

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8574 OF 2020

Premchand S/o Gulabchand Nahar
Age 56 years, Occu. Business & Agri.
R/o. Wadwani,
Tq. Wadwani, Dist-Beed.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Town Planning Department,
Mantralaya, Mumbai 32.
2. The State Election Commission,
Through Chief Commissioner,
New Administrative Building,
Madam Kama Road, Hutatma
Rajguru Chowk, Mumbai-32.
3. Divisional Commissioner,
Divisional Commissioner Office,
New Delhi Gate,
Aurangabad Collector Office Campus,
Fazilpura, Aurangabad.
4. The Collector,
Collectorate, Beed.
5. Chief Officer,
Nagarpanchayat, Wadwani,
District : Beed

...Respondents

Mr Sushant V. Dixit, Advocate for Petitioner
Mr P.K. Lakhotiya, Assistant Government Pleader for
Respondent Nos. 1, 3 and 4
Mr A.B. Kadethankar, Advocate for Respondent No. 2
Mr S.G. Jadhavar, Advocate for Respondent No. 5

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

DATE OF RESERVATION : 30.01.2021

DATE OF PRONOUNCEMENT : 15.02.2021

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

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for both the sides, heard finally.

2. The factual matrix of the case is as under :-

(a) General election of Nagarpanchayat, Wadwani, Dist. Beed was due in the month of November, 2020. The State Election Commission of Maharashtra paused all the general elections of various self local bodies including Nagarpanchayat, Wadwani due to Covid-19 pandemic vide its letter dated 17.03.2020.

(b) The election process was directed to be resumed gradually by the State Election Commission. Accordingly, the ward delimitation and reservation process for Nagarpanchayat, Wadwani was initiated under the instructions dated 06.02.2020 issued by the State Election Commission. The draft ward formation was to be published on 18.11.2020. The time to submit objections if any to draft ward formation was during 18.11.2020 to 26.11.2020 (upto 3.00 p.m.). The objections to the ward formation were to be heard on 04.12.2020. The authority was expected to submit its report

on the objections to the higher authority upto 10.12.2020. The Divisional Commissioner, Aurangabad was expected to approve the draft upto 17.12.2020 and the District Collector was expected to publish final notification on 24.12.2020. However, the above said programme was modified to little extent. The hearing was to take place on 10.12.2020 instead of 04.12.2020 and the report was to be submitted on 15.12.2020 instead of 10.12.2020. The approval to the draft notification was to be given upto 24.12.2020 instead of 17.12.2020. The final notification was to be published on 30.12.2020 instead of 24.12.2020.

(c) The petitioner has raised as many as 30 objections on 25.11.2020 to the ward formation and reservation pursuant to the time line provided in the schedule. According to the petitioner, respondent No. 4/Collector, Beed has rejected his objections. His objections were valid in respect of formation of ward and reservation of the wards. The Collector, Beed did not assign any reason for rejection of his objections. The decision of the Collector, Beed is perverse and bad in law. The Collector, Beed did not consider the guidelines given by the State Election Commission regarding ward formation and reservation of wards in a letter and spirit. The decision of the Collector, Beed is violative of principles of natural justice. The petitioner has prayed for issuance of writ of certiorari or directions in the nature of certiorari to quash the report of the Collector dated 10.12.2020.

(d) The Sub Divisional Magistrate, Majalgaon, District, Beed has filed reply-affidavit on behalf of respondent No. 4 and denied all the

allegations made by the petitioner. It is the stand of the State that respondent No. 4 has extended fair opportunity of hearing to the petitioner and his advocate. It was a public hearing. The hearing was also videographed and recorded. There were other objectors also, who were heard. The respondent No. 4 also demonstrated to the objectors including petitioner during the hearing to satisfy their objections regarding reservation of lottery. The District collector, Beed has decided all the objections raised by the petitioner in the light of the guidelines set out by the State Election Commission. The objections were found untrue and irrational and hence, came to be rejected. Most of the objections were in the nature of repetition. The petitioner has even taken objections regarding statutory provisions which cannot be considered. It is denied that Collector, Beed merely put his remark of rejection without recording reasons. The record speaks that the Collector, Beed has considered each considerable objection with reasoning. The draft notification is finalized and same is approved by the Divisional Commissioner. None of the objections raised by the petitioner even remotely suggests fatal to the entire ward formation process. All the parameters laid down by the State Election Commission regarding ward formation and reservation were followed. The elections are already due since long. There is no merit in the petition. No valid and legal grounds were raised by the petitioner, and as such, the petition deserves to be dismissed.

