

SSC

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 7583 OF 2022

Chaya w/o Vechya Thingale

....Petitioner

Versus

The State of Maharashtra and others

....Respondents

Mr. Rajendrraa Deshmukkh, Senior Advocate i/b. Mr. G.A. Kulkarni,
Advocate for petitioner.

Mr. A.B. Kale, Advocate for respondent no. 2.

**CORAM : DIPANKAR DATTA, CJ. &
RAVINDRA V. GHUGE, J.**

DATED : JULY 22, 2022.

PER COURT :

1. One Suekha Afzal Tadvi alias Nazma Irfan Tadvi had been elected as the President of Muktainagar Municipal Council as a reserved candidate. The office of the President is required to be filled up from the Scheduled Castes, the Scheduled Tribes (Women) and the Backward Classes of Citizens in the prescribed manner in terms of provisions contained in section 51-1A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, 'the Act'). Since within the time prescribed the said Suekha Afzal Tadvi failed to produce the validity certificate of her caste/tribe status, she was disqualified to continue as the President as per the provisions of section 51-1B of the Act. Guidance, in such circumstance, was sought for by the Collector, Jalgaon from the

Government of Maharashtra in the Urban Development Department regarding the election of the President. The Under Secretary, Urban Development Department informed the Collector that if a candidate from the Scheduled Tribes (Women) category is not available for the post of President, then any member from the Scheduled Tribe (General) category could be elected and appointed on the post of President. Based on such advice, the Collector has convened a special meeting of the elected municipal councillors for appointment of President on 22nd July 2022 at 12.00 noon, vide his order dated 15th July, 2022.

2. After issuance of such order, Maharashtra Ordinance No. IV of 2022 was promulgated to further amend the Act. To the extent relevant, section 51A-1A of the Act was substituted by the following:

“(1) Notwithstanding anything contained in section 51, every Municipal Council, to which the General election is to be held after the date of the commencement of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Ordinance, 2022, subject to the provisions of section 51-1A, shall have a President who shall be elected by the persons whose names are included in the Municipal Council voters list prepared under section 11.”

(emphasis ours)

3. In view of such amendment having been introduced in the Act, the electorate has been changed. Prior to the amendment, the municipal councillors were to elect the President. Now, it is the members of the public who would be electing a candidate for

appointment as the President of the Municipal Council. Although, Mr. D.R. Kale, learned Government Pleader appearing for the State, has not been instructed by the Collector to make a statement that the Collector was not aware of the ordinance having been promulgated, we can reasonably infer the same having regard to the tenor of the order dated 15th July 2022 of the Collector. If indeed the Collector was aware of the ordinance, he would not have proceeded to convene the meeting for this day based on the advice of the Urban Development Department dated 7th July 2022 with the municipal councillors as electors.

3. Be that as it may, we are of the considered opinion that this is a fit case for interference. Although allowing this writ petition at this stage would result in stalling of the election of the President of the Municipal Council, which is scheduled today, the fact that the very statute in question has been amended by the ordinance, which creates a new electorate for the purpose of election of the President of the Municipal Council, the amended provision has to be given effect and not the provision that no longer exists on the statute book.

4. In such view of the matter and the facts not being in dispute, we allow the writ petition at the admission stage by quashing the order dated 15th July 2022 convening a meeting today at 12.00 noon. The Collector is directed to proceed further for appointment of the President in accordance with the amended provision of the Act.

For such purpose, the election for the post of President of the Municipal Council be conducted as early as possible.

5. The writ petition stands disposed of. No costs.

6. Since this order has been passed prior to 12.00 noon, being the time for holding of election in terms of the impugned order dated 7th July 2022, election, if any, is held prior to communication of this order would be of no effect.

[RAVINDRA V. GHUGE, J.]

[CHIEF JUSTICE]