

(1996) 07 BOM CK 0025

In the Bombay High Court

Case No : Writ Petns. No"s. 5476, 5587 and 5227 of 1995

Baburao and etc.

APPELLANT

Vs

The Collector, District Parbhani and others

RESPONDENT

Date of Decision : 31-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 — Section 55
Maharashtra Municipalities (Conduct of Business) Rules, 1966 — Rule 34
Maharashtra Municipalities (Elections to Subjects Committees) Rules, 1966 — Rule 38
Maharashtra Municipalities (President Election) Rules, 1981 — Rule 6, 7

Citation : AIR 1997 Bom 49 : (1996) 98 BOMLR 567 : (1997) 2 MhLj 547

Hon'ble Judges : N.P. Chapalgaonkar, J;D.D. Sinha, J

Bench : Division Bench

Advocate : H.T. Joshi, for the Appellant; E.P. Sawant, Asstt. Govt Pleader, S.C. Bora, V.J. Dixit, A.B. Naik, N.N. Shinde and S.B. Talekar, for the Respondent

Judgement

Chapalgaonkar, J.—These writ petitions challenge proceedings of a special meeting of Parbhani Municipal Council held on 6-11-1995. The special meeting was called to consider vote of no confidence against President of the Council.

2. Shri V. N. Kallam, Sub-Divisional Officer was authorized by the Collector, Parbhani to preside over this meeting. When the meeting commenced, 8 members of the Municipal Council submitted an application to the Presiding Officer requesting that votes on the Resolution be recorded by secret ballot. This application is at Exhibit B at page 22 in the compilation of the petition. There is no dispute that in exercise of his discretion under Rule 33, Presiding Officer decided to take votes by ballot. It appears that soon after this decision, 12 members of the Council submitted similar applications requesting the assistance of the person named in application in casting vote.

3. We are told that these applications were allowed and the applicants were allowed to vote through the assistant who recorded vote on their behalf on the

resolution of no confidence. It is averred in the petition that these 12 assistants have cast two votes each, one of their own and the second of the person who has named him as assistant. The fact that all these assistants are the Councillors is not in dispute before us. The motion expressing no confidence on the President, Baburao Vishwanath Mathpati, who is petitioner before us in this petition, was carried by 53 votes in favour and 8 against it with one abstention. Since number 53 constituted the requisite majority, motion was declared to have been passed. Writ Petitions Nos. 5476 and 5587 of 1995 challenge the said decision of the presiding authority on the ground that 12 votes cast through the assistants are invalid and should not have been counted in favour of the motion. The petitions further point out that the so-called assistance to these persons was objected to and the Presiding Officer has failed to give any decision on the said objection petition filed and the so-called assistance vitiates the secrecy of voting which is of paramount importance.

4. It is also alleged that on one of these applications purporting to be of Sheikh Fakir Mohammad Sheikh Hassan, there is no signature of the Councillor who was asking the assistance. Writ petitions pray that these 12 votes should be excluded from consideration and the result about the motion should be declared afresh by excluding these votes.

5. Before we acquaint ourselves with the legal submissions it is necessary to record some factual aspects. When the permission to take assistance was granted by the Presiding Officer, petitioner herein filed an application with the Presiding Officer that none of the persons who are required to vote is either blind or illiterate and, therefore, if one member of the Council goes along with another member of the Council while marking the ballot, secrecy of voting is destroyed. Therefore, such a permission should not have been granted.

6. We had requested the learned Assistant Government Pleader to make the record available to us and we find that the 12 applications submitted to the Returning Officer for the assistants are cyclostyled applications in which names of the applicants are filled in by the ink and in every application, blank space is left for the name of the person whose assistance is required and it is filled in. It is also notable that there was no reason in the original text supplied to the Returning Officer as to why assistance is required and the words 'eyk okprk ;sr ukgh?' are subsequently added to the cyclostyled text of the application. On all these applications, except one, applicants have signed and there is no thumb impression of any of them. Out of these signatures, Sow. Mankarna Jadhav, Sheikh Abdul Sheikh Moin, Sow. Sarubai have signed in Marathi, Abdul Samad, Khamisa Jubeda Hussain, Hamida Karimbi Kausar, Sahera Begam and Chand Sultana appears to have signed in Urdu, Walmik Gade has probably signed in English and Sheikh Fakir Mohammad has not signed at all on the application as per the statement made in the writ petition, which has not been controverted by any return.

7. Shri H. T. Joshi, learned counsel appearing on behalf of the petitioner,

submitted that Rule 34 of the Maharashtra Municipalities (Conduct of Business) Rules, 1966 requires that each Councillor has to record his vote on the voting paper and the rule is mandatory. These rules do not provide for assistance to the voter and, therefore, Presiding Officer had no jurisdiction to permit the assistance to the members. According to Shri Joshi, rule making authority has purposely abstained from making any provision, as to the assistance which Presiding Officer may give a voter for recording his vote in meetings of the Council. He points out that the Maharashtra Municipalities Election Rules, 1966, the Maharashtra Municipalities (Elections to Subjects Committees) Rules, 1966 and the Maharashtra Municipalities (President Election) Rules, 1981 all make a provision for assistance to blind or illiterate voter in one or the other form. Since the rules do not provide same thing regulating the conduct of business in meeting on occasions other than the election of the President of the Municipal Council, co-option of the Councillors or election to Subjects Committees of the Municipal Council, authorities cannot insert something in the rules which is not there. The action of the Returning Officer is thus totally without jurisdiction and the votes cast by this illegal assistance needs to be excluded from consideration. Alternatively, Shri Joshi submits that since the meeting was for the removal of the President, at best we can consider the rules which are applicable for electing a President. Rule 7(a) of the Maharashtra Municipalities (President Election) Rules, 1981 authorizes the presiding authority to record the vote on behalf of an illiterate, blind or otherwise physically infirm voter who is unable to make a mark on the ballot paper, by making a mark on the ballot paper, according to the wishes of the voter. Shri Joshi submits that at best presiding authority could have resorted to this rule after finding that any of the voters is either an illiterate or blind or otherwise physically infirm and, therefore, not able to cast his vote by making a mark, could have himself assisted. According to Shri Joshi, permitting any other person and moreover a member of the Council to assist the voter is an interference with the free exercise of electoral right.

8. Shri S. C. Bora, Shri S. B. Talekar and Shri N. N. Shinde, appearing for some of the respondents in the petitions, submitted that the powers of the Presiding Officers are not limited by the rules and if an exigency which is not provided for in the rules arises, Presiding Officer has all the powers to see that the electoral right of every member is allowed to be exercised. If the rules do not provide for giving assistance to blind or infirm voters and if we hold that the Returning Officer cannot give any assistance, then it would defeat the electoral right of a person which has been granted to him by the statute on which the rules cannot override. Therefore, such discretion is always exercisable by the Returning Officer and the Returning Officer has done nothing wrong in permitting these 12 persons to take assistants and the petition deserves to be dismissed.

9. Shri A. B. Naik, appearing on behalf of the respondent No. 62 in Writ Petition No. 5476 of 1995, supported the contentions raised by Shri Joshi and Shri Naik also appears for one Gajanan s/o Manikrao Dahale who has filed a petition similar as that of Baburao Mathpati and this Writ Petition bearing No. 5587 of

1995 is being considered along with this petition. In this petition, respondents Nos. 1 and 2 i.e. State of Maharashtra and the Deputy Collector, Sailu have been served and Shri E. P. Sawant appears on behalf of these respondents but rest of the respondents who are the members of the Municipal Council, Parbhani have not been served and, therefore, the petition is dismissed today as against those respondents. However, since a similar challenge is pending before the Court, this dismissal is of no consequence.

10. Secrecy is one of the essentials of the election process. It is necessary to safeguard persons entitled to vote from the consequences which are external to the process of election either in the form of punishment or in the form of reward for voting in a particular manner. If the secrecy is not maintained, it may result in the direct interference of the electoral right amounting to undue influence. Various statutes governing the conduct of business of meetings in which elections are to take place or resolution of removal of an office bearer is to be passed, have provided that the presiding authority either shall or may (according to the specific provision in that statute) take the votes by ballot instead of recording the votes by show of hands. Political, social and economic inequalities do not place all the members of a body in a society like India on the pedestal are always desirous to find out a way by which they can exercise pressure on a section of the voters so that they can be assured of their victory.

11. In *Maruti Bandu Patil Vs. Village Panchayat, Sidhanerli and Others*, , this Court has considered Rule 10(2) of the Bombay Village Panchayat (Sarpanch and Upsarpanch) Election Rules, 1964. Holding that the rule requiring Presiding Officer to record votes by ballot when prayed by any member present is mandatory, Division Bench observed (at p. 381 of AIR) :

"Secrecy of ballot is undoubtedly an indispensable adjunct of free and fair election. The election by ballot is to be held when demanded, as to statutorily assure the voter that his identity will not be disclosed so that the voter may vote without fear or favour and also free from apprehensions. This rule subserves a very vital principle that a voter should be absolutely free to exercise his franchise untrammelled by any constraint. The provision of holding election by ballot is made in the rules to help voters to vote free from any inhibition, fear or apprehension of being subjected to some sort of calamity. Thus the provision goes to the very root of the matter, namely, of holding free and fair elections of the office bearers of the Village Panchayat. To hold otherwise is to perpetuate the very mischief which is sought to be suppressed."

In the rules we are required to deal with discretion which has been given to presiding authority to take votes by ballot instead of by a show of hands on special occasion. Rules do not describe as to what would be special occasion. It is for presiding authority to decide. When presiding authority decides to take votes by ballot, it is presumed that he has accepted necessity of secrecy in recording votes since the occasion warrants it. Once he decides so, it is his duty to be truthful to the principle of secrecy and protect it.

12. Our attention was invited by the learned counsel for respondents to the judgment of this Court reported in *Kalimuddin Gulam Dastgir v. Government of Maharashtra*, 1986 Mah LJ 79, to contend that violation of secrecy is not a ground on which vote can be treated as invalid placing reliance on this judgment, it was contended that secrecy by itself is not so vital which would invalidate resolution on the ground that the secrecy has not been observed at the time of recording votes on that resolution. We are afraid that this is not the ratio of the said judgment. In para 12 of the said judgment, the Division Bench recorded its opinion -

"The principle of secrecy is well-settled. It is a basic principle in the democratic norms of conducting the elections."

Again in para 14, the Division Bench went on to observe :

"It is true that secrecy of the ballot is one of the essentials which should be maintained because it is so basic that in every election secret ballot should be there. Under the Rules of 1981 secret voting is provided which is to be followed by following these Rules. According to these Rules, sometimes there are elections which are held by show of hands. So the secrecy of election by ballot is only a safeguard against the corrupt practice, bribery and coercion or any threats. Voting must be a free voting. There must not be coercion. The voter must not be threatened in any way to exercise his free will so that the elector must express his free will and give his vote. It is for that purpose that secret ballot is used."

The importance of the secrecy of ballot while recording the vote has been acknowledged by this Court in that judgment. It was alleged in that case that two of the voters namely; Raman Malharrao Dhotrikar and Bhausahab Ganpatrao Doke have shown the mark made on the ballot to whole House and, therefore, these two ballot papers should be excluded from consideration. The State Government had accepted this contention and excluded these two ballot papers from consideration. Reversing this order of the State Government, the Division Bench recorded a finding that it is not proved that these two persons have shown their ballot papers. It is not that the Division Bench recorded a finding that ballot papers were shown and despite it, held that there was nothing improper. About this factual aspect, the learned Judges have observed :

"It is alleged that the ballot papers were seen by all the Councillors. If that be the position, then and there, it would have been possible for all the Councillors to have objected to the same. There is no affidavit to this effect. From thirty-three Councillors who are elected to elect the President not a single affidavit except the two have been filed or procured in order to give assurance to the so-called device which was adopted by these two deponents. In view of the vague reference to the place of the ballot box and the displaying of the ballot papers we are unable to accept the evidence of affidavit given by respondent No. 2 that this particular displaying of the ballot papers must have been taken to such an extent by the two Councillors that their identity could have been disclosed."

Lastly, the learned Judges have recorded a finding :

"The manner in which this incident has happened and which is reflected by the parties is also very vague. In the absence of any direct evidence in this regard, we are afraid that we cannot give much importance to the mere allegations that the ballot papers were displayed."

13. It is, therefore, necessary that the observations of this Court in Kalimuddin's case 1986 MLJ 79 will have to be read in the light of the finding of fact recorded by the learned Judges. The learned Judges have not disregarded importance of the secrecy and they have not held that the secrecy need not be observed. It is true that they have accepted the contention of the petitioner in that case on another ground. The two ballot papers were discarded by the State Government on the count that mark was displayed to other members. The learned Judges have observed that there is no rule to discard the ballot papers merely because it is seen by somebody-else. In arriving at this conclusion, the Division Bench considered sub-rule (9) of Rule 6 of the Maharashtra Municipalities (President Election) Rules, 1981 which gives the grounds which the ballot paper should be rejected. Since displaying ballot paper or the fact that any other person has seen the ballot paper is not a ground to reject the ballot paper as provided by sub-rule (9), the learned Judges reversed the order passed by the State Government and declared the petitioner therein elected as President.

14. Shri V. J. Dixit, learned counsel appearing on behalf of the respondents Nos. 16 and 42, submits that in this case also even assuming that casting of the vote by 12 members was seen by other 12 members, that itself will not be sufficient to reject these 12 votes since it is not a ground under sub-rule (9) and in the petition also, it has not been pointed out that these disputed ballot papers will have to be rejected on some statutory ground. The submission of Shri Dixit is not acceptable firstly for the reason that sub-rule (9) of Rule 6 provides for rejection of the ballot paper which is properly cast without interference. The question before us is not regarding rejection of the ballot paper which is properly cast but it relates to the manner in which it is cast and, therefore, sub-rule (9) is of no relevance. If a vote is caused by exercising a corrupt practice of bribery, undue influence, appeal on the ground of religion or caste, or by booth capturing, or in any other corrupt manner, then the ballot paper will have to be thrown out not on the ground provided for by sub-rule (9) but on the ground that it does not reflect free will of voter but results from interference impermissible in law.

15. Before we proceed further, we wish to consider argument advanced by Shri Joshi that since Conduct of Business Rules do not permit the Presiding Officer to give any assistance, the action of the Returning Officer in providing assistance is per se without jurisdiction. We are not prepared to accept the submission. The rules are made for the purpose of giving effect to the purposes of the Act. The purpose of framing Conduct of Business Rules is to regulate the meetings. They help members to have an orderly business. It is true that the rule making authority has not provided that the Presiding Officer may give assistance to an

illiterate or an infirm or blind voter in recording his vote. But that itself will not prevent Presiding Officer to meet exigency arising out of presence of such an infirm voter in the House. If we interpret the omission for this eventuality in the rules to mean that no assistance could be provided, we would be defeating valuable statutory right which the member has, merely because he is illiterate or blind or infirm. This can never be the intention of the legislature. True that there is some anomaly. Rules 33 and 34 of the Maharashtra Municipalities (Conduct of Business) Rules, 1966 do not provide for any assistance to such infirm voter whereas Rule 38 in the Maharashtra Municipalities Election Rules, 1966, Rule 7(3) (a) of the Maharashtra Municipalities (Elections to Subjects Committees) Rules, 1966 and Rule 7(a) of Maharashtra Municipalities (President Election) Rules, 1981 do provide for such assistance. The nature of the assistance which may be given by the returning officer also differs. Rule 38 of the Rules relating to general election enables presiding officer to permit the voter to take with him a companion of not less than twenty-one years of age to the voting compartment for recording the vote on the ballot paper on his behalf and in accordance with his wishes, and, if the presiding officer is satisfied that owing to the blindness or other physical infirmity, the voter is unable to recognize symbol on the ballot or to make mark thereon without assistance. Rule 7(4) of the Maharashtra Municipal Councils (Co-option of Councillors) Rules, 1967 are in pari materia with the aforesaid rule. Rule 7(a) of the Maharashtra Municipalities (Elections to Subjects) Committees) Rules, 1966 makes a similar provision. A different provision regarding the nature of the assistance appears under Rule 7(a) of the Maharashtra Municipalities (President Election) Rules, 1981. This rule reads as under :

7(a) If a voter is illiterate or, owing to blindness or other physical infirmity is unable to make a mark of a cross on the ballot paper without assistance, the Presiding Authority shall record the vote on the ballot paper in accordance with the wishes of the voter.

16. Shri Joshi, appearing on behalf of the petitioner, submitted that there is material difference between the provision regarding the assistance to inform voters in presidential election rules and other rules. He submitted that the nearest rules which may be applied are rules regarding election of the President since occasion is removal of the President. Shri Joshi's submission may look prima facie sound but is not well-placed on the legal foundation. Merely because some rules are provided for the election of the President, we cannot, in the absence of the legislative intent expressed in the delegated legislation, hold that same rule would be applicable to the removal of the President. The dispute before us can be resolved without considering difference in the various rules, which is not really required.

17. Presiding authority appointed by the Collector u/s 55 has a statutory duty to see that the members of the Council are given an opportunity to exercise their right to vote at that special meeting. This statutory duty is coupled with the

powers which are necessary for doing that duty. Statutory power will have to be construed as impliedly authorizing everything which can fairly be regarded as incidental or consequential to the power itself. *A.G. v. Smethwick Corporation*, (1932) 1 Ch 562. We cannot assume that Rule 34 would limit the powers of the Presiding Officer. Rule tells about the duty of the Councillor to record his vote on a voting paper meaning thereby that the Councillors cannot exercise their voters by a manner other than mark on the voting paper. The rule does not speak anything about the eventuality in which the Councillors are unable to make mark on the voting paper.

18. The validity of a rule has to be adjudged on three well recognized tests: (1) whether the provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution (*Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*,). There is presumption in favour of the validity of the rule. We will have to interpret rule, as far as possible, so as to be not inconsistent with the statute under which the rule is made. Section 55 of The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 gives statutory right to every member of the Council to vote on the resolution expressing no confidence on the President seeking his removal. This statutory right cannot be defeated by any rules made under the Act. Therefore, we will have to hold that the presiding authority has got power to meet the eventuality to further the object of the statutory provisions. The presiding authority has a right, even in the absence of a specific rule, to consider giving assistance to the blind, physically handicapped or illiterate persons who are not able to record their vote in the manner prescribed. Rule 34 will have to be read reasonably to mean that a voter has to record himself his vote on the ballot paper otherwise the ballot paper is not a valid ballot paper, except in cases where he is not able to record vote in this manner because of physical or other disability though he is present in the House. The presiding authority shall have power to give necessary assistance to such infirm voter since it is not contrary to the rule.

