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**(2008) 06 BOM CK 0133**

**Bombay High Court (Nagpur Bench)**

**Case No:** Writ Petition No's. 2174 and 2181 of 2008

Raju Dakru Bawane and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision:** June 20, 2008

**Acts Referred:**

- City of Nagpur Corporation Act, 1948 - Section 9AA, 9B
- Constitution of India, 1950 - Article 243ZA

**Citation:** (2008) 5 ALLMR 603 : (2008) 6 MhLj 76

**Hon'ble Judges:** Vasanti A. Naik, J; D.D. Sinha, J

**Bench:** Division Bench

**Advocate:** R.R. Shrivastava, in W.P. No. 2174 of 2008 and N.S. Khubalkar, in W.P. No. 2181 of 2008, for the Appellant; Indira Bodade, AGP for Respondent No. 1 in W.P. No. 2174 of 2008 and for Respondent No. 4 in W.P. No. 2181 of 2008, Pradeep Marpakwar, in W.P. No. 2174 of 2008 and S.M. Puranik, for Respondent Nos. 3 and 4 in W.P. No. 2174 of 2008 and for Respondent Nos. 1 to 3 in W.P. No. 2181 of 2008, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

D.D. Sinha, J.

Rule is made returnable forthwith in both the Writ Petitions by consent of Mr. R.R. Shrivastava, Adv. and Mr. N.S. Khubalkar, Adv. for the petitioners and Smt. Indira Bodade, Assistant Government Pleader, Mr. Pradeep Marpakwar, Adv. and Mr. S.M. Puranik, Adv. for respondents. Since the cause of action involved in both the Writ Petitions is identical, they are heard together and disposed of by this judgment.

2. The following facts have given rise to filing of both these petitions:

That the State Election Commissioner, Mumbai has published a notification dt. 2-5-2008 and declared the bye-elections of the Ward Nos. 64, 65, 35, 56, 25, 53, 73 and 98 of Nagpur Municipal Corporation, Nagpur. As per the election programme, the candidates who wanted to contest the bye-elections were required to submit

their nomination forms between 14th May, 2008 to 21st May, 2008. Scrutiny of the nomination papers was scheduled to be held on 22-5-2008. The date for publishing the names of eligible candidates was 30-5-2008. The last date for withdrawal of nomination forms was 2-6-2008. Allotment of symbol was to be declared on 5-6-2008. Final list was to be published on 6-6-2008. The elections were to be held on 22-6-2008 and counting of votes was to be held on 23-6-2008 and the result of the elections were to be declared on 27-6-2008.

3. It is contended by the learned Counsel for the petitioners that all the petitioners have submitted nomination forms from the Scheduled Caste category, however, their forms were rejected on the ground that they have not submitted the Caste Validity Certificate issued by the competent Caste Certificate Scrutiny Committee along with their nomination forms in view of the provisions of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 2008 (Mah. XIII of 2008) (hereinafter referred to as "the Amending Act") whereby the proviso to Section 9AA of the City of Nagpur Corporation Act, 1948 came to be deleted w.e.f. 12-5-2008. Being aggrieved by the action of rejection of nomination forms of the petitioners, both the present Writ Petitions are filed challenging validity of the said action of the Returning Officer (respondent No. 4).

4. Mr. R.R. Shrivastava, Adv. for the petitioners has submitted that, in view of the provisions of Article 243-ZA of the Constitution of India read with Section 9-B of the City of Nagpur Corporation Act, 1948, it is the State Election Commission alone which is authorized to supervise, direct, control and to conduct the bye-elections in question. In other words, it is the Election Commission who is empowered to exercise power of Superintendence, directions and control over the conduct of elections. The Commissioner, Nagpur Municipal Corporation does not have any of the said powers and is required to act merely as per the directions issued by the Election Commission and to carry out and implement the directions issued by the State Election Commission.

