

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 262 OF 2020

Devyani W/o Krishna Dongaonkar,
Age 39 years, Occu. Agri. and presently
President of the Zilla Parishad, Aurangabad,
R/o Dongaon, Tal. Gangapur,
District Aurangabad.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai 32.
2. The District Collector, Aurangabad.
3. The Returning Officer for Elections to
President and Vice President of the
Zilla Parishad, Aurangabad and
The Additional Collector, Aurangabad.
4. The Chief Executive Officer,
Zilla Parishad, Aurangabad.
5. Meena Ramrao Shelke,
Age 45 year, Occu : Household,
R/o Kumbhephal Tq. & Dist. Aurangabad
6. Anuradha Atul Chavan,
Age 46 year, Occu. Household,
R/o Kingaon, Tq. Phulambri,
District Aurangabad.

...Respondents

Mr S.S. Thombre, Counsel for Petitioner
Mr D.R. Kale, I/c. Government Pleader for
Respondent Nos. 1 to 3
Mr P.R. Nangare, Counsel for Respondent No. 4
Mr V.D. Salunke, Counsel for Respondent No. 5
Mr R.N. Dhorde, Senior Counsel i/by
Mr V.R. Dhorde, Counsel for Respondent No. 6

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

**DATE OF RESERVATION : 16.02.2021
DATE OF PRONOUNCEMENT : 07.05.2021**

JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. Rule. Rule returnable forthwith. With the consent of learned Counsel for the parties, heard finally at admission stage.

2. The petitioner, one of the candidates contesting election for the post of President of Zilla Parishad, Aurangabad has knocked the doors of this Court by invoking writ jurisdiction under Article 226 of the Constitution of India and sought the following reliefs :-

(A) *By issuing writ of Mandamus or any other writ, order or directions in the like nature, the adjourned meeting scheduled on 4.01.2020 may kindly be quashed and set aside and for that purpose issue necessary orders;*

(B) *By issuing writ of Mandamus or any other writ, order or directions in the like nature, this Hon'ble Court may be pleased to direct the respondent No. 3 to declare the petitioner as elected as President of the Zilla Parishad, Aurangabad and for that purpose issue necessary orders;*

(C) *Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court may be pleased to direct the respondent no. 3 to declare the petitioner as elected as President of the Zilla Parishad, Aurangabad and for that purpose issue necessary orders;*

(D) *Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court may be pleased to restrain the respondent No. 3 from conducting the adjourned meeting on 4.01.2020 for election of the President of the Zilla Parishad, Aurangabad and for that purpose issue necessary orders;*

THE FACTUAL MATRIX

3. The State Government published election programme to elect new President and Vice President of the Zilla Parishad, Aurangabad. Respondent No. 3 was appointed as a Presiding Officer to hold the meeting to elect the President and Vice President of the Zilla Parishad, Aurangabad.

4. The Deputy Chief Executive Officer (General Administration), Zilla Parishad, Aurangabad published election programme on 27.12.2019. As per the said programme, on 03.01.2020 from 10.00 a.m. to 12.00 p.m. was the time to purchase and file the nomination for the post of President and Vice President. From 02.00 p.m. to 02.30 p.m. was scheduled time for scrutiny of nominations. From 02.35 p.m. to 02.40 p.m. was the time fixed for withdrawal of nominations and about 02.45 p.m. onwards, procedure to elect the President and Vice President was scheduled.

5. Accordingly, on 27.12.2019, the petitioner submitted her nomination for the post of President. Respondent No. 5/Meena Ramrao Shelke and Respondent No. 6/Anuradha Atul Chavan also submitted their nominations for the post of President. As per scheduled time, the process to elect the President was commenced. The procedure to elect President was by show of hands. According to the petitioner, she had secured 30 votes. The process of election of the President was videographed. One Smt Monali Rathod had shown her hand in favour of the petitioner and thus, the petitioner had secured 30 votes. However, Smt Monali Rathod again raised her hand inadvertently when name of the another candidate

was called out. In fact, Smt Monali Rathod has cast her vote in favour of the petitioner by showing her hand, and therefore, her vote should not have been considered for other candidate. The Returning Officer ought to have declared the petitioner as elected President of the Zilla Parishad, Aurangabad in view of the fact that she had secured 30 votes. Due to political pressure, the Returning Officer adjourned the meeting. The meeting was rescheduled on 04.01.2020 for election of the President of the Zilla Parishad, Aurangabad and the same decision is under challenge. The petitioner has approached this Court on the rescheduled date of the election of the President of the Zilla Parishad, Aurangabad i.e. on 04.01.2020 and petition was placed before us on that day at 01.00 p.m. On 04.01.2020, we had passed the following order :-

ORDER

I) *Issue notice to respondents including added party respondents, returnable on 21.01.2020. The learned Addl. G.P. waives notice for respondent Nos. 1 to 3. Humdast allowed.*

II) *The respondent authorities shall bring it to the notice of all the contesting candidates the factum of pendency of present writ petition and further consequences of the pendency of the present writ petition.*

III) *Needless to state, in case the result of the election is declared, same would be subject to the decision of the present writ petition.*

IV) *The participation of the petitioner in the election/meeting to be held on 04.01.2020 at 2.00 P.M. would be without prejudice to her rights in the present writ petition.*

6. During the pendency of the petition, the election for the post of President of Zilla Parishad, Aurangabad was held on 04.01.2020.