19. But when the authority is vested, any power either specifically given by the statute or conferred by necessity, as is the instant case, the authority has to exercise that power only in the circumstance which require such exercise for the purposes of the Act. If a voter is unable to record his vote because of illiteracy, or because of blindness or any other physical infirmity, then firstly, voter will have to make such a prayer to the presiding officer. Secondly, the presiding officer will have to apply his mind and get himself satisfied about the truth of the facts alleged and then decide whether assistance is to be given. Here, we find that the cyclostyled applications were provided to a group of voters in which originally, even the reason was not mentioned. It appears to have been supplied

later on. It is difficult for us to understand how in the absence of specific averments on oath before us, we can presume that voter who is able to sign is not able to read. A factual dispute was sought to be raised before us by the parties as to whether these voters are actually illiterate or they have taken formal education in the school sufficient to read or write. A glaring fact will have to be noted that there is no signature of one of the applicants and even then, the learned presiding officer has allowed assistance to that voter. It is not necessary for the presiding officer to hold a regular inquiry by recording evidence but at least prima facie, there must be some material before him to find out whether the members are illiterate or they are physically handicapped which disables them to record the vote in the prescribed manner. We see a case of total non-application of mind wherein the returning officer has granted permission of assistance merely for asking.

20. Though the physically handicapped or illiterate persons are to be provided with required assistance in exercise of their electoral right, it is the duty of the persons in authority supervising the election or business in meetings of elected bodies that under the guise of assistance, undue influence is not exercised by compelling somebody to take assistance. Assistance is to record the vote as per the wishes of the voter and there can be no assistance for influencing exercise of the vote. It is a matter of common knowledge that if some voters are considered to be doubtful by their patrons, attempts are usually made to see as to whether they have complied wishes of their leaders. It is nothing but a direct interference with the electoral right which will have to be deprecated. If these voters are able to write, they could have certainly found out the place where they have to make a mark. There is an affidavit filed by Shri N. T. Jadhav, Deputy Collector, Parbhani on behalf of the Respondents Nos. 1 and 2 in which following contentions have been raised -

"The Councillors who have applied for assistance have specifically stated in their application that they are having faith on the councillors and his name they have recorded and specifically stated in the application. The Presiding Officer considered applications as well as the proceeding and notices issued which are in Marathi language. The Presiding Officer verified the application filed by the Councillors for seeking permission to assist them to cast votes and it is found that out of 12 Councillors near about 9 Councillors belonging to Muslim religion as they requested that they are unable to read and understand the Marathi language and some of them stated before the then Presiding Officer that they are illiterate persons and therefore they requested to provide assistance at the time of casting votes and after satisfaction of the Presiding Officer, Presiding Officer permitted to the applicant for assistance."

The satisfaction of the presiding officer will have to be told to us by an affidavit filed by the presiding officer. We are sorry to note that the affidavit in reply is filed by a person who was not present in the meeting, as was admitted by the learned Assistant Government Pleader before us. It is very difficult to know how

he can state these facts before us when he has no first hand knowledge. Shri Savant stated before us that the Collector, Parbhani has authorized Shri Jadhav, Deputy Collector to file this affidavit and, therefore, he is filing this affidavit on behalf of Collector and Presiding Officer. Filing of affidavit in return to writ petition where factual allegations are made is not a ministerial act which would permit the Collector to direct any of his subordinates to do. If something is alleged in the petition, it will have to be either accepted or controverted by the person who is in know of the facts. It is not the case that the respondent Shri Kallam, who was Presiding Officer is not available for filing the affidavit, and in the absence of any affidavit by the Presiding Officer, it is not possible to place any reliance or even to consider the statement made in the affidavit of Shri Jadhav, who admittedly was not present in the meeting.

21. The statement that 9 of the Councillors were Muslims and, therefore, their request for assistance was accepted shows that some Government officials are still labouring under the presumption that all Muslims do not know Marathi. Marathi is the language of our State and persons living in the State are expected to know the language of the State irrespective of their religion. There is no presumption that all Muslims are ignorant of Marathi language. We find that one of the Muslim applicants has signed in Marathi and there is no affidavit filed before us by any of these Councillors that they are unable to read and write Marathi, the language of the ballot papers.

