

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

WRIT PETITION NO. 3323 OF 2020
WITH
CIVIL APPLICATION NOS.2640 OF 2020,
3117 OF 2020, AND 3598 OF 2020
IN WRIT PETITION 3323 OF 2020

Sameer s/o Subhash Rajurkar ... Petitioner
Aged 41 years, Occu: Business and Agri.
R/o 13,Shriram Colony, Samarthnagar,
Aurangabad

VERSUS

1. State of Maharashtra
Through Department of Urban Development,
Mantralaya, Mumbai 400 032
2. The State Election Commission of Maharashtra,
Through the State Election Commissioner,
Dr. Madam Kama Road, Mumbai
3. The Aurangabad Municipal Corporation,
Through its Municipal Commissioner,
Aurangabad.
4. The Municipal Commissioner,
Aurangabad Municipal Corporation, Aurangabad.
5. The Commissioner of Sugar,
Maharashtra StatePune
6. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
7. The Collector, Aurangabad
8. The Deputy Commissioner (Revenue), ... Respondents.
Aurangabad Municipal Corporation,
@ Head of Election Department of A.M.C.
Aurangabad

Mr Devdatt P. Palodkar, Advocate for the petitioner,
Mr. D.R.Kale, Government Pleader of the Respondents-State.
Mr. Ajit B. Kadethankar, Advocate for respondent No.2
Mr. Sanjev B. Deshpande, Advocate for respondent Nos. 3, 4 and 8.
Mr. G. L. Kedar, Advocate for applicant in Civil Application No. 3117/2020

WITH
WRIT PETITION NO. 3519 OF 2020

1. Balasaheb Yogiraj Sanap ... Petitioners
Age 48years,Occu:Agri
R/o Naregaon, Tq. & District Aurangabad
2. Deepak Mahadeo Suryawanshi
Age 35years,Occu:Business,
R/o Naregaon Tq. &Dist. Aurangabad

VERSUS

1. State of Maharashtra
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai 400 032
2. The State Election Commissioner,
State Election Commission,
Hutatma Rajguru Chowk,
Madam Cama Road, Mumbai
3. Deputy Commissioner (Revenue) and ... Respondents
Chief Election Officer,
Municipal Corporation, Aurangabad.

Mr S S Thombare, Advocate for the petitioner,
Mr. D. R. Kale, Government Pleader of the Respondent-State.
Mr. Ajit B. Kadethankar, Advocate for respondent No.2
Mr. Sanjev B. Deshpande, Advocate for respondent Nos. 3

WRIT PETITION NO.3351 OF 2020
WITH CIVIL APPLICATION NO. 3597 OF 2020

1. Anil s/o Keshav Vidhate ... Petitioners
Age 34 years, Occu: Business
R/o V/C 33 Vishnunagar, Aurangabad
2. Nandlal s/o Suresh Gawali
Age 32 years, Occu: Business,
Plot No. 570, Opp. Bilal Masjid
Uttam Nagar, jawahar Colony road, Aurangabad

3. Ganesh s/o Umakant Dixit
Age 33 years, Occu: Business,
R/o Shanta Apartment, Flat No.20,
Mitrnagar, Aurangabad

VERSUS

1. State of Maharashtra
Through Department of Urban Development,
Mantralaya, Mumbai 400 032
2. The State Election Commission of Maharashtra,
Through the State Election Commissioner,
Dr. Madam Kama Road, Mumbai
3. The Aurangabad Municipal Corporation,
Through its Municipal Commissioner, Aurangabad.
4. The Municipal Commissioner,
Aurangabad Municipal Corporation, Aurangabad.
5. The Commissioner of Sugar,
Maharashtra State, Pune
6. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
7. The Collector, Aurangabad
8. The Deputy Commissioner (Revenue),
Aurangabad Municipal Corporation,
@ Head of Election Department of A.M.C.
Aurangabad

... Respondents.

Mr. Devdatt P. Palodkar, Advocate for the petitioner
Mr. P.S. Patil, Addl. G.P. for R/State
Mr. Ajit B. Kadethankar, Advocate for R.No.2
Mr. Sanjeev B. Deshpande, Advocate for R/3,4,8.

3) WRIT PETITION NO.3361/2020

Kishorn s/o Babulal Tulsibagwale
Age 52 years, Occu: Social Work & Business,
R/o Jadhav Mandi, Rajabazar,
Aurangabad

... Petitioner

VERSUS

1. State of Maharashtra
Through Urban Development Department,
Mantralaya, Mumbai 400 032
2. The State Election Commissioner of Maharashtra,
New Administrative Building
Infront of Mantralaya, Mumbai
3. The Divisional Commissioner,
Aurangabad Division, Aurangabad
4. The District Collector,
Aurangabad.
5. The Aurangabad Municipal Corporation,
Through its Commissioner, Aurangabad
6. The Deputy Commissioner and Election Officer
For the General Election of the Aurangabad
Municipal Corporation 2020 Aurangabad.

Mr. C.R Thorat, Advocate for petitioner

Mr. D. R. Kale, G. P. for R/State.

Mr. Ajit B. Kadethankar , Advocate for R. No. 2

Mr. Sanjeev B. Deshpande, Advocate for R/5,6.

Mr. G.L. Kedar, Advocate for Application in C.A. 3117/2020.

4) WRIT PETITION NO. 3466/2020

Riyaz Shah Khan s/o Azam Shah Khan
Age 44 years, Occu: Service
R/o Kaisar Colony, Lane No.5,
Jinsi Road, Aurangabad

... Petitioner

VERSUS

1. The State Election Commission,
New Administrative Bhavan, Madam Cama Road,
Hutatma Rajguru Chowk, Mumbai
2. Aurangabad Municipal Corporation, Aurangabad,
Through its Commissioner
3. The Divisional Commissioner,
Aurangabad Division, Aurangabad..
4. The Collector, Aurangabad.
5. The Commissioner of Sugar,
Maharashtra State, Pune

Mr. Promod B. Gapat, Advocate for Petitioner

Mr. D. R. Kale, G. P. for R/State.

Mr. Ajit B. Kadethankar, Advocate for R.No.1

Mr. Sanjeev B. Deshpande, Advocate for R/2

5) WRIT PETITION NO.3491/2020

1. Rajendra Laxman Narwade, ... Petitioners
Age 62 years, Occu: Business,
R/o Opp. Chate School, Satara Parisar,
Beed Bypass, Aurangabad
2. Somnath Shamrao Sirane
Age 50 years, Occu: Agri.
R/o Satara Village, Tq & Dist. Aurangabad
- 3 Madhukar Bhimrao Langade,
Age 62 years, Occu: Nil,
R/o Near Satara Police Station,
Amdar Road, Satara Parisar, Aurangabad

VERSUS

1. State of Maharashtra
Through Urban Development Department,
Mantralaya, Mumbai 400 032
2. The State Election Commission,
Maharashtra State, Mumbai.
3. The Municipal Corporation, Aurangabad
4. The Municipal Commissioner,
Municipal Corporation, Aurangabad.
5. The Collector, Aurangabad. ... Respondents

Mr. Shivraj B. Kadu, Advocate for petitioner

Mr. D.R. Kale, G. P. for R/State.

Mr. Ajit B. Kadetankar, Advocate for State Election Commission.

Mr. Sanjeev B.Deshpande, Advocate for Aurangabad Municipal Corporation

6) WRIT PETITION NO. 3492/2020

- Mohd. Ayyub Khan s/o Mohd. Hussain Khan, ... Petitioner
Age 47 years, Occu: Business & Agri.
R/o Harsh Nagar, Labour Colony, Aurangabad.
Aurangabad

VERSUS

1. State of Maharashtra
Through Department of Urban Development,
Mantralaya, Mumbai 400 032
 2. The State Election Commission of Maharashtra,
Through the State Election Commissioner,
Dr. Madam Kama Road, Mumbai
 3. The Aurangabad Municipal Corporation,
Through its Municipal Commissioner, Aurangabad.
 4. The Municipal Commissioner,
Aurangabad Municipal Corporation, Aurangabad.
 5. The Commissioner of Sugar,
Maharashtra State, Pune
 6. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
 7. The Collector, Aurangabad
 8. The Deputy Commissioner (Revenue),
Aurangabad Municipal Corporation,
@ Head of Election Department of A.M.C.
Aurangabad
- ... Respondents.