5. It is the case of the petitioners that the State Election Commission vide communication dt. 2-5-2008 directed the Commissioner, Nagpur Municipal Corporation to hold bye-elections of the wards in question. It is submitted that the entire election programme (as referred to hereinabove) was also annexed with the said communication. Learned Counsel for the petitioners have contended that the date of declaration of election programme was 2-5-2008, which was prior to the date on which the Amending Act came into force i.e. 12-5-2008 and therefore, the bye-elections were required to be conducted as per the procedure stipulated in Section 9AA before amendment, which permitted the candidate who has filed the nomination form, provided he has already applied to the Scheduled Tribe Scrutiny Committee for verification of his caste certificate before the date of filing of nomination paper, but has not received the Validity Certificate on the date of filling the nomination paper, to submit along with the nomination paper a true copy of the

application preferred by him to the Scrutiny Committee for issuance of Validity Certificate and was required to give an undertaking that he shall submit within a period of four months from the date of election the Validity Certificate issued by the Caste Scrutiny Committee. Counsel for petitioners, therefore, contended that the action of the Returning Officer in rejecting the nomination papers of petitioners, in view of the Amending Act which came into force w.e.f. 12-5-2008, is misconceived and therefore, liable to be set aside and declare that the nomination forms submitted by the petitioners being valid should be accepted and petitioners are eligible to participate in the bye-elections.

6. Counsel for the petitioners further contended that it is not in dispute that the Amending Act whereby the proviso to Section 9AA of the City of Corporation Act came to be deleted, came into force w.e.f. 12-5-2008. It is submitted that Clause (6) of the Amending Act of 2008 deals with removal of doubt in respect of the procedure required to be followed while conducting election to the reserved seat before the Amending Act came into force and it stipulates that election to the reserved seat to the Municipal Corporations/Councils before the date of coming into force of the Amending Act, shall be regulated by relevant provisions of the City of Nagpur Corporation Act, 1948 as they existed immediately before the Amending Act came into force. It is submitted that, in the instant case, the bye-elections in respect of wards in question were declared by the Election Commissioner vide Communication dt. 2-5-2008 by exercising power vested in him under Article 243-ZA read with Section 9B of the City of Nagpur Corporation Act. However, the elections in the Official Gazette was formally notified by the Municipal Commissioner on 14-5-2008 which cannot be treated to be the date on which the election programme of the bye-elections of the wards was declared. It is submitted that the Municipal Commissioner has merely done ministerial act and therefore, the conclusion arrived at by the Returning Officer that the election programme for the first time was declared by Municipal Commissioner on 14-5-2008, which was after the Amending Act came into force, is unsustainable in law.

6A. Mr. N.S. Khubalkar, Adv. for the petitioner further contended that the election process in fact was commenced vide order dt. 8-4-2008 issued by the State Election Commissioner whereby direction to prepare the electoral roll was issued and since the preparation of electoral roll being a part of election process, the bye-elections would be governed by the provisions of Section 9AA of the Act of 1948 as it stood before commencement of the Amending Act and therefore, the action of rejecting the nomination papers of the petitioners by the Returning Officer in view of the Amending Act is bad in law.

7. Mr. S.M. Puranik, Adv. for the respondent-Corporation has submitted that the State Election Commissioner vide communication dt. 2-5-2008 only informed the respondent-Corporation to fill up the vacancies by holding bye-elections of the wards in question. It is contended that perusal of said communication makes it clear

