

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

**WRIT PETITION NO. 7164 OF 2021**

Deepali W/o. Santosh More,  
Age-39 years, Occu- Service  
R/o. Vasarni, Tq. & Dist. Nanded

**...PETITIONER**  
[Orig. respondent No.1]

**VERSUS**

- ...RESPONDENTS**
1. Radhabai W/o. Vaijnath Jathale,  
Age-Major, Occu-Household,  
R/o. Vasarni, Tq. & Dist. Nanded
  2. Vandana W/o. Subhashrao Bochara,  
Age-Major, Occu-Household,  
R/o. Vasarni, Tq. & Dist. Nanded
  3. Vishwanath S/o. Namdeorao Jatale,  
Age-Major, Occu-Business,  
R/o. Vasarni, Tq. & Dist. Nanded
  4. Jaiwant S/o. Mahajan Kokate,  
Age-Major, Occu-Agriculture,  
R/o. Vasarni, Tq. & Dist. Nanded
  5. Vijay S/o. Venkat Swami Ponna,  
Age-Major, Occu-Business,  
R/o. Vasarni, Tq. & Dist. Nanded
  6. The Commissioner and Returning Officer of  
Nanded Waghala Municipal Corporation  
Nanded
  7. Returning Officer,  
7, of Nanded Waghala Municipal Corporation,  
HUDCO, Nanded

Mr. Swapnil S. Rathi, Advocate for the petitioner

**CORAM : SANDEEP K. SHINDE, J.**  
**RESERVED ON : 03-07-2021**  
**PRONOUNCED ON : 08-07-2021**

**ORAL JUDGMENT :**

. This petition challenges, following two orders;  
i] order below exh. 48 dated 15-03-2021;  
ii] order below exh. 51 and 52 dated 15-03-2021;  
passed by the learned Civil Judge Senior Division, Nanded in  
Election Petition No. 9 of 2017.

. Facts:

a] The petitioner was elected as a Councilor of Nanded-Waghala Municipal Corporation, Nanded from Ward No. 19 (hereinafter called as 'Returned Candidate') which was reserved for Nomadic Tribes. Radhabai Jethale-respondent No. 1, challenged the validity of the election in the election petition under Section 16 of the Maharashtra Municipal Council and Nagar Panchayat Acts being petition No. 9 of 2017. The petition was presented in October, 2017. The petitioner (returned candidate), filed her written statement in June, 2018. The respondent No. 6 in the election petition is the Commissioner and Returning Officer, NMCMC, Nanded; whereas the respondent No.7 is Returning Officer, NWCMC, Nanded. Issues were framed on

30-07-2019. Whereafter on 25-11-2019 the petitioner in the election petition filed an affidavit-in-lieu of evidence. Her evidence was recorded on 10-01-2019 i.e. much before imposing lockdown. Roznama shows on 10-01-2020 the Returned Candidate, Commissioner and the Returning Officer and their Advocates were absent although called repeatedly and intermittently. In the circumstances, the learned Judge forfeited returned candidate's right to cross-examine and the petition was posted on 06-02-2020. It appears from the roznama that on 07-03-2020 Advocate on behalf of the returned candidate filed an application seeking time to lead the evidence. The learned trial court granted time subject to cost of Rs. 750/- which was directed to be paid to the District Legal Services Authority, Nanded. The returned candidate did not deposit the cost till date. Be that as it may, thereafter the election petition was posted on 04-04-2020, 08-06-2020, 08-07-2020, 27-07-2020, 18-08-2020, 15-09-2020, 20-10-2020 and 09-12-2020 for recording the evidence of Returned Candidate. On these dates may be on account of lockdown the returned candidate and her Advocate did not attend the proceedings. Thereafter, in the month of June, 2021 when the court functioning was resumed, on 06-01-2021 the petition was posted for recording evidence of the returned candidate. Whereafter, again on 09-02-2020 the petition was posted for recording evidence of the returned candidate. On that day returned candidate and her Advocate were absent. Therefore, the learned trial court forfeited the returned candidate's right to lead the evidence and posted the matter for final arguments on 15-

03-2021.

2. It appears, on 15<sup>th</sup> March, 2021 when the Advocate for the petitioner in the election petition was submitting final arguments, Advocate for the returned candidate interrupted proceedings and filed an application below Exh. 48 at about 1.45 pm seeking to set aside the no-cross order passed against the returned candidate on 10-01-2020. On the same day the respondent-Commissioner and the Returning Officer had also applied for setting aside 'no cross' order passed against them on 10-01-2020.

3. It appears from the proceedings that returned candidate had filed three more applications on 15-03-2021 below Exh. 50, 51 and 52. Vide application Exh. 50 returned candidate sought directions to the Returning Officer to produce the original nomination form and entire file. Whereas vide the application Exh. 51 requested the trial court to exhibit her caste certificate and caste validity certificate by dispensing its proof main public documents. Whereas vide application Exh. 52 the petitioner sought leave to file original documents in support of her defence.

4. The learned trial judge vide orders dated 15-03-2021 declined to set aside the 'no-cross' order and also refused to exhibit caste certificate and caste validity certificate. These orders are challenged in this petition.

5. Chronology of the events narrated above definitely shows that the petitioner, a returned candidate, deliberately and consciously avoided to attend the proceedings with an intention to delay the conclusion in the election petition. The events distinctly demonstrate despite returned candidate was permitted to lead her evidence subject to cost of Rs. 750/-. She has not paid it and avoided leading the evidence intentionally so that she could apply for the same subsequently. Although the petitioner was aware of 'no-cross order' passed on 10-01-2020, an application to set aside it, was filed on 15-03-2021 when the election petition was posted for final hearing. The impugned order records a fact that the Advocate for the returned candidate interrupted the arguments of the petitioner in the election petition and sought leave to file an application for setting aside 'no-cross order'. The manner in which the election petition has been contested by the returned candidate was nothing but abuse of process of law. Deliberately and intentionally she did not take steps in time to defend the petition and ensured that petition is rendered infructuous; so that she could complete her tenure as a Councilor. In consideration of the facts, the impugned orders cannot be faulted with. The learned counsel for the petitioner could not point out any obvious error committed by the learned Court, in exercise of jurisdiction, while rejecting the applications preferred by the petitioner.

6. For the reasons stated above, the petition is dismissed

with costs of Rs. 50,000/-. The petitioner shall pay the cost of Rs. 50,000/- to the Dean, Government Medical College and Hospital, Aurangabad through the Medical Officer, Dispensary, High Court of Bombay Bench at Aurangabad within one month from today and produce the receipt before the Registrar (Judicial) of this Court. If the cost is not deposited, the Registry shall forward the copy of this order to the Collector, Nanded who shall recover the cost from the petitioner-Deepali Santosh More as a recovery of arrears of land revenue.

7. The learned Judge shall conclude the Election Petition No. 9 of 2017, on its own merits and preferably within four weeks from today.

8. The petition is dismissed.

**[ SANDEEP K. SHINDE, J. ]**