Respondent No. 5/Smt Meena Ramrao Shelke was declared elected as President of Zilla Parishad, Aurangabad.

7. We have heard Mr S.S. Thombre, learned counsel for the petitioner, Mr D.R. Kale, learned I/c. Government Pleader for Respondent Nos. 1 to 3/State, Mr P.R. Nangare, learned counsel for respondent No. 4, Mr V.D. Salunke, learned counsel for Respondent No. 5, who has been elected as President of Zilla Parishad, Aurangabad and Mr R.N. Dhorde, learned senior counsel instructed by Mr V.R. Dhorde for Respondent No. 6.

8. We have perused the documents placed on record by both the sides.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

9. According to Mr Thombre, the learned counsel for the petitioner, as per the programme for election to the post of President, Zilla Parishad, Aurangabad was conducted on 03.01.2020 at 2.00 p.m. The petitioner had secured 30 votes out of 58 Zilla Parishad members, who were present in the meeting. The petitioner ought to have been declared as elected. Even if the contention of the respondent is accepted that one Smt Monali Rathod had cast her vote in favour of the two candidates, her vote would be invalid. Still, the petitioner would secure 29 votes and thus, petitioner ought to have been declared as elected President of Zilla Parishad, Aurangabad. The authority should not have postponed the meeting since all the stages of election were concluded. According to Mr Thombre, the decision of respondent No. 3/Returning Officer adjourning the meeting to next day i.e. 04.01.2020 is unjust, arbitrary and illegal. The Returning

Officer under political pressure has taken such arbitrary decision. He submitted that in similar set of facts in the year 2014, for the elections of the subject committees of the Zilla Parishad, the vote which was counted for in time that was considered, and therefore, the Returning Officer should have adopted the same mechanism for this election for the post of President/Vice President of Zilla Parishad. According to Mr Thombre, the decision of adjourning the meeting to next day is nothing but to favour another candidate under political pressure. He submitted that in the above background, directions need to be issued to respondent No. 3/Returning Officer to declare the petitioner as elected for the post of President of Zilla Parishad, Aurangabad by issuing necessary writ.

10. The entire proceeding of the election of Zilla Parishad, Aurangabad is videographed and the petitioner has placed on record CDs and photographs as well to support the case of the petitioner.

11. Mr Thombre, learned counsel for the petitioner has placed reliance on following citations :-

- (i) ***Chandrakant Khaire Vs. Shantaram Kale AIR 1988 SC 1665***
- (ii) ***Save Moreshwar Dina Nath Vs. Shantaram Kale and Ors. 1989 (2) Bom. Cases Reporter 619***
- (iii) ***R.M. Malkani Vs. State of Maharashtra AIR 1973 SC 157***
- (iv) ***S. Pratap Singh Vs. State of Punjab AIR 1964 SC 72***
- (v) ***Tarvindarsingh Mahendrasingh Dhillon Vs. State of Maharashtra and Ors. AIR 2000 Bom. 223***
- (vi) ***Ashraf Yunus Motiwala Vs. State of Maharashtra and Ors. 2000 (4) Mh.L.J. 13***

SUBMISSIONS OF INCHARGE GOVERNMENT PLEADER

12. Mr Kale, learned I/c Government Pleader submitted that the procedure to cast vote for the election of President/Vice President of Zilla Parishad is show of hands in view of the provisions of section 42 and 45 of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 and Rules, 1962. The election process was commenced on 03.01.2020 and as per alphabetical order, the name of Smt Anuradha Atul Chavan was called for voting first. None of the members present in the meeting had raised their hands to cast vote in favour of the first candidate Smt Anuradha Atul Chavan. The name of petitioner Smt Devyani W/o Krishna Dongaonkar called for voting. The members, who wished to vote in favour of the petitioner, had raised their hands and their concerned Row Officer deputed to obtain the signatures of the members in acknowledgment of the votes, which they had obtained the signatures of the members had voted in favour of the petitioner. At that time, Smt Monali Rathod at no point of time raised her hand to cast her vote in favour of the petitioner. She did not put her signature as an acknowledgment of her vote in favour of the petitioner. The name of third candidate in alphabetical order namely, respondent No. 5/Smt Meena Ramrao Shelke was called for voting. The Returning Officer had instructed to the members, who were present in the meeting that those members who had cast vote in favour of the previous candidate cannot recast their vote in favour of subsequent candidate. The same procedure was followed while counting votes of Respondent No. 5/Smt Meena Ramrao Shelke.

