



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1317 OF 2026

Shri. Deepak Raghunath Dhere,
Age : 59 Years, Occ: Business,
R/o: 16/437/1, Sangram Chouk,
Ichalkaranji, Taluka: Hatkanagle,
District: Kolhapur.

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]
] **...Petitioner**

Versus

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| 1) | The State of Maharashtra
Through the Secretary,
Department of Urban Development
Mantralaya, Mumbai. |]
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]
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] |
| 2) | The Divisional Commissioner,
Pune Division, Pune. |]
] |
| 3) | Ichalkaranji Municipal Corporation,
Ichalkaranji, Dist: Kolhapur
Through The Commissioner. |]
]
] |
| 4) | The Commissioner,
Ichalkaranji Municipal Corporation,
Ichalkaranji Dist : Kolhapur |]
]
] |
| 5) | The Municipal Secretary,
Ichalkaranji Municipal Corporation,
Ichalkaranji, Dist: Kolhapur |]
]
] |
| 6) | Shri. Sanjay Mahadev Kamble,
Age: 53 Years, Occ:
R/O: 19/240, Kamal Nehru Housing Society,
Malatimadhav Nivas, Ichalkaranji,
Tal: Hatkangale, Dist: Kolhapur
skgrouptextiles@gmail.com |]
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| 7) | Shri. Imran Bashir Haveri,
Age: 44 Years, Occ:
R/O: 24/1300, Savitrinagar, |]
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| | Shahapur, Ichalkaranji, |] |
| | Tal: Hatkangale, Dist: Kolhapur. |] |
| 8) | Shri. Imran Salim Bagwan |] |
| | Age: 41 Years, Occ: |] |
| | R/O: 20/839, Swami Mala, Ichalkaranji, |] |
| | Tal: Hatkangale, Dist: Kolhapur |] |
| | bimran7860@gmail.com |] |
| 9) | Shri. Prakash Dnyanba Dattawade, |] |
| | Age: 15 Years, Occ: |] |
| | R/O: 8/1352, Sanjay Gandhi Nagar, |] |
| | Sangli Nagar, Ichalkaranji, |] |
| | Tal: Hatkangale, Dist: Kolhapur |] |
| | prakash.dattawade@gmail.com |] |
| 10) | Shri. Avinash Gulchand Kamble, |] |
| | Age: 45 Years, Occ: |] |
| | R/O: 1/833, Takavade Ves, |] |
| | Baudhvihar, Ichalkaranji, |] |
| | Tal: Hatkangale, Dist: Kolhapur |] |
| | avinashkamble1468@gmail.com |] |
| 11) | Shri. Maruti Yellappa Patharwat, |] |
| | Age: 48 Years, Occ: |] |
| | R/O: 8/1794/4, Patil Mala, |] |
| | Sangli Road, Ichalkaranji, |] |
| | Tal: Hatkangale, Dist: Kolhapur |] |
| | marutipatharwat11@gmail.com |] |
| | | <u>...Respondents.</u> |

Mr. Satyajeet A. Rajeshirke, Mr. Rahul Rane, Mr. Gautam R. Kulkarni and Mr. Shubham R. Vasekar, for the Petitioner.
Ms. Tejas S. Kapre, AGP for the Respondent-State.
Mr. Aditya S. Raktade (through V.C.) a/w Mr. Ajit Jagtap, Mr. Sanket Patil, for the Respondent Nos.3 and 4.
Mr. Ishaan Kapse, for the Respondent Nos.6 to 11.

Coram : Sharmila U. Deshmukh & Neeraj P. Dhote, JJ.

Reserved on : September 29, 2026.

Pronounced on : October 19, 2026.

