

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

WRIT PETITION NO. 14256 OF 2019

Isak Malik Ibrahim Malik

.. Petitioner

Versus

The State Election Commissioner
Maharashtra State through its
Commissioner and others

.. Respondents

Shri Bhausahab S. Deshmukh, Advocate for the Petitioner.
Shri A. B. Kadethankar, Advocate for the Respondent No. 1.
Mrs. A. V. Gondhalekar, Addl.G.P. for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
AVINASH G. GHAROTE, JJ.
DATE : 26TH NOVEMBER, 2019.**

FINAL ORDER :

. Mr. Deshmukh, the learned advocate for the petitioner submits that, bye-election cannot be held, if the term is for a period less than six months. The respondents have even declared the voters list for the general elections of the Municipal Council to be held in April 2020. Less than six months have remained, still the respondents are proceeding further with conduct of bye-election of the post of member of the Municipal Council. The same is not permissible and same is against the provisions of Section 48(1) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act (for short "said Act").

2. We would have exercised our writ jurisdiction under Article 226 of the Constitution of India, if the rights of the petitioner are affected or the petitioner is prejudiced or the said action is not in public interest. In the present case, none of these eventualities exist.

3. According to the petitioner, it would be loss to the public exchequer if elections are taken. That stage has already lapsed. Bye-election programme is declared. The voters list is under process. It is for the Election Commission to consider the pros and cons of holding the bye-election.

4. According to the respondent No. 1, the vacancy had arisen in June 2019 and more than six months period was available.

5. As the pre-election process has already started, the voters list is being finalized, at this stage, we are not inclined to exercise our writ jurisdiction. However, the respondent No. 1 shall consider proviso to sub section 1 of Section 48 of the said Act before proceeding with the proposed bye-election.

6. In view of the above, the writ petition is disposed of. No costs.

[AVINASH G. GHAROTE, J.] [S. V. GANGAPURWALA, J.]