in the case of *K. Prabhakaran Vs. P. Jayarajan* reported in 2005 (1) S.C.C. 754 reading, thus,

“ 33. We may just illustrate what anomalies and absurdities would result if the view of the law taken in *Manni Lal* case and *Vidya Charan Shukla* case were to hold the field. One such situation is to be found noted in para 39 of *Vidya Charan Shukla* case. A candidate's nomination may be rejected on account of his having been convicted and sentenced to imprisonment for a term exceeding two years prior to the date of scrutiny of nomination. During the hearing of election petition if such candidate is exonerated in appeal and earns acquittal, his nomination would be deemed to have been improperly rejected and the election would be liable to be set aside without regard to the fact whether the result of the election was materially affected or not. Take another case. Two out of the several candidates in the election fray may have been convicted before the date of nomination. By the time the election petition comes to be decided, one may have been acquitted in appeal and the conviction of the other may have been upheld and by the time an appeal under Section 116-a of RPA preferred in this Court comes to be decided, the conviction of one may have been set aside and, at the same time, the acquittal of the other may also have been set aside. Then the decision of the High Court in election petition would be liable to be reversed not because it was incorrect, but because something has happened thereafter. Thus, the result of the election would be liable to be avoided or upheld not because a particular candidate was qualified or disqualified on the date of scrutiny of nominations or on the date of his election, but because of acquittal or conviction much after those dates. Such could not have been the intendment of the law.

44. We are, therefore, of the opinion that an appellate judgment of a date subsequent to the date of nomination or election (as the case may be and having a bearing on conviction of a candidate or sentence of imprisonment passed on him would not have the effect of wiping out disqualification from a back date if a person consequent upon his conviction for any offence and sentenced to imprisonment for not less than two years was actually and as a fact disqualified from filing nomination and contesting the election on the date of nomination or election (as the case may be).

61. To sum up, our findings on the questions arising for decision in these appeals are as under:

1. The question of qualification or disqualification of a returned candidate within the meaning of Section 100(1)(a) of the Representation of the People Act, 1951 (RPA for short) has to be determined by reference to the date of his election which date, as defined in Section 67-A of the Act, shall be the date on which the candidate is declared by the returning officer to be elected. Whether a nomination was improperly accepted shall have to be determined for the purpose of Section 100(1)(d)(i) by reference to the date fixed for the scrutiny of nomination, the expression, as occurring in Section

36(2)(a) of the Act. Such dates are the focal point for the purpose of determining whether the candidate is not qualified or is disqualified for being chosen to fill the seat in a House. It is by reference to such focal point dates that the question of disqualification under sub-sections (1), (2) and (3) of Section 8 shall have to be determined. The factum of pendency of an appeal against conviction is irrelevant and inconsequential. So also a subsequent decision in appeal or revision setting aside the conviction or sentence or reduction in sentence would not have the effect of wiping out the disqualification which did exist on the focal point dates referred to hereinabove. The decisive dates are the date of election and the date of scrutiny of nomination and not the date of judgment in an election petition or in appeal there against.

2. For the purpose of attracting applicability of disqualification within the meaning of “a person convicted of any offence and sentenced to imprisonment for not less than two years”, - the expression as occurring in Section 8(3) of RPA, what has to be seen is the total length of time for which a person has been ordered to remain in prison consequent upon the conviction and sentence pronounced at a trial. The word “any” qualifying the word “offence” should be understood as meaning the nature of offence and not the number of offence/offences.

3. Sub-section (4) of Section 8 of RPA is an exception carved out from sub-sections (1), (2) and (3). The saving from disqualification is preconditioned by the person convicted being a member of a House on the date of the conviction. The benefit of such saving is available only so long as the House continues to exist and the person continues to be a member of a House. The saving ceases to apply if the House is dissolved or the person ceases to be a member of the House.”

and submits that further developments in such a case is unlikely to affect the invalidity befallen on the date of nomination and after the expiry of period prescribed by the statute. He, particularly draws attention to that while respondent no. 5 had been unable to submit validity certificate within the period prescribed under the proviso to section 5B and submission of validity certificate being held mandatory by supreme court in the case of *Shankar s/o Raghunath Devre (Patil) Vs. State of Maharashtra and others* reported in (2019) 3 Supreme Court Cases 220, endorsing the view taken by full bench of

this court in the case of *Anant H. Ulahalkar and another Vs. State Election Commissioner and another* reported in 2017(1) Mh.L.J. 431, disqualification stands incurred by respondent no. 5 on failure to submit validity certificate within time and would not be reversible.