JUDGMENT : (Per Sharmila U Deshmukh, J.):

1. **Rule.** With consent, Rule made returnable forthwith and taken up for final hearing.
2. Despite the existence of constitutional and statutory bar in electoral matters, whether this Court should interfere under Article 226 of Constitution of India in exercise of writ jurisdiction is the question.
3. The captioned petition challenges the nomination of the nominated councillors of Respondent No.3-Ichalkaranji Municipal Corporation, including the recommendation dated 20th February 2026 of Respondent No.4- Commissioner, the resolution passed in General Body Meeting of Respondent No.3-Corporation dated 20th February 2026, and the State Government Gazette notification dated 25th February 2026, and seeks a declaration of the nomination of Respondent Nos.6 to 11 as nominated councilors as illegal, arbitrary and contrary to the provisions of Maharashtra Municipal Corporations Act, [for short **“MMC Act”**] and the Maharashtra Municipal Corporations (Qualifications and Appointment of Nominated Councilors) Rules 2012 [for short **“Rules of 2012”**], and fresh process of nomination of nominated councilors to be conducted.
4. The petitioner is a voter in Ichalkaranji Municipal Corporation election for the term 2025-26 from Ward No. 14, Part No. 242, Kalanagar Parisar and was elected Councillor of the erstwhile Ichalkaranji

Municipal Council for the term 2001-2006. The Petition pleads that on 15th January 2026, the election for the Respondent No.3-Corporation was held for electing 65 councilors. The Respondent No 5 issued/published notice dated 12th February, 2026 convening the General Body Meeting of the Respondent No 3 Corporation to be held on 20th February, 2026 at 12.15 pm. Item No 2 of the Agenda was the nomination of six nominated councillors. Based on the strength of parties in the Corporation, Bhartiya Janata Party submitted nomination forms alongwith supporting documents and affidavits of four candidates-Respondent Nos 8 to 11 herein and Shiv Shahu Vikas Aghadi submitted nomination forms with documents and affidavits of two candidates. It is claimed that all six nominations are from category (g) of Rule 4 of Rules of 2014. The nomination from only one category defeats the purpose of nomination and even within the said category (g), the nominated persons are ineligible as they lack requisite qualifications.

5. It is pleaded that there is non application of mind as on the same day i.e. 20th February, 2026, the recommendation and scrutiny of nomination forms and documents was completed and the resolution was passed by the General Body of Respondent No.3 Corporation in a mechanical manner. It is pleaded that there are eligible persons available from other categories as there are various qualified professionals residing within the jurisdiction of Respondent No.3. The

Petition further sets out the specific ground of ineligibility of each nominated councillor.

6. Affidavit-in-reply filed by the Deputy Commissioner of Corporation on behalf of Ichalkaranji Municipal Corporation, raises an objection to the maintainability of petition in view of the remedy of election petition under Section 16 of the MMC Act. It is stated that after determining the party wise entitlement, the Municipal Commissioner addressed communications dated 13th February, 2026 to the Leader of Majority and Leader of Opposition informing them about number of nominations to be recommended. The nominations were received from the leader of opposition on 18th February 2026 and from leader of majority on 20th February 2026, along with supporting documents. Office of Respondent No.4-Commissioner scrutinized every nomination and thereafter prepared the statutory recommendation and forwarded the same to the Mayor. The General Body meeting considered the recommendation and passed Resolution No.6, dated 20th February 2026, approving the nominations which came to be published.

7. The reply Affidavit of Respondent Nos.6 to 11-the nominated councillors raises a preliminary objection to the maintainability of the Petition. It reiterates the process of recommendation and nomination and states that at no stage during the nomination process, any objection was taken regarding the eligibility or qualification of any of

the proposed nominees.