13. During the process, a member by name Smt Monali Rathod showed of her hand to cast her vote in favour of Respondent No. 5/Smt Meena Ramrao Shelke. During the said period of process of recording of the votes of the members who had raised their hands was in progress and the signatures of those members who had cast votes and raised their hands to support the candidature of Smt Meena Ramrao Shelke was in progress and after some time, Smt Monali Rathod started some conversation on her mobile phone. After sometime, Smt Monali Rathod had taken her hand down. The contesting candidates namely, petitioner, Respondent No. 5 and 8 to 10 members had gathered around Smt Monali Rathod and they started pressurizing her to raise her hand and cast her vote to either of two contesting candidates. Both contesting candidates were pursuing Smt Monali Rathod to cast her vote in their favour. The supporters of contesting members also started pressurizing Smt Monali Rathod to caste her vote in favour of their respective candidates. The rival members were shouting at each other. The situation had turned bad. Both the rival groups started threatening each other and as a result, there was chaotic situation. As a result, the process of counting of votes of the candidature of Smt Meena Ramrao Shelke could not be completed.

14. The learned In charge Government Pleader submitted that the Returning Officer had tried his level best to bring situation under control. However, the members present in the meeting were not in a mood to listen. As such, the Returning Officer had no option except to adjourn the proceeding of the said special meeting in view of the provisions of Sec. 45 (2) of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 r/w Rule 7 of the Maharashtra Zilla Parishad (President and Vice-President)

and Panchayat Samitis (Chairman) Election Rules, 1962. Accordingly, the proceeding of the meeting was adjourned to 04.01.2020 at 2.00 p.m. and pronouncement was made to that effect. The entire proceeding of the meeting dated 03.01.2020 is videographed and CDs are placed on record.

15. Learned In charge Government Pleader submitted that on 04.01.2020 at about 2.00 p.m. at same venue, election for the post of Zilla Parishad was held. 60 elected members were present in the said meeting. In the said election, petitioner got 30 votes whereas Respondent No. 5 got equal number of votes i.e. 30 votes. In view of section 45 (3) of the Act of 1961 and Rules, 1962, chit was drawn and in the said process, Respondent No. 5/Smt Meena Ramrao Shelke got elected and accordingly, result was declared. 58 members were present at the time of election held on 03.01.2020. 60 members were present on 04.01.2020 when election was held on adjourned date. The petitioner did not raise any objection for permitting two members to participate in the said meeting.

16. Learned Incharge Government Pleader submitted that as per the proceedings and record, Smt Meena Ramrao Shelke had cast her vote in favour of Smt Meena Ramrao Shelke/Respondent No. 5. The learned Incharge Government Pleader submitted that the decision taken by the Returning Officer/Respondent No. 3 to adjourn the meeting to next day was right in view of the chaotic situation. There is no merit in the petition.

SUBMISSIONS OF LEARNED COUNSEL FOR RESPONDENT NO. 5

17. Mr V.D. Salunke, learned counsel for Respondent No. 5 strenuously argued that the instant writ petition is not maintainable. The

petitioner has raised disputed questions of facts which cannot be gone into under extraordinary jurisdiction under Article 226 of the Constitution of India. He submitted that the petitioner has alternate efficacious legal remedy of appeal. The petitioner may avail the alternate remedy of appeal/ revision as per the Zilla Parishad and Panchayat Samitis Act. According to Chapter IX of the Constitution particularly Article 243 (O) puts a bar to make interference in the electoral matters by the Court. The remedy is to file an election petition. In view of the above legal objections, instant petition is not maintainable and liable to be dismissed.

18. Mr Salunke, the learned counsel further submitted that election for the post of President of Zilla Parishad Aurangabad, was scheduled on 03.01.2020 from 10.00 a.m. onwards. There were three candidates in the fray of election for the post of President.