Mr. Devdatt P. Palodkar, Advocate for Petitioner
Mr. D. R. Kale, G. P. for R/State.
Mr. Ajit B. Kadethankar, Advocate for R.No.2

7) WRIT PETITION NO.3501 OF 2020.

Mussa Noor s/o Mohd Patel,
Age 54 years, Occu: Business & Agri.
R/o Patel Nagar, Chikalthana, Aurangabad

... Petitioner

VERSUS

1. The State of Maharashtra
Through Department of Urban Development,
Mantralaya, Mumbai 400 032
2. The State Election Commission of Maharashtra,
Through the State Election Commissioner,
Dr. Madam Kama Road, Mumbai

3. The Aurangabad Municipal Corporation,
Through its Municipal Commissioner, Aurangabad.
4. The Municipal Commissioner,
Aurangabad Municipal Corporation, Aurangabad.
5. The Commissioner of Sugar,
Maharashtra State, Pune
6. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
7. The Collector, Aurangabad
8. The Deputy Commissioner (Revenue), ... Respondents.
Aurangabad Municipal Corporation,
@ Head of Election Department of A.M.C.
Aurangabad

Mr. Devdatt P. Palodkar, Advocate for petitioner
Mr. D. R. Kale, G.P. for R/State.
Mr. Ajit B. Kadathankar, Advocate for R. No.2
Mr. Sanjeev B. Deshpande, Advocate for R/3, 4, 8.

8) WRIT PETITION NO.3510 OF 2020

Laxminarayan s/o Babulal Bakhriya ... Petitioner
Age 45 years, Occu: Byusiness
R/o Dhavani Mohalla, Behind Appa Halwai
Aurangabad District Aurangabad

VERSUS

1. State of Maharashtra
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai 400 032
2. The State Election Commissioner,
State Election Commission,
Hutatma Rajguru Chowk,
Madam Cama Road, Mumbai
3. Deputy Commissioner (Revenue) and ... Respondents
Chief Election Officer,
Municipal Corporation, Aurangabad.

Mr. S. S. Thombre, Advocate for petitioner
Mr.D.R. Kale, G.P. for R/State.
Mr. Ajit B. Kadethankar, Advocate for R.No.2
Mr. Sanjeev B. Deshpande, Advocate for R/3

9) WRIT PETITION NO.3511 OF 2020

Hakim Kadu Patel, ... Petitioner
Age 42 years, Occu:Business,
R/o Deolai, Tq. & District Aurangabad

VERSUS

1. State of Maharashtra
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai 400 032
2. The State Election Commissioner,
State Election Commission,
Hutatma Rajguru Chowk,
Madam Cama Road, Mumbai
3. Deputy Commissioner (Revenue) and ... Respondents
Chief Election Officer,
Municipal Corporation, Aurangabad.

Mr. S. S. Thombre, Advocate for petitioner
Mr. D.R. Kale, G. P. for R/State.
Mr. Ajit B. Kadethankar, Advocate for R.No.2
Mr. Sanjeev B. Deshpande, Advocate for R/3.

11) WRIT PETITION NO.3556 OF 2020

1. Braahul s/o Ramkrishna Ingle ... Petitioner
Age 48 years, Occu: Social Work,
Plot No.435, N-3, CIDCO, Aurangabad.
2. Deepak Mahadeo Suryawanshi
Age 35years,Occu:Business,
R/o Naregaon Tq. &Dist. Aurangabad

VERSUS

1. State of Maharashtra
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai 400 032

2. The State Election Commissioner,
State Election Commission,
Hutatma Rajguru Chowk,
Madam Cama Road, Mumbai
3. Deputy Commissioner (Revenue) and Chief Election Officer,
Municipal Corporation, Aurangabad. ... Respondents
4. Municipal Corporation, Aurangabad,
Through its Municipal Commissioner

Mr. Amol S. Gandhi, Advocate Petitioner
 Mr. D. R. Kale, G. P. for R/State.
 Mr. Ajit B. Kadethankar, Advocate for R. No.2
 Mr. Sanjeev B. Deshpande, Advocate for R.No.2

12) WRIT PETITION NO.3934 OF 2020

1. Zakat Foundation of India,
Through Coordinator and Assigned person.
Aurangabad ... Petitioners
2. Mohammed Waseem Sagar s/o Mohammed Muslim
Age 59 years, Occu: Social Workers,
R/o 349-F, Pocket-2, Mayur Vihar-1, New Delhi,
Authorized Signatory of Petitioner No.1
3. Shaikh Farooq Ahmed s/o Iqbal Ahmed
Age 46 years, Occu: Social worker
R/o Chaitanya Nagar, Nanded
Tq. & Dist. Nanded,
Authorized Signatory of Petitioner No.1
4. Sandeep Bhausaheb Shirsath
Age 37 years, Occu: Social Worker,
R/o H. No.17/162, Kranti Chowk Police Line,
Aurangabad

VERSUS

1. State of Maharashtra
Through Department of Urban Development,
Mantralaya, Mumbai 400 032
2. The State Election Commission of Maharashtra,
Through the State Election Commissioner,
Dr. Madam Kama Road, Mumbai

3. The Aurangabad Municipal Corporation,
Through its Municipal Commissioner, Aurangabad.
4. The Municipal Commissioner,
Aurangabad Municipal Corporation, Aurangabad.
5. The Deputy Commissioner (Revenue)
Aurangabad Municipal Corporation
As Head of Election Department of Aurangabad
Municipal Corporation, Aurangabad
6. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
7. The Collector, Aurangabad

Mr. Taher Ali Quadri and Zia Ul Mustafa, Advocate for Petitioner
Mr. D. R. Kale, G. P. for R/State.
Mr. Ajit B. Kadethankar, Advocate for Respondent No.2

CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.

RESERVED ON : 19th March, 2020
PRONOUNCED ON : 26th May, 2020

JUDGMENT (Per Shrikant D. Kulkarni, J.):

1. The challenge in this group of petitions is to the notification of ward formation of the ensuing election of Aurangabad Municipal Corporation May-2020.

FACTUAL MATRIX

2. The State Election Commission has published a draft notification of delimitation/reservation/ward formation of Aurangabad Municipal Corporation on 04.02.2020 and suggestions and objections were called upon from the public at large. The petitioners have submitted their suggestions /objections to the draft notification of delimitation/ward

formation of Aurangabad Municipal Corporation. According to the petitioners, census of 2011 is considered for the ensuing election of the Corporation. The population of Municipal area is required to be divided into 115 wards and after having necessary calculations, ratio of population per ward comes to 10769. However, $\pm 10\%$ is permissible. As such, maximum population limit per ward is 11747 and minimum population limit is 9611 per ward. Population per wards has nexus with reservation of seats of Scheduled Caste/Scheduled Tribe. The State Election Commission has directed that only in exceptional cases, ratio of population per ward may cross minimum or maximum limit referred above. According to the petitioners, in the process of ward formation, the ratio of minimum and maximum limit of population per ward as stated above is violated at 21 places due to political interference. Resultantly, the entire ward formation and consequent reservation is tampered with in 80 wards.

3. The starting point of ward formation is north direction and it ends in south direction in a zig-zag manner. Additional area of Satara and Deolai has been included in the Corporation in 2016, which is situated in south direction. According to the petitioners, even if population of Satara-Deolai is included, maximum increase of population per ward is 188. Wards have been increased from 113 to 115 and as such the ward formation of 2015 should not have been disturbed in north/east or west direction.