10. It is reiterated that claim of respondent no. 5 of belonging to other backward class category had been fraudulent and his contest and election continues to be fraudulent and his election, as such, is questioned and shall not be allowed to stand and should be rendered *non-est*.

11. He, therefore, urges this court to allow the writ petition in terms of prayer clauses (A) and (B), having regard to provisions of the The Maharashtra Municipal Corporations Act.

12. On the other hand, learned counsel Mr. A.S. Golegaonkar appearing with Mr. M.A. Golegaonkar vehemently submits, the petition is wholly misconceived and is not tenable at the behest of petitioner, who has no *locus standi* to challenge election of petitioner or for that matter to claim the reliefs.

13. He submits that as a matter of fact, petitioner is a stooge of a defeated candidate from ward no. 14 of Parbhani municipal corporation. Defeated candidate has already initiated election petition against respondent no. 5. Election petition at the behest of one Mr. Sayyad Noman Kausar is pending and while no

interim relief has been granted in the election petition, an approach has been made under this writ petition through cousin of said person. He submits that the family, as such, is after petitioner and is indulging into forum choosing. The petitioner cannot be said to have been moved with clean hands. There are malafides and ill-intention underlying the writ petition and in such a case, in exercise of discretionary and equitable jurisdiction, the court should not lose sight of the same and would refrain from indulging into request being made under writ petition. His aforesaid proposition, he purports to reinforce, stating that there is no direct or indirect injury being suffered by petitioner legal or otherwise. It cannot be said that only on account of being voter of the constituency, he would be able to and authorizedly file present petition as there is no injury or harm being caused to him nor it is the case that he is likely to gain anything except that it is going to satisfy hurt of a defeated candidate. No other voter from the constituency has moved the court except the cousins *inter-se* which gives clear indication that respondent no. 5 has won the confidence of the people of his constituency and thus, has been elected to represent them in the erstwhile council as well as present corporation continuously. He submits that such election winning would not be possible unless the person toils and works for the benefit of the people and citizens in the constituency. While such is the situation, on mere technicality, petitioner is

trying to unsettle him and such unsettlement would ultimately result in affecting welfare the people in constituency whom respondent no. 5 has been representing since 1991. He submits that there are no other allegations except of technical nature in the writ petition. The disqualification in the circumstances, is also a technical disqualification.

14. Learned counsel for respondent no. 5 vehemently submits that even the claim of respondent no. 5 belonging to other backward class category stands vindicated as validity to him being from *Julaha* community has been issued in July, 2019 and has been duly submitted with the concerned authority. He purports to file affidavit annexing caste validity certificate issued by Caste Certificate Scrutiny Committee, Parbhani dated 26-07-2019, declaring him to be coming from *Julaha* community - other backward class.

15. Learned counsel for respondent no. 5 refers to decision in the case of *Ayaaubkhan Noorkhan Pathan Vs State Of Maharashtra & others* reported in (2013) 4 SCC 465, wherein an open category complainant purported to espouse cause of a scheduled tribe person as a public spirited person and his *locus standi* was under consideration, and submits that petitioner does not have *locus standi* to move this court and rationale in cited case would squarely apply to this writ petition at the instance of petitioner.

16. Learned counsel Mr. Golegaonkar has also referred to decision of supreme court in the case of *Ravi Yashwant Bhoir V. District Collector, Raigad and others* (Civil Appeal No. 2085 of 2012) reported in (2012) 4 SCC 407 and has emphasized paragraph no. 44 therefrom which also deals with the question of *locus standi* and contends petitioner is precluded from posing challenge.

17. Learned counsel Mr. Golegaonkar refers to and purports to rely on decision of division bench of this court dated 02-04-2019 in group of writ petitions bearing no. 181 of 2018 (*Kesharben Murji Patel Vs. State of Maharashtra and others*) and connected writ petitions, wherein the disqualification incurred by the petitioners in writ petitions no. 147 of 2018 and 3673 of 2018 had been stalled during pendency of writ petitions, and while scrutiny committee's decisions invalidating claim of petitioners were quashed remitting the matters back to the scrutiny committee for re-consideration, the relief was directed to be continued. In the case of respondent no. 5 as well decision of scrutiny committee had been quashed, remitting the matter for reconsideration. The committee as a matter of fact on remand has validated the claim of respondent no. 5 as from *Julaha* other backward class community. For him, situation is much better than petitioners in those cases and as such, urges not to unsettle the prevailing position.