- (i) Smt Anuradha Atul Chavan
- (ii) Smt Devyani W/o Krishna Dongaonkar
- (iii) Smt Meena Ramrao Shelke

19. 58 members were present for the special meeting to elect President of Zilla Parishad, Aurangabad. Nobody tendered vote in favour Smt. Anuradha Atul Chavan. 29 members tendered votes in favour of the petitioner out of 58 members. The Presiding Officer announced the name of Respondent No. 5 when 29 members cast their votes in her favour out of 58 members including disputed vote of Smt Monali Rathod. Smt Monali Rathod cast her vote by raising her hand in favour of Respondent No. 5 and same was recorded in the sheet. However, while obtaining her signature on the sheet, the petitioner and her good members made chaos

in the meeting and pressurized Smt Monali Rathod not to sign the sheet. In fact, Smt Monali Rathod had cast her vote to Smt Meena Ramrao Shelke. The petitioner and her supporters prevented Smt Monali Rathod from putting signature on the sheet and as a result, the situation became bad. It was beyond the control of the Presiding Officer to continue the proceeding of the same. The Presiding Officer exercised powers under section 45 of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 r/w Rule 7 of the Maharashtra Zilla Parishad (President and Vice-President) and Panchayat Samitis (Chairman) Election Rules, 1962 and adjourned the meeting to next day i.e. on 04.01.2020. On the next day, special meeting was conducted when 60 members were present. The petitioner did not raise any objection about presence of two members, who were not present in the meeting held on 03.01.2020.

20. Mr Salunke, learned counsel for Respondent No. 5 invited our attention to Rule 7(supra) and submitted that it provides that Presiding Officer shall adjourn and held the meeting again for the purpose on the next day. It does mean that there should be fresh meeting for the purpose of election of the President and Vice President of the Zilla Parishad, Aurangabad. On 04.01.2020, 60 members were present. Out of which 30 members cast their votes in favour of the petitioner and 30 members cast their votes in favour of Respondent No. 5. The note-sheet to that effect is also placed on record in order to clear the position. The proceedings of the election of President dated 03.01.2020 and 04.01.2020 are recorded and CDs to that effect are also placed on record which supports the case of Respondent No. 5. He submitted that the process of meeting held on 03.01.2020 did not complete before the stage of declaration of result for

the post of President, Zilla Parishad, Aurangabad. There was chaos. The Presiding Officer has rightly exercised his powers as provided under Rule 7 of 1962 Rules.

21. On 04.01.2020, the petitioner and Respondent No. 5 secured equal votes i.e. 30 votes each and by way of drawing of chit, Respondent No. 5 has been declared elected on the post of President, Zilla Parishad, Aurangabad. Now, only course open for the petitioner to challenge the election of Respondent No. 5 by way of election petition/appeal under the statutory provisions of the Act and Rules.

22. To buttress the argument, Mr Salunke, learned counsel placed his reliance on following citations :-

(i) 1998 (8) SCC 703 in the matter of C. Subrahmaniam Vs. K. Ramanjaneyullu (para no. 3 & 4)

(ii) 2005 (8) SCC 383 in the case of Harnek Singh Vs. Charanjit Singh.

(iii) Avtar Singh Hit Vs. Delhi Sikh Gurudwara Management Committee and ors., reported in (2006) 8 SCC 487.

(iv) (1967) 3 SCC 211 in the case of Nanhoo Mal and Others Vs. Hira Mal and Others.

(v) 1978 (1) SCC 405 in the matter of Mohinder Singh Gill and Anr. Vs. Chief Election Commission, New Delhi and ors.

(vi) Tulshiram Timaji Shrirame and Anr. Vs. State of Maharashtra through its Secretary and Ors. reported in 2011 (I) Bom.C.R. 131 (Nagpur Bench)

(vii) Kiran S/o Ashokrao Patil Dongaonkar Vs. Collector (Election Officer), Zilla Parishad, Aurangabad and two others Writ Petition No. 7251/2007 decided on 21.08.2008 (Bench at Aurangabad).

23. Mr R.N. Dhorde, learned senior counsel for respondent No. 6 argued in tune with the argument advanced by the learned counsel for the petitioner. Mr Dhorde, learned senior counsel submitted that the decision of the Presiding Officer to adjourn the meeting was capricious, arbitrary and illegal. The decision was under political pressure and as such, the decision needs to be quashed and set aside.

24. Mr Nangre, learned Counsel for respondent no.4 echoed the argument advanced by the learned Govt. Pleader and supported to the stand of Government.

25. Having regard to the factual matrix as detailed in para nos. 2 to 4, it would be clear that the decision of the Returning Officer to adjourn the meeting for the election of the President of the Zilla Parishad, Aurangabad, which was rescheduled on 4.1.2020 is put to challenge by way of this petition. It is obvious to look to the relevant provisions regarding the decision to adjourn the meeting.

26. Section 45 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter referred to as "the Act of 1961") throws light on the procedure for election of President and Vice-President of Zilla Parishad, which reads thus :

"45. Procedure for election of President and Vice-President - (1) On the constitution of a Zilla Parishad after a

general election or otherwise, a meeting shall be called for the election of the President and Vice-President on the date fixed by the Collector under sub-section (2) of Section 11.