4. Around 66 wards are located in northern side of Jalna road and 49 wards are located at south side of Jalna road. According to the petitioners, in order to favour some politicians more than 80 wards of 2015 have been substantially disturbed and this has been done either to reserve or dereserve particular wards. It is contented that reservation is required to be rotated in each election in view of Article 243-T of the Constitution of India. Accordingly the State Election Commission has issued orders stating that while considering reservation of the wards of the current election, the reservation on the enumeration blocks of the ward shall be considered. According to the petitioners false information has been submitted in schedule 11 by the officers of the Aurangabad Municipal corporation in respect of several wards and resultantly the process is adversely affected. While carrying out ward formation, conveniently enumerated blocks, having population of SC/ST are shifted from one ward to another ward in such a manner that, ward, which would have been reserved in descending order, is unreserved and vice versa. Principle of rotation is followed but only to rotate the enumerated blocks.

5. Wards which were reserved for women in preceding election are excluded from women reservation since reservation is 50%. But as the wards are newly formed in each election the State Election Commission has directed to ascertain the reservation of women on the enumerated blocks in preceding election. According to the petitioners if total population of women enumerated blocks of last election exceeds 50% of

population of newly ward formed, then it should be considered as the ward reserved for women in the preceding election.

6. In the preceding election (2015) some of the wards were reserved for the women and now in this election those wards are unreserved for the women. The reservation of Scheduled Caste/Scheduled Tribe is not maintained in the view of ratio of total population of ward with SC/ST population.

7. According to the petitioners the entire process of delimitation needs to be carried out very confidentially. It is contended by the petitioners that confidential information relating to delimitation of wards is disclosed to unauthorized persons and media. As such, the Aurangabad Municipal Corporation has committed breach of guidelines issued by the State Election Commission. The contents of draft notification as well as contents of final notification were available with copying centres as well as social media. The entire process has been carried out to favour certain political leaders. The petitioners had raised serious objections to that effect with the State Election Commission, but, unfortunately, no cognizance was taken by the State Election Commission.

8. According to the petitioners they have raised objections with details to the State Election Commission. The State Election Commissioner has rejected their objection to the draft notification regarding ward formation and issued final notification. In that background petitioners have rushed to this Court and challenged notification of ward

formation/ delimitation/reservation published by the State Election Commission.

9. We have heard Mr Devdatta Palodkar, Mr.S.S.Thombre, Mr C. R.Thorat, Mr. Pramod B. Gapat, Mr. Shivraj B. Kadu, Mr. Amol S. Gandhi and Mr. Taher Ali Quadri learned counsel for the petitioners, Mr D. R. Kale, learned Government pleader for the respondents State, Mr. Ajit Kadethankar, advocate for the State Election Commission of Maharashtra and Mr. S. B.Deshpande, learned Advocate for the Municipal Corporation of Aurangabad. We have also perused copy of notification, reservation declaration programme, map of Aurangabad City and other documents placed on record with the able assistance of learned Advocates of both the sides.

Arguments advanced by the learned advocates for the petitioners may be summarized as under:

10. According to the petitioners, the entire formation /delimitation of wards is based on the population of latest census. The State Election Commission is required to divide the city in to different wards according to the latest census figure, number of persons in each wards. In view of section 5(3) of the Maharashtra Municipal Corporations Act,1949 (hereinafter referred to as the MMC Act), population of Municipal area is required to be divided into 115 wards and thus, ratio of population per ward comes to 10679 $\pm$, maximum 10% permissible in this ratio and after having necessary calculation, maximum population per ward is

11747 and minimum population per ward is 9611. Only in exceptional cases, for the reasons to be recorded in writing, rule of plus minus 10% of the average population per ward may be crossed. The reason is that entire reservation of Scheduled Caste/Scheduled Tribe is dependent on the total population and the percentage of population of those reserve categories in each ward.

11. Permissible ratio of population $\pm$ per ward is violated at 21 wards without any reason. The stand of the Aurangabad Municipal Council and the State Election Commission about inclusion of Satara and Deolai is perverse and unjustified. The rule of ratio of population per ward has been colourably used either to reserve or unreserve the wards either for women or for BCC, SC or ST.

12. Schedules 9, 10 and 11 are the basic documents for the purpose of carrying out delimitation as well as reservation. The reservation of enumerated blocks which are included in the newly formed wards in the current election qua the earlier election of 2005, 2010 and 2015 is submitted in Schedules 9, 10 and 11 respectively. As per schedule 9, 10 and 11, the reservation on the enumeration blocks in the preceding election is in a criteria to ascertain the reservation on the said ward. Rule of 50% is prescribed for that. If we go by the said Rule, total population of all enumerated blocks of newly formed wards are required to be compared with total of enumeration blocks which were reserved. If the population of enumeration blocks more than 50% of total population,

the ward shall be reserved for the said category in the preceding election. If it is less than 50%, the ward shall be deemed to be unreserved and available for any reservation. This rule is applied conveniently and thus entire rotation is affected due to illegal action of rotation of enumeration blocks. There are illegalities in the rotation and reservation seats for SC ward No.70 Kranti Chowk and Ward No.90 Pundliknagar.

13. Delimitation notification issued by the State Election Commission can be challenged by invoking writ jurisdiction under Article 226 of the Constitution of India as no other remedies available and therefore the petitions are rightly maintainable. The State Election Commission is empowered in view of Section 5(3) of the Act to publish final notification after inviting objections from affected persons and consider those objections. This function is quasi judicial function. The State Election Commissioner has delegated function of hearing of objections to a committee but the impugned notification is silent on the consideration of decision of the committee. The entire action needs to set aside on this ground. Hearing is important part and not an empty formality.

14. According to the learned counsel for the petitioners, the "Institutional hearing" means when an institution like Central Government, State Government is designated to take a decision not specific authority, but in the present case, the State Election Commissioner is designated vide section 5 of the MMC Act and not State

Election Commission. Thus once the authority is designated, it cannot assume colour of "institutional hearing".

15. It is further argued that Circular dated 03.01.2020 issued by the State Election Commission of Maharashtra prescribing procedure for formation of Wads is not followed. It was expected that the geographical nature of the wards should not be disturbed and natural boundary should be maintained. But in the ward formation. Initial ward No.47 of Rajabazar has been divided into two wards i.e. Ward No.36 and ward No.50. The boundaries which are mentioned for ward No. 36 do not have access way. The ward has been divided from the building which is not permissible unless and until there was approach way to the ward.

16. According to the learned counsel for the petitioners, draft notification dated 04.02.2020 and final notification dated 24.02.2020, issued by the Respondent/ Deputy Commissioner (Revenue), Aurangabad Municipal Corporation regarding delimitation /ward formation and draw of reservation of seats for the ensuing elections of Aurangabad Municipal Corporation needs to be quashed and set aside with directions to the respondents to conduct fresh programme for delimitation/ward formation and reservation of seats in accordance with the provisions of Maharashtra Municipal Corporation Act and prevailing rules and orders.

Learned counsel for the petitioners have placed their reliance on the following stock of citations in support of their arguments.

(1) Anurag Narayan Sing Vs. State of U.P. reported in (1996) 6 SCC

303. Indian National Congress Vs. Institute of Social Welfare and others, reported in (2002) 5 SCC 685.
- (2) Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary, AIR 1965 Supreme Court, 1486
- (3) Gullapalli Nageswara Rao and others Vs. A.P. State Road Transport Corporation, AIR 1959 Supreme Court 308
- (4) Rashid Javed and others Vs. State of Uttar Pradesh and another, (2010) 7 Supreme Court Cases 781
- (5) Indian National Congress (I) Vs. Institute of Social Welfare and others (2002) 5 Supreme Court Cases 685.

SUBMISSIONS OF MR. A.B. KADETHANKAR, ADVOCATE FOR STATE ELECTION COMMISSION

17. It is binding on the State Election Commission to declare result at least one week before the expiry of duration of five years, thereby giving time for the process of holding first meeting of the newly formed body. The State Election Commission had supported the delimitation programme for Aurangabad Municipal Council vide letter dated 30.10.2019 for four seats wards (multi member ward) as per the legal provisions existing then. However, the State of Maharashtra issued enactment on 31.12.2019 replacing the multi member ward system by single member ward system for the purpose of election to the Municipal Corporation. As such, the process undertaken earlier became redundant in the light of the new law and delimitation process had to be started afresh. Accordingly, the State Election Commission has immediately started delimitation process afresh by issuing order dated 03.01.2020, considering short time of four months in hand.