that the State Election Commissioner has asked the Corporation to publish and declare the election programme in the Government Gazette and local Newspapers on 14-5-2008 after taking into consideration the provisions of law and rules applicable in this regard. It is contended that the Commissioner, Municipal Corporation, after taking into consideration the legal position, declared the election programme on 14-5-2008 accordingly and as per the said election programme, the eligible candidates were entitled to obtain nomination forms from 14-5-2008 to 20-5-2008 and were required to submit the same on or before 21-5-2008 to the Returning Officer. Scrutiny of nomination forms was to be done on 22-5-2008 and list of eligible candidates was to be published on 30-5-2008. The last date of withdrawal of nomination forms was 3-6-2008. Symbols were to be allotted to the eligible candidates on 5-6-2008. Final list of eligible candidates was to be published in the Government Gazette and local Newspapers on 6-6-2008. On 6-6-2008 final voters' list as per the polling booths was to be published by the Commissioner, Nagpur Municipal Corporation or by his designated Officer and as per the programme, the elections were to be held if necessary on 22-6-2008. Counting and declaration of result was scheduled to take place on 23-6-2008 and final results were to be published in the Government Gazette on or before 27-6-2008.

8. Mr. Puranik, Adv. for the Corporation has submitted that, in view of the above referred facts, it is crystal clear that the election programme commenced from 14-5-2008 and not from 2-5-2008 as contended by the Counsel for the petitioners. It is submitted that the amendment in the City of Nagpur Corporation Act, 1948 to Section 9AA was published in the Government Gazette on 2-5-2008 and came into force w.e.f. 12-5-2008 and it is, therefore, not in dispute that the programme of election was declared by the Commissioner of Municipal Corporation after the Amending Act came into force and in view of "removal of doubt" Clause of the Amending Act, the Returning Officer was justified in rejecting the nomination forms of the petitioners since the same were not accompanied with the Validity Certificate issued by the Caste Scrutiny Committee.

9. Considered the rival contentions canvassed by the respective Counsel. The facts which are undisputed are as follows:

Bye-elections were required to be held in respect of the wards mentioned hereinabove and the seats were reserved for Scheduled Caste Category candidates. The Caste Certificates of the candidates who were elected from this category were invalidated by the Caste Scrutiny Committee and therefore, vacancies occurred which were required to be filled in by holding bye-elections. Petitioners (belonging to Scheduled Caste category) submitted nomination forms from different wards to the Returning Officer. The Returning Officer at the time of scrutiny of the nomination forms found that the nomination forms submitted by the petitioners were not accompanied with the Validity Certificate issued by the Caste Scrutiny Committee and therefore, in view of deletion of proviso to Section 9AA of the City of

Corporation Act, 1948 by the Amending Act which came into force w.e.f. 12-5-2008, the nomination papers of the petitioners were rejected and therefore, the petitioners filed the present petitions challenging the orders dt. 13-5-2008 and 26-5-2008.

10. Considering the controversy involved, the question which falls for our consideration is - Whether the Returning Officer was required to follow the procedure stipulated in Section 9AA as it stood then prior to coming into force of the Amending Act i.e. on 12-5-2008 or Returning Officer is justified in rejecting the nomination forms of the petitioners in view of the Amending Act whereby the relevant proviso to Section 9AA came to be deleted.

11. We feel it appropriate to re-produce Section 9AA of the City of Nagpur Corporation Act as it stood then prior to the amendment.

9AA. Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of Citizens, shall be required to submit, along with the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

Provided that, a person who has applied to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing the nomination paper but who has not received the validity certificate on the date of filing of nomination paper shall submit along with the nomination paper,-

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the validity certificate or any other proof for having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period of four months from the date of his election, the validity certificate issued by the Scrutiny Committee:

Provided further that if the person fails to produce the validity certificate within a period of four months from the date of his election, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.

Similarly, Clause 4 of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 2008 which came into force on 12-5-2008 reads thus:

In Section 9AA of the City of Nagpur Corporation Act, 1948 both the provisos shall be deleted.

Clause (6) of the Amending Act of 2008 is re-produced as under:

For the removal of doubt, it is hereby declared that the election to a reserved seat to the Municipal Corporations or Municipal Councils; before the date of coming into force of this Act, shall be regulated by the relevant provisions of the Mumbai Municipal Corporation Act, the Bombay Provincial Municipal Corporations Act, 1949, the City of Nagpur Corporation Act, 1948, or as the case may be, the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965, as they existed immediately before such date of commencement.

