

BDP-SPS

Bharat
D. Pandit

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Bharat D. Pandit
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6822 OF 2018**

Shri Tukaram Krishna Patil

.... Petitioner.

V/s

Smt. Ritu Rajesh Tawde & Ors.

..... Respondents

Mr. B.D. Joshi a/w Mr. Neel Helekar a/w Darshana Pawar for the
Petitioner.

Mr. Mayur Jadhav i/b S.B. Shetye for Respondent No.3.

Mr. M.M. Vashi, Senior Advocate with Ms. Aparna Deokar i/b Anjali
Awasthi for Respondent No.1.

Ms. Gauri Jadhav a/w Mr. Vinod Mahadik for Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 17, 2019

P.C.:-

1] In Municipal Election Petition No. 21 of 2017, the Petitioner –
returned candidate, moved an application for casting additional issues,
which is rejected by the order impugned.

2] The submissions of Mr. Joshi, learned Counsel for the Petitioner
are, considering the nature of remedies provided under Sections 18
and 33 of the Mumbai Municipal Corporation Act, parameters under
which the said provision could be invoked for setting aside the
election or for disqualification of returned candidate are altogether

different. According to him, Election Petitioner has mixed both these issues and has framed the Election Petition. In the aforesaid backdrop, he submits that by quashing the order impugned, it is necessary to direct that additional issues be framed based on the provisions of Section 16 and 33 of the Municipal Corporation Act and section 100 of the Representation of People Act, 1951.

3] Since onus is on the Election Petitioner to prove that present Petitioner's election is liable to be set aside or disqualified, in my opinion, issues which are sought to be framed additionally by way of application-Exhibit-25 are not warranted to decide the controversy in the Election Petition.

4] In the aforesaid background, without showing any indulgence, Petition is dismissed. However, it is made clear that since the issues are based on legal provisions, it is always open for the Petitioner to canvass his argument during the final hearing of the Election Petition as is reflected in the proposed issues, as are scribed in the application.

(NITIN W. SAMBRE, J.)