(2) The meeting called under sub-section (1), shall be presided over by the Collector or such officer not below the rank of a Deputy Collector as the Collector may by order in writing appoint in this behalf. The Collector or such officer shall, when presiding over such meeting, have the same powers as the President when presiding over a meeting of the *Zilla Parishad* has, but shall not have the right to vote :

Provided that, notwithstanding anything contained in [sub-section (2) or (10) of Section 111, the Collector or the officer presiding over such meeting may, for reasons recorded in writing which in his opinion are sufficient, refuse to adjourn such meeting, or as the case may be, adjourn such meeting.]

(3) If in the election of the President or Vice-President, there is an equality of votes, the result of the election shall be decided by lot to be drawn in the presence of the Collector or the officer presiding, in such manner as he may determine.

(4) In the event of a dispute arising as to the validity of the election of a President or Vice-President, [the Collector or the officer presiding over such meeting or any Councilor may within thirty days from the date of the election] refer the dispute to the Commissioner for decision. [An appeal against the decision of the Commissioner may within thirty days from the date of such decision, be filed before the State Government.]

(5) After the election of the President and Vice-President, the *Zilla Parishad* may continue its meeting over

which the President shall preside for transacting such other urgent business as the President may allow."

27. Rule 7 of the Maharashtra Zilla Parishads (President, Vice-President and Chairman of Subjects Committees) and Panchayat Samitis (Chairman and Deputy Chairman) [Reservation of Offices and Election] Rules, 1962 is also relevant, which reads thus :

"7. Power to adjourn and hold the meeting again if election is not held - If for any reason the meeting called for the election of a President, does not result in the election of a President, the Officer Presiding shall adjourn it and hold the meeting again for the purpose on the next day at the same hour."

28. Following two points may cover the entire dispute on hand:

(i) Whether the Returning Officer has properly used his powers as contemplated under Section 45 of the Act of 1961 and Rule 7 of the Election Rules, 1962 to adjourn the meeting till next day for the election of a President of Zilla Parishad, Aurangabad ?

(ii) At what stage election was adjourned ?

29. First we shall deal with the legal point raised by Mr V.D. Salunke, learned Counsel for respondent no.5 regarding maintainability of this petition.

30. In case of ***Kiran s/o Ashokrao Patil Dongaonkar Vs. The Collector & Election Officer, Aurangabad and ors., Writ Petition No. 7251/2007 decided on 21.08.2008 (Bench at Aurangabad) (supra)***, the

learned Single Judge has held that once a declaration is made by the Returning Officer declaring a candidate as elected, only remedy available under law is to raise challenge by taking recourse to provisions of Section 144-T of M.C.S. Act, 1960 and by presenting an Election Petition. The order in respect of declaration of a particular candidate as elected cannot be questioned by any other mode except by presenting an election petition. It is well settled position of law that where elections are conducted in accordance with the provisions of a Statute and the Statute also provides a remedy for settlement of election dispute by filing an election petition before the Tribunal, it is that remedy alone, which should be availed of and recourse cannot be taken to proceedings under Article 226 of the Constitution of India. Mr Salunke has placed reliance in case of ***Harnek Singh Vs. Chandrajit Singh and Avtar Singh Hit Vs. Delhi Sikh Gurudwara Management Committee and ors. (supra)***. Article 243-O of the Constitution of India mandates that all election disputes must be determined only by way of an election petition. This by itself may not *per se* bar judicial review. Judicial review is the basic structure of the Constitution, but ordinarily, such jurisdiction would not be exercised. There may be some cases where a writ petition would be maintained. Parties must avail alternate and efficacious remedy available under the Statute. There cannot be debate on this settled legal position.

31. In the case on hand, the petitioner is not challenging the election of President, Zilla Parishad, Aurangabad wherein respondent no.5 has been elected as President. Prayer (B) of the petition reads thus :

"(B) By issuing writ of mandamus or any other writ, order or directions in the like nature, the adjourned meeting

scheduled on 4.1.2020 may kindly be quashed and set aside and for that purpose issue necessary orders."

Therefore, it is clear that the subject of adjournment of meeting to elect the President of Zilla Parishad, Aurangabad is challenged in the main prayer. Even though the subsequent prayer clauses (C) and (D) are clothed with seeking declaration of petitioner as President of the Zilla Parishad, Aurangabad by setting aside the decision of adjournment of meeting; by order dated 4.1.2021, we had made it clear that the result of the election would be subject to the decision of the present Writ Petition. In view of that we have entertained the petition.

32. In case of ***Chandrakant Khaire Vs. Shantaram Kale (supra)***, it is held by the Honourable Supreme Court that adjournment is act of postponing meeting of any kind private or public body until another time is fixed. Adjournment *sine die* applied also to period during which meeting or business stands adjourned. However, proper course to be adopted to hold meeting as originally intended that adjourn it to more suitable date.