3. We have heard Mr Sushant Dixit, learned counsel for the petitioner, Mr P.K. Lakhotiya, learned Assistant Government Pleader for the State/Respondent Nos. 1, 3 and 4, Mr A.B. Kadethankar, learned

counsel for respondent No. 2/State Election Commission and Mr S.G. Jadhavar, learned counsel for respondent No. 5/Chief Officer, Nagar Panchayat, Wadwani, Dist. Beed.

4. Perused the impugned decision, objections raised by the petitioner and other papers annexed with the petition.

5. Before going to the merits of the matter, it is necessary to focus on the first round of litigation. The petitioner has raised number of objections regarding ward formation and reservation of Wadwani Nagarpanchayat, Dist. Beed. On the date of hearing, the petitioner and his advocate were present. It is alleged that that respondent no. 4 refused to conduct the hearing on the objections raised by the petitioner and also insulted petitioner's advocate without any reason. Due to which the petitioner filed an application before respondent No. 2 to 4 to transfer hearing of petitioner on objections/application to another District. The petitioner had approached this Court by filing writ petition No. 8110/2020 seeking transfer of hearing to Collector of another District. This Court was pleased to dispose of that writ petition with direction to extend full and fair opportunity of hearing to the petitioner and his advocate. In that background, the hearing on the objections raised by the petitioner was conducted before respondent No. 4/Collector, Beed and after full-fledged hearing, the objections raised by the petitioner came to be turned down.

THE SUBMISSIONS OF LEARNED ADVOCATE FOR THE PETITIONER

6. Mr Sushant Dixit, the learned counsel for the petitioner vehemently submitted that the petitioner has raised valid objections in respect of the formation and reservation of wards. Respondent No. 4 tuned down those objections without assigning any reasons. He submitted that respondent No. 5, who is Chief Officer of Nagarpanchayat, Wadwani has given remarks on objections raised by the petitioner. Respondent No. 5 has no authority to give such kind of remarks, and as such, that exercise is completely illegal. The objection in respect of the lack of specific description of the wards and vague nature of boundaries shown in the map was raised. Unless boundaries of each wards are specifically mentioned and identified by landmarks and house numbers, it would be difficult to determine geographical area of the ward. Respondent No. 4 failed to appreciate that map prepared for ward formation is vague and no particulars in respect of area of each ward is mentioned in the said map. The formation of ward is improper. Some wards are amalgamated forming new wards. There is no justification for such creation of new wards, and such wards are created only with a view to benefit present members of Wadwani Nagarpanchayat.

7. The draw of lots has not taken place for providing reservation to Scheduled Caste and ward No. 17 is reserved for Scheduled Caste in contravention of provisions of law. Respondent No. 4 has mechanically rejected the objections raised by the petitioner due to grudge against him since he has approached the High Court by filing writ petition No.

8110/2020. The rozanama prepared by respondent No. 4 regarding hearing also indicates that only one objection was considered and rest of the objections were simply turned down without conducting any hearing. Ward formation of Wadwani Nagarpanchayat is erroneous. The impugned report of Collector, Beed dated 10.12.2020 rejecting objections of the petitioner is bad in law and liable to be quashed and set aside.

THE SUBMISSIONS OF MR P.K. LAKHOTIYA, LEARNED A.G.P. FOR RESPONDENT NOS. 1, 3 AND 4/STATE.

8. Mr P.K. Lakhotiya, learned Assistant Government Pleader for the State supported to the impugned report submitted by the District Collector, Beed. He submitted that the full and fair opportunity of hearing was extended to the petitioner and his advocate. The hearing was also videographed and recorded. The objections raised by the petitioner were found untrue and irrational and came to be turned down. The learned Assistant Government Pleader invited our attention to page Nos. 79 to 96 and pointed out that it records merely operative part of the order of respondent No. 4 whereas page Nos. 75 to 78 demonstrates the application of mind by respondent No. 4, which speaks about the reasoned consideration by respondent No. 4 on the objections of the petitioner. The entire ward formation and reservation is conducted properly as per the parameters and guidelines set out by the State Election Commission. After recording details of the hearing, respondent No. 1 submitted a proposal of ward formation for Wadwani Nagarpanchayat election 2020 to respondent No. 3 for its sanction. Respondent No. 3 vide its letter dated 19.12.2020 has also accorded sanction to the ward formation of Wadwani

Nagarpanchayat. No case is made out for interference by the petitioner.

