

**(1992) 08 BOM CK 0023**

**In the Bombay High Court**

**Case No : Writ Petition No. 1857 of 1991**

Mohammed Shafi

APPELLANT

Vs

Aurangabad Municipal Corporation

RESPONDENT

**Date of Decision : 21-08-1992**

**Acts Referred:**

Bombay Provincial Municipal Corporations Act, 1949 — Section 16, 5A(3), 60, 74, 7A  
Constitution of India, 1950 — Article 334, 341  
Mysore Panchayats and Taluk Boards Election Rules, 1959 — Rule 26, 27  
Representation of the People Act, 1951 — Section 123

**Citation : AIR 1993 Bom 270 : (1994) 2 BomCR 527**

**Hon'ble Judges : N.P. Chapalgaonker, J**

**Bench : Single Bench**

**Advocate : S.V. Gangapurwala, for the Appellant; A.M. Kanade, S.P. Soupawale and V.G. Sakolkar, for the Respondent**

## **Judgement**

1. In an election to Aurangabad Municipal Corporation, which took place on 17th April, 1988, Respondent No. 8 herein -- Sudani Bhanudas Waghmare was declared elected from Ward No. 42 as a Councillor. The election came to be challenged by the present petitioner Mohammad Shafi S/o. Mohammad Yusuf by filing an election petition u/s 60 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the Act of 1949, for the purpose of brevity). The petitioner had contended in Election Petition No. 10 of 1988 that voters list for Ward No. 42 included some voters pertaining to Ward No. 39 from Gautamnagar and Banjara Colony localities. These colonies are not covered by boundaries of Ward No. 42 as are notified under the provisions of Section 5A(3) of the Act of 1949. It was further contended that most of these 400 voters wrongly included in the list have cast their votes in election to Ward No. 42 and these illegal votes received resulted in material irregularity. The second ground raised in the election petition was an allegation that elected candidate and his supporters indulged in corrupt practice by publishing a false pamphlet requesting the voters to vote in favour of Respondent No. 8 -- elected candidates. This

pamphlet was shown to be a request by some of the other contesting candidates to vote in favour of the respondent No. 8 when in fact, none of these candidates had signed or instructed to issue such an appeal. The third ground was that Respondent No. 8 in collusion with others and with the help of the supporters pelted stones at booth No. 1 and as a result of this pelting of stones, about 200 to 250 Muslim voters mostly parda nashin women, who were in queue, were deterred and left the polling booth. This incident affected the polling and in the subsequent hours, polling was not as brisk as it was before. It was further alleged that the Presiding Officer had stopped the polling between 3 p.m. to 4 p.m. and refused to extend time or allow persons who were in queue at 5 p.m. since they were Muslims and were likely to vote for the petitioner who lost the election.

2. The learned Civil Judge, Senior Division, Aurangabad, who heard Election Petition No. 10 of 1988, was pleased to dismiss the petition with costs. He held that none of the contentions raised is proved. This Judgment and Order dated 19-4-1991 is the subject-matter of challenge in this writ petition.

3. Shri S. V. Gangapurwala, learned Counsel for the petitioner, submitted that the city will have to be divided into wards for the purpose of the elections of Councillors as provided by sub-section (3) of Section 5 of the Act of 1949 and a Notification will have to be issued notifying this division. The Municipal election roll u/s 74 will have to be in conformity with the wards already notified u/s 5(3) and if voters list does not conform to boundaries of the wards, then such voters list would be invalid and any election held on the basis of an invalid voters list also will have to be quashed. He also submitted that circumstances on record would enable this Court to infer that alleged pamphlet issued in the name of other contesting candidates was a misrepresentation to the voters by respondent No. 8 and, therefore, this is corrupt practice and since the respondent No. 8 is guilty of the corrupt practice, his election will have to be set aside. In respect of other contentions raised in the Election Petition, Shri Gangapurwala was fair enough to say that the petitioner has not laid sufficient evidence and, therefore, need not be considered.

