

राज्य निवडणूक आयोग, महाराष्ट्र

क्रमांक रानिआ/मनपा२००८/प्र.क्र. १२/का.०५

नवीन प्रशासन भवन, मंत्रालयासमोर,

मादाम कामा रोड, मुंबई ४०० ०३२

दिनांक :- २३ जून, २००८

प्रति,

सर्व महानगरपालिका आयुक्त

विषय:- न्यायालयाचा निर्णय

महोदय,

मुंबई प्रांतिक महानगरपालिका अधिनियम, १९४९ अंतर्गत असलेल्या निवडणूक नियमांमधील नियम क्रमांक-९(ड) येथे अशी तरतूद आहे की, उमेदवार, त्याचा सूचक किंवा अनुमोदक यांची त्यांच्या मतदार यादीतील क्रमांकावरून ओळख पटली पाहिजे. अशी ओळख पटत नसेल तर त्यांचे नामनिर्देशनपत्र अस्वीकृत करावे. मुंबई उच्च न्यायालयाने सांगली-मिरज-कुपवाड शहर महानगरपालिकेच्या सार्वत्रिक निवडणुकीसंबंधी दाखल झालेल्या रिट याचिकांमध्ये असा निर्णय दिला आहे की, जर उमेदवार, उमेदवाराचा सूचक किंवा अनुमोदक यांचे मतदार यादीतील क्रमांक जर नामनिर्देशनपत्रात चुकीचे लिहिले असतील परंतु, त्यांचे नांव जर संबंधित मतदार यादीत असेल तर ते नामनिर्देशनपत्र स्वीकारण्यात यावे.

२.
आहे.

मुंबई उच्च न्यायालयाचा हा निर्णय आपल्या माहितीसाठी सोबत जोडला

आपला,

(रा. नी. पांडे)

अवर सचिव,

राज्य निवडणूक आयोग

HIGH COURT, BOMBAY

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3638 OF 2008

Nasif Alam Hafiz Dhature.	.....	.....	Petitioner.
Versus			
The State of Maharashtra & Ors.	.....	.....	Respondents.

:- ALONG WITH :-

WRIT PETITION NO. 3622 OF 2008

Sanjay Vasantrao Bhosale.	.....	.....	Petitioner.
Versus			
The State Election Commission & Ors.....		.....	Respondents.

:- ALONG WITH :-

WRIT PETITION NO. 3648 OF 2008

Razzak Husen Chikode.	.....	.....	Petitioner.
Versus			
The State of Maharashtra & Ors.	.....	.....	Respondents.

:- ALONG WITH :-

WRIT PETITION NO. 3649 OF 2008

Uday Namdeo Bansode.	Petitioner.
Versus			
The State of Maharashtra & Ors.	Respondents.

:- ALONG WITH :-

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WRIT PETITION NO. 3650 OF 2008

Shivprasad Jagannath Satpute. Petitioner.
Versus
The State of Maharashtra & Ors. Respondents.

:- ALONG WITH :-

WRIT PETITION NO. 3651 OF 2008

Mansur Babalal Narwade. Petitioner.
Versus
The State of Maharashtra & Ors. Respondents.

:- ALONG WITH :-

WRIT PETITION NO. 3661 OF 2008

Dilip Jinnappa Chaugule. Petitioner.
Versus
The State of Maharashtra & Ors. Respondents.

:- ALONG WITH :-

WRIT PETITION NO. 3834 OF 2008

Pushkar Krishnaji Mane. Petitioner.
Versus
The State of Maharashtra & Ors. Respondents.

:- ALONG WITH :-

WRIT PETITION NO. 3861 OF 2008

Chandrakant Krushna Hulwan. Petitioner.
Versus
The State of Maharashtra & Ors. Respondents.

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Mr. M. L. Patil for Petitioner in W.P. 3638/08.

Mr. Amit Sale i/by Mr. S.P.Borade in W.P.3622/08.

Mr. R.M.Monin for Petitioners in W.P. Nos.3648/08, 3649/08, 3650/08 and 3651/08.

Mr. P. D. Pise for Petitioner in W.P. 3661/08 & 3834/08.

Mr. G. M. Savagave for Petitioner in W.P.3861/08.

