

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

WRIT PETITION NO.1878 OF 2020

SANDIPSINGH SHANKARSINGH GADIWALE

VERSUS

THE RETURNING OFFICER NANDED WAGHALA CITY MUNICIPAL
CORPORATION AND OTHERS

...

Advocate for the Petitioner : Smt.Deshmukh Charuta Sunil and Shri
P.P.Dawalkar

...

CORAM: ROHIT B. DEO, J.

DATE : 05th February, 2020

Per Court:

1 The petitioner, who is an elected candidate, is challenging the order dated 19.12.2019 whereby, the Election Tribunal rejected the application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint.

2 The rejection under Order VII Rule 11 would be justified only if taking the plaint as a whole, no cause of action is demonstrated. Perusal of the election petition would reveal that the first ground is that 46 persons were permitted to cast their votes after 5:30 pm and after closure of the control unit. The other ground is that the postal votes were not properly counted and that some postal votes were improperly rejected.

3 Section 16 of the Maharashtra Municipal Corporations Act reads thus:-

"16. Election petitions.

- (1) If the qualification of any person declared to be elected a councillor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection by the [State Election Commissioner] of a nomination, or of the improper reception or refusal of a vote, or by reason of a material irregularity in the election proceedings corrupt practice, or any other thing materially affecting the result of the election, any person enrolled in the municipal election roll may at any time within ten days after the result of the election has been declared submit an application to the Judge for the determination of the dispute or question.*
- (2) The [State Election Commissioner] may, if it has reason to believe that an election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed by order in writing, authorise any officer [of the Commission] to make an application to the Judge at any time within one month after the result of the election has been declared for a declaration that the election of the returned candidate or candidates is void.*
- (2A) No election to any Corporation shall be called in question except by an election petition presented to the Judge referred to in sub-section (1) and no Judge other than the Judge referred to in sub-section (1) shall entertain any dispute in respect of such election.]*
- (3) The judge shall decide the applications made under sub-section (1) or (2) after holding an inquiry in the manner provided by or under this Act.*

Explanations. - For the purposes of this section -

- (1) "corrupt practice" means one of the following practices, namely :-*
 - (a) any gift, offer or promise by a candidate or his agent or by any person with the connivance of a candidate or his agent of any gratification, pecuniary or otherwise, to any person whomsoever, with the object directly or indirectly of inducing a person to stand or not to stand as, or to withdraw from being a candidate at an election or a voter to vote or refrain from voting at an election or as a reward to a person for having so stood or*

not stood or for having withdrawn his candidature or a voter for having voted or refrained from voting;

(b) any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or of any other person with the connivance of the candidate or his agent with the free exercise of any electoral right, including the use of threats of injury of any kind or the creation or attempts to create fear of divine displeasure or spiritual censure, but not including a declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with a legal right;

(c) the procuring or abetting or attempting to procure by a candidate or his agent or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person whether living or dead or in a fictitious name or by a person for a voting paper in his own name when, by reason of the fact that he has already voted in the same or some other ward, he is not entitled to vote;

(d) the removal of a voting paper from the polling station during polling hours by any person with the connivance of a candidate or his agent;

(e) the publication by a candidate or his agent or by any other person with the connivance of the candidate or his agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election;

(f) any acts specified in paragraphs (a), (b), (d) and (e) when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent;

(g) the application by a person at an election for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or for a voting paper in his own name when, by reason of the fact that he has already voted in the same or another ward, he is entitled not to vote; or

(h) the receipt of, or agreement to receive, any

gratification of the kind described in paragraph (a) as a motive or reward for doing or refraining from doing any of the acts therein specified.

- (2) *a corrupt practice shall not be deemed to have been committed in the interests of a returned candidate if the Judge is satisfied that it was of a trivial and limited character which did not affect the result of the election, that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, that it was committed without the sanction or connivance or contrary to the orders of the candidate or his agents, and that the candidate and his agents took all reasonable means for preventing the commission of corrupt practices at the election."*

4 The provision is widely worded and anything materially affecting the result of the election would be a ground for setting aside the election.

5 In this view of the matter, I do not see any error in the view taken by the Election Tribunal.

6 The Election Tribunal is requested to dispose of the Election Petition as expeditiously as possible and in any event, within THREE MONTHS. No adjournment shall be granted unless an extreme compelling circumstance is made out.

7 This Writ Petition is dismissed.