8. A preliminary objection has been taken by Mr. Kapse, learned counsel appearing for Respondent Nos.6 to 11, to the maintainability of petition in the light of Full Bench decision of this Court in the case of ***Anil (Vidyarthi) Chanderlal Ailani v. State of Maharashtra and Others¹***, which held that the remedy of filing an election petition under Section 16 of the MMC Act can be availed questioning the nomination of nominated councillors. He submits that the Petitioner is not only challenging the process of nomination, but also the qualification of each of the nominated councillors by pointing out the pleadings as regards the ineligibility of the nominated councillors in the petition. He submits that the specific plea of Petitioner is that all Respondent Councillors belong to one category under Rule 4, which is disputed and in exercise of writ jurisdiction, disputed questions of facts cannot be entertained. Drawing attention of this Court to the provisions of Section 16 of the MMC Act, he would submit that the scope of Section 16 of the MMC Act is wide enough to include any kind of challenge to the nomination. He would submit that there is specific bar imposed by the Constitution of India, which permits challenge to an election of municipality only through an election petition. Pointing out to page nos. 380 and 382 of the petition, he would submit that even on merits, there is no

¹ 2016(2) Mh.L.J. 708.

procedural irregularity as the Commissioner has, after consulting the leader of majority and the leader of opposition, recommended the names of suitable persons. He submits that the Corporation, after the general elections, nominated six councillors in the resolution of the first meeting after election in accordance with the prescribed procedure.

9. Mr. Rajeshirke, learned counsel appearing for the petitioner, would first deal with the preliminary objection to contend that under Section 16(1) of MMC Act, the application is to be submitted for determination of dispute or question. He submits that Section 16(1) makes it clear that if qualification of any person is disputed or the validity of election is questioned on the grounds mentioned therein that the remedy of filing of election petition is available. He submits that first part of Section 16(1) applies where there is dispute regarding qualification of declared councillor, whether nominated or elected and remaining part pertains to questioning the validity of elections on grounds mentioned therein, which applies specifically to elected councillors. He submits that the State Election Commission is empowered to file an application before the Judge regarding elected councillor only in the event when election is not free on account of undue influence or instances of bribery.

10. He would submit that an election petition can be filed only if it concerns a single particular candidate and cannot be stretched to

challenge the election of multiple candidates simultaneously. He submits that there is no statutory provision enabling the Petitioner to file an election petition for the purpose of declaring the entire nomination process and nomination of nominated councillors void. He submits that power of judicial review can be exercised where there is *ex-facie* colorable exercise of power by the Municipal Commissioner and the Corporation, the cumulative effect of which renders the result of nomination void.

11. On merits, he would point out the provisions of Section 5(2)(b) of MMC Act and Maharashtra Municipal Corporations (Qualification and Appointment of nominated Councillors) Rules, 2007 [for short ***“Rules of 2007”***]. He submits that the earlier Rules were notified on 21st February, 2007 and Rule 5 contained a proviso enabling the Mayor to nominate any member not belonging to any party or group. He submits that by the notification of 21st April, 2007, some of the rules came to be amended and Rule 3 of the amended rules, the word “Mayor” in the principal rules was substituted by the word “Corporation”. He submits that the proviso to Rule 5 of the Rules of 2007 notified on 21st February 2007 enabled the Mayor to nominate any member or member not belonging to any such party or group. He submits that the proviso is clarificatory in nature and despite its deletion in the Rules of 2012, the same would explain the real intention of statutory provision and

becomes integral part of the enactment.

12. He would submit that the Rules of 2007 came to be superseded by the Rules of 2012, which explicitly provides for the recommendation of Commissioner, after consultation with the leader of the House, leader of the opposition and leader of each recognized or registered party or group in the Corporation. He would submit that post enforcement of Rules of 2012, the process for nomination of councillors and process for election of councillors are materially distinct and only the first part of Section 16(1) of MMC Act pertaining to an election dispute regarding individual qualification apply to a nominated councillor.

13. He submits that the duty of the Commissioner is not that of a mere post office or forwarding authority. He would point out Rule 4 and the proviso to Rule 5(2) of the Rules of 2012, which provide for nomination from different categories. He submits that in the present case, all the nominated candidates belong to the category (g) of Rule 4 of the Rules of 2012. He would further submit that the entire process of nomination, scrutiny, recommendation and passing of resolution was completed within a time-frame of two hours on 20th February 2026 which shows the mechanical manner in which the nomination process has been conducted.