4. On 19-8-1985, Urban Development Department of the Government of Maharashtra issued a Notification bearing No. ABD-1084-CR-70-84-UD-2 specifying the division of the city of Aurangabad into 60 wards including 3 wards reserved for scheduled caste and showing the boundaries of each of the wards. It was also mentioned in this Notification that by Notification dated 21-3-1985, the proposal for division of the wards was published and the objections and suggestions thereto received have been duly considered by the Government of Maharashtra and, thereafter, this Notification is being issued. This Notification came to be published in the Government Gazette on 5-9-1985. Extent of Ward No. 42 -- Khokhadpura --(General), the election of which is under challenge, as shown in this Notification are as follows-

Ward No. 42 -- Khokhadpura (General) Extent of Ward-

North -- Road from Rosy Cinema road junction to house of M.A. Jabbar Khokhadpura and lane from Chandra More's house to Northern side boundry of Radha Mohan via house of Shri Baburao Burkul and Northern side compound wall of Radha Mohan Colony.

South -- Road from house of P.L. Shinde, Advocate to Banjara Hostel.

East -- Road from Banjara Hostel to Northern side compound wall of Radha Mohan colony.

West -- Road from house of Shri P.L. Shinde, Advocate to Roxy cinema road junction and lane from M.A. Jabbar house Khokhadpura to fort wall via Chandra More's house Khokhadpura.

5. Petitioner's contention is that localities of Gautamnagar and Banjara Colony do not give these boundaries specified in this notification. To prove his contention, voters lists of Ward No. 39 and Ward No. 42 were produced by the petitioner in title of the voters list of Ward No. 39 -- Rokdiya Hanuman Colony -- General. The areas, ten in number, included in this ward also include Gautamnagar and part of Banjara Colony. This list is at Exhibit 44. List of Ward No.42. To prove that the voters from Gautamnagar and Banjara Colony are included in the voters list of Ward No, 44, the petitioner has examined, besides himself one Mr. Matinoddin S/o. Moinuddin Kadri who is working as Junior Engineer in Municipal Corporation. He deposed that as per instructions of the Deputy Commissioner, he has done work of formation of the wards and Gautamnagar and Banjara Colony were included in Ward No. 39 as per boundaries. These two localities do not fall in Ward No. 42 as notified but the voters list exhibit 43 for Ward No. 42 shows voters from Banjara Colony from serial Nos. 732 to serial No. 891, Similarly, it shows voters from Gautamnagar from serial No. 892 to serial No. 1183, and as per the formation of wards notified these voters should have been the voters in Ward No. 39 and not in Ward No. 42. He further deposed that there is difference in the formation of the wards and ward lists of the voters. He admitted that he has not prepared the voters list for Ward No. 42 and Ward No. 39 and was not able to say on what basis the voters list was prepared. He also deposed that there is no house bearing a number starting from figures 4-21 which is included in Ward No. 42. Number 4 denotes municipal tax ward while No. 21 denotes block and thereafter house number is given. Series of house numbers starting from figures 4-19 is in respect of Banjara Colony. According to his opinion, voters list of Ward No. 42 is wrongly prepared. He was confronted with an order of the Deputy Commissioner of the Municipal Corporation, Aurangabad dated 29-6-1985 wherein he himself along with four other persons namely; Rajput, Rana, Sangamker and Choudhari were entrusted with the work of division of voters list as per delimitation of the wards. Except this witness Matinoddin Kadri, petitioner only examined himself and did not adduce any other evidence. No evidence except testimony of the petitioner was laid regarding bogus voting in the name of 125 voters who were out of station, about stoppage of the polling for one hour, about pelting stones and

thereby disturbing the peaceful voting and in respect of publication of a false pamphlet in the name of other contesting candidates appealing to vote all Hindus to respondent No. 8 only.

6. I propose to examine firstly the contentions vehemently raised by Shri Gangapurwala in respect of invalidity of the voters list and its consequential effect on the election. Sub-section (3) of Section 5 of the Act of 1949 is as follows-

5. (3) The State Government shall, from time to time, by notification in the Official Gazette, specify for each City the number and boundaries of the wards into which such --City shall be divided for the purpose of the ward election of councillors (so that, as far as practicable, all wards shall be compact areas and the number of persons in each ward according to the latest census figures shall approximately be the same. Each of the wards shall elect only one councillor;)

Provided that, no notification issues under sub-section (2) or sub-section (3) shall have effect except for the general elections held not less than (six weeks) next after the date thereof and for subsequent elections;

