

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No. 351/2021

Pravin s/o Eknath Ghode

...Petitioner

Versus

State Election Commission and ors.

...Respondents

Shri S.S. Dengale, Advocate for the Petitioner

Shri J.B. Kasat, Advocate for Respondent No. 1

Shri Amit Madiwale, AGP for the Respondent Nos. 2 and 4- State

Shri M.J. Datrak, Advocate for Respondent No. 5

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 01 MARCH 2021

P.C.:

Heard learned Counsel for the parties.

2. The Petitioner has challenged the Order dated 24 December 2020 passed by the Respondent No. 2-Divisional Commissioner, Nagpur regarding approval to final Wards with a direction to issue fresh composition of Wards and its reservation.

3. The Petitioner resides within jurisdiction of Nagar Panchayat, Hingna. The Petitioner is desirous of contesting Election from Ward No. 4 as stated by the Petitioner in the additional affidavit.

4. A Notification was issued by the State Election Commission on 12 October 2020 for reservation and composition of Wards. On 21 October 2020, the Chief Officer, Nagar Panchayat, Hingna carried out preliminary exercise and notice was published by the Respondent No. 3 – Collector on 03 November 2020. The Corrigendum was issued on 13 November 2020. The Petitioner submitted his objections. Thereafter, the Petitioner has filed this Writ Petition.

5. The Petitioner has stated that the Petitioner is desirous of contesting the Election as a Councilor from new Ward No. 4 of Nagar Panchayat, Hingna. The Petitioner belongs to Other Backward Class and therefore, can contest the Election from the reservation for the Other Backward Class and from General Category. The Petitioner is aggrieved by the fact that the reservation for Ward No. 4 is for Open Category (Female) as per the Notification now issued. The learned Counsel for the Petitioner submitted that as per the Order issued by the State Election Commission pursuant to the *Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Ordinance, 2020*, (for short the “*Ordinance of 2020*”) the reservation for new Ward No. 4 (old Ward No. 5) could not have been for General Category (Woman) as earlier the reservation for old Ward No. 4 was for General Category (Woman).

6. The learned Counsel for the Petitioner submitted that as per Clause 8.10 of the Order, while fixing the Wards and providing for reservation for Open/General Category (Female), the Wards which were

notified for the Female/Woman in the earlier Election are to be excluded. It is the contention of the Petitioner that taken into the consideration the position as to Election held in year 2015 and the Clause 8.10 of the Order, and therefore, reservation provided is not correct.

7. The Order dated 06 February 2020 issued by State Election Commission pursuant to the *Ordinance of 2020* has changed the methodology for providing the reservation for Wards in the Nagar Panchayats. Earlier procedure of multi-member Wards has been discontinued and one Member methodology is now adopted. Therefore, reference to earlier Election will have to be in the context of the Order dated 06 February 2020. The Order dated 06 February 2020 as in Clause 5 provides for rotational reservation. As to ascertain what was reservation in the earlier Election, Clause 5(ii) provides a notional method. Since, the methodology has changed, the earlier reservations cannot be the same and as per old system of multi-member Wards. Clause 5(ii) creates a fiction to decide what would be the earlier reservation. For deciding what would be the reservation for Wards in earlier Election as a fiction, a particular method should be followed. That method is based on Enumeration Block. Therefore, Order dated 06 February 2020 does not refer to reservation in the earlier Election as a matter of fact, but what ought to have been considered as reservation in the earlier Election as per the new methodology. This is the stand taken by the Respondents in their affidavit.

8. This stand is in consonance with Clause 5 of the Order dated 06 February 2020. Therefore, reference to earlier Election in Clause 8.10

upon which the Petitioner is placing reliance not as a matter of fact but as by way of a fiction calculated as per Order dated 06 February 2020.

9. The Respondents in their reply have demonstrated that if the earlier Election is arrived as per Rule 5(ii), then the reservation now provided for Ward No. 4, is proper. The only argument of the Petitioner is the reference to Clause 8.10, the reference to the earlier Election should be read literally. As observed earlier, it will not be correct reading of Clause 5 of the Order dated 06 February 2020. Therefore, the foundation of the Petitioner's case being incorrectly premised, the contention of the Petitioner that the reservation was erroneously provided cannot be accepted and the challenge of the Petitioner to the reservation so provided cannot be sustained.

10. The Writ Petition is rejected.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]