14. He would submit that even the Full Bench decision of this Court of

Anil v. State of Maharashtra (supra) did not rule out the availability of writ jurisdiction in election matters. In support of his submissions, he relies upon the following decisions:

(i) S. Sundaram Pillai And Others v. V.R.Pattabiraman And Others²

(ii) Dwarka Prasad v. Dwarka Das Saraf³

(iii) ICICI Lombard General Insurance Co. Ltd. v. Arti Devi And Others⁴

(iv) Sonal Dilip Shinde v. State of Maharashtra And Others⁵

(v) State of Punjab And Another v. Gurdial Singh And Others⁶

15. We have considered the submissions and perused the record.

16. A preliminary objection has been taken to the exercise of writ jurisdiction by Mr. Kapse, in view of the availability of remedy under Section 16 of MMC Act.

17. The Petition calls in question the nomination of nominated councillors in Ichalkaranji Municipal Corporation. The MMC Act is a complete code in itself providing for the constitution of Corporation, the qualification of councillors, eligibility and disqualification. Section 5 of the MMC Act governing the constitution of Corporation provides that the Corporation shall consist of elected councillors and such number of

2 (1985) 1 SCC 591.

3 (1976) 1 SCC 128.

4 2025 SCC OnLine All 1236.

5 2022(3) Mh.L.J. 657.

6 (1980) 2 SCC 471.

nomination councillors not exceeding ten percent of total elected councillors or ten, whichever is less having special knowledge or experience in municipal administration to be nominated by the Corporation in the prescribed manner. In exercise of powers under Section 5(2)(b) and Section 456A of MMC Act, the State Government has framed Maharashtra Municipal Corporations (Qualifications and Appointment of Nominated Councillors) Rules, 2012. Rule 3 provides that subject to Rule 4, the Corporation shall in its meeting held immediately after the expiry of one month from the date of notification of election results, after general elections, nominate five persons to be nominated Councillors. Rule 4 prescribes the qualification for nomination and prescribes the person eligible for being nominated as candidate for the office of the nominated Councillors if he has special knowledge or experience in municipal administration and he falls within the categories specified in clause (a) to (g) therein. Rule 5 deals with nomination of Councillors and reads as under:

"5. Nomination of Councillors

(1) For the purpose of nomination of Councillors, the Commissioner shall, after consulting the Leader of the House, Leader of Opposition and Leader of each recognized or registered party or group in the Corporation, and after taking into account the relative strength of such parties and groups recommend the names of suitable persons to the Corporation for being nominated as a nominated Councillor. The names of such persons recommended shall not exceed the number of Councillors to be nominated in accordance with rule 3.

[Provided that, while recommending the names of persons to be nominated Councillors on the basis of relative strengths of the recognized

or registered parties or groups or aghadis or fronts, formed as per the provisions of sub-section (2) of section 50S of the Mumbai Municipal Corporation Act, or section 31A of the Bombay Provincial Municipal Corporation Act, 1949 or section 40A of the City of Nagpur Corporation Act, 1948, as the case may be, the Commissioner shall first consider the whole number of the seats admissible for nomination of persons as nominated Councilors to such recognized or registered parties or groups or aghadis or fronts, as per their relative strengths and thereafter if one or more seats remain to be allotted, the same shall be allotted to such recognized or registered parties or groups or aghadis or fronts in the descending order of the fraction numbers, considering the highest fraction till all the seats of nominated Councillors are allotted:

Provided further that, while recommending the names of the basis of the descending order of the fraction number, as mentioned in the above proviso, if two or more recognized parties or groups or aghadis or fronts have the same fraction number, then the Commissioner shall, recommend the names of person belonging to such recognized or registered parties or groups or aghadis or fronts, selected on the basis of lots drawn in the presence of all such concerned parties or groups or aghadis or fronts.]