Mr. V.S.Masurkar, Government Pleader with Mr. V. P. Malvankar, AGP for the State.

Mr. S. B. Shettye for Election Commissioner.

Mr. N.V.Walawalkar with Mr. G.H.Keluskar for Respondent No.2 in W.P.3622/08 and for Respondent No.4 in W.P.3649/08.

CORAM: BILAL NAZKI and
S. S. SHINDE, JJ.

DATED: 17TH JUNE, 2008.

P.C.:

Rule.

2. Learned Counsel appearing for the respective respondents waive service on behalf of the respondents.
3. By consent of the parties, Rule made returnable and taken up for final hearing forthwith.
4. These petitions are disposed of by the common order as they raise same question of facts and law.
5. All the petitioners were candidate to various Wards of Municipal Corporation of Sangli, Miraj and Kupwad City Municipal Corporation. By a Notification 'General Elections - 2008' in the Municipal Corporation were

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called. All nomination papers had to be filed between 27th May, 2008 to 3rd June, 2008. Scrutiny of Nominations was to take place on 4th June, 2008 and publication of list of valid nominations had also to be published on 4th June, 2008. Withdrawal had to take place on 9th June, 2008 and allotment of symbols had to take place on 10th June, 2008. Publication of list of contesting candidates was to be issued on 11th June, 2008 and voting had to take place on 22nd June, 2008. These candidates, who have filed these petitions, had filed their nominations within the stipulated period and on 4th June, 2008 when their nomination papers were scrutinised the same were rejected.

6. There is some controversy on fact as the petitioners claim that on 4th June 2008 they moved applications before the Returning Officer for making certain correction and they sought time till their advocate arrive. The Returning Officer waited till 4.00 p.m. when their Advocates arrived. He heard the arguments of the learned Advocate but passed orders on 5th June, 2008 pre-dated 4th June, 2008 rejecting nominations. This has been disputed by the respondents and the Returning Officer in his counter affidavit maintained that the order rejecting nominations were passed on 4th June, 2008 itself.

7. The short controversy is whether the nomination papers could be rejected on the ground that the serial number mentioned by the candidates in

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their nomination forms did not tally with the serial number in the voter's list. There is no dispute that the present petitioners are eligible to contest elections and their nominations along with the names of their proposers are there in the final voter's list. But the dispute is that the serial number they mentioned in their nomination forms did not tally with the serial number in the voter's list and therefore their nomination papers were rejected.

8. One of the main objections taken by the learned Counsel for the respondent is that since the election process has already started and it is settled law that the courts do not interfere at such stage of election process and if the petitioners have any grievance they will have to wait till the elections are over and challenge the elections through the process permitted under the relevant laws. We are conscious of the fact that if the rejection of nomination of the petitioners are found to be illegal, even if the elections are held, those elections would be invalid and would only be waste of time and money and the efforts by the State Election Authority. Learned Counsel for the respondents submits that since admittedly the serial number mentioned in the forms did not tally with the serial number in the voter's list, the Returning Officer was bound to reject the nomination papers in terms of the mandate of Rule (9) (d) of the Bombay Provincial Municipal Corporations (Conduct of Elections to the Corporations) Amendment of Schedule D) Rules,

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2002. Rule (9) lays down that the Returning Officer shall scrutinise and examine the nomination papers and shall decide the objections, if any, and after summary inquiry reject any nomination paper on any of the grounds enumerated under sub-rules (a) to (f). Sub-rule (d) on which the respondents rely, lays down, "that the identity of the candidate or, as the case may be, of the proposer or seconder, cannot be established with their electoral number as specified in the nomination paper". Learned Counsel for the respondents submits that this rule makes it clear that the serial number given in the nomination form should tally with the serial number given in the voter's list. We are afraid, this is not the interpretation which can be placed on this provision. The purpose of this provisions is, mainly, to ascertain whether the candidate who has filed the nomination paper is eligible under the Act and his name and the name of the proposer or seconder is found in the voter's list. The serial number is not important. What is important is that the name of proposer or seconder and the candidate should be in the voter's list and it should be identifiable. The serial number cannot be the sole identifying factor for coming to a conclusion whether the candidate's name, his proposer's name and seconder's name is in the voter's list or not. Once it is found by the Returning Officer that the name of the candidate, name of his proposer and the name of his seconder is in the voter's list, he cannot reject the nomination

