

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

srp

**WRIT PETITION NO. 426 OF 2011**

Hemant S. Vani & Others. ..Petitioners.  
*Versus*  
State of Maharashtra & Others. ..Respondents.

Mr. A. V. Anturkar i/b Mr. R. D. Suryawanshi for the petitioners.  
Mr. Patel, AGP for R-1 to 3.  
Mr. Sachin Dhakephalkar for R-5.  
Mr. N. R. Bubna for R-4.

Coram : RANJIT MORE, J.  
Date : **March 22, 2011.**

P. C. :

1. Heard learned counsel for the respective parties.
2. Petitioner nos. 2 to 6 are the elected members of the Thane Municipal School Board. Petitioner no.1 is nominated by the Government as a member of the said Board. By the order impugned, all the petitioners have been disqualified on the ground that they do not possess qualifications as prescribed under sub-sections (4) and (7) of Section 4 of the Bombay Primary Education Act, 1947 [for short "the said Act"]. Sub-section (7) of section 4 of the said Act reads thus :

"(7) Members elected under sub-section (5) shall have passed the primary school certificate examination or shall possess such other equivalent or higher educational qualification as may be prescribed."

2. Mr. A. V. Anturkar, learned counsel for the petitioners invited my attention to documents, which are page nos. 27, 29, 30, 33 and 24 of the additional compilation of documents filed by the petitioners. These are the documents pertaining to petitioner nos. 2, 5, 6 3 & 4 respectively. These documents *prima facie* support Mr. Anturkar's contention that petitioner nos. 2 to 6 have passed the primary school certificate examination.

3. So far as petitioner no.1 is concerned, he is a nominated member. The qualification prescribed for nominated member is given in sub-section (4) of section 4 of the said Act, which reads thus :

“4(4) Of the members appointed by the State Government under sub-section (2) one shall be an officer of the State Government and the remaining shall be persons (i) who shall have passed the matriculation examination or shall possess any other equivalent or higher educational qualification which the State Government may specify in this behalf or (ii) who have had experience of the system or institutions of primary education.”

4. Mr. Antrukar relies upon the certificate which indicates that petitioner no.1 is a Treasurer of one Lilawati Satish Avhad Education Society. *Prima facie*, on the basis of this certificate it

appears that the petitioner complies with the eligibility criteria given under sub-section (4) of section 4 of the said Act.

5. That apart, petitioner nos. 2 to 5 are the elected members. Section 6 of the said Act deals with the determination of validity of election. Under sub-section (2) of Section 6, an enquiry regarding validity of election is required to be held by a Judge not below the grade of Assistant Judge. By the impugned order, which is passed by Principal Secretary, the petitioners are disqualified. I find substance in the contention of Mr. Anturkar that petitioner nos. 2 to 6's election are in fact set aside by the Principal Secretary by passing the impugned order. In above facts and circumstances, I am of the opinion that the arguable points are made out. Hence, Rule.

6. Ad-interim relief which was granted on 17/1/2011 shall remain in operation during the pendency and till the final disposal of this writ petition.

**(RANJIT MORE, J.)**