22. Unless there is subjective satisfaction of the Presiding Officer that a person is illiterate, blind or physically infirm and is not able to make a mark required under the procedure on the ballot paper, there can be no question of assistance arise. This subjective satisfaction is neither visible from the action taken nor is stated before us on affidavit. It is true that if somebody does not know Marathi -- the language of the ballot papers, he need not be deprived of his right to vote and assistance can always be given. But such occasion would arise only if it is established that the person actually does not know Marathi.

23. If the rules prescribe that the assistance should be in the particular form, then that form will have to be followed. But in the absence of the rules, even if assistance is to be given, then the secrecy of the process of voting so vital for maintaining the democratic values will have to be first kept in mind while deciding manner of assistance. When members ask for secret ballot as they are apprehensive that other members present in the meeting may punish members for voting in a particular manner it would be totally undesirable to permit other members in the same House to assist some members in casting their vote. A case may arise wherein person who is fighting election may pressurize all members of the Council and make them to give applications that they should be given assistance and the election would be reduced to a farce. Therefore, it is desirable that in case Presiding Officer is subjectively satisfied that the assistance is required, then assistance should be given either by presiding officer himself or by any person who is a member of the family of that member or any other

person who is not connected with the body as member or servant and who is not below the age of twenty-one. It is the duty of the presiding officer to ensure that in the name of assistance, the voters are not being pressurized. Therefore, we record that the assistance allowed by the Presiding Officer to 12 members in the meeting was totally unjustified and was defeating the purpose of the secret ballot which was accepted by the Presiding Officer.

24. Shri H. T. Joshi submitted that if these 12 votes are excluded, then motion stands defeated and, therefore, this Court should declare that the motion of no confidence is defeated. We cannot accept this prayer of the petitioner because it would be penalising these 12 members by other way. Even assuming that assistance have been interfered in the exercise of the electoral right, these voters should not be penalised for applying for assistance. They will have to be given fresh opportunity to record their vote in the meeting. Since the Presiding Officer, has exercised the power without ascertaining the existence of facts which were sine qua non for giving rise to power, there is no other go than to set aside whole proceeding of the meeting of Municipal Council, Parbhani and direct it to consider motion afresh.

25. We direct that the Collector, Parbhani shall convene a special meeting of the Parbhani Municipal Council to consider motion of no confidence against the present petitioner on the same requisition within a period of ten days from today. The meeting should take place after the minimum required period of the notice under the rules. The Collector shall preside over the meeting or, depute any of his subordinates, as per the provisions of law and the Presiding Officer shall take due note of the observations made in this judgment regarding the assistance. We therefore, quash the proceedings of the meeting dated 6-11-1995 of Parbhani Municipal Council and direct the Collector to hold a fresh meeting in accordance with the above directions. Rule is made absolute in Writ Petition No. 5476 of 1995 in the above terms. Parties are left to bear their own costs.

26. At this stage, Shri Joshi prays that the petitioner should be continued as President of the Municipal Council. We are told that in the meantime, fresh elections have already taken place. Therefore, we cannot grant this request.

27. Shri Dixit, appearing on behalf of the Respondent No. 42, prays for stay of this order for a period of two weeks. This litigation has already taken about seven months and the period for which the President was elected is to expire of the end of December 1996. Taking into consideration these facts, we refuse the request.

28. In view of our judgment in Writ Petition No. 3476 of 1995, no separate orders are necessary in Writ Petition No. 5587 of 1995 and the petition stands disposed with no order as to costs. Writ Petition No. 5227 of 1995 had challenged the stay granted by the Minister of State of Urban Development to the meeting called by the Collector on 31-10-1995. By interim relief, this Court had stayed the stay and directed the meeting to be convened. Meeting was convened in

accordance with the orders of this Court on 6-11-1995. Therefore, this writ petition has become infructuous and is disposed as such without any order as to the costs. Copy, if applied for, be given within five days.

29. Order accordingly.