18. According to the reverse calendar calculation, now and giving

a bare minimum period for conduct of election, the voter lists have to be finally published before 26th March, 2020. Taking into account this fact, the present voter list programme is in progress.

19. It is submitted that power of delimitation or ward formation is vested with the State Election Commission. The voters are allowed to submit objections/suggestions so that if there are any genuine objections/suggestions, the same can be incorporated in the final publication of wards. The State Election Commissioner, by exercising powers under section 14, sub section 2 of the MMC Act, appointed senior IAS officer Mr. Saurabh Rao, presently working as Commissioner of Sugar, Pune to conduct hearing on the objections and suggestions on the draft of delimitation/formation of wards.

20. It is submitted that authorized officer, by way of elaborate and detailed enquiry, extended opportunity to the members of public to justify their objections and suggestions and whenever possible, accepted the suggestions and made recommendations to the Commissioner which were again examined at the State Election Commissioner's level and all such recommendations were accepted and accordingly approval to the final notification was given.

21. Hearing upon the objections/suggestions, is purely institutional arrangement. The Delimitation Act, 2002 provides for delimitation of seats of House of People and seats of Legislative Assembly of Seats. Section 9(2)(c) of the Delimitation Act refers to holding one or

more public sitting and the same activity termed as 'hearing' by the State Election Commission and its meaning has to be taken into consideration in the same manner. The process of institutional hearing involves that the authorized officer hears the objections in detail to understand their exact point of view, whenever necessary get the objection examined from the concerned officer, get report of recommendation from such corporation staff, form his own opinion on such objection and then take decision, wherever possible and where further process of changes in ward are involved forward his opinion to the State Election Commission for final decision after checking the consequences of the said objection after accepting the same. The State Election Commission accepted all such recommendations made by Authorized officer and prepared the final plan for ward formation and gave approval to it. In the case in hand, there is no difference in the action of the State Election Commission and the opinion of the Authorized Officer. The petitioners have not demonstrated as to what prejudice is caused to them in this process.

22. It is submitted that due to inclusion of village Satara and Deolai in 2016 in the Aurangabad Municipal Corporation area, having the 2011 Census population of 52000, initially two wards came to be formed. Thus, in 2020, when the same number of 115 wards and the average population of 10678 per ward, two wards of Satara and Deolai got divided into five wards. As such, changes in the boundaries of the Wards became inevitable.

23. So far as deviation in population of some wards, marginally maximum and minimum limit of 10% is prescribed by the State Election Commission. It is submitted that by taking into consideration the ward shape, compactness, contiguity and to keep the enumeration block intact and so as to not break communities/ societies having distinct boundaries and after noticing that the reasons given by the Corporation at the time of detailed presentation on 21.01.2020 were found to be satisfactory. The State Election Commission accepted the variations, which were marginally more or less than the prescribed limit.

24. It is submitted that as regards reservation and rotation of reservation, the order of the State Election Commission dated 03.01.2020, 14.01.2020 and 29.01.2020 are issued in consonance with all the provisions of the Constitution, the Maharashtra Municipal Corporation Act and in compliance of the ratio laid down by the higher Courts in land mark cases. It is submitted that all the directions have been followed strictly, scrupulously and reservations and rotation method is duly followed and there is no illegality.

Submissions of Government Pleader:

25. Mr D. R.Kale, Learned Government Pleader echoed the argument advanced by Mr. A.B. Kadethankar, learned counsel for the State Election Commission.

Submissions of Learned Counsel for the A.M.C.

26. Mr. S.B.Deshpande, learned counsel appearing for the

respondents- Municipal Corporation also argued in tune with Mr. Kadethankar and supported to the stand taken by the State Election Commission. Shri Deshpande, the learned counsel further submitted that while conducting institutional hearing, principles of natural justice were followed. The objections/suggestions regarding ward formation/delimitation of wards were taken into consideration and there is no question of prejudice to the petitioners or anybody else. He submitted that the petitioners have to demonstrate that competent authority recommended contrary to the findings of the State Election Commission. On the concept of institutional hearing, Mr. S.B.Deshande, learned counsel for the Aurangabad Municipal Corporation has placed reliance on the following citations:

- (1) (1989) 4 SCC 264 Ossian and Gelatin Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and others
- (2) (2014) 5 SCC 252 Kalinga Mining Corporation Vs. Union of India
- (3) Writ Petition No. 369/2011 Adarsha Cooperative Housing Society Ltd Vs. Union of India, judgment dated 29.04.2016.

27. To conclude, Mr. Deshpande, the learned counsel submitted that the petitioners were given institutional hearing and their objections / suggestions regarding ward formation/ delimitation of wards were considered by the competent authority. Whenever objections /suggestions found genuine and proper the same were accepted. As such, no prejudice is caused to the petitioners in the process of institutional hearing.

28. Before we advert to the arguments advanced by the learned

counsel for the respective parties, it is necessary to refer to the relevant provisions of the MMC Act and other relevant provisions of the Act, Rules and Election Commission orders issued from time to time regarding holding of election and powers under Article 324 of the Constitution of India. As per Article 243-Q of the Constitution of India, Municipal Corporation is constituted and Article 243-K governs composition of Municipalities, whereas, Article 243-T governs reservation of seats of various backward classes. Section 5 of the MMC Act governs constitution of Municipal Corporation. Section 5-A of the Act speaks about reservation of seats. Section 5-A(1)(b) provides reservation of seats of SC and ST candidates. Section 5-A reads thus:

Reservation of Seats

5A.(1) (a) In the seats to be filled in by election in a Corporation, there shall be seats reserved for persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Class of citizens and women, as may be determined by the State Election Commissioner, in the prescribed manner;

(b) the seats to be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in a Corporation shall bear, as nearly as may be, the same proportion to the total number of seats to be filled in by direct election in the Corporation as the population of the Scheduled Castes or, as the case may be, the Scheduled Tribes in that Corporation area bears to the total population of that area and such seats shall be allotted by rotation to different electoral wards in a Corporation:

Provided that, [one-half] of the total number of seats so

reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes:

Provided further that, where only one seat is reserved for the Scheduled Castes, or as the case may be, the Scheduled Tribes, then no seat shall be reserved for women belonging to the Scheduled Castes, or as the case may be, the Scheduled Tribes and

(c) the number of seats to be reserved for persons belonging to the category of Backward Class of citizens shall be twenty-seven per cent. of the total number of seats to be filled in by election in a Corporation and such seats shall be allotted by rotation to different electoral wards in a Corporation:

Provided that, [one-half] of the total number of seats so reserved shall be reserved for women belonging to the category of Backward Class of citizens.

(d) [one-half] (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and the category of Backward Class of citizens) of the total number of seats to be filled in by direct election in a Corporation shall be reserved for women and such seats shall be allotted by rotation to different electoral wards in a Corporation.

[(e)Notwithstanding anything contained in clauses (a) to (d), the State Election Commissioner may, by an order, issue instructions for rotation of wards reserved for the Scheduled Castes, Scheduled Tribes, Backward Class of citizens and women in Corporations where the number of wards have changed after the general elections for whatever reasons.]

(2)The reservation of seats (other than the reservation for women)under clause (b) of sub-section (1), shall cease to have effect on the expiration of the period specified in article 334 of the Constitution of India.]

29. Section 5A(1)(b): Mah. Amendment 20 of 2011:

Reservation of Seats : SC and ST candidates.

According to mandate of Article 243-T of the Constitution of India, the laws relating to Local Self Government and Municipal Corporations and Councils have been amended. The present provision is one third of total number of seats of the Councillors to be filled in by direct election in the Municipal Corporations and Municipal Councils are reserved for women including seats reserved for women belonging to SC, ST and Backward Class Citizen. One third of the Offices of Mayor of Municipal Corporations and President of Municipal Councils are reserved for women under the Rules made under relevant principal Laws. In the Urban Local Bodies, in order to have more participation in the democratic process, the Reservations for women have been ensured. Due to such Reservation for women as Mayors and Presidents in the Urban Local Bodies, new phenomena appeared since more number of women has become Mayors or Presidents. This amendment has been enforced w.e.f. 21.04.2011.