Provided further that, for the purpose of any general election held before the expiration of the period for the time being specified in Article 334 of the Constitution of India, and for by-elections (if any) before the next general election after the expiration of such period, so held, (the State Government shall, in any notification issued under sub-section (3), having regard to the population of members of Scheduled Castes in the City, provide for reservation for such members such number of seats out of the total number of seats available as the State Government may deem fit and in making such reservation as nearly as may be, thirty per cent, of the total number of seats so reserved shall be reserved for women belonging to the Scheduled Castes; and where only two seats are reserved for the Scheduled Castes, one of the two seats shall be reserved for women belonging to the Scheduled Castes; and specify the wards in which the seats shall be so reserved).

Explanation -- In this section "Scheduled Castes" means such castes, races or tribes or parts of, or groups within, such castes, races or tribes as are deemed to be Scheduled Castes in relation to the State of Maharashtra under Article 341 of the Constitution of India;

Provided further that, the fact that the reservation of seats has ceased to have effect shall not "render any person elected and in office immediately before the ceased ineligible from continuing as a councillor during the rest of the term to which he was duly elected:--

Provided also that, before any notification is issued under sub-section (3), a draft thereof shall be published in the Official Gazette and in such other manner as in the opinion of the State Government is best calculated to bring the information to the notice of all persons likely to be affected thereby, together, with a notice

specifying the date on or before which any objections or suggestions will be received, and the date after which the draft will be taken into consideration.

The division of wards will have to be made by the State Government and should be published in the official gazette. The wards so formed, shall be compact area and the population of each ward shall be approximately same as per the latest census. Last proviso to the said sub-section requires that a draft shall be published in the official gazette and in such other manner as in the opinion of the State Government is best calculated to bring the information to the notice of all persons likely to be affected thereby, together, with a notice specifying the date on or before which any objections or suggestions will be received, and the date after which the draft will be taken into consideration. Therefore, the voters and desirous candidates have an opportunity to take objections or make suggestions in respect of the proposed formation of the wards and those suggestions and objections will have to be considered by the State Government before finalization of the voters list.

7. Section 7A speaks about the Municipal Election Roll and the main provision contained therein is that the assembly roll for the time being in force shall be divided into different sections corresponding to the different wards in the city. It also requires that the draft ward roll shall be published in such manner as may, in the opinion of the Commissioner, be best calculated to bring the roll to the notice of all persons likely to be affected thereby, together with a notice specifying a date for calling objections, for inclusion of names or for correction of entries. Sub-section (1) of Section 7A is reproduced below for the ready reference-

7A (1) The Assembly roll for the time being in force, on such date as the State Government may, by notification in the Official Gazette, specify (being any date before such notification, but any such date shall not be earlier than four months immediately preceding the date of such notification), shall be divided by the Commissioner or such officer of the corporation as may be authorised by him in this behalf, into different sections corresponding to the different wards in the City; and a printed copy of each section of the roll so divided and authenticated by the Commissioner or the authorised officer, as the case may be, shall be the draft ward toll for each ward. The draft ward roll shall be published in such manner as may, in the opinion of the Commissiner, be best calculated to bring the roll to the notice of all persons likely to be affected thereby, together with a notice specifying a date on or before which applications for the inclusion of names or for correction of entries therein shall be lodged with an officer of the State Government as may be designated by the State Government in this behalf.

Sub-section (6) of Section 7A requires that after the expiry of 45 days from the date of publication of the draft ward roll under subsection (1), the designated officer shall, after carrying out necessary corrections in the draft ward roll will publish the final ward roll. Subsection (6) is reproduced below-

(6) After the expiry of forty-five days from the date of publication of the draft ward roll under sub-section (1), the designated officer shall, after carrying out all additions, amendments and other changes in the draft ward roll in accordance with his orders made under sub-section (2) and sub-section (3) and the orders of the appellate officer (if any) under sub-section (5) and after correcting any clerical or printing error or other inaccuracies discovered in the roll, make available a copy of the roll as so corrected and brought up-to-date and after authenticating it, to the Commissioner or the officer authorised by him, who shall publish the ward roll in such manner as the Commissioner may determine, and also make it available for inspection at the municipal office. The roll so published shall be the final ward roll for that ward from the date of its publication. The final ward rolls so published shall collectively be deemed to be the municipal election roll.

8. It is, therefore, clear that the ward roll should first be in conformity with the division of wards made under sub-section (3) of Section 5 and secondly, it should carry out all the corrections necessary not only at the behest of persons who want to include their names or want to object to any entry, but the municipal authorities have also been cast with a duty that they should themselves look into the draft roll and should correct any clerical or printing error or other inaccuracies discovered in the roll. These inaccuracies certainly include any inaccuracy which has resulted because of difference between the delimitation of the ward and the division of the assembly election roll. A voter, in general, may be interested in inclusion of his name and may, sometimes object to the inclusion of somebody who is not entitled to be included as a voter in a particular ward. Some conscious prospective candidate or a political party may even look into the correctness of the roll and point out certain irregularities. But even if they do not do so, it is the duty of the designated officer and persons working under him to see that the final list of voters carries all the amendments which have been ordered after consideration of the claims and objections and the printing and clerical errors are also corrected. They have a further duty to see that the voters list of the ward includes only the names of voters residing in the localities which are included in that ward as per the delimitation of the ward made under sub-section (3) of Section 5. This duty, in the circumstances, cannot be shirked by the municipal authorities engaged in the preparation of the voters list. If the municipal authorities cast with the duty of preparation of a valid voters list in accordance with the statute do not verify that the voters list of a ward contains only the names of the persons living in that ward as constituted under subsection (3) of Section 5 of the Act of 1949, then the very purpose of the division of wards would be frustrated. The purpose of division of wards and preparation of the voters list in accordance with the wards is to confer right to elect a Councillor on citizens living in a compact area as the wards are bound to be compact. If by inadvertence or intentional mischief of the persons engaged in the preparation of voters list, voters of one ward are included in electoral roll of another ward, it defeats the very scheme of the Act and if the act is intentional then it gives a

candidate or a political party sponsoring the candidate to select their voters themselves. If this is allowed, then the authorities, in a given case, may prepare a roll purporting to be a ward roll which would be helpful for a particular candidate or a party. Therefore, a duty is cast on the municipal authorities to find out whether the roll conforms to the delimitation of the ward and if it is not, the designated officer is duty bound to correct it.

9. In the instant case, though Shri Matinoddin was examined by the petitioner and he was not able to identify any of the voters who should have been included in Ward No. 39 but were included in Ward No. 42, he pointed out that houses Nos. 4-21 and 4-24 are not actually included in the area of Ward No. 42. In the voters list of this ward, we find that some of the voters are said to be living in houses, number of which starts from 4-21. This anomaly remained unexplained. However, none of the voters is examined in support of this contention by the petitioner. The map of the Ward No. 42 showing area and houses Nos. in the ward have not been placed on record. Even the petitioner's testimony is not sufficient to come to a conclusion that the voters actually residing in Ward No. 39 were wrongly included in Ward No. 42. Testimony of Matinoddin-petitioner's witness No. 2 is not free from doubts. Though he has ventured to state before the Court that voters list is not correct and some voters belonging to Ward No. 39 have been included in Ward No. 42, he was unable to explain as to how this has happened. In fact, at exhibit 70, an order of the Deputy Commissioner, Aurangabad is placed on record which directs this witness Matinoddin Kadri, Junior Engineer along with four other persons, out of whom, three are Clerks and fourth one -- another Junior Engineer to distribute the voters list as per the proposed division of wards. Therefore, it was the duty of Shri Matinoddin Kadri to see that the voters list confirms the wards proposed. Shri Kadri has not given any explanation as to why he and other four persons have not prepared the ward list by distributing the voters list for the Legislative Assembly as per the wards already proposed. In these circumstances, it is not possible to place reliance on the testimony of Matinoddin and hold that the voters list was not in conformity with the wards formed u/s 5(3) of the Act of 1949.