(2) The Corporation shall, after considering the recommendation by the Commissioner, nominate the Councillors:

Provided that, if the Corporation decides not to accept the recommendation of the Commissioner with respect to a person so recommended, it shall record the reasons therefor:

Provided further that, every endeavor shall be made to ensure that one Councillor each possessing any of the qualifications referred to in clauses (a) to (g) of rule 4 has been nominated."

18. The Petitioner challenges the nomination of nomination councillors on the grounds of: (a) being from single category i.e Rule 4(g) being in violation of Rule 4 and 2nd proviso to Rule 5(2) of Rules of 2012 (b) lacking eligibility even within that category and (c) mechanical manner of processing the nomination and recommendation.

19. In electoral matters, Article 243-ZG imposes a specific bar to the interference by Courts as under :

"243-ZG. Bar to interference by Courts in electoral matters.-

Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-ZA shall not be called in question in any Court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

20. Similar bar is enacted in Section 16 of the MMC Act, which provides for the remedy of election petition and reads as under:

“16. Election petitions.— (1) If the qualification of any person declared to be elected a councillor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection by the [State Election Commissioner] of a nomination, or of the improper reception or refusal of a vote, or by reason of a material irregularity in the election proceedings, corrupt practice, or any other thing materially affecting the result of the election, any person enrolled in the municipal election roll may at any time within ten days after the result of the election has been declared submit an application to the Judge for the determination of the dispute or question.

(2) The [State Election Commissioner] may, if it has reason to believe that an election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed by order in writing, authorise any officer [of the Commission] to make an application to the Judge at any time within one month after the result of the election has been declared for declaration that the election of the returned candidate or candidates is void.

(2A) No election to any Corporation shall be called in question except by an election petition presented to the Judge referred to in sub-section (1) and no Judge other than the Judge referred to in sub-section (1) shall entertain any dispute in respect of such election.

(3) The Judge shall decide the applications made under sub-section (1) or (2) after holding an inquiry in the manner provided by or under this Act.

Explanations.--”

21. Mr. Rajeshirke has not mounted a direct frontal challenge to the appointment of nominated councillors on the ground that the process

of nomination could not be equated with election process. Indeed no such submission could have been canvassed given the decision of the Hon'ble Full Bench in ***Anil v. State of Maharashtra*** (supra). The statutory bar under Section 16 of MMC Act is sought to be circumvented by creating an artificial distinction between the former and latter part of Section 16(1). If we consider the case put up by the Petitioner in the Petition and the written submissions, one of the grounds is that the Respondent Nos.6, 7, 9 to 11 lack proper supporting necessary documents. The submissions thus raise a dispute about the qualification of the nominated councillors and even if the distinction is accepted for the moment, the remedy would lie under Section 16 of MMC Act. That apart, we are of the view that the interpretation placed by Mr. Rajeshirke on Section 16(1) of MMC Act creates a superficial distinction, which does not have any basis. The submission is premised on the opening words in Section 16(1) i.e. "qualification of any person declared to be elected as councillor" as against the use of the words "validity of election" in the subsequent portion of Section 16(1). We do not find form reading of the provisions of Section 16(1) of the MMC Act that Section 16(1) can be segmented in the manner suggested by Mr. Rajeshirke. Section 16 permits questioning of election results on two grounds: one where the qualification of councillors is doubted and second: where the validity of election process is questioned. If the

submission canvassed is accepted, the consequence would be that where the qualification is disputed whether of elected or nominated councillor, the remedy would be election petition and where validity of election is questioned, the writ court will have to be approached. Such consequence, in our view, is unacceptable for the reason that where the challenge is on both counts, for the same candidates, two different remedies will be required to be adopted.

22. The submission indirectly canvasses the submission that the nomination of nominated councillors cannot be equated with election process and it is only in respect of elected councillors that the validity of election can be questioned in election Petition. The Rules of 2012 prescribes the process of nomination commencing with determination of relative party strength, the consultation, recommendation and acceptance in the General body.