30. **5A(2) Reservation of seats:** This section was inserted by Maharashtra Act No. 41 of 1994. In every Municipal Corporation seats are to be reserved for the Scheduled Castes, Scheduled Tribes, Women and Backward Class of Citizens. The number of seats to be reserved for the

Scheduled Castes and Scheduled Tribes is to bear as nearly as may be the same proportion to the total number of seats to be filled by election in that Municipality as the population of the Scheduled Castes and Scheduled Tribes in the Municipal area bears to the total population of that area. It is also provided that the seats shall be allotted by rotation of different constituencies in the Corporation. A provision is also made for reservation of one-third of total number of seats in every Municipal Corporation for women including the women belonging to the Scheduled Castes, Scheduled Tribes and backward Class of Citizens. Twenty seven per cent of the total number of seats are reserved in every Municipal Corporation for the Backward class of Citizens.

Formation of Wards : Reservation.

The exercise of power and formation of opinion in the matter of forming wards or provisions for reservation is based on the material available to the Election Commission. Both the formation of wards and reservation can be done simultaneously and the Act does not prohibit such an exercise.

31. The Bombay Provincial Municipal Corporations (Manner of Allotment and Rotation of Reservation of Seats in Wards) Rules, 2011, throws light on the manner of allotment of seats reserved for scheduled caste and scheduled tribes.

3. Manner of allotment of seats reserved for the Scheduled castes

(1) For reserving seats of Councillors for the candidates

belonging to the Scheduled Castes, the wards shall be first arranged in descending order, beginning with a ward where the percentage of population of the Scheduled Castes with regard to the total population of such ward is the highest.

(2) Where the number of seats of Councillors to be reserved for the candidates belonging to the Schedule Castes is equal to or less than the number of wards in a Corporation, one seat in each ward shall be allotted to the Scheduled Castes, beginning in the descending order with the ward having the highest percentage of population of the Scheduled Castes:

Provided that, the seats reserved under this sub-rule shall be rotated, as far as possible, in the subsequent elections to the Corporation to such wards in which no such seat had been previously reserved for the Scheduled Castes until such reservation is provided in all the wards in the Corporation by rotation.

(3) Where the number of seats of Councillors to be reserved for the candidates belonging to the Scheduled Castes is more than the number of wards in the Corporation, then, -

(a) firstly, one seat in each ward shall be allotted to the Scheduled Castes; and

(b) then for the purpose of allotting the remaining reserved seats, beginning in the descending order with the ward having the highest percentage of population of the Scheduled Castes, one seat in the ward, shall be allotted to the Scheduled Castes till all the seats to be reserved for the Scheduled Castes are allotted:

Provided that, the seats reserved under this sub-rule shall be rotated, as far as possible, in the subsequent elections to the Corporation to such wards in which one such seat had been previously reserved for Scheduled Castes, until such reservation is provided in all the wards in the Corporation by rotation.

4. Manner of allotment of seats reserved for the Scheduled Tribes

(1) For reserving seats of Councillors for the candidates belonging to the Scheduled Tribes, the wards shall be first arranged in descending order beginning with a ward where the percentage of population of the Scheduled Tribes with regard to the total population of such ward is the highest.

(2) Where the number of seats of Councillors to be reserved for the candidates belonging to the Schedule Tribes is equal to or less than the number of wards in a Corporation, one seat in each ward shall be allotted to the Scheduled Tribes, beginning in the descending order, with the ward having the highest percentage of population of the Scheduled Tribes:

Provided that, the seats reserved under this sub-rule shall be rotated, as far as possible, in the subsequent elections to the Corporation to such wards in which no such seat had been previously reserved for the Scheduled Tribes until such reservation is provided in all the wards in the Corporation by rotation.

(3) Where the number of seats of Councillors to be reserved for the candidates belonging to the Scheduled Tribes is more than the number of wards in the Corporation, then,-

(a) firstly, one seat in each ward shall be allotted to the Scheduled Tribes; and

(b) then for the purpose of allotting the remaining reserved seats, beginning in the descending order with the ward having the highest percentage of population of the Scheduled Tribes, one seat in the ward, shall be allotted to the Scheduled Tribes till all the seats to be reserved for the Scheduled Tribes are allotted:

Provided that, the seats reserved under this sub-rule shall be rotated, as far as possible, in the subsequent elections to the Corporation to such wards in which one such seat had been previously reserved for Scheduled Tribes, until such reservation is provided in all the wards in the Corporation by rotation.

5. Manner of reservation, where the seat in the ward may be allotted to both, Scheduled Castes and the Scheduled Tribes.

While allotting the seats of Councillors to be reserved for the scheduled castes or the scheduled tribes, if on the basis of the percentage of population of the Scheduled Castes and Scheduled Tribes, the same ward qualifies for reservation of seats for both, the Scheduled Castes and the Scheduled Tribes, then a seat in such ward shall be reserved for either of the two categories viz, the scheduled castes or the Scheduled Tribes, depending on whose percentage of population is higher in that ward.

7. Manner of allotment of seats for women

(1) The number of seats of Councillors to be reserved for women in a ward shall be as under :-

(a) In a ward having two seats, one seat shall be reserved for women.

(b) In a ward having three seats, two seats shall be reserved for women.

(2) The seats to be reserved for women belonging to the Scheduled Castes, or, as the case may be, the Scheduled Tribes, shall be allotted by drawing of lots from amongst the wards having the seats reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) The seats to be reserved for women belonging to the Backward Class of Citizens shall be allotted by drawing of lots from amongst the wards having the seats reserved for the Backward Class of citizens, after excluding the wards having a seat reserved for women belonging to the Scheduled Castes or the Scheduled Tribes.

(4) The seats shall be reserved for women belonging to General Category by drawing of lots from amongst the wards having the seats not reserved for the Scheduled Castes, Scheduled Tribes or Backward Class of citizens in such a manner that as far as possible, one seat is reserved for women in a ward with two seats and two seats are reserved for women in a ward having three seats.

(5) The seats reserved for the women in a particular category shall be allotted by rotation, as far as possible, in the subsequent election of the Corporation after commencement of these rules, to the wards where no such seat was allotted to women in that category in the previous elections to the Corporation, till all the wards are allotted such reservation by rotation.

Explanation- For the purpose of rotation under this rule and rules 3, 4 and 6 the general elections held after commencement of these rules shall be considered as the first election.

By 74th amendment to the Constitution of India election, responsibility of holding election of the municipalities is cast upon State Election Commission. Superintendence directions and control of the election of the Municipalities in the State are

vested by the Constitution in the State Election Commission of Maharashtra.

32. We have considered the arguments advanced by the learned Advocates for respective sides in the light of above referred relevant provisions of the Act and Rules.

33. Population of Aurangabad Municipal Corporation area in the year 2010 according to 2001 census report was stated to be 880340. In the year 2015, the population of Aurangabad Municipal Corporation area was taken to be 1175160 according to 2011 census figures and as such, the number of Councillors to be elected is increased to 113. In view of inclusion of Satara and Deolai area in the Aurangabad Municipal Corporation, number of Councillors to be elected is increased to 115. As a result of increase in number of wards and change in population figures, exercise in respect of delimitation of wards and prescribing reservation and rotation of seats was required to be conducted in accordance with the provisions of law, rules, orders issued by the State Election Commission and in observance of the constitutional mandate. In the year 2011, the State Government has taken a decision to prescribe multi member wards by incorporating amendment in section 5(3) of the Maharashtra Municipal Corporation Act. The system of multi member ward adopted in the year 2011 with effect from 26.05.2011 was given go bye by the State in view of Ordinance issued on 31.12.2014 thereby reverting to its earlier decision of having single member ward/constituency.

34. Main challenge in these petitions is with regard to ward

formation/delimitation, reservation of wards and non adherence to the State Election Commission orders/circulars issued from time to time regarding rotation of reservation of wards for SC/ST/women reservation.

Mr. Ajit Kadethankar learned counsel for the State Election Commission, Maharashtra contended that writ petitions filed by the petitions are not at all maintainable in view of constitutional bar on the jurisdiction of a Court of law including under Articles 226 of the Constitution in respect of any electoral matter including delimitation of constituencies/wards and allotment of reservation as provided in Chapter IX and IXA under Article 243-O and 243-ZG read with Article 329 of the Constitution of India. Mr. Kadethankar, learned counsel has placed his reliance on the following citations in support of his argument.

- 1) NP Ponnuswami V/s R.O. and others (Five Judges Bench), 1952 AIR 64
- 2) Meghraj Kothari V/s delimitation Commissioner and others (Five Judges Bench), AIR 1967 SC 669, MANU/SC/0054/1966
- 3) 1978(1) SSC 405 Mohinder Singh Gill & ano. V/s The C.E.C., New Delhi and others (Five Judges Bench)
- 4) E.C.I. V/s Shivaji and others, 1987 Air 61, manu/sc/0379/1987 Division Bench
- 5) State of U.P V/s Pradhan Sangh Kshettra samiti and others 1995 (Supp.) 2 SSC 305 Division Bench
- 6) Boddula and others V/s State Election Commission and others manu/sc/0417/1996, AIR 1996, AIR 1996 SC 1595 (Three Judges Bench)
- 7) Anurag Narain Singh & ors V/s State of UP and others 1996 (6) SSC 303 manu/sc/1252/1996 Division Bench
- 8) Election Commission of India V/s Askok Kumar and others 2000(8) SSC 216 (Three Judges Bench)

- 9) Kishansing Tomar V/s Municipal Corporation of Ahemdabad and others 2007 (4) C\BCR 414 (Five Judges Bench)
- 10) 2009(2) ALL MR 306 Naarendra Kulkarni V/s State and others Division Bench
- 11) Jadhav Shankar Dyandeo V/s Collector and others 2010 (6) ALL MR 576 Division Bench
- 12) Vijaysing Rajput V/s State and others 2018 (3) Mh LJ 126 Division Bench
- 13) Punjabrao and others V/s The State and others MAN/MH/0996/2017 (Para 10 and 11) Division Bench
- 14) Laxmibai V/s the collector, Nanded and others Manu/SC/0191/2020
- 15) Prashant Desarda V/s State and others Writ Petition No.3010 of 2015

35. It is necessary to place on record the development after the petitions were heard at length and closed for judgment. The whole Nation is affected due to pandemic Covid-19. In that background, the Chief Secretary, State of Maharashtra has requested to the State Election Commission of Maharashtra to postpone the election of Aurangabad Municipal Corporation as well as other elections to be held as per the programme published earlier. Taking into consideration the pandemic Covid-19 and its large scale in the State, the State Election Commission, vide order dated 17.03.2020, was pleased to postpone the election of Aurangabad Municipal Corporation as well other elections until further orders and copy of the said order issued by the State Election Commission dated 17.03.2020 is placed on record.

36. Firstly we shall deal with the point of allegation of leakage of

information by the officials of the Aurangabad Municipal Corporation and sharing the same with photocopy centers and media. On going through the affidavit sworn by Mr. Avinash Tukaram Sanas, Deputy Commissioner, State Election Commission that the State Election Commission has taken cognizance of the complaints made by the petitioners. The State Election Commission has already directed to the Commissioner, Aurangabad Municipal Corporation to conduct enquiry about the allegation of leakage of information and submit report. Further it is evident from the papers annexed with the reply affidavit filed on behalf of the State Election Commission that the Municipal Commissioner, Aurangabad Municipal Corporation has issued show cause notice to one Mr Kamlakar Phad, Deputy Commissioner/ then head of election of Aurangabad Municipal Corporation. It is therefore clear that State Election Commission has taken cognizance of the complaint made by the petitioners in this regard and on the basis of directions issued by the State Election Commission, the Municipal Commissioner, Aurangabad Municipal Corporation has initiated enquiry and report is awaited. At this stage, it may not be appropriate to make any comment on this issue and certainly it is not a ground to quash the final notification issued by the State Election Commission.

37. Now, coming to maintainability of the writ petitions under Article 226 of the Constitution of India, learned counsel for both the sides have relied upon number of citations in support of their arguments. We have carefully gone through the stock of citations relied upon by the learned

counsel for the respective parties. In the premise of their bone of contentions and after taking stock of citations relied upon by both sides, following legal propositions are emerged:

- (i) The Higher courts shall be slow in entertaining the petitions under Articles 226 of the Constitution of India seeking interference in election process.
- (ii) There is constitutional bar under Article 329 (a) of the Constitution of India which prohibits questioning delimitation of constituencies or allotment of seats in any court of law.
- (iii) Notification delimiting constituencies and allotting seats has force of law and hence covered by constitutional bar provided under Article 329(a) of the Constitution and it cannot be challenged.
- (iv) Scope for challenge – though the draft order of delimitation- after alteration or modification if any, becomes final, in absence of any provisions laying down that such final order shall have force of law and shall not be questioned in any court of law as provided under section 10 of the Delimitation Commission Act. The final order would be open to challenge provided challenge made soon after publication of the order. Order challenged after publication of notification for holding election of Municipal Corporation, not maintainable in view of Article 226 and 243ZG of the Constitution of India.

Therefore, it is clear that validity of laws relating to delimitation

and allotment of seats made under Article 243-ZG of the Constitution cannot be questioned before any Court of law.

38. It is important to note that petitioners are not at all challenging the law relating to delimitation and allotment of seats, much less reservation of seats. Challenge in these petitions is mainly on the grounds- (i) non adherence to the rules and regulations of the State Election Commission for holding Aurangabad Municipal Corporation election; (ii) non consideration of objections for draft notification; and (iii) improper formation of wards by overlooking geographical ground realities. We are therefore of the considered view that the petitions filed by the respective petitioners are maintainable before this Court under Article 226 of the Constitution of India. In this regard, it would be useful to place reliance on the decision in the case of **Anugrah Narain Singh & Anr. Vs. State of U.P. and others reported in (1996) 6 Supreme Court Cases 303**, wherein, the Hon'ble Supreme Court has held as under:

"24. The validity of Sections 6-A, 31, 32 and 33 of the U .P. Act dealing with delimitation of wards cannot be questioned in a court of law because of the express bar imposed by Article 243-ZG of the Constitution. Section 7 contains rules for allotment of seats to the Scheduled Castes, the Scheduled Tribes and the Backward Class people. The validity of that section cannot also be challenged. That part, in the instant case, when the delimitation of the wards was made, such delimitation was not challenged in the ground of colourable exercise of power or on any other ground of arbitrariness. Any such challenge should have been made as soon as the final order was published in the Gazette after objections to the draft order were considered and

not after the notification for holding of the elections was issued. As was pointed out in *Lakshmi Charan Sen*, that the fact that certain claims and objections had not been disposed of before the final order was passed, cannot arrest the process of election.

25. In this connection, it may be necessary to mention that there is one feature to be found in the Delimitation Commission Act, 1962 which is absent in the U.P. Act. Section 10 of the Act of 1962 provided that the Commission shall cause each of its order made under Sections 8 and 9 to be published in the Gazette of India and in the Official Gazettes of the States concerned. Upon publication in the Gazette of India every such order shall have the force of law and shall not be called in question in any Court. Because of these specific provisions of the Delimitation Commission Act, 1962, in the case of *Meghraj Kothari v. Delimitation Commission*, this Court held that notification of orders passed under Sections 8 and 9 of that Act had the force of law and therefore, could not be assailed in any court of law because of the bar imposed by Article 329. The U.P. Act of 1959, however, merely provides that the draft order of delimitation of municipal areas shall be published in the Official Gazette for objections for a period of not less than seven days. The draft order may be altered or modified after hearing the objection filed, if any. Thereupon, it shall become final. It does not lay down that such an order upon reaching finality will have the force of law and shall not be questioned in any court of law. For this reason, it may not be possible to say that such an order made under Section 32 of the U.P. Act has the force of law and is beyond challenge by virtue of Article 243-ZG. But any such challenge should be made soon after the final order is published. The Election Court constituted under Section 61 of the U.P. Act will not be competent to entertain such an objection. In other words, this ground cannot be said to be comprised in sub-clause

(iv) of clause (d) of Section 71 of the U.P. Act. In the very nature of things, the Election Court cannot entertain or give any relief on this score. The validity of a final order published under Section 61 of the Said Act.”