10. Even assuming that the Municipal election roll and the ward rolls do not conform with the wards formed u/s 5(3), the question would be whether it can be a ground on which an election can be held invalid. Though it is true that a valid list of voters is the basis of a valid election, when the statute has provided an elaborate procedure for formation of the wards and then for the preparation of the voters list and has also provided an opportunity to the voters to file objections and claims to be proposed formation of wards and to the provisional ward list, whether such an objection can again be entertained in election petition would be a question to be determined first. Draft Ward Roll is to be published and persons likely to be affected thereby are entitled to file their objections and claims. After considering those within a period of forty-five days from the publication of the draft ward roll, designated officer has to publish the final ward roll.

11. Section 8 of the Act of 1949 is a deeming provision by which every person included in the ward roll is deemed to be entitled to vote and who is not included is deemed to be not entitled to vote. Section 8 of the Act of 1949 is quoted below for ready reference.

8. Every person whose name is in a ward roll shall be deemed to be entitled to vote at the ward election, and every person whose name is not in the said roll shall be deemed to be not entitled so to vote.

The purpose of adding this deeming provision by Section 8 of the Act appears to be to give a finality to the ward roll and to direct that if any person has got any objection that should be raised before rolls are finalised. This is necessary particularly in view of the fact that elections to the legislative bodies and to the local bodies are to be held as per the time bound programme laid down by the statute governing them and, therefore, whosoever wants to participate in the election either as a voter or a candidate must challenge an action or inaction on the part of the officers concerned at appropriate time. When the wards are once finalised, they cannot be subject matter of dispute anytime thereafter. Similarly, when a voters list is finalised, it cannot be disputed and made a ground for challenge of the election subsequently. If we hold that inclusion or non-inclusion of any name in the voters list can be challenged even in the election petition, it would be nullifying what has been provided by Section 8 specifically.

12. Shri S.V. Gangapurwala, learned Counsel for the petitioner, submitted that Section 16(1) of the Act of 1949 specifically provides improper reception or a refusal of a vote as one of the grounds on which the election of a Council can be challenged. The phrase "improper reception or refusal of a vote" appearing in sub-section (1) of Section 16 will have to be considered in the light of the scheme of the Act. When Section 8 gives finality to the voters list, the improper reception or refusal of vote will not include improper inclusion or non-inclusion of any voter in the voters list. Other instances of improper reception or refusal are only covered by this phrase such as not allowing voter who is included in the voters list to vote or treat invalid vote to be valid one at the time of counting. If we hold that the validity of the electoral roll for the elections to the Municipal Corporation under the Bombay Provincial Municipal Corporations Act of 1949 can be inquired into in election petition u/s 16, it would open a Pandora's box which is not permissible in view of the specific provision of Section 8. Even this objection is not covered by phrase "any other thing materially affecting the result of the election" appearing in Section 16 of the Act of 1949. Section 16(1) of the Act of 1949 is quoted below for ready reference.

16. (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 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.

13. Shri S.V. Gangapurwala, learned Counsel for the petitioner, invited my attention to a judgment of the Full Bench of Andhra Pradesh High Court in the case of Addigiri Vengamuni Vs. Chukkalooru Narayanappa and Another, . Interpreting sub-section (6) of Section 11 of the Andhra Pradesh Municipalities Act (6 of 1965), learned Judges of the Andhra Pradesh High Court were pleased to hold that a person who is underaged, according to the Constitution, cannot be a voter at the Assembly election and at the municipal election as well and the Election Tribunal can go into question of constitutional disability and entry of name of voter in the electoral roll. The Full Bench appears to have considered the question from the angle that constitutional mandate cannot be annulled by any provision of the statute and while considering validity of election, it is always open for the tribunal to go into question whether there was a constitutional disability to the voter though his name is included in the voters list.

