

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

WRIT PETITION NO. 3252/2022

(KUNAL PRAKASH IMALE **VERSUS** STATE ELECTION COMMISSION, MUMBAI & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S. Zia Qazi counsel for the petitioner.
Shri J.B. Kasat, counsel for the R-1.
Ms N.P. Mehta, Assistant Government Pleader for the R-2.
Shri M.I. Dhattrak, counsel for the R-3.
Shri K.J. Tople, counsel for the R-4.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : JULY 01, 2022.

Heard.

2. The challenge raised in this writ petition is to the Final Ward Formation Plan of Kamptee Municipal Council for the General Elections-2022 and especially with regard to Ward No.2. Pursuant to the directions issued by the respondent no.1-State Election Commission, the Municipal Councils wherein elections were due were required to undertake the exercise of Ward formation. According to the Draft Ward Formation Plan pertaining to the respondent no.3-Kamptee Municipal Council, seventeen Wards were formed with each Ward being entitled to be represented by two Councilors. Insofar as Ward No.2 is concerned, total population as per the Census of the Year-2011 was shown to be 4734 with the population of Scheduled Castes voters to be 578 and the population of Scheduled Tribes voters to be 29. An objection raised to the said Draft Ward Formation Plan pertaining to Ward No.2 by the respondent no.4 on 16.03.2022 was not recommended by the Chief Officer of the Municipal Council. The grievance of the petitioner is that despite such recommendation, the Draft Ward Formation Plan with regard to Ward no.2 was modified and as a result the population for Ward No.2 was increased to 5410 and voters from Scheduled Castes category were shown to be 579. While finalizing the Wards, Gat nos.52 and 53 were added in the area of Ward no.2 after removing the same from Ward no.6. It is the grievance of the petitioner that if the Draft Ward Formation Plan

would not have been modified, Ward no.2 would have been liable to be reserved for the candidates from the Scheduled Castes category as that Ward would have been at Serial Number 10 from amongst the seventeen Wards. However, under the garb of Final Ward Formation Plan, Ward no.2 is now placed at Serial Number 11 and thus it was not liable to be reserved for the candidates from the Scheduled Castes category. In other words, despite there being an increase in the population of Ward no.2 from 4734 to 5410, the population of voters from the Scheduled Castes category was increased only by one. Being aggrieved by such modification of Wards, the petitioner has filed the present writ petition.

3. Shri S. Zia Qazi, learned counsel for the petitioner submitted that there was no justification on the part of the Collector to have modified Ward no.2 from the Draft Ward Formation Plan as indicated. The objection raised by the respondent no.4 did not receive the recommendation of the Chief Officer but despite that during the stage of Final Ward Formation, Ward no.2 was modified. The population initially shown was 4734 and despite increasing the same to 5410 there was increase in the number of Scheduled Castes voters only by one. It was urged that such modification was undertaken with a view to deprive Ward no.2 from being reserved. There was no legal justification for the Collector to have modified Ward no.2. Inviting attention to a document purported to be signed by Head of the Election Department of the Municipal Council, it was submitted that at the stage of Final Ward Formation the population of voters was shown as 5410 while in the said document that figure was increased to 6430. This was also not justified. On these grounds, it was prayed that the position of Ward no.2 as indicated in the Draft Ward Formation Plan be restored.

4. Ms Nivedita Mehta, learned Assistant Government Pleader for the respondent no.2 relied upon the affidavit-in-reply filed on behalf of the Collector. It was stated that out of seventeen Wards, ten were reserved for the candidates from the Scheduled Castes category. While considering objections to the Draft Ward Formation Plan a composite exercise was undertaken. Gat nos.52 and 53 which were forming part of Ward no.6 were shifted to Ward no.2 and Gat no.73

from Ward no.1 was shifted to Ward no.6. It was submitted that even under the Draft Ward Formation Plan, Ward no.2 was shown at Serial Number 11 while determining the population of the members from the Scheduled Castes category. Even after Final Ward Formation, Ward no.2 was at Serial Number 11. Thus, it was submitted that even after finalization of the Wards, there was no change in the population of Scheduled Castes voters and it could not be said that as a result of such Ward Formation, Ward no.2 stood de-reserved.

Shri J.B. Kasat, learned counsel for the respondent no.1, Shri M.I. Dhattrak, learned counsel for the respondent no.3 and Shri K.J. Tople, learned counsel for the respondent no.4 supported the aforesaid contentions.

5. We have heard the learned counsel for the parties at length and we have perused the documents placed on record. It is seen that under the Draft Ward Formation Plan when the population of Ward no.2 was 4734, it was shown at Serial Number 11 in the statement showing the percentage of the voters from Scheduled Castes category in the descending order. During the stage of Final Ward Formation, when the population of Ward no.2 was increased to 5410 that Ward was still placed at Serial Number 11 in such statement. In other words, as a result of increase in population from 4734 to 5410, the position of Ward no.2 has not been altered. It is an admitted position that the ten Wards having higher number of voters from Scheduled Castes category were liable to be reserved for such category. Even prior to finalization of the Wards, it is clear that Ward no.2 was not liable to be reserved for the candidates from the Scheduled Castes category. Thus, the entire basis of the petitioner's contention that as a result of Final Ward Formation, Ward no.2 which was earlier reserved for the candidates from the Scheduled Castes category was required to be de-reserved is not sustainable.

6. Further perusal of the exercise undertaken after hearing objections and suggestions given during the course of Draft Ward Formation, it becomes clear that insofar as Ward no.2 is concerned Gat nos.52 and 53 from adjoining Ward no.6 were shifted and included in Ward no.2. Similarly, from Ward no.1 Gat

no.73 was shifted to Ward no.6. We find that Ward Formation has been finalized by considering all the seventeen Wards together and the same is a complex and interconnected exercise. As a result of such Ward Formation, it is always possible that some area which forms part of one Ward is liable to be shifted to the adjoining Ward subject to the minimum and maximum number of voters in that Ward. We find that the minimum and maximum number of voters has been kept in mind while finalizing the Formation of Wards. We do not find that this exercise of Ward Formation has been undertaken *malafidely* so as to deprive Ward no.2 from being a reserved Ward. It is reiterated that even under the Draft Ward Formation, Ward no.2 was placed at Serial Number 11 on the basis of the population of Scheduled Castes. That position at Serial Number 11 has not been altered during the course of Final Ward Formation.

7. Insofar as the document dated 24.06.2022 relied upon by the petitioner to indicate the difference in the number of voters from 5410 to 6430 is concerned, the said document has been denied by the learned counsel for the Municipal Council by submitting that the information furnished therein cannot be attributed to any responsible Authority. We also find that there are no specific pleadings with regard to this document and hence we refrain from going into that aspect of the matter.

8. Hence for aforesaid reasons, we do not find that there is any merit in the prayers made in the writ petition for the same to be granted. The writ petition is thus dismissed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A. S. CHANDURKAR, J.)

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