39. Following are the material dates:

Notifications	Date of publication
Draft Notification	04.02.2020
Final Notification	24.02.2020
Petition Nos.	Date of filing/institution
Writ petition No. 3323/2020	24.02.2020
Writ petition No. 3351/2020	25.02.2020
Writ petition No. 3361/2020	25.02.2020
Writ petition No. 3466/2020	26.02.2020
Writ petition No. 3491/2020	28.02.2020
Writ petition No. 3492/2020	28.02.2020
Writ petition No. 3501.2020	28.02.2020
Writ petition No. 3510/2020	27.02.2020
Writ petition No. 3511/2020	28.02.2020
Writ petition No. 3556/2020	29.02.2020
Writ petition No. 3934/2020	09.03.2020
Writ petition No. 3519/2020	28.02.2020

The petitioners have approached this Court soon after publication of final notification of ward formation dated 24.02.2020. Notification of election programme is yet to be published by the State Election Commission. The petitioners have challenged the final notification dated 24.02.2020 regarding ward formation and in view of decision of the Hon’ble Supreme Court in the case of **Anugrah Narain Singh and another (supra)**, the petitions are maintainable. Therefore, we do not find any merit in the arguments advanced by

Mr. Kadethankar, learned Advocate for the State Election Commission and Shri S.B. Deshpande, learned counsel appearing for the Aurangabad Municipal Corporation regarding maintainability of the petitions under Article 226 of the Constitution of India.

40. The power under Article 226 of the Constitution of India is not intended to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view. The High Court, in exercise of powers under Article 226 of the Constitution cannot make a roving enquiry and rope in all sorts of issues. The extra ordinary power under Article 226 is to be invoked only where circumstances are exceptional and do warrant the exercise of such powers.

Scope for judicial review to challenge notification is narrow. The High Court, while exercising writ jurisdiction under Article 226 of the Constitution of India, does not sit as an appellate authority. Role of High Court, in such matters under judicial review is limited to find whether the decision making process is adhered to and that there are any malafides while issuing draft notification and absence of arbitrariness on the part of the Election Commission.

41. Another points raised by the petitioners are regarding delimitation/formation of wards and institutional hearing. For examining the objections and suggestions, there are various stages in the election process. The election comprises major stages like delimitation,

publication of voters list and conduct of election, which are further divided in several sub stages. Article 243E of the Constitution mandates conduct of election before expiry of duration of five years from the date appointed for its first meeting.

42. A striking feature of these new provisions inserted in the Constitution by Articles 243-243ZG is that they are in the nature of basic provisions, which are to be supplemented by laws made by respective State Legislatures.

43. The local Government including self government institutions in rural and urban areas is an exclusive state subject under Entry 5 of List II of the 7th Schedule. The union cannot enact any law to create rights and liabilities relating to these subjects. Ergo, the Union by inserting Part IX and IXA in the Constitution outlined the scheme which would be implemented by several states by making laws or amending their existing laws to bring them in conformity with the provision of the 73rd and 74th Constitution Amendment Act.

44. The Maharashtra State legislature correspondingly amended the existing Maharashtra Municipal Corporations Act, 1949 (erstwhile Bombay Provincial Municipal Corporation Act) and provided the scheme for reservation and formation of wards. Section 5A of the MMC Act provides for reservation of seats and section 5(3) speaks about formation of wards.

45. The State Election Commission noticed the provisions in regard to nomination papers and the ballot papers made in the MMC Act and the common rules made thereunder as well as the supplement rules made by the Municipal Corporation under the MMC Act, are either incomplete or not in conformity with each others. To fulfill the need and the requirement of holding the election in an efficient manner and in the interest of purity of election of corporations and in the interest of conduct of such elections in free, fair and efficient manner, to provide for supplemental and incidental provisions with regard to nomination form and form of ballot paper. The State Election Commission in exercise of power conferred by Article 243-ZA of the Constitution of India read with sub section 4 of Section 14 of the Bombay Provincial Municipal Corporation Act and all other powers enabling it, framed Municipal Corporation Election Rules (Supplementary and Incidental Provision) Order 1997. Similarly, the MMC Act has been amended, with a view to give effect to the provisions, it is considered expedient by the State Legislature to frame Rules. The Government of Maharashtra, in exercise of powers conferred by Article 243-ZA of the Constitution of India read with sub section (4) of section 14 of the Maharashtra Municipal Corporations Act, 1949 and all other powers enabling it in this behalf and in partial modification of the State Election Commission, Maharashtra Order No. SEC/MCN/ELN/SUPPL-PRO/231/94. Dated 22nd November, 1994, amended the order.

The corresponding amendment was made in Section 5 of the MMC Act. The power for delimitation and reservation of ward is invested with

the Election Commission.

46. Section 5 of the MMC Act provides for delimitation of boundaries of wards. Duty is cast upon the State Election Commission to delimit boundaries of wards and forming wards. Sub section 2 of section 14 of the MMC Act empowers the State Election Commissioner to delegate any of its power and function by order in writing to any officer of State Election Commission or any officer of the State Government not below the rank of Deputy Collector or any officer of the Municipality not below the rank of Assistant Municipal Commissioner. Sub section 3 of Section 14 provides that all the officers and members of staff appointed or deployed for preparation of electoral roll and conduct of election of the corporation under this Act or Rules shall function under superintendence, direction and control of State Election Commissioner. Having regard to section 5(3) and section 14(2) and(3) of the MMC Act, the State Election Commission, by order dated 11.02.2020 seems to have appointed an independent senior IAS Officer namely Mr Saurabh Rao who is presently working as Commissioner of Sugar, Pune. The powers were delegated to Mr Saurabh Rao , senior IAS officer to conduct hearing on the objections and the suggestions received on draft of delimitation of wards on pre-notified date. It is evident from the record that authorized officer Mr. Saurabh Rao, senior IAS officer has conducted elaborate and detailed inquiry and extended an opportunity to the members of public by way of hearing to justify their objections and suggestions regarding delimitation of wards/formation of wards.

47. Mr. Saurabh Rao, senior IAS officer has accepted certain suggestions and submitted his report with his recommendation to the State Election Commission. The State Election Commission, at its level, again examined the report with suggestions and objections. All such recommendation were accepted by the State Election Commission and accordingly approval was given to the final notification. It is needless to say that power to finalize delimitation and formation of wards in a corporation election vests in the State Election Commission.

48. Learned counsel for the petitioners vehemently argued that in the present case, one officer has conducted hearing on the objections and suggestions on the draft of delimitation of wards, whereas another officer at State Election Commission has decided the objections and suggestions, which is contrary to the law and against the principles of natural justice. Mr. Kadethankar, learned counsel for the State Election Commission and Mr.S.B.Deshpande,learned counsel appearing for the Aurangabad Municipal Corporation, while combating the arguments advanced on behalf of the petitioners, again invited our attention to section 14(3) of the MMC Act and exercise of powers of hearing on the objections, suggestions on draft delimitation of wards. Learned counsel for both the sides have placed on record number of citations in support of their contentions.

49. It is undisputed position that Mr, Saurabh Rao, senior IAS Officer has conducted hearing on the objections and suggestions on the draft of

delimitation of wards/formation of wards and submitted his report with his recommendations to the State Election Commission and on that basis, the State Election Commission has issued the impugned final notification regarding delimitation of wards of Aurangabad Municipal Corporation. The exercise referred above cannot be said to be violative of principles of natural justice.

