

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

969 WRIT PETITION NO.4831 OF 2021
WITH
CIVIL APPLICATION STAMP NO.9862/2021
WITH
CIVIL APPLICATION STAMP NO.9864/2021
WITH
CIVIL APPLICATION STAMP NO. 9865/2021
IN
WRIT PETITION NO.4831 OF 2021

Vishwanath Suresh Khadse ... Petitioner

Versus

The State of Maharashtra and others ... Respondents

Mr. V. D. Sapkal, Senior Advocate I/by Mr. D. S. Bagul, Advocate for the petitioner

Mr. D.R. Kale, I/c Government Pleader respondent Nos. 1 to 3

Mr. S. P. Brahme, Advocate for respondent Nos. 4 and 5

AND

WRIT PETITION NO.4835 OF 2021
WITH
CIVIL APPLICATION ST. NO.9863 OF 2021
WITH
CIVIL APPLICATION ST. NO.9867 OF 2021
WITH
CIVIL APPLICATION ST. NO.9871 OF 2021
IN
WRIT PETITION NO.4835 OF 2021

Ranjana w/o Vijay Sonar ... Petitioner

Versus

The State of Maharashtra and others ... Respondents

Mr. R. N. Dhorde, Senior Advocate I/by Mr. Amarjitsing B.Girase and Mr. Y.B. Bolkar, Advocates for the petitioner

Mr. D.R. Kale, I/c Government Pleader respondent Nos. 1 to 4

Mr. S. P. Brahme, Advocate for respondent Nos. 5 and 6

AND

WRIT PETITION NO. 4901 OF 2021

Rajendra Narayan Marathe ... Petitioner

Versus

The State of Maharashtra and others ... Respondents

Mr. Rajendra Deshmukh, Senior Advocate i/by Mr. Vishnu B. Madan,
Advocate for the petitioner

Mr. D.R. Kale, I/c Government Pleader respondent Nos. 1 to 4

Mr. S. P. Brahme, Advocate for respondent Nos. 5 and 6

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

DATE : 17th March, 2021.

ORDER:

1. The petitioners herein are aggrieved by the decision of the respondents to conduct elections of Mayor and Deputy Mayor of Jalgaon Municipal Corporation, online.

2. Learned Senior Advocate Mr. Dhorde, learned Senior Advocate Mr. Sapkal and learned Senior Advocate Mr. Deshmukh for the petitioners in respective writ petitions strenuously contend that holding of elections for the posts of Mayor and Deputy Mayor of the Jalgaon Municipal Corporation online would not be in tune with the purity of election. The Bombay Provincial Municipal Corporations (Conduct of Elections to the Office of Mayor and Deputy Mayor) Rules, 2005 (for short 'the Rules of 2005') would not permit conduct of online elections. The learned Senior Advocates referred to the Communication/Circular dated 21.12.2020 to submit that the Government has permitted physical conduct of meetings of the Municipal Corporations and its Committees by maintaining social distancing. It is further submitted by the learned Senior Advocates that elections for the posts of Mayor and Deputy Mayor for the Pune Municipal Corporation and the Municipal Corporation, Nagpur were held physically in the months of November/December, 2020. There is no reason in not holding the special meeting of the Municipal Corporation physically for

electing Mayor and Deputy Mayor of the Jalgaon Municipal Corporation. According to them, it is with an oblique motive, the decision is taken to hold the elections online. It is submitted that B.J.P. has a strength of 57 members, Shivsena has 15 members and MIM has 3 members out of the total 75 members. It is further contended by the learned Senior Advocates that Shivsena, being ruling party, has played mischief and thereby taken away 22 Municipal Councilors belonging to B.J.P. at unknown place and by doing this, the ruling party has directed respondent Nos. 3 to 5 to hold the elections through video conferencing so that their illegitimate goal can be achieved. There is no circular or directions in existence to hold elections of the Mayor and Deputy Mayor through video conferencing.

