

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4108/ 2021

(Rajkumar s/o Sampatrao Kuthe vs. State of Maharashtra and others)

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Office Notes, Office Memoranda of
of directions and Registrar's orders

Court's or Judge's order

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Mr. R.L. Khapre, senior counsel assisted by P.V. Deshmukh,
Advocate for the petitioner
Mr. Thakre, AGP for respondent nos. 1 and 2
Mr. M.I. Dhatri, Advocate for respondent no.4

**CORAM : SUNIL B. SHUKRE &
ANIL S.KILOR, JJ.**

DATED : 14th October, 2021.

Heard Mr. R.L.Khapre, learned senior Advocate with
Mr. P.V. Deshmukh, learned counsel for the petitioner.

2. By this petition, an exception has been taken to the communication dated 11.10.2021 issued by the Urban Development Department directing Collector, Gondia to conduct meetings for holding elections of Subject Committees online in accordance with the procedure prescribed in the Government communication dated 28.06.2021. The learned senior Advocate submits that now there are no COVID restrictions and physical meetings are going on. He submits that all shops, restaurants and even malls and temples have been opened and members of public are freely mingling with each other. He further submits that all offices -Government and private, are working to their full capacity. In these circumstances, he submits that meetings for holding such elections must not be held online and by adopting a virtual mode

and only in exceptional circumstances it can be done. He invites our attention the provisions made in sub-section (5) of Section 81 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Section 81(5) of the said Act reads thus:

“81(5): Every meeting of a council shall, except for reasons to be specified in the notice convening the meeting, be held in any of the buildings used as a municipal office by such Council.”

3. Placing emphasis upon the words “be held in any of the buildings used as a municipal office”, the learned senior counsel submits that it is an unmistakable intention of the legislature to hold such meetings only physically or otherwise no reference to the “buildings used as the municipal office” would have been made. He also submits that it is well-settled law by now that when a manner of doing a thing has been prescribed under the law, it must be done in that manner only or not at all. So far as the principle of law stated by learned senior counsel is concerned, there is no quarrel about it. The settled law would tell us that when a mandatory procedure for doing a particular thing is prescribed, it has to be done by adopting that procedure only. There is a consistent line of precedents on this point and we do not want to burden our order with those citations. However if we read the provisos of Section 81 we would find that there is an exception created therein. The exception takes care of certain

situations and contingencies which would allow the meetings of the councils to be held in any buildings used as a municipal office by the council.

4. In the present case, there is a reason noted in the impugned communication dated 11.10.2021 and that reason is of SOP prescribed in the earlier communication dated 28.6.2021 though it may be that there has been relaxation in the SOP prescribed by the communication dated 28.6.2021.

5. The subsequent communication, it is seen, does not remove entirely the restrictions placed earlier. It only relaxes many of the restrictions and overall it adopts a guarded approach in lifting all the restrictions. Therefore, the communication dated 28.06.2021 when read with subsequent communication dated 24th September, 2021 would only show that if the authority thinks that certain measures prescribed as a precautionary, need to be followed while holding the meeting/s, no fault could be found with the approach so adopted by the authority and such approach should also be covered by the exception carved out in section 81(5) of the said Act and, therefore, we find no substance in this petition.

6. The Writ Petition is therefore summarily rejected. No costs.

JUDGE

JUDGE