paper. In any case, even if the interpretation tried to be placed by the learned Counsel for the respondents for sub-rule (d) of rule (9) of the Rules is accepted, even then nomination paper could not have been rejected in view of Rule (10) of the Rules. This Rule lays down, "the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of substantial nature". It can not be any body's case that mentioning a wrong serial number in the nomination paper would be a defect of substantial nature. There is another proviso to Rule (11) of the Rules, that where an objection to the filing of nomination paper is taken by the Returning Officer or some other person, the candidate concerned may be allowed time up to the next following working day to rebut the same and Returning Officer is supposed to record his decision on the adjourned date. The case of the petitioners is that they wanted to correct and they had moved applications for making correction in the nomination papers. It is admitted by the Returning Officer in his counter affidavit that the applications were made but according to him it was made on 4th June, 2008 at 4.00 p.m. when he had already passed orders rejecting the nominations. When this was made aware to the candidates that they have mentioned wrong serial numbers in their nomination papers, normally the reaction of the candidates would be that they would like to correct the serial number. For this reason, we find merits

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in the writ petition.

9. Coming to the objection raised by the learned Counsel for the respondents that it would not be proper to stall the process of elections at this stage, the learned Counsel for the petitioners pointed out the judgment of the Supreme Court in Ram Bhual v/s Ambika Singh, reported in (2005) 12 SCC 121. This case is identical to the present case and the facts are almost same. Since ultimately, even if the elections are allowed to be held, the result would be that the elections would be set aside. Therefore, we feel that this is a fit case where this Court should exercise its jurisdiction under Article 226 of the Constitution of India and in any case this Court is not stalling the election process.

10. We may also refer to the judgment of the Supreme Court in K. Venkatachalam v/s A. Swamickan and Anr., reported in AIR 1999 SC 1723. In this case the question was a person had got elected to State Assembly though admittedly he was not eligible to be elected. After the elections were over nobody filed the election petition and the writ petition was filed. In this context, while analysing the powers of the High Court under Article 226 of the Constitution of India, the Supreme Court in paragraphs 26 and 27 held :

"26. The question that arises for consideration is if in such circumstances High Court can not exercise its jurisdiction under Article 226 of the Constitution declaring that the appellant is not qualified to be member of the Tamil Nadu Legislative Assembly

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from Lalgudi Assembly Constituency. On the finding recorded by the High Court, it is clear that the appellant in his nomination form impersonated a person known as Venkatachalam s/o Pethu, taking advantage of the fact that such person bears his first name. Appellant would be even criminally liable as he filed his nomination on affidavit impersonating himself. If in such circumstances, he is allowed to continue to sit and vote in the Assembly his action would be fraud to the Constitution.

27. In view of the judgment of this Court in the case of Election Commission of India v/s Saka Venkata Rao, AIR 1953 SC 210, it may be that action under article 192 could not be taken as the disqualification which the appellant incurred was prior to his election. Various decisions of this Court which have been referred to by the appellant that jurisdiction of the High Court under article 226 is barred challenging the election of a returned candidate and which we have noted above do not appear to apply to the case of the appellant now before us. Article 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one bar of Article 329(b) will not come into play when case falls under Articles 191 and 193 and whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the Court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?"

11. In view of the above, we direct that the nomination of the present petitioners be treated to have been approved. They be allotted the election symbols and their names be added and published in the list of contesting candidates. Since, the names of the petitioners are also to be added to the list

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of contesting candidates and symbols have to be allotted to them and some more arrangements may have to be made, therefore, it is left to the Election Commissioner to decide whether the schedule of elections relating to polling date as notified earlier needs to be changed or not. He may do so in his discretion after considering all the relevant factors.

12. Rule made absolute in the above terms. Writ petitions are disposed of. No order as to costs.

13. However, this order shall apply only to the persons who have approached this Court.

14. All Authorities concerned to act on an authenticated copy of this Order.

Sd/-

(BILAL NAZKI, J.)

Sd/-

(S. S. SHINDE, J.)

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Ans 10668
Section Officer
High Court, Appellate Side
Bombay.