33. In case of ***Save Moreshwar Dina Nath Vs. Shantaram Kale and Ors (supra)***, it is held by the Division Bench of this Court, Bench at Aurangabad that if the meeting is adjourned as per the clauses in the Act and Rules, then, in the next meeting, the further business, which has remained to be carried out, shall be disposed of. But, the provisions do not provide for cancellation of the business, which is already transacted in the meeting. It is further held by the Division Bench that the voice recorded on tape is admissible in writ proceedings in view of Section 63 of the Evidence Act, 1872.

34. In case of ***R.M. Malkani Vs. State of Maharashtra (supra)***, it is held by the Honourable Supreme Court that evidence of tape recorded conversation cannot be challenged on the ground that it violates Section 25 of the Telegraph Act, 1885. In case of ***Tarvindarsingh Mahendrasingh Dhillon Vs. State of Maharashtra and Ors.(supra)***, the Division Bench of this Court, Bench at Aurangabad has set aside the elections of Mayor and Deputy Mayor by observing that Rules framed for conducting the elections not in clear and correct language and directed fresh elections to be held. In another decision in case of ***Ashraf Yunus Motiwala Vs. State of Maharashtra and Ors. (supra)***, the election of Chairman of Standing Committee and adjournment of the meeting was under challenge.

35. In the case on hand, we have to examine whether the Returning Officer has properly used his discretion as contemplated under Section 45 of the Act of 1961 and Rule 7 of the Rules, 1962 to adjourn the meeting till next day for the election of President of Zilla Parishad, Aurangabad. Secondly, at what stage the election came to be adjourned. Having regard to the study of stock of citations relied upon by both the sides and ratio laid down therein, we must state that the scope of this petition is very much narrow to the extent of examining the decision of adjournment of the meeting by way of judicial review. As such, petition to that extent is maintainable in view of legal position made clear by the Honourable Supreme Court in case of ***Avtar Singh Hit Vs. Delhi Sikh Gurudwara Management Committee and ors. (supra)***, wherein it is made clear that in exceptional or extra-ordinary circumstances, writ

remedy can be availed of.

36. Now, coming to the factual scenario regarding election of President of Zilla Parishad, Aurangabad, it is evident from the record that as per election programme, the election for the post of President, Zilla Parishad, Aurangabad was scheduled on 3.1.2020. As per the said programme, on 3.1.2020 from 10.00 a.m. to 12.00 noon was the scheduled time to purchase and file nomination papers for the post of President. From 2.00 p.m. to 2.30 p.m. was scheduled time for scrutiny of nominations. From 2.35 p.m. to 2.40 p.m. was scheduled time for withdrawal of nominations and about 2.45 p.m. onwards, process to elect the President was scheduled. There were following three candidates in the fray of election for the post of President.

- (i) Smt Anuradha Atul Chavan;
- (ii) Smt Devyani w/o Krishna Dongaonkar;
- (iii) Smt Meena Ramrao Shelke

Fifty eight Councilors/Members were present for the Special General Body Meeting to elect President of Zilla Parishad, Aurangabad. The procedure to elect President was by show of hands.

37. As per alphabetical order, name of Smt. Anuradha Atul Chavan was called out and votes were invited. Nobody tendered vote in favour of Smt. Anuradha Atul Chavan. Then, name of Smt. Devyani wife of Krishna Dongaonkar was called out and votes were invited. One Zilla Parishad member Smt. Monali Rajendra Rathod did not raise her hand at any point of time to cast her vote in favour of Smt. Devyani wife of Krishna Dongaonkar and she has also not even affixed her signature as a

Councilor giving her vote in favour of Smt. Devyani wife of Krishna Dongaonkar. The name of third candidate in alphabetical order namely Smt. Meena Ramrao Shelke was called out and votes were invited. The process of casting of votes began. The members in support of candidature of Smt. Meena Ramrao Shelke raised their hands. In the said process, one member Smt. Monali Rajendra Rathod also raised her hand to cast her vote in support of Smt. Meena Ramrao Shelke/respondent no.5. The process of recording of votes of the members, who had raised their hands was in progress and signatures were being obtained. Smt. Monali Rajendra Rathod took down her hand and started some conversation on her mobile phone. It is further evident from the pleadings of both the sides that supporters of two candidates gathered around Smt. Monali Rajendra Rathod and started pressurising her to raise her hand and cast her vote in favour of either of the two contesting candidates. The supporters of both the contesting candidates were persuading and pressurising said Smt. Monali Rajendra Rathod to cast her vote in favour of their respective candidates.