18. While the arguments are being advanced as aforesaid by learned counsel, what would be at the center of matter, is the provision of law, and section 5B of the Maharashtra Municipal Corporations Act, 1949, reads, thus,

“ 5B. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate.

Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward class of citizens, shall be required to submit, alongwith the nomination paper, Caste certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 :

Provided that, for the General or bye-elections for which the last date of filing of nomination falls during the period commencing on the date of commencement of the Mumbai Municipal Corporation, the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2018 and ending on the 30th June 2019, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing the nomination papers but who has not received the validity certificate on the date of filing of the nomination papers shall submit, along with the nomination papers,--

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the validity certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period of twelve months from the date of his election, the validity certificate issued by the Scrutiny Committee :

Provided further that, if the person fails to produce the validity certificate within a period of twelve months from the date of his election, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor. ”

19. Respondent no. 5's claim, at the relevant time of filing nomination and declaration of result of election, and till expiry of period of submission of validity certificate had not been validated. According to rule 18(3) of Caste Certificate Rules, decision of majority from committee had not approved or validated claim of respondent no. 5. It appears that in the given scenario, aforesaid proviso will be at focal point. The relevant factual aspect in the present matter appears to be, while respondent no. 5 had been declared elected on 21-04-2017, till July, 2019, admittedly, he had not submitted the validity certificate. In such a case, though arguments have been vehemently advanced and various aspects have been referred to, yet, the factual position represents that the proviso referred to above would clinch the issue though it is being referred to that under amendment, the period has been extended to submit validity certificate. However, it appears, validity certificate has been issued to petitioner only on 26-07-2019 by which time, even the extended period under amendment had expired. Looking at the categorical decision of full bench of this court in *Anant H. Ulahalkar* (supra) and under its endorsement by the apex court in the judgment of *Shankar Raghunath Devre (Patil)* (supra), the nature underlying a similar provision had been examined and considered under paragraphs no. 8, 9 and 10, reading, thus,

“ 8. There is a second proviso which contemplates that on the failure of the person(s) concerned to produce the validity certificate within the time-frame stipulated his election “shall be deemed to have been

terminated retrospectively and he shall be disqualified for being a councillor.”

*9. We have read and considered the very elaborate reasoning adopted by the Full Bench of the High Court in coming to its conclusions that the aforesaid provisions of the statute engrafts a mandatory requirement in law. **The High Court, in our considered view, very rightly came to the aforesaid conclusion along with the further finding that equities in individual case(s) would not be a good ground to hold the provision to be directory.** In fact, the High Court has supported its decision by weighty reasons to hold that reading the provisions to be directory would virtually amount to rendering the same to be nugatory.*

*10. Compounded is the fact that the proviso was deleted in the year 2008 and reintroduced in the year 2012. The same would go to show that **sans the proviso the main provision would debar a candidate who does not possess a validity certificate from contesting the election as a reserved category candidate.** If that is so, the proviso has to be strictly construed and the deeming provision contained in the second proviso together with the plain language used can lead to only one conclusion, namely that the **legislative intent was to make the provision of the statute mandatory irrespective of individual hardships.** ”*

20. While the case of *Ayaaubkhan Noorkhan Pathan* (supra) is relied upon by respondent no. 5, in the same, it appears to have been considered that the complainant would not be considered to fall within the category of aggrieved person and only the persons who suffer legal injury would be eligible to pose challenge in the court of law. A stranger cannot be permitted to meddle with by proceeding unless he satisfies that he falls in the category of injured persons. Enforceable legal right shall ordinarily be of the petitioner to complain destruction of such right. The observations to aforesaid effect had been rendered on the background that while scrutiny committee with record before it and record of the vigilance committee, had validated claim of the appellant in said case and after about 9 years, respondent no. 5 of that case had purportedly lodged a complaint before scrutiny committee. The

same had been rejected by the committee and the high court had set aside the order of the committee remitting the matter for hearing all the parties. It is in that context, the matter had been viewed and the observations are appearing in supreme court judgment.

21. So far as *Ravi Bhoir's* case (supra) is concerned, it appears that the complainant had sought hearing and in the context of peculiar facts, circumstances and legal position in that situation, court had observed that complainant had no *locus standi* to claim hearing.