14. Referring to the decision of the Division Bench of the Andhra Pradesh High Court in Radhakrishna Murthy v. Subordinate Judge, Bapatla, (1960) 2 And WR 308 , judgment of the Division Bench of the Madras High Court in S.V. Viswanathan Vs. G.P. Rangaswamy and Others, and relying on the decision of Supreme Court in Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others, , the learned Judges were pleased to take this view. Supreme Court was pleased to hold in the case of Durga Shankar Mehta (cited supra) that non-compliance with the provisions of the Constitution was sufficiently wide to cover cases of fundamental disability of the candidate to stand for election also. The Full Bench of Andhra Pradesh High Court has differed with the view taken by the learned Judges of the Allahabad High Court in the case of Ghulam Mohiuddin Vs. Election Tribunal for Town Area Sakit and Another, . In Allahabad case, the election of the Chairman of the Town Area Committee was challenged in an election petition before the Sessions Judge, Etah. Election Tribunal was pleased to pass an order on 29-4-1958 that it is open to the second respondent in that petition to raise a question in election petition that the electoral roll had been wrongly prepared. This order of the Election Tribunal came to be challenged before the Division Bench of Allahabad High Court. Since the Division Bench felt that the view expressed by the previous Division Bench in Prabhakar Yajnik Vs. Dist. Magistrate, Bulandshahr and Others, needs reconsideration, the matter was referred to the Full Bench. Full Bench per majority was pleased to quash the order Raghuvver Dayal and M.L. Chaturvedi, JJ. were pleased to hold (Sahay, J. contrary) that it was not open to the Election Commission to determine whether the persons whose names are entered in the electoral roll, possess necessary qualifications for the registration of their names in the electoral roll. Raghuvver Dayal, J. (as he then was) was pleased to qualify mat the electoral roll is to be deemed final and conclusive so far as the fulfilment of the qualifications of a voter is concerned but it is not deemed final and conclusive by the Election Tribunal so far as disqualifications attached to such persons.

15. The decision of the Supreme Court in *B.M. Ramaswamy Vs. B.M. Krishnamurthy and Others*, , considers the point at issue in the present writ petition. An election to the Panchayat Byappanahalli from Ward No. 1-was challenged on the ground that on the day fixed for filing of the nomination, the name of the returned candidate was not in authenticated list of the voters published under R. 3, Cl. (5) of the Mysore panchayats and Taluk Boards Election Rules, 1959. It was further contended that he was not an ordinary resident of Byappanahalli and, therefore, he was disqualified from standing for election from that constituency. The learned Munsif hearing the election petition was pleased to hold that though the returned candidate was ordinarily the resident of the said village, since his name was not included in the authenticated list of the voters of the Panchayat, he could not contest the election and was pleased to set aside the election. Some of the provisions of the Mysore are identical to the Act of 1949 with which we are concerned. Section 9 of the Mysore Act provides that the electoral roll of the Mysore Legislative Assembly in respect of the part included in the Panchayat Constituency shall be deemed to be the list of voters of such Panchayat Constituency and Section 10 laid down that every person whose name is in the list of voters of any Panchayat Constituency shall, unless disqualified under this Act or any other law for the time being in force, be qualified to be elected as a member of the Panchayat. An application was filed before the Registration Officer for the inclusion of the returned candidate in the electoral roll. The Electoral Registration Officer did not follow the procedure prescribed in Rule 26 relating to the posting of the application in a conspicuous place and inviting objections to such application. Though the action of the Electoral Registration Officer directing inclusion of the name of the returned candidate in the voters list was illegal, this cannot be questioned in the civil Court and the only remedy available was an appeal under Rule 27 of the Rules. The learned Judges of the Supreme Court ruled that the action of the Electoral Registration Officer was not a nullity and that illegal order should have been challenged before the forum provided for and in the manner prescribed. It was further ruled by the Supreme Court that the High Court had no jurisdiction to set aside the election on the ground that though the name of the candidate is in the list, it had been included therein illegally.

16. For the elections of the Municipal Corporation governed under the Bombay Provincial Municipal Corporations Act, 1949, legislature has provided elaborate procedure for preparation of the voters list. The draft ward roll is to be published and objections are to be invited. If objections are not filed and suggestions are not made, and if the authorities do not find any inaccuracy, and if such objections and claims are filed after considering the same, the final roll is to be published. If this opportunity is not availed by an affected person, he cannot challenge the electoral roll on the basis of which election was held. If the scheme of the Bombay Provincial Municipal Corporations Act, 1949 is examined, it will have to be concluded that the provisions of Section 8 of the said Act does not permit the question of the invalidity of voters list being agitated in an election petition.

Irregularity of inclusion of a voter in a ward other than the one in which he should have been included, though an irregularity is not a breach of constitutional mandate, it cannot be equated with any constitutional disqualification and in no case can be agitated in an election petition u/s 16 of the Act of 1949.