38. There was chaos in the meeting hall. The Returning Officer tried his level best to bring the situation under control, but he failed. None of the members present in the meeting were in a mood to listen to the Returning Officer and the chaotic situation continued. The affidavit sworn by the Returning Officer namely Bhanudas Haribhau Palwe, more particularly, paragraph nos. 9 to 12 throw light, under what circumstances, he constrained to adjourn the meeting till next day. It is evident from paragraph 12 of his affidavit that the Returning Officer had made several requests to the members to maintain silence and keep discipline in the

meeting hall and to co-operate him to complete the election process. None of the members responded him. The Returning Officer could not complete the process of counting of votes in respect of candidature of Smt. Meena Ramrao Shelke due to chaotic situation in the meeting hall. Both the rival groups were heading to each other and there seems to be ruckus. The Returning Officer/respondent no.3 adjourned the proceeding of the said special meeting to next day, i.e. on 4.1.2020 at 2.00 p.m. in view of Section 45 (2) of the Act of 1961 read with Rule 7 of the Election Rules 1962. The minutes of the said meeting are also placed on record by respondent no.3 to that effect.

39. On careful examination of the pleadings of both the sides, one fact is clear that because of casting of vote by Smt. Monali Rajendra Rathod at the time of process of casting of votes in favour of Smt. Meena Ramrao Shelke/respondent no.5, the situation became chaotic. The supporters of both the rival groups were persuading and pressurising Smt. Monali Rajendra Rathod to cast her vote in favour of their respective candidates. The Returning Officer tried his level best to convince the members to keep silence and maintain discipline in the meeting hall to complete the process of election, but none of them responded to his appeal. It was very much difficult for the Returning Officer to complete the process in free and fair manner, which is the foundation of a democratic election process. There was no other reason for the Returning Officer to adjourn the meeting. It is alleged from the side of petitioner that respondent no.3 adjourned the meeting under political pressure and to favour respondent no.5, who is from ruling party. However, the pleadings of both the sides and affidavits on record go to show that because of

irresponsible behaviour of one of the Zilla Parishad members namely Monali Rajendra Rathod, the situation became chaotic and beyond control. Smt. Monali Rajendra Rathod invited trouble in the meeting. As such, the process of election of the President of Zilla Parishad, Aurangabad could not be completed due to chaotic situation. There was no option for the Returning Officer to adjourn the meeting by looking to the chaotic situation by taking aid of Section 45 (2) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 and Rule 7 of the Maharashtra Zilla Parishads (President, Vice-President and Chairman of Subjects Committees) and Panchayat Samitis (Chairman and Deputy Chairman) [Reservation of Offices and Election] Rules, 1962. Accordingly, the Returning Officer seems to have adjourned the meeting till next day i.e. till 4.1.2020 at 2.00 p.m. at same venue.

40. Adjournment is the act of postponing a meeting of any private or public body or any business until another time, or indefinitely, in which case it is an adjournment *sine die*. An adjournment may be :

- (1) For an interval expiring on the day of the adjournment,
- (2) For an interval expiring on some later date,
- (3) For an indefinite time (i.e. *sine die*),
- (4) Until a fixed time and date,
- (5) To another place.

41. It is evident from the affidavit sworn by respondent no.3/Returning Officer that there was pandemonium all around and members of rival groups were around one of the members Smt. Monali Rajendra Rathod in the meeting hall. The chaotic situation continued and

no further business could be transacted on that day. It is not in dispute that business for the day or partly transacted when the Councilors met at scheduled time and venue. There was order in the meeting hall till completion of the process of casting votes in favour of the petitioner. The trouble started when Smt. Monali Rajendra Rathod, one of the Councilors/ Members raised her hand in support of respondent no.5/Smt. Meena Ramrao Shelke and after some time, she had taken her hand down and whole process crumbled. There was no option available for the Returning Officer but to adjourn the meeting by exercising powers under Section 45 (2) of the Act of 1961 read with Rule 7 of the Election Rules, 1962, when he noticed that situation was not beyond control and there was no discipline and realizing that, it was difficult for him to complete the election process to elect President of Zilla Parishad, Aurangabad. In prevailing situation, Returning Officer/respondent no.3 had no other alternative but to adjourn the meeting by invoking the powers vested with him under the Act and Rules. As such, decision taken by respondent no.3/Returning Officer to adjourn the meeting till next day i.e. 4.1.2020 at 2.00 p.m. cannot be termed as arbitrary, illegal and under political pressure. The Returning Officer seems to have used powers under Section 45 (2) of the Act of 1961 read with Rule 7 of the Election Rules, 1962 by considering the situation which was prevailing in the meeting hall and taking into consideration all other difficulties in completing the remaining process of election.