50. We lay our hands on the citation in the case of **Ossian and Gelatin Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and others**, reported in (1989) 4 SCC 264, wherein it is observed by the Hon'ble Supreme Court that in a case where the order has been passed by an officer, different from the one who heard the parties, after considering all the points, does not amount to prejudice. The Hon'ble Supreme Court has further observed that in such a case, the requirement of natural justice can be said to have been complied with. It is not a case of prejudice where the charges were heard by one officer and order was passed by another officer. **The Division Bench of this Court, in Writ Petition No. 646 of 1994 with connected matters, to which, one of us was party (S.V. Gangapurwala, J.), vide order dated 6th August 2010, has taken similar view by placing reliance on the decision in case of Mahadaya Premchandra Vs. Commercial Tax Officer (AIR 1958 SC 667) and Ganpat Balaji Parate Vs. State of Maharashtra and others, [(1991) 2 Mh.L.J. 1515].** Herein the case at hand, Mr. Saurabh Rao, senior IAS officer was appointed by State Election Commission to hear the objections/suggestions on delimitation/formation of wards. He had afforded an

opportunity of hearing to the concerned and forwarded his detailed report with his recommendation to the State Election Commission. The State Election Commission arrived at subjective satisfaction based on objective assessment of the report and accepted the report submitted by Mr. Saurabh Rao , senior IAS officer with his recommendations threadbare and accordingly issued final notification dated 24.02.2020 regarding Aurangabad Municipal Corporation general election 2020. Therefore, it is clear that it is not a case of violation of principles of natural justice. No prejudice has been caused to the petitioners. As is evident from record, the State Election Commission has considered all objections/suggestions forwarded by Mr. Saurabh Rao, senior IAS officer along with his report and recommendations and accordingly final notification has been issued.

51. Now coming to the delimitation /formation of wards. Relevant provisions of MMC Act are section 5(3) and section 5(4) which are discussed earlier.

Population of latest census 2011 is the pillar of entire process of ward formation/delimitation. It is the main contention of the petitioners that Clause No.4 of the Election Commissioner's order dated 03.01.2020 prescribes population as basis for the purpose of conducting election. Clause no. 4.4 allows $\pm 10\%$ of the average population per ward. Only in exceptional cases for the reasons to be recorded in writing, rule of $\pm 10\%$ of the average population per ward can be relaxed. According to the petitioners, the State Election Commission has given go by to its own rules and regulations while delimitation of wards and ratio of $\pm 10\%$ is

not at all maintained.

52. It is pertinent to note that State Election Commission has issued final notification regarding reservation of wards and rotation of reservation by keeping in mind the provisions of the Constitution of India and in compliance of the judgment and order passed by this court in writ petition no.386/2006, dated 03.10.2006, writ petition no.6389/2006 with connected matters dated 9-2-2007 and judgment and order dated 24.03.2015 in writ petition no. 3101/2015 with other connected matters. On going through the exercise made by State Election Commission and direction issued by this court earlier in the above referred petitions, the State Election Commission has followed the directions of this court strictly and scrupulously in the process of reservation of wards and rotation of reservation.

53. We have gone through the reply affidavit sworn by Mr. Sumanth Ganpatrao More, Deputy Commissioner (Revenue) and Head of Election Department of Aurangabad Municipal Corporation as well as additional affidavit filed by the petitioners. It should be borne in mind that at the time of last general election of Aurangabad Municipal Corporation held in the year 2015, there were 113 wards. Later on Satara and Deolai villages were brought into the limits of Aurangabad Municipal Corporation. As a result, number of wards came to be increased to 115 wards in Aurangabad Municipal Corporation. It is evident from the reply affidavit sworn on behalf of the Aurangabad Municipal Corporation that the administration was required to divide Satara and Deolai into only

two wards. While exercising delimitation, the administration was required to consider total population of the city including newly added Satara and Deolai villages. Satara and Deolai area are having population around 52,000 and need to be divided in five wards, but as per statute only two wards could be increased which consequently affected original wards as well as natural boundaries of each ward came to be changed.

54. Further it is evident from the reply affidavit sworn on behalf of Aurangabad Municipal Corporation that it has taken into consideration the population of Aurangabad City as per census of 2011 and on that basis calculations were made and population of each ward came around 10678. Further, it is evident that while adding any enumeration block to a particular ward, care needs to be taken that no enumeration block need to be divided in two wards. As such, in certain wards there is deviation marginally above minimum or maximum. It is true that ratio of 10% $\pm$ as per the State Election guidelines and order needs to be followed and in 20 wards, same is not adhered to. It is important to note that in the process of formation/delimitation of wards, one cannot apply mathematical precision and equation and in that exercise, it was found so difficult for them to adhere to the norms stated above. Learned counsel for the petitioners have invited our attention in this regard as to how guidelines of 10% $\pm$ ratio is not adhered to and thereby violation of Rules and Regulations of State Election Commission.

55. As discussed herein above, the area of Aurangabad Municipal

Corporation is required to be divided into 115 wards in view of addition of Satara and Deolai villages. No malafides are brought to our notice while delimitation /formation of wards. The situation was very much unique. The administration was required to accommodate Satara and Deolai area having population around 52000. Secondly, it cannot stretch number of wards beyond 115. Obviously, the deviation from the norms are bound to be there. Therefore, we are of the considered view that even though ratio of 10% $\pm$ is not adhered while delimitation of wards/re-formation of wards in respect of certain wards, it is not a case of malafides and as such final notification cannot be questioned on that ground.

56. Now coming to the reservation/rotation of reservation of wards, according to the learned counsel for the petitioners, ward boundary and ward formation are not according to the provisions of law and regulation. It is also contended that the ratio of population was not maintained and fraudulent information was supplied to mislead the public and there is illegality in rotating seats in respect of Ward Nos. 73, 23, 49, 46, 3, 4, 70, 90, 58 with regard to reservation. It is evident from the reply affidavit sworn on behalf of Aurangabad Municipal Corporation that they have considered the factual position existed during the elections held in the years 2005, 2010 and 2015 while considering the rotation of reservation. The State Election Commission has directed to consider whether more than 50% enumeration blocks were in the wards reserved earlier or not. If such blocks are reserved in earlier election, they cannot be reserved for the present election. But if it is revealed that

reservation for less than 50% enumeration blocks are not reserved then such wards need to be considered as new wards and need to be reserved.

57. Reply affidavit referred above also gives picture about women reservation category and wards thereof. It is evident that in the last election held in the year 2015, enumeration block No. 0037000 was a part of ward No. 76 which was then reserved for women category. Further it is evident from the reply sown on behalf of the Aurangabad Municipal Corporation that Satara- Deolai area was divided in five wards viz. 105, 112, 113, 114 and 115. There were 79 objections on the said 5 wards of Satara Deolai Village. During hearing, the officials of Aurangabad Municipal Corporation and few representatives of these objectioners were asked to sit together and come with best possible solution. Accordingly, the wards of Satara Deolai were reconstructed and shown to the objectors and after having consensus of majority, the reconstruction was accepted and the changes were recommended and finalized.

58. The formation of ward Nos. 21,22,23 has been challenged by the petitioners. With specific references to Ward Nos.21,22,23, boundaries have been made distinct along the Sukhana river. Wards have been formed with adherence to the legal provisions. The State Election Commission, after taking into consideration geographical situation of the wards, enumeration blocks, population ratio and other factors with the

constitutional provisions and other legal provisions made exercise of reformation of wards/delimitation of wards in the light of directions given by this court **in the case of Prashant Desarda and others**. The State Election Commission seems to have taken every care for rotation of wards for reserved category as well as women reservation of wards. While reservation of wards the State Election Commission has taken into consideration reverse calendar and accordingly rotated the wards. The wards are required to be arranged in descending order for the purpose of rotating SC/ST reservation and accordingly it has been followed in this case.

59. The contention of the petitioners regarding policy of reservation and rotation of seats has not been followed by State Election Commission is devoid of merit. It shall have to be taken into consideration that the State Election Commission is expected to follow the principles governing the rules and regulations and its own orders and circulars in its substance.

60. There may be delusions or illusions, which are not sufficient to vitiate the whole process of election. It would not render the whole exercise of delimitation of wards and prescription of reservation and rotation, bad and illegal.

61. Having regard to the above reasons, we arrive at conclusion that the petitions are devoid of any merit. All the petitions need to be dismissed.

62. Writ petitions stand dismissed. In the facts and circumstances of the case no order as to costs.

63. Pending civil applications also stand disposed of.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC