

JVS.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 156 OF 2026

Nilesh Chhaburao Bhojane	}	Petitioner
Versus		
State of Maharashtra & Ors.	}	Respondents

Mr. Navroz Seervai, Senior Advocate with Mr. Mayur Khandeparkar, Mr. Nishant Shashidharan, Mr. Vikramjit Singh Garewal, Mr. Nakul Jain, Mr. Nivit Srivastava, Ms. Sneha Patil, Ms. Aditi Sinha and Ms. Isha Vyas i/b. Maniar Srivastava Associates, Advocates for the Petitioner.

Ms. Neha S. Bhide, Government Pleader with Mr. Kedar B. Dighe, Additional Government Pleader and Ms. G. R. Raghuwanshi, AGP for Respondent No. 1-State.

Mr. Sachindra B. Shetye with Mr. Akshay Pansare and Mr. Nipun Sawane, Advocates for Respondent No. 2-State Election Commission.

Mr. Tejesh Dande with Mr. Bharat Gadhavi, Mr. Sarvesh Deshpande and Mr. Vinayak Shelar, Advocates for Respondent Nos. 3 to 6-NMMC.

Mr. A. Y. Sakhare, Senior Advocate with Mr. Ajay Varekar, Advocates for Respondent No. 7.

Mr. Surel Shah, Senior Advocate with Mr. Chirag Shah, Mr. Vishal Acharya, Adv. Bhavya Shah, Advocates for Respondent No. 9.

Mr. Sukhdeo Yedve, Assistant Returning Officer, NMMC present.

**CORAM: SHREE CHANDRASHEKHAR, C.J. &
GAUTAM A. ANKHAD, J.**

DATE: 8th JANUARY 2026

P.C.:

On 7th January 2026, the following order was passed :-

“Mr. Navroz Seervai, the learned senior counsel for the petitioner referred to the provisions under section 10(1D) of the Maharashtra Municipal Corporations Act, 1949 and laid a stress on the expression “councillor” to submit that the disqualification as conceived under

sub-section (1D) shall apply to a “sitting councillor” and not to a candidate who seeks to contest election as a councillor.

2. The learned senior counsel has then referred to the last paragraph of the order dated 31st December 2025 and submitted that the said order is ex-facie illegal and the same is liable to be quashed by declaring the petitioner eligible to contest the election for the post of a “councillor”.

3. Mr. A.Y. Sakhare, the learned senior counsel appearing for the respondent no.7 seeks some time for filing an affidavit to bring on record certain factual aspects.

4. This request is declined for the reason that the order under challenge must be tested with reference to the materials which were before Election Returning Officer as on the date of determination.

5. Post this matter tomorrow, that is, 8th January 2026 under the heading “High on Board”, with an understanding that this writ petition shall be disposed of finally. The petitioner to complete the records. The respondent no.7 may also produce the records which were before the Election Returning Officer. Mr. Tejesh Dande, the learned counsel appearing for the 6th respondent-the Election Returning Officer shall provide copies of the records to the learned counsel for the petitioner and the respondent no.7 and file the same in the registry of this Court in the course of the day.”

2. At the outset, Mr. Surel Shah, the learned senior counsel for the respondent no. 9 makes a statement that the respondent no. 9 has since withdrawn his candidature for election as Ward Councilor for Ward No. 17A of Navi Mumbai Municipal Corporation.

3. On instructions, Mr. Navroz Seervai, the learned senior counsel for the petitioner states that as per the information given to Mr. Mayur Khandeparkar, the learned assisting counsel, the respondent no. 12 has also withdrawn his candidature.

4. Mr. Navroz Seervai, the learned senior counsel for the petitioner states that all the respondents have been duly served except the respondent no. 12.

5. As regards withdrawal of the candidature by the contesting candidates, Mr. Sachindra B. Shetye, the learned counsel for the State Election Commission and Mr. Tejesh Dande, the learned

counsel for the Election Returning Officer shall take instructions and apprise the Court on the next date of hearing.

6. Raising an objection to the maintainability of this writ petition, Mr. A. Y. Sakhare, the learned senior counsel for the respondent no. 7 submitted that there are judicial precedents and constitutional bar under Article 243ZG of the Constitution of India and, in view thereof, the present writ petition is not maintainable. The learned senior counsel referred to a Full Bench decision of this Court in “*Karmaveer Avtade*”¹ and endeavoured to demonstrate that in view of the Full Bench judgment, a writ petition challenging the acceptance or rejection of nomination paper is not maintainable. Besides other decisions, the learned senior counsel for the respondent no. 7 extensively read out the decision in “*Anugrah Singh*”² and submitted that the election for the municipality which has been notified after 9 years in the State of Maharashtra should not be impeded or stalled in any manner whatsoever by virtue of an order passed by this Court. The learned senior counsel also referred to the order passed by the Hon’ble Supreme Court on 16th September 2025 in Special Leave to Appeal (C) No. 19756 of 2021 and submitted that there is a clear direction by the Hon’ble Supreme Court to conclude the elections by 31st January 2026 and an attempt made in Review Petition No. 180 of 2025 filed in Writ Petition No. 16799 of 2025 for an interim order has been rejected by this Court.

7. Mr. Tejesh Dande, the learned counsel for the Election Returning Officer and Mr. Sachindra B. Shetye, the learned counsel for the State Election Commission have also raised objections to the maintainability of this writ petition.

1. *Karmaveer Tulshiram Avtade v. State Election Commission & Ors.* : 2021 SCC OnLine Bom 1150

2. *Anugrah Narain Singh & Anr. v. State of Uttar Pradesh & Ors.* : (1996) 6 SCC 303

8. On the other hand, Mr. Navroz Seervai, the learned senior counsel for the petitioner referred to the provisions under sections 10 (1D), 11 and 12 of the Maharashtra Municipal Corporations Act, 1949 (in short, “the Act of 1949”) and submitted that the order passed by the Election Returning Officer on 31st December 2025 holding the nomination of the petitioner invalid is *ex-facie* illegal. This is the submission made on behalf of the petitioner that the provisions under section 10(1D) of the Act of 1949 shall apply to a sitting Councilor. Mr. Navroz Seervai, the learned senior counsel for the petitioner submits that the issue whether section 10(1D) shall apply to a sitting Councilor is no more *res integra* and any controversy whatsoever stands settled by the decisions of this Court in Writ Petition Nos. 9592 of 2013, 6775 of 2018, 12923 of 2018 and other cases.

9. We have bestowed our careful consideration to the objection raised on behalf of the respondents. Notwithstanding the bar under Article 243ZG of the Constitution of India, the Hon’ble Supreme Court has rendered judgments holding that the powers of the writ Court under Article 226 of the Constitution of India can be exercised provided such interference does not impede the process of election. This has been considered by the Hon’ble Supreme Court in “*Ashok Kumar*”³, “*Jammu and Kashmir National Conference*”⁴ and “*Kishorchandra Rathod*”⁵.

10. Sections 10(1D), 11 and 12 of the Act of 1949 read as under :-

10. Disqualification for being a councillor.

“10 (1D) A Councillor shall be disqualified for being a Councillor, if such Councillor has constructed or constructs by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions

3. *Election Commission of India v. Ashok Kumar & Ors.* : (2000) 8 SCC 216

4. *Union Territory of Ladakh & Ors. v. Jammu and Kashmir National Conference and Anr.*: (2023) SCC OnLine SC 1140

5. *Kishorchandra Chhanganalal Rathod v. Union of India & Ors.* : (2024) 13 SCC 237

of this Act or the Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts; or has directly or indirectly been responsible for, or helped in his capacity as such Councillor in, carrying out such illegal or unauthorised construction or has by written communication or physically obstructed or tried to obstruct, any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure. Such disqualification shall be for the remainder of his term as a Councillor from the date of the declaration of such structure to be illegal or unauthorised by the concerned authority under the provisions of the said Acts or, as the case may be, from the date of commission of the act of interference or obstruction by the Councillor against the Competent Authority.

11. Disabilities from continuing as councillor.

A councillor shall cease to hold office as such if at any time during his term of office he, -

- (a) becomes disqualified for being a councillor by reason of the provisions of section 10;*
- (b) absents himself during three successive months from the meetings of the Corporation, except from temporary illness or other cause to be approved by the Corporation;*
- (c) absents himself from, or is unable to attend, the meetings of the Corporation during six successive months from any cause whatever, whether approved by the Corporation or not; or*
- (d) acts as a councillor or as a member of any committee of the Corporation by voting on, or taking part in the discussion of, or asking any question concerning, any matter in which he has directly or indirectly by himself or his partner any such share or interest as is described in clause (b) of sub-section (2) of section 10 of in which he is professionally interested on behalf of a client, principal or other person.*

12. Questions as to disqualification to be determined by the Judge.

- (1) If any doubt or dispute arises whether a councillor has ceased to hold office as such under section 11, such councillor or any other councillor may, and at the request of the Corporation, the Commissioner, shall refer the question to the Judge.*
- (2) On a reference being made to the Judge under sub-ssection (1), such councillor shall not be deemed to be disqualified until the Judge after holding an inquiry in the manner provided by or under this Act determines that he has ceased to hold office.”*

11. Impeding or stalling the process of election, in our opinion, is one thing and interference in a few Constituency or Ward etc. is another thing. Being alive to limitations under Article 226 of the

Constitution of India, we are of the *prima facie* opinion that there is no absolute bar to entertain a writ petition in the matters like the present one which *prima facie* demonstrate illegal and arbitrary exercise of powers by the Election Returning Officer. Having regard to the non-applicability of section 10(1D) of the Act of 1949, we are inclined to entertain this writ petition and grant ad-interim order in terms of prayer clauses (c) and (d) of the prayer clause, which read as under :-

“(c) that pending the hearing and final disposal of this Petition, this Hon’ble Court be pleased to stay the effect, execution, implementation and operation of the impugned order dated 31st December 2025 (Exhibit “O” to the Petition);

“(d) that pending the hearing and final disposal of this Petition, this Hon’ble Court be pleased to stay the general election 2025 to seat of councillor of ward no. 17A of the Navi Mumbai Municipal Corporation.”

12. The State Election Commission, the Commissioner, Navi Mumbai Municipal Corporation, the Chief Electoral Officer and the Election Returning Officer, Navi Mumbai Municipal Corporation shall not proceed further as regards the election on the seat of Councillor for Ward No. 17A of the Navi Mumbai Municipal Corporation.

13. Mr. Sachindra B. Shetye, the learned counsel for the State Election Commission made a statement that the present petitioner cannot be included in the list of validly nominated candidate and he shall not be now able to contest the elections.

14. Let an affidavit be filed in this regard by tomorrow.

15. Post this matter tomorrow, that is, 9th January 2026 under the heading “For Final Disposal”.

Digitally
signed by
JAYANT
VISHWANATH
SALUNKE
Date:
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+0530

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]