42. Now, coming to another point, at what stage meeting was cancelled. The stage of counting of votes in favour of candidature of the petitioner was complete. The process of counting of votes in favour of candidature of respondent no.5/Smt. Meena Ramrao Shelke was in

progress when situation became chaotic and beyond control, the meeting came to be adjourned. The meeting seems to have been held on next day, i.e. on 4.1.2020 at 2.00 p.m. at same venue. The meeting was commenced. There were sixty Councilors/Zilla Parishad members present in the meeting to elect the President of Zilla Parishad, Aurangabad. The Returning Officer ought to have started the process from where it was adjourned. It was necessary for respondent no.3/Returning Officer to start the process to call out the name of respondent no.5/Smt. Meena Ramrao Shelke and invite votes in support of her candidature. However, it seems that respondent no.3/Returning Officer has conducted the meeting afresh and not from the stage, it was adjourned. The petitioner has challenged the decision of Returning Officer to adjourn the meeting by way of instant Writ Petition on 4.1.2020 and on the very day, this Court had made it clear while passing order on 4.1.2020 that the result of the election for the post of President of Zilla Parishad, Aurangabad would be subject to decision of this petition.

43. On 3.1.2020, i.e. the day of election of President of Zilla Parishad, Aurangabad, as per election programme, 58 Councilors/Zilla Parishad members were present for the meeting. As per record, the petitioner had secured 29 votes and equally, respondent no.5 also secured 29 votes including vote of Smt. Monali Rathod. Though result was not declared, the position was that both the candidates had secured equal votes on that day, i.e. 29 votes each. On the next day, i.e. date of adjourned meeting, 60 members were present. Smt. Monali Rajendra Rathod cast her vote in favour of Respondent no.5 and another Councilor cast his vote in favour of petitioner and thus, the petitioner and respondent

no.5 again secured equal votes i.e. 30 votes each. The position seems to have not changed on the day of adjourned meeting and the same scenario existed which was on 3.1.2020.

44. Smt. Monali Rajendra Rathod who has invited the controversy seems to have filed affidavit in support of the petitioner. On going through the affidavit of Smt. Monali Rajendra Rathod, it is found that she has now supported to the candidature of petitioner Devyani Dongaonkar blaming Returning Officer. She has attempted to state in her affidavit that she has tendered her vote by show of her hand in support of Smt. Devyani Dongaonkar/petitioner, but Returning Officer did not allow her to put her signature due to pressure of two members namely Pankaj Thombre and Vilas Bhumre. On careful scrutiny of the affidavit of Smt. Monali Rathod, it seems that she has changed her stand due to political compulsions. She has changed her role according to change of political scenario and no more weightage can be given to the affidavit sworn by Smt. Monali Rathod.

45. Another important point about participation of members/Councilors on the day of adjourned meeting. There were fifty eight Councilors/Zilla Parishad members present for the meeting held on 3.1.2020, whereas on the adjourned day, i.e. on 4.1.2020 at 2.00 p.m. there were sixty Councilors/Zilla Parishad members present in the meeting hall. All of them seem to have participated in the meeting by casting their votes in support of their respective candidates. Nobody raised any grievance about two Councilors who remained present for the meeting scheduled on adjourned date i.e. on 4.1.2020. The meeting was continued with presence of sixty Councilors to elect the President of Zilla

Parishad, Aurangabad. Accordingly, that process seems to have commenced and completed. The petitioner and respondent no.5 seem to have secured equal votes in the said election held on adjourned date i.e. on 4.1.2020. Smt. Monali Rathod, a Zilla Parishad member has tendered her vote in favour of respondent no.5/Smt. Meena Shelke. In draw of lots, respondent no.5 came to be elected as a President of Zilla Parishad, Aurangabad.

46. In the sequence of events, if the decision taken by the Returning Officer/respondent no.3 is examined and studied, the impugned decision appears to be proper exercise of powers vested with him under the provisions of Section 45 (2) of the Act of 1961 read with Rule 7 of the Election Rules, 1962. Though the meeting ought to have commenced at the stage it was stayed, the meeting seems to have been conducted afresh. Two additional members absent on the first day were allowed to participate. To their participation, nobody raised objection. Out of additional two members, one voted in favour of petitioner and another in favour of respondent no.5. If their votes are excluded, the position would be same. Both would get equal votes. It appears that by stroke of luck, respondent no.5 was destined to win and petitioner did not have luck in her favour. The scenario which was existing on 3.1.2020, did not change on the day of adjourned meeting i.e. on 4.1.2020 since both the candidates had secured equal votes and ultimately, respondent no.5 was declared elected as President of Zilla Parishad, Aurangabad by drawing a chit. As such, there is no point to open that chapter again at this stage when the process is completed in all respect.

47. On an overall view of the facts and circumstances of the case on hand and after careful examination of the impugned decision, on the legal platform, we do not see any reason to invoke our writ jurisdiction under Article 226 of the Constitution of India to interfere with the impugned decision.

48. In the result, we proceed to pass the following order :

ORDER

- (i) Writ Petition is dismissed. Rule discharged.
- (ii) No order as to costs.

(SHRIKANT D. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)

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