12. Plain reading of the above referred provisions would show that, prior to the Amending Act of 2008 came into force, the first proviso to Section 9AA of the City of Nagpur Corporation Act was holding the field and as per the said proviso, the candidate who had applied to the Scrutiny Committee for verification of his caste certificate before the date of filing of nomination paper but had not received the Validity Certificate on the date of filing of nomination paper, it was mandatory for such candidate to annexe the true copy of application referred by him to the Scrutiny Committee for issuance of Validity Certificate or any other proof for having made such application. It was also mandatory for such candidate to give undertaking that he shall submit within a period of four months from the date of election the Validity Certificate issued by the Caste Scrutiny Committee. Similarly, second proviso to Section 9AA, as it stood then prior to the amendment contemplated that if a candidate who was elected from the reserved seat but failed to produce the Validity Certificate within a period of four months from the date of election, his election shall be deemed to have been terminated retrospectively and such a candidate shall be disqualified for being a Councillor.

13. Perusal of Clause (4) of the Amending Act clearly shows that both these provisos were deleted by the Amending Act of 2008 which came into force on 12-5-2008. Perusal of Clause (6) of the Amending Act of 2008 which deals with "removal of doubt" makes it further clear that the election to a reserved seat to the Municipal Corporation before the date of coming into force of the Amending Act shall be regulated by the relevant provisions of the City of Nagpur Corporation Act, 1948.

14. In the instant case, applicability of provisions of Section 9AA prior and after the Amending Act of 2008 would necessarily depend upon interpretation of the word "election" mentioned in Clause (6) of the Amending Act.

15. It is no doubt true that as per Clause (1) of Article 243-ZA the power of superintendence, direction and control of preparation of election rolls and to conduct elections of the Municipalities is vested in the State Election Commission. Clause (2) of the said Article stipulates that the power vested in the State Election Commission in view of the Clause (1) is subject to the provisions of the Constitution. Legislature of the State may by law is entitled to make provisions with respect to all the matters related to or in accordance with the elections to the Municipalities. It is, therefore, evident that the State Election Commission has power of superintendence and control in respect of preparation of electoral rolls including power of issuing

directions in this regard. The provisions of this Article need to be understood in its right perspective. It is no doubt true that the State Election Commission has a right to issue any direction to the competent Authority in respect of conduct of election and it is binding on such Authority. In the instant case, the State Election Commissioner by a Communication dt. 2-5-2008 issued a direction to the Commissioner, Nagpur Municipal Corporation to hold the bye-elections of various wards (referred to hereinabove) and also mentioned the various factors to be considered while conducting the said bye-elections. The words used in Clause (6) of the communication dt. 2-5-2008 issued by the State Election Commission make it clear that the Municipal Commissioner was directed, after taking into consideration the provisions of Law, bye-laws, Rules of Corporation pertaining to election, to declare the election programme. There is no ambiguity in the direction issued by the State Election Commission to the Municipal Commissioner. On the other hand, the direction is loud and clear which requires the Municipal Commissioner to declare the election programme after taking into consideration the provisions of law, bye-laws as well as the rules applicable to the elections of the Municipal Corporations. It is, therefore, evident that the communication dt. 2-5-2008 cannot be treated to be declaration of election which in fact was required to be declared by the Municipal Commissioner as per the direction of State Election Commission, but, only after considering the provisions of law and rules applicable in respect of the election. It is true that the format of election programme was accompanied with the communication dt. 2-5-2008 however, as per the direction of Election Commission itself, the Municipal Commissioner was required to consider the said format in view of the provisions of relevant Act and Rules including bye-laws applicable to the election and it is only thereafter the Municipal Commissioner was directed to declare the election programme by the State Election Commission vide communication dt. 2-5-2008 and therefore, the communication dt. 2-5-2008 was the direction issued by the State Election Commission in exercise of power vested in it in view of Article 243-ZA of the Constitution.