23. The issue is no longer *res integra* and was considered by the Hon'ble Full Bench decision in ***Anil vs State of Maharashtra*** (supra). The Hon'ble Full Bench analyzed the statutory provisions of MMC Act and Rules of 2012 to hold that the decision on nomination of councillor taken by Corporation is also capable of being challenged in election petition on both counts i.e. dispute about qualification and question with regard to validity of election. It has specifically held that the process of nomination can be equated with an election. The Hon'ble Full

Bench did not distinguish between directly elected councillors and nominated councillors.

24. We find that the validity of appointment of nominated councillors can also be questioned on the substantive or procedural material irregularity, say for instance where there is no recommendation of the Commissioner or the recommendations have not been considered by the Corporation and the General body appoints the nominated councillors. There is a prescribed nomination process involved even in the appointment of nominated councillors, which process can be questioned under Section 16(1) of MMC Act.

25. The allegation *qua* violation of Rule 4 is that Ichalkaranji Municipal Corporation has appointed all six nominated councillors exclusively from social welfare work qualification category under clause (g) of Rule 4 and has failed to make an endeavour to secure professional diversity, which in effect is an allegation of infraction of Rules questioning the validity of nomination process. The contention that the remedy of Election Petition is not available to question the validity of election in respect of nominated councillors and is restricted in challenge only to single particular councillor can be stated only to be rejected. Upon a reading of Section 16 of MMC Act, we do not find any such embargo being placed by the statutory provisions. On the contrary, Sub Section (2) of Section 16 empowers the State Election

Commissioner to challenge the election result seeking a declaration that the election or the returned candidate or candidates is void. There is no basis to hold that it is only State Election Commissioner which can challenge the election result of multiple candidates, and such remedy is not available under Sub Section (1) of Section 16. There is no express restriction in Sub Section(1) of Section 16 limiting the challenge only to a election of single candidate. Section 16 permits questioning of validity of election on the grounds specified in sub section (1), which are wide enough to include challenge to the entire election process. The grounds specified therein include material irregularity in election proceedings, which would take within its fold the entire nomination process. The allegation is of infraction of the enactment and the Rules, which can be categorized as material irregularity as expressed in Section 16 of MMC Act.

26. The issue as regards entitlement of voter to question the nomination of nominated councillors by way of election dispute was considered by the Hon'ble Full Bench in ***Anil vs State of Maharashtra*** (supra) constituted to answer the following question:

“Whether a remedy of election dispute under Section 16 of the said Act or Section 21 of the said Act of 1965 is available to a voter who is entitled to vote in General Ward Elections for challenging the election/nomination of a nominated Councillor ?”

27. The factual matrix of the two Petitions, resulting in constitution of the Hon'ble Full Bench, challenged the nomination process

conducted in nomination of councillors. In one Petition, the nomination process and the resolution nominating the Respondents therein was challenged on the ground that the nominated councillors were not eligible and were nominated without considering the recommendations of Municipal Commissioner. In the other Petition, the allegation was that the Rules were violated by seeking to nominate ineligible candidates and the notice and agenda of General Body meeting was also challenged. One of prayers sought was for quashing the nominations and to fill the vacancy in accordance with Rules of 2012. A preliminary objection was taken to the maintainability in view of availability of remedy of filing election petition. In light of conflict of views between two Division Benches in respect of Section 16 MMC Act and Section 21 of Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965, (Act of 1965) the issue was referred to the Hon'ble Full Bench.