9. Mr A.B. Kadethankar, learned counsel for respondent No. 2 and Mr S.G. Jadhavar, learned counsel for respondent No. 5 echoed the argument advanced by learned Assistant Government Pleader.

10. On going through the record, it is seen that the petitioner has raised near about 30 objections regarding ward formation and reservation of Wadwani Nagarpanchayat election to be held in the year 2021. The core question is about the hearing on the objections raised by the petitioner at the hands of District Collector, Beed.

11. On going through the copy of rozanama (page 75), it is evident that as per the directions given by this Court in writ petition No. 8110/2020, opportunity of hearing on the objections was extended to the petitioner and his advocate on 10.12.2020. So far as the objections raised by the petitioner at Sr. No. 21, 23, 24 and 29 are concerned, it is seen that those have been excluded since petitioner's advocate did not raise any grievance about it. So far as the objections at Sr. No. 1 and 17 are concerned, according to the petitioner, the persons, who had filed the affidavit, not present at the time of drawing lottery of reservation. During course of hearing, advocate for the petitioner considered the position that out of those three persons, the names of two persons did not find place in muster, and therefore, that objection did not remain. So far as the another person Mr Shamrao Rama Rathod is concerned, his name finds place in the muster roll at Sr. No. 73. His signature also matches. Not only that, in the video recording, the said person was seen. So also, his photo annexed

with the affidavit matches. The Clerk of the Nagarpanchayat Mr R.S. Gursali has also identified that person and also informed about his acquaintance. As such, the objections raised by the petitioner came to be turned down.

12. Further, perusing the rozanama, it is found that lot of persons were present at the time of hearing. It was an institutional hearing and not a personal hearing. The objections raised by the petitioner regarding not providing video recording of the entire hearing and filing of affidavit to that effect of certain persons also turned down by the District Collector, Beed by making certain observations. On careful scrutiny of the photo copy of the rozanama, it is found that full and fair opportunity seems to have been given to the petitioner. There are signatures of learned advocate for the petitioner, the Chief Officer of Nagarpanchayat, Wadwani, and the concerned Clerk of Nagarpanchayat.

13. So far as the remarks given by the Chief Officer, Nagarpanchayat, Wadwani on the objections raised by the petitioner and concluding remarks of the District Collector, Beed are produced at page Nos. 79 to 96. The Chief Officer, Nagarpanchayat has offered his remarks on the objections raised by the petitioner and hearing was conducted on each and every objections, and thereafter, District Collector, Beed has turned down those objections. Though in the last column of remarks, no reasons are assigned, the same find place in the copy of rozanama sheet at page Nos. 75 to 78. As per the order issued by the State Election Commission vide No. रानिआ-नप-२०००/प्र.क्र.१-अ/का-६ dated

o6.02.2020, the Chief Officer, Nagarpanchayat, Wadwani is assigned the work to prepare draft ward formation and it is for the Collector to approve it. In view of the order passed by the State Election Commission, the Chief Officer, Nagarpanchayat, Wadwani has extended his assistance to the District Collector, Beed by offering his remarks and he has not played any role in the actual hearing on objections. Therefore, we do not find any force in the argument advanced by Mr Dixit, learned counsel for the petitioner to that effect. During the course of argument, Mr Lakhotiya, the learned Assistant Government Pleader for the State made it clear that rozanama is in the own handwriting of District Collector, Beed. It appears that as per guidelines issued by the State Election Commission, online google map seems to have been used wherein main roads and other signs are clearly visible, ward-wise maps are also published after rejection of objection as appears from the record.

14. The District Collector, Beed seems to have applied his mind while deciding each and every objections raised by the petitioner regarding ward formation and reservation for Nagarpanchayat, Wadwani by extending full and fair opportunity to the petitioner and his advocate.

15. This Court in exercise of its power under Art. 226 of the Constitution would not sit as an appellate authority over the decision taken by the authority, but would be concerned with due adherence to the decision making process. The said procedure seems to have been followed.

16. There may be delusions and illusions, while deciding the objections. However, those are not sufficient to vitiate the whole process for ensuing election of Nagarpanchayat, Wadwani, Dist. Beed. It would not render the whole exercise of delimitation of wards and prescription of reservation and rotation, bad and illegal.

17. We do not find any merit in the writ petition to invoke our writ jurisdiction. The writ petition needs to be dismissed.

18. Writ Petition stands dismissed. Rule discharged.

[SHRIKANT D. KULKARNI, J.]

[S.V. GANGAPURWALA, J.]

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