16. By the communication dt. 2-5-2008, the Municipal Commissioner is asked to declare the election programme only after considering the provisions of law, rules and bye-laws. Though the format of the election programme was annexed with the said communication, however to take care where the Municipal Commissioner for some reasons would come to conclusion that the election programme mentioned in the format is not consistent with the provisions of the Corporation Act, Rules and Bye-laws applicable in respect of such elections, in that event, the only option available to the Municipal Commissioner is to inform the Election Commission about the same and seek advice in the matter. Similarly, if the Election Commission intended to declare election programme vide communication dt. 2-5-2008, in that event, the Election Commission would not have directed the Municipal Commissioner to consider the provisions of the Act, Rules and bye-laws applicable in respect of the elections, before declaring the election programme. Taking into

consideration these vital factors, we are of the view that the election programme notified in the Government Gazette as well as published in the local newspaper on 14-5-2008 is a valid date of declaration of the election programme.

17. It is not in dispute that the Amending Act came into force w.e.f. 12-5-2008 whereby both the proviso to Section 9AA stood deleted and by virtue thereof, it became mandatory for the candidates contesting elections from the reserved categories to annex Caste Certificate issued by the competent Authority and Validity certificate issued by the Caste Scrutiny Committee along with the nomination forms as required by provisions of Section 9AA. Since we have already concluded that the date of declaration of election programme was 14-5-2008, admittedly after the Amending Act of 2008 came into force, hence, in view of the provisions of Clause (6) of the Amending Act, the benefits as well as facilities provided and available to the Scheduled Caste candidate under the provisions of Section 9AA of the Act came to an end from the date the Amending Act, 2008 came into force. Therefore, the impugned orders passed by the Returning Officer, in our view, are just and proper and are also sustainable in law.

18. The contention canvassed by the Counsel for the petitioners that issuance of communication dt. 8-4-2008 by the Election Commission whereby direction was given for preparation of electoral roll being part of the election process also does not further the case of the petitioners in view of mention of the word "election" in Clause (6) of the Amending Act.

It is well settled that the word "election" denotes the entire process of election and includes every step from start to finish of the total process. Similarly, it is also well settled that the "election" means the entire process consisting of several stages and embracing several steps by which an elected member is returned. The declaration of election is in fact declaration of various steps required to be taken by the candidate who is desirous of contesting election as well as Returning Officer who has to conduct the elections as per the said election programme and is required to declare result of the election.

19. Clause (6) of the Amending Act stipulates that "election" to the reserved seat to the Municipal Corporations/Councils before the date of coming into force of the Amending Act shall be regulated by relevant provisions of the Corporations/Councils Act as they existed immediately before such date of commencement. We have already observed that the word "election" denotes the entire process of election consisting of several stages including preparation of electoral rolls, declaration of final voters' list, declaration of election programme and declaration of election results by the Returning Officer. While construing the word "election" mentioned in Clause (6), we have to take into consideration the natural meaning of the word "election" which includes all the steps from start to finish of the total process. It is in this context direction to prepare the electoral roll given by the Election Commissioner dt. 8-4-2008 though considered to be a part of election process,



however, the entire electoral process from start to finish was not completed prior to coming into force of the Amending Act. In fact, declaration of the election programme was, admittedly, after the Amending Act came into force and therefore, the question of completion of entire election process prior to the Amending Act came into force does not arise and therefore, the Returning Officer was justified in rejecting the nomination papers of the petitioners. The decision of the Apex Court reported in [Shri Sant Sadguru Janardan Swami \(Moingirid Maharaj\) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, .](#), in the facts and circumstances of the present case, does not improve the case of the petitioners.

20. For the reasons stated hereinabove, the petitions suffer from lack of merits. Hence, the same are dismissed with no order as to costs.