22. Though, learned counsel for respondent no. 5 has purportedly referred to division bench decision of this court at principal seat dated 02-04-2019 in writ petitions bearing no. 181 of 2018 and companion writ petitions (supra), in said judgment, it has been unequivocally observed that the bench was not inclined to accept the submissions of learned senior counsel and in the light of authoritative pronouncement of the full bench decision in *Anant Ulahalkar's* case (supra) on the point that the amended legislation does not change the mandatory nature of the statute. In the two cases *viz;* writ petitions no. 145 of 2018 and 3673 of 2018, stock of situation and evidence had been taken into account and decisions by scrutiny committee were quashed and set aside and matters were remitted, while the claim of the petitioners had

been found to be improperly rejected and it had been observed giving declaration to the effect that they belong to the caste claimed would ensue under peculiar situations involved in said cases. It is in that context, said petitioners were allowed to continue to hold the post pursuant to their elections.

. It may have to be referred to that, observations and analogy from in cited cases on behalf of respondent no. 5, would not hold the present case having regard to that present petition has been moved on a different footing altogether while relevant factual position is not in dispute.

23. As respondent no. 5 purports to question *locus standi* and/or authority of petitioner to invoke jurisdiction of this court, it may well have to be considered that the *quo-warranto* proceeding is for juridical inquiry under which a person holding *inter-alia* public office, is called upon to show by what right he holds said office and if it is found that a person has no valid title to the office, issue of writ of *quo-warranto* ousts him. It has been considered by supreme court that *quo-warranto* confers jurisdiction and authority on the judiciary to control appointments to and occupation of public offices against statutory provisions.

24. Supreme court in *Rajesh Awasthi V. Nand Lal Jaiswal and others* reported in *AIR 2013 SC 78* has observed, thus,

“ 28. From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in *Dr. Kashinath G. Jalmi and another v. The Speaker and others*. ”

25. Supreme court, in its decision in the case of *Central Electricity Supply Utility of Odisha V. Dhobei Sahoo and others* reported in *AIR 2014 SC 246* in paragraph 18 has observed, thus,

“ 18. From the aforesaid exposition of law it is clear as noon day that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority. While dealing with the writ of quo warranto another aspect has to be kept in view. Sometimes a contention is raised pertaining to doctrine of delay and laches in filing a writ of quo warranto. There is a difference pertaining to personal interest or individual interest on one hand and an interest by a citizen as a relator to the court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the court. The Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds.”

26. Having regard to aforesaid, it does not appear that contention of respondent no. 5 with regard to *locus standi* of petitioner would be of such significance as to truncate the proceedings and its force gets watered down and pales into

insignificance having regard to facts, circumstances of present case and legal position referred to above.

27. Additionally, it may be pertinent to refer to following observations of supreme court from the decision *K. Venkatachalam Vs. Swamickan and another* (supra), reading, thus,

“ 27. In view of the judgment of this Court in the case of *Election Commission of India v. Saka Venkata Rao* it may be that action under Article 192 could not be taken as the disqualification which the appellant incurred was prior to his election. Various decisions of this Court, which have been referred to by the appellant that jurisdiction of the High Court under Article 226 is barred challenging the election of a returned candidate and which we have noted above, do not appear to apply to the case of the appellant now before us. **Article 226 of the Constitution is couched in the widest possible terms and unless there is a clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief.** In circumstances like the present one the bar of Article 329(b) will not come into play when the case falls under Articles 191 and 193 and the whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution? ”

28. Situation in present matter goads on to consider that respondent no. 5 could not have legitimately continued to be a corporator after expiry of the period under relevant proviso (second) to section 5B of the Maharashtra Municipal Corporation Act and it appears that the municipal commissioner has also informed the same to the State government.

29. In the circumstances, writ petition succeeds to the extent of declaration that the respondent no. 5 would be deemed to have ceased to be a corporator from and would not be able to continue as a corporator of Parbhani municipal corporation, with the expiry of period for submission of validity certificate under provisions of section 5B of the Maharashtra Municipal Corporation Act. Writ petition is disposed of in aforesaid terms. Rule is made absolute accordingly.

30. At this stage, learned counsel Mr. Golegaonkar, however, requests to postpone giving effect to this order by nine weeks in order to enable respondent no. 5 to pose challenge to this decision.

31. In view of aforesaid, we deem it appropriate to direct that the effect and operation of this order shall not take place until expiry of nine (9) weeks from today.

[S.M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/