17. Though I am holding that the voters list prepared under the Act of 1949 cannot be challenged in an election petition u/s 16 of the said Act, I wish to place on record displeasure of this Court in the casual manner in which the Aurangabad Municipal Corporation has prepared the draft roll and the final roll for the elections of Aurangabad, Municipal Corporation particularly in respect of Ward No. 42. Person who was entrusted with the job of preparation of the correct voters list themselves come to the Court and say that the voters list is not correctly prepared is a very difficult situation to appreciate. If witness and his other colleagues would have applied their mind to the voters list, they had every right to recommend to the designated officer to correct the roll if any of them felt that voters not entitled to be included in Ward No. 42 have been included in the voters list of Ward No. 42. It is not known why they have not done this which was rather their duty. It is not known whether the designated officer had any time supervised this work. Holding free and valid election is essential requisite for democracy. Those entrusted with the preparation of the voters list and with the conduct of the election are the custodians of the valuable rights of the citizens. Even if the citizens do not take objection at the appropriate time, duty is cast on these authorities to see that statutory mandates are followed. If the wards are formed u/s 5(3), detailed maps of the wards must be available with the Municipal Corporation. It was the duty of some officer of the Municipal Corporation to see that voters in houses included in that map are only included in the draft roll for that area. Designated Officer and his subordinates were better placed than any other voter in the matter of this verification and it appears that this was not done. If the matter would have been brought before this Court at an appropriate time before the elections, this Court would have exercised its powers. Unfortunately, the elections have already taken place and now it is impermissible to go into question of the validity of the electoral roll. I only hope that the authorities of the Municipal Corporation, Aurangabad will realise their responsibility and would in the future elections verify whether the draft ward roll contains the names of voters living in that ward according to the formation of the wards u/s 5 (3).

18. This takes us to the next point raise by Shri S.V. Gangapurwala about the alleged corrupt practice. According to the petitioner, a pamphlet purporting to be an appeal by 7 candidates in the field was issued at the connivance of the respondent No. 8. A copy of this printed appeal filed along with the list Exhibit 40 was not duly proved. It was contended that this was printed in the printing press belonging to Respondent No. 10. Neither he nor any other person was examined to prove that the pamphlet was printed in such a press and was printed at the instance of either petitioner or his authorised agent. A copy of the Lokmat daily

-- a newspaper published from Aurangabad dated 17-4-1988 is also placed on record in which a news appeared that the police have seized some printed appeals with some false signatures appealing voters to vote for Shiv Sena. This copy of the newspaper can hardly prove the fact that such pamphlets were printed and were seized from the press belonging to the Respondent No. 10 and that such pamphlet was published at the instance of Respondent No. 8. No other evidence is led on the point, Similarly, there is no evidence in respect of other corrupt practices as alleged in the petition and also in respect of alleged stoppage of voting for an hour and refusal of the Presiding Officer to allow the voters who were inside polling booth at the time of the close of the polling hour. These allegations are not at all proved.

19. Charge of corrupt practice will have to be proved by clear and cogent evidence as a charge for criminal offence and it is not open to the Court to hold the charge of corrupt practice as proved merely on the preponderance of probabilities but it must be satisfied that evidence is sufficient to prove the charge beyond reasonable doubt. Therefore, submission of Shri Gangapurwala that it can well be inferred that such a pamphlet was published by the Respondent No. 8 will have to be rejected. A useful reference can be made in this respect to the judgment of the Supreme Court in *N.C. Zeliang Vs. Aju Newmai and Others*, *Surinder Singh Vs. Hardial Singh and Others*, and in *Ram Singh and Others Vs. Ram Singh*. These decisions laid down in clear terms that the proof required in elections petition about the alleged corrupt practice will have to be equal to the proof required for proving a criminal charge. In the present case, the learned Judge trying elections petition has recorded a finding that none of the allegations of the corrupt practice is proved and that finding is perfectly justified looking to the fact that practically no evidence is laid on the point by the petitioner except his bare word.

20. In the result, the writ petition is dismissed. The Judgment and Order dated 19th April, 1991 passed by the learned Civil Judge, Senior Division, Aurangabad in Election Petition No. 10 of 1988 is hereby confirmed. Rule is discharged. However, in the circumstances, there be no order as to the costs.

21. Petition dismissed.