



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7409 OF 2014

PETITIONER :-

Nilesh S/o. Babarao Thombare, Aged about 35 years, Occ : Agriculturist and Vice-President, Municipal Council, Hinganghat, Tq.Hinganghat, Distt. Wardha.

...VERSUS...

RESPONDENTS :-

- 1) The Collector, Wardha.
- 2) The Sub-Divisional Officer, Hinganghat, Distt. Wardha and Presiding Officer.
- 3) The Municipal Council, Hinganghat, through its Chief Officer, Having office at Hinganghat, Distt. Wardha.
- 4) Pandhari Haribhau Kapse, Age : Adult,
- 5) Nilesh Babarao Thombare, Age : Adult,
- 6) Nagesh Chandrabhan Jivankar, Age : Adult,
- 7) Smt.Gita Gopal Mandawkar, Age : Adult,
- 8) Smt.Aparna Sunil Anasne, Age : Adult,
- 9) Smt.Suryakant Ramchandrarao Madavi, Age : Adult,
- 10) Smt.Nita Satish Dhobe, Age : Adult,
- 11) Balraj Rambhau Awchat, Age : Adult,
- 12) Anil Babarao Bhongade, Age : Adult,
- 13) Smt.Latatai Narhari Thool, Age : Adult,
- 14) Vitthal Rajaram Gudghane, Age : Adult,
- 15) Smt.Jyoti Sureshrao Mude, Age : Adult,
- 16) Balaji Mahadeosingh Gahalot, Age : Adult,
- 17) Smt.Kokila Manohar Kulmethe, Age : Adult,

- 18) Jitendra Manikrao Kukse, Age : Adult,
- 19) Smt.Pushpa Waman Katare, Age : Adult,
- 20) Ashok Marotrao Parate, Age : Adult,
- 21) Badalsingh Mannalal Rewate, Age : Adult,
- 22) Smt.Shubhangi Sunil Dongre, Age : Adult,
- 23) Smt.Madhuri Mahesh Khadse, Age : Adult,
- 24) Adv. Sudhir Daulatchandji Kothari, Age :  
Adult,
- 25) Haridas Baliram Katkar, Age : Adult,
- 26) Smt.Pratibha Devendra Padole, Age : Adult,
- 27) Smt.Kavita Rajesh Bhaimare, Age : Adult,
- 28) Pralay Bhaurao Telang, Age : Adult,
- 29) Smt.Sonali Ranjit Sute, Age : Adult,
- 30) Vinod Dadaji Zade, Age : Adult,
- 31) Smt.Sharda Baratlal Patel, Age : Adult,
- 32) Suresh Ramaji Munjewar, Age : Adult,
- 33) Shankar Haribhau Mohmare, Age : Adult,
- 34) Smt.Sunita Dilip Choudhary, Age : Adult,
- 35) Smt.Sangita Maroti Sathe, Age : Adult,
- 36) Ku.Sonali Manik Landge, Age : Adult,
- 37) Surendra Gokuldas Rathi, Age : Adult,
- 38) Dashrath Pandurang Thakare, Age : Adult,

Respondent Nos.4 to 38 are Councilors,  
Municipal Council, Hinganghat, Distt.  
Wardha.

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Mr.Firdos Mirza, Advocate for petitioner.  
Mr. H.D. Dubey, A.G.P for respondent No.1.  
Mr.Anjan De, Advocate for respondent No.14.  
None for respondent Nos.2 to 13 and 15 to 38.

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**CORAM : ANOOP V. MOHTA &  
A. R. JOSHI, JJ.**

**DATE OF RESERVING THE JUDGMENT : 08.01.2015.**

**DATE OF PRONOUNCING THE JUDGMENT: 15.01.2015**

**J U D G M E N T (Per : Anoop V. Mohta, J.)**

1) Rule returnable forthwith. The petition was heard finally by consent of the learned counsel for the contesting parties.

2) The petitioner, Councilor of Municipal Council Hinganghat (The Council) (B-Class Municipal Council) at present Vice President, has prayed to quash and set aside election nomination dated 23/12/2014 of the Subject Committees and Standing Committees of respondent No.3-Municipal Council Hinganghat, along with subsequent elections of Chairmans of said Committees; and also prayed for direction against respondent No.1 to conduct elections of sub-committee afresh as per the provisions of Maharashtra Municipalities (Elections to Subjects Committees) Rules, 1966 (The Rules); and also prayed for stay of the proceedings/meeting dated 23/12/2014.

3) Contesting party appeared and opposed all the prayers. As submission was made that the petition can be disposed of finally at the admission stage, we heard finally and proceeded accordingly. The counsel for the parties read and referred the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial

Townships Act, 1965 (The Act), specifically sections 63 and 64 including amended provisions (Maharashtra 36 of 2006 dated 13/12/2006) and the unamended provisions. There is no dispute and no challenge by the petitioner about the first requisite election already held based upon the existing provisions, after new election of Municipal Council. The contention, with regard to the subsequent election in question, ought to have been taken place based upon the Rules as referred above, is not acceptable. Once the elections are held as per the existing amended provisions of the Act, for all the subsequent elections, the same procedure needs to be followed. There is no question of dissecting the existing provisions of the Act for subsequent election, once the procedure of acceptance or rejection of nomination paper has been deleted and so also the provisions of section 3 (3A) and (3B) have been substituted by present provisions of Section 2 (2a), (2b) and (2A). In Section 64 of the old provisions sub-sections (ii)(a) and (b) have been substituted and the word “election” has been substituted by the word “nomination”. The entire process of election which was prevailing before 13/12/2006 has been substituted by nomination. Therefore, as the elections have been substituted by nomination and so also Section 64(ii)(b) by nomination, the submission that the earlier Election Rules be used and utilized is unacceptable, being inconsistent with the amended provisions of the Act. The submission so raised based upon

the old Rules, in our view, cannot be used and utilized for subsequent such election. We find, in view of above provisions of the Act, no case is made out by the petitioner to interfere with the meeting and the election proceedings so initiated.

4) We have also noted that all the members of the Subject Committees and the Standing Committee have already taken charge and are functioning as proceedings dated 23/12/2014 have been implemented from 26/12/2014 and meetings of the respective committees have already taken place. There is no case of any interference made out on facts as well as on law as recorded above. This is also for the reason that the petitioner, at present in view of the nomination procedure, has already been working as Chairman of Planning and Development Committee and also as a member of Standing Committee. Therefore, the challenge so raised at the instance of petitioner is also unsustainable.

5) The petitioner having participated now cannot be permitted to raise such issue. The submission of learned counsel appearing for petitioner based upon the judgment in the case of *Ramchandra Keshav Adke v. Govind Joti Chavare* reported in (1973) 1 SCC 559 that “*where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other*

*methods of performance are necessarily forbidden*” is not acceptable, in view of the admitted facts and the clear amended provisions of law, as referred above. The provisions of Amended Act shall prevail over unamended Rules. The inconsistency, therefore, even if any, the provisions of the Amended Act would prevail. The parties have already accordingly acted upon the same.

6) Therefore, taking overall view of the matter, we see no reason and/or case is made out to interfere with the elections so held and so also the meetings based upon the same. The same are well within the framework of law and the record.

7) The petition is, therefore, disposed of.

8) Rule stands discharged. No costs.

(A.R.JOSHI, J.)

(ANOOP V. MOHTA, J.)

KHUNTE