3. According to the learned Senior Advocates, as per the Rules of 2005, physical presence is required for filling in the nomination and withdrawal of the nomination. Voting has to take place by show of hands. It is only for the purpose that Municipal Councilors of B.J.P. should not remain physically present and that they can be pressurized from the unknown place, the present *modus operandi* has been adopted.

4. The learned Senior Advocates for the petitioners further submit that the Collector, Jalgaon, on 14.03.2021 has issued communication (SOP), wherein exemption has been granted for limiting presence of 50 persons in the meeting of General Body of Zilla Parishad, Jalgaon and Jalgaon Municipal Corporation. In view of the exemption granted, respondents can hold the meeting for the elections of Mayor and Deputy Mayor, Physically. There would be no violation of the norms.

5. Learned i/c Government Pleader and the learned Advocate for the Municipal Corporation submit that on 15.03.2021, SOP has been issued by the Government of Maharashtra. The congregation of 50 persons and more is prohibited. So also, no social/cultural/political/religious gathering is allowed. The said measures are in force till 31.03.2021. According to them, the elections would be held in accordance with the provisions of the Rules of 2005. The learned counsel further submits that the elections for the post of Mayor of Sangli Municipal Corporation were held online on 16.03.2021. The learned Government pleader submits that the Collector could not have issued communication(SOP) dated 14.03.2021 in view of the SOP of the Government . The communication of the Collector relied by the petitioners is before the SOP of the Government of Maharashtra dated 15.03.2021 and would not have any effect.

6. The learned Advocate for the Municipal Corporation also referred to the order passed by the Division Bench of this Court at the Principal Seat at Bombay in Writ Petition Nos. 448/2021 and 615/2021 dated 16.03.2021, wherein the general body meeting to be held online was assailed.

7. We have considered the submissions canvassed by the learned Senior Advocates, learned i/c Government Pleader and learned Advocate for the Municipal Corporation.

8. The elections for the post of Mayor and Deputy Mayor of Jalgaon Municipal Corporation are scheduled to be held on 18.03.2021.

9. Provisions of the Bombay Provincial Municipal Corporations (Conduct of Elections to the Office of Mayor and Deputy Mayor) Rules, 2005 are required to be adhered to while conducting the elections for the posts of Mayor and Deputy Mayor. It would be the responsibility of the Returning Officer and the persons in-charge of conducting elections to scrupulously adhere to the Rules of 2005. Violation of the procedure and Rules in the conduct of elections would entail its own consequence.

10. This Court can take a judicial notice of the surge of Covid-19 cases. Measures are being taken for containing the said surge such as lock-down, restricting the presence of maximum number of persons, prohibiting religious and political activities as detailed in the SOP issued by the Government of Maharashtra on 15.03.2021 and the same will operate till 31.03.2021.

11. The reliance placed on the Circular dated 21.12.2021 may not enure to the benefit of the petitioners. As per the said Circular, the Standing Committee meeting and meetings of the Statutory Committees of the Municipal Corporation/Municipal Council are permitted in physical form, may be the number of members of the said committee are limited.

12. In the present case, the Corporation has 75 members. This Court need not enter into the debate of the 22 Municipal Corporators of a particular party being said to be won over or pressurized by another party. It would be premature at this stage to go into the said aspect. The consequences are laid down under the Statute.

13. Considering the surge of the Covid-19 pandemic, it would not be appropriate to entertain the petitions, inasmuch as, directing physical conduct of elections. It is for the authorities to consider the ground situation and take decision accordingly.

14. We would only observe that the elections to be held for the posts of Mayor and Deputy Mayor of the Jalgaon Municipal Corporation should be in accordance with provisions of the Rules of 2005. The Returning Officer and the authorities concerned shall adhere to the provisions of the Rules of 2005 scrupulously while conducting the elections. Violation of the Rules of 2005 during conduct of elections would affect the purity of the elections and may have its further consequence.

15. In case, the elections are not held in accordance with the Rules of 2005 and/or the purity of elections is affected, the parties certainly will have an opportunity to agitate against the same in an appropriate proceeding.

16. With these observations, the writ petitions stand disposed of.

17. In view of disposal of the writ petitions, civil applications also stand disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC