

(2013) 02 BOM CK 0236

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 301 of 2012

Vinod Rathod

APPELLANT

Vs

The State of Maharashtra, Urban
Development Department,
Mantralaya, Mumbai and Others

RESPONDENT

Date of Decision: Feb. 5, 2013

Acts Referred:

- Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
- Section 51B, 9, 9(1)(b)

Citation: (2013) 2 ABR 1135 : (2013) 2 ALLMR 786 : (2013) 2 BomCR 583 : (2013) 3 MhLj 833

Hon'ble Judges: U.D. Salvi, J; R.M. Borde, J

Bench: Division Bench

Advocate: N.L. Jadhav, for the Appellant; V.D. Rakh, A.G.P. For Respondent Nos. 1 to 3, Mr. S.S. Rathi, advocate for Respondent No. 4, Mr. S.T. Veer, advocate for Respondent Nos. 5 and 7 to 12 and Respondent No. 6 served, for the Respondent

Judgement

R.M. Borde, J.

Heard Mr. N.L. Jadhav, learned Counsel for the petitioner, learned A.G.P. for Respondent Nos. 1 to 3, Mr. S.S. Rathi, learned Counsel for Respondent No. 4 and Mr. S.T. Veer, learned Counsel for Respondent Nos. 5 & 7 to 12. None appears for Respondent No. 6, though served. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. The petitioner is praying for issuance of writ of mandamus or any other writ or direction in the like nature to Respondent No. 2-Collector, Parbhani, to declare him as a nominated Councilor of Municipal Council, Jintur, Tq. Jintur, District Parbhani. The petitioner also prays for quashing Rules 3 and 5 of the Maharashtra Municipal Councils and Nagar Panchayats (Qualifications and Procedure for Appointment of Nominated Councillors) Rules, 2010.

3. The elections to Respondent No. 4-Jintur Municipal Council were held in December, 2011. The total strength of the elected councilors of the Municipal Council is twenty-one, whereas, the Collector, in view of provisions of Section 9(1)(b) of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 (for short, hereinafter referred to as "Act of 1965"), is supposed to nominate two councilors. The elected councilors set up by the Congress-I party are twelve in number, whereas, there are eight councilors got elected, who were set up by the Nationalist Congress Party. One independent candidate also got elected as councilor of the Jintur Municipal Council.

4. The Collector convened a special meeting on 03.01.2012 for nominating two councilors as provided by Section 9(1)(b) of the Act of 1965 read with Rules prescribed in that behalf. There were seventeen members who attended the meeting, out of which, twelve members belong to Congress-I Party, whereas, four members belong to Nationalist Congress Party and one independent candidate attended the meeting. It has also been stated that four members belong to Nationalist Congress Party did not remain present at the meeting. The candidature of one Kiran Vasantrao Wattamwar was declared on behalf of Congress-I Party and considering relative strength of Congress-I Party, the Collector nominated the said candidate as a councilor of the Jintur Municipal Council.

5. The name of the petitioner was suggested on behalf of Nationalist Congress Party. It is stated that one Farooqui Kapilur Raheman Inaytur Raheman, who claims to be the group leader of Nationalist Congress Party recommended name of petitioner as a candidate on behalf of group of councilors belonging to Nationalist Congress Party. The memorandum recommending name of the petitioner, which was presented on 29.12.2011, is stated to have been signed by five members, whereas, there were four members belonging to Nationalist Congress Party present at the meeting held on 03.01.2012. The Collector refused to nominate petitioner as councilor on the ground that only four members have signed the authorization out of eight elected councilors belonging to Nationalist Congress Party.

6. Learned Counsel appearing for the petitioner contends that the Collector shall have to look to the relative strength of the recognized Parties or registered Parties or groups and nominate the members as nearly as may be in proportion to the strength of such Parties or groups in the Council after consulting with each of such Parties or groups. It is contended that candidature of only two members was recommended. One candidate was recommended on behalf of Congress-I Party whose strength in the Council is twelve, whereas, the Nationalist Congress Party suggested name of the petitioner. It is contended that it does not matter whether four members out of 8 attended the meeting or that those members attending the meeting only supported candidature of the petitioner. The relative strength of Nationalist Congress Party in the Council is eight and even assuming that four members supported candidature of petitioner, since there was no other candidate

in the fray or that there was no recommendation either on behalf of any other party or the group, the Collector ought to have nominated the petitioner as a councilor.

7. Section 9 of the Act of 1965 prescribes composition of Councils. As per sub section (1)(a) of Section 9, every Council shall consist of the Councilors elected at ward elections, by direct elections and clause (b) prescribes that such number of Councilors, not exceeding ten per cent of the total number of elected Councilors or five, whichever is less, having special knowledge or experience in municipal administration, to be nominated by the Collector in such manner, as may be prescribed. Considering the strength of members of Municipal Council, Jintur, to be 21, the Collector is entitled to nominate two councilors in view of sub-section (1)(b) of Section 9.

8. Section 51B of the Act of 1965 provides for nomination of councilors, which reads thus:

51B Nomination of Councilors

(1) The Collector shall, within seven days from the date of election of the President call a special meeting for the purpose of nominating Councilors.

(2) The nomination of the Councilors under clause (b) of sub-section (1) of Section 9, shall be made in the prescribed manner.

(3) The meeting called under sub-section (1) shall be presided over by the Collector or such officer as the Collector may order in writing appoint in this behalf. The Collector or such officer shall, when presiding over such meeting, have the same powers as the President of a Council when presiding over a meeting of the Council has, but shall not have the right to vote;

(4) Provided that, notwithstanding anything contained in this Act for regulating the procedure at meeting (including the quorum required thereat), the Collector or the officer presiding over such meeting may, for reasons which in his opinion are sufficient, refuse to adjourn such meeting.)

9. The State has framed Rules prescribing the procedure for nominating councilors, which are called as the Maharashtra Municipal Councils and Nagar Panchayats (Qualification and Procedure for Appointment of Nominated Councillors) Rules, 2010. Rules 3 and 5 thereof are relevant for consideration and those are as quoted below:

3. Determination of number of nominated Councilors-Subject to the provisions of rule 4, the Collector shall nominate such number of Councilors, not exceeding ten per cent of the total number of elected councilors or five, whichever is less, at the first meeting of the council after the election of the President and Vice-President:

Provided that, while determining the number of nominated Councilors, a fraction of less than one-half shall be ignored and a fraction of one-half or more shall be

reckoned as one.

5. Nomination of Councilors-In nominating the Councilors, the Collector shall take into account the relative strength of recognized parties or registered parties or groups, and nominate the members, as nearly as may be, in proportion to the strength of such parties or groups in the Council, after consulting leader of each of such parties or groups:

Provided that, nothing containing in this rule shall be construed as preventing the Collector from nominating any member not belonging to any such party or group:

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

10. Rule 5 of the Rules of 2010 provides that the Collector shall take into account the relative strength of recognized parties or registered parties or groups, and nominate the members, as nearly as may be, in proportion to the strength of such parties or groups in the Council, after consulting with leader of each of such parties or groups. In the instant matter, the Collector has nominated Mr. Kiran Vasant Rao Wattamwar as a councilor in consultation with Congress-I Party whose strength in the Council is twelve, whereas, strength of Nationalist Congress Party in the Council is eight councilors. Even if assuming the contention of the Collector that only four members of Nationalist Congress Party have supported candidature of the petitioner, out of total strength of eight members, taking into consideration the situation that neither the group of other four councilors or one independent candidate did set up any other candidate nor opposed the nomination of petitioner on behalf of four councilors of Nationalist Congress Party, it was not open for the Collector to refuse to nominate the petitioner as councilor. The things would have been different had the other group set up any other candidate opposed nomination of petitioner, which has been backed by four members of Nationalist Congress Party. In our opinion, the Collector has misread the provisions of Rule 5 of Rules of 2010 in refusing to nominate the petitioner as councilor. The direction, as sought for by the petitioner, therefore, deserves to be issued.

11. The petitioner has also requested for quashing Rules 3 and 5 of the Maharashtra Municipal Councils and Nagar Panchayats (Qualifications and Procedure for Appointment of Nominated Councilors) Rules, 2010. The petitioner places reliance on the judgment of the Division Bench of this Court in the matter of [Gajanan Bhaurao Waghmare and Madhukar Fakiraji Sute Vs. State of Maharashtra and Municipal Council](#), . On perusal of the judgment, it appears that, similar set of Rules were framed in 2006 and Rules 3 and 5 of the Rules of 2006, which are exactly same as in case of Rules of 2010, were subjected to challenge in the petition presented to this Court. The Division Bench of this Court, considering substantive provisions of Section 9(1)(b) of the Act of 1965, prevailing then, proceeded to direct quashing of

the Rules. Section 9(1)(b), which was in operation then, provided that such number of councilors, not exceeding ten per cent of the total number of elected councilors or five, which is less, were to nominate the members in the manner prescribed. The word "Council" is substituted by the word "Collector" in view of the amendment brought into force by Amending Act 7 of 2009, effective from 14.01.2009. In view of amendment to substantive provision, it cannot be said that the Rules in existence today i.e. Rules of 2010 are contrary to substantive provisions of Section 9(1) (b) of the Act of 1965. The challenge raised by the petitioner to the legality of Rules 3 and 5, therefore, does not deserve consideration.

12. Since we are of the opinion that the Collector has committed material illegality in refusing to nominate the petitioner as Councilor of Jintur Municipal Council, we direct the Collector, Parbhani, to nominate the petitioner as councilor for the remainder period of term of Municipal Council. The steps, in furtherance of the direction, shall be taken by the Collector, Parbhani, within twelve weeks from the date of this order. Rule is accordingly made absolute. There shall be no order as to costs.