28. One of the submissions canvassed was as regards the distinction between nomination and direct election to contend that remedy of filing election petition was not available and Writ Petition under Article 226 was maintainable. The Hon'ble Full Bench noted the definition of Councillor under Section 2(11) of MMC Act, which included a nominated Councillor. It noted the manner in which Section 16 was sought to be interpreted suggesting a determination of qualifications of Councillor

declared to be elected or validity of any election as restricted to a direct election process. Noting the Rules of 2012 and the process of nomination, the Hon'ble Full Bench held such interpretation to be a restricted or narrow interpretation and declined to accept the interpretation. The Hon'ble Full Bench equated the process of nomination with election and held in paragraphs 62 to 65 as under:

"62. It is therefore clear that when the scheme of the Act and Rules is understood as denoting that the Corporation shall consist of Councillors elected directly at Ward election and nominated by it, then, it would not be proper to divide the exercise and then hold whether it is "election" or "nomination". As urged by the learned Senior Counsel Mr. Gorwadkar, an election means voting as set out in section 8A of the MMC Act. That manner of voting would decide whether it is a election else the process cannot be termed as such would be really missing the point. The act of electing can be held to be performed after the vote is cast. It may be by ballot meaning inserting a paper marking one's choice in the box or by pressing the button against a name in the electronic machine.

63. The word "nomination" also is assigned the same meaning, namely, "to select the candidate to be voted for a public office or a member of legislative or representative assembly, to name or to recommend for confirmation". One nominates a person in order to propose him or appoint him to an office and that could be as understood in the Law Lexicon by appointment or it could be to propose a person for election or appointment.

64. Once we understand that it is the Corporation as a whole which considers the recommendations of the Commissioner and then takes a decision on nominations of the candidates, then, the process can be equated with an election. Albeit the mode may be by voting in the manner understood above.

65. That such a decision of the Corporation is also capable of being challenged by an Election Petition is therefore evident. One cannot construe Section 16(1) in the backdrop of the locus of a person challenging the elections. Advisedly, the words employed in Section 16 are that if the qualification of any person declared to be elected a Councillor is disputed or if the validity of the election is questioned for the reasons indicated in sub-section (1), then, any person enrolled in the municipal election roll can submit an application to the Judge for determination of dispute or question. Thus, the dispute is about the qualification of any person declared to be elected as a Councillor, whereas the question is with regard to the validity of any election. On both counts,

the application can be presented by the person enrolled in the municipal election roll. Equally, by sub-section (2), a discretion is given to the State Election Commissioner to make an application within the meaning of that sub-section.”

29. The Hon'ble Full Bench then dealt with the controversy as regards the availability of writ jurisdiction and considered Articles 226 and 243-ZG of the Constitution of India. It noted the judicial pronouncement in ***Jyoti Basu And Others v. Debi Ghosal And Others***⁷, that the right to elect, the right to be elected and the right to dispute an election has to be determined by the scheme of constitutional and statutory provisions in relation to these rights, which would indicate that this is neither a fundamental right nor a common law right and it is a pure and simple statutory right.

30. The Hon'ble Full Bench held in paragraph 88 as under:

“88. Therefore, it is not in all cases and as a matter of course the power to issue the Writs under Article 226 of the Constitution of India would be exercised. After the bar enacted under Article 243-ZG as well, the exercise of this power depends upon several factors and which need not be enumerated. The reasons for refusing to exercise the power to issue prerogative Writs are also well settled. Once the constitutional Articles referred above are understood in such perspective, then, it would be evident that there is a bar to interference by Courts in electoral matters. That is notwithstanding anything in the Constitution and if the matter is covered by clause (a) of Article 243-ZG and clause (b), then this aspect becomes clear and apparent.”

31. Mr. Rajeshirke would draw attention of this Court to the decision of ***K. Venkatachalam v. A. Swamickan And Another***⁸, which was noted by the Hon'ble Full Bench. In paragraph 93-Q, the Hon'ble Full Bench has

⁷ AIR 1982 SC 983

⁸ AIR 1999 SC 1723

observed that the reasoning in the case of ***K. Venkatachalam*** (supra) was explained in ***Kurapati Maria Das v. Dr. Ambedkar Seva Samajan And Others***⁹, that there was clear finding that the elected person therein played a fraud with the Constitution and he impersonated some other person taken advantage of similarity of names. The Hon'ble Apex Court termed the reasoning in case of ***K. Venkatachalam*** (supra) as exceptional.

32. The Hon'ble Full Bench answered the questions referred as under:

"(i) The remedy of election dispute under section 16 of the MMC Act or section 21 of the Municipal Councils Act is available to a voter entitled to vote in general Ward election to dispute or question the nomination of nominated Councillor.

(ii) We clarify that the availability of this remedy to a candidate at the said election would depend upon the language of the two provisions and the difference therein as outlined by us in the forgoing paragraphs of the judgment in detail."

33. The Hon'ble Full Bench has held that the dispute about qualification of Councillor as well as validity of election can be questioned under Section 16 of the MMC Act. Considering the enunciation of law, the contention that remedy of Section 16 of MMC Act is not available to the Petitioner cannot be accepted.

34. Pertinently, one of the Petitions in the Hon'ble Full Bench decision questioned the resolution nominating Respondent Nos 4 to 8 i.e. multiple candidates therein on ground of eligibility and in the other

⁹ (2009) 7 SCC 387

Petition, the nominations of Councillors were challenged alleging violation of Rules. In the background of such challenge, the preliminary objection was taken on the ground of availability of remedy of election petition, which was decided by the Hon'ble Full Bench.

35. To overcome the decision of Hon'ble Full Bench, Mr. Rajeshirke would contend that the Rules of 2012 resulted in change in nomination process, which cannot be said to be election process, drawing support from ***Sonal Dilip Shinde*** (supra). He would draw attention of this Court to the observations therein that person nominated as member is not required to undergo process of election as per Rules of 2012. The observations are being read divorced from the context. In that case, the issue before the Hon'ble Division Bench was as regards the incurring of disqualification by the nominated councillors. The Hon'ble Division Bench noted that under the Rules of 1995, the nominated candidates were elected by procedure of election, which process is not provided in Rules of 2012 as it provided for nomination of candidates. The observation came in the context of considering whether the disqualification under Section 10(E) of MMC Act can be incurred by nominated councillor for failure to submit election expenses. The Hon'ble Division Bench has equated the nominated and elected councillor at par to hold that nominated councillor is not exempted from disqualification, however, no disqualification can be incurred for

failure to submit election expenses for the reason that the nominated candidates were not elected by procedure of election. It is well settled that a decision is an authority for what it actually decides and what is of essence is its ratio and not every observation found therein nor what logically flows from the various observations made therein.

36. The Hon'ble Full Bench has considered the Rules of 2012 to hold that process of nomination can be equated with an election albeit the mode may be by voting in the manner prescribed. The decision of Hon'ble Full Bench would bind this Court.

37. In so far as the decision in ***Pratima Prabhakar Rao Borikar v. State of Maharashtra And Others***¹⁰ is concerned, there was no consideration of the issue of availability of remedy of filing election petition. The Hon'ble Full Bench decision addresses the specific issue of availability of remedy of election petition, with which we are respectfully bound.

38. As regards the citations on the aspect of nature of proviso, as we have upheld the preliminary objection, it is not necessary to consider the same.

39. The written submissions contend that the entire nomination process is carried out in violation of the MMC Act and the Rules of 2012. In effect the allegation is of infraction of the enactment and the Rules, which would be categorized as material irregularity as expressed in

¹⁰ [2013(4) Mh.L.J.]

Section 16 of MMC Act. In view of the constitutional and statutory bar to interference of Court in electoral matters, we are not inclined to exercise writ jurisdiction to adjudicate the nomination of nominated councillors. It is open for the Petitioner to adopt the remedy under Section 16 of MMC Act, if so advised. We have not expressed any views on the merits of the Petition.

40. In light of the above discussion, the Petition stands disposed of. Rule is discharged.

[Neeraj P. Dhote, J.]

[Sharmila U. Deshmukh, J.]