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REENA SURESH ALHAT

v.

STATE OF MAHARASHTRA & ANOTHER  
(Special Leave Petition (Civil) No. 6264 of 2017)

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FEBRUARY 13, 2017

[J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.]

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*Constitution of India – Art. 136 – Special Leave Petition – Entertainability of – Writ petitions before High Court by the candidates contesting election to Municipal Corporation – Challenging certain actions taken by the State Election Commission – Orders of High Court passed against the petitioners – Special Leave Petitions filed – Held: The petitions are not entertainable on the grounds : (i) result of the election does not have repercussions on the affairs of nation; (ii) jurisdiction u/Art. 136 is discretionary; (iii) High Court is also a constitutional court (iv) the petitioner would still have a forum for adjudication of their respective rights – Pendency of huge number of matters in Supreme Court coupled with relative insignificance of the present case, are also the factors which should weigh with Supreme Court before entertaining the Special Leave Petitions – Petitions are dismissed – Maharashtra Municipal Corporation Act, 1949.*

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*Mohinder Singh Gill & Another v. The Chief Election Commissioner, New Delhi & Ors. AIR 1978 SC 851 : 1978 (2) SCR 272; Election Commission of India through Secretary v. Ashok Kumar & Ors. (2008) 8 SCC 216; Rogers v. Missouri Pacific Railroad Co., 353 U.S. 500, 521 : 77 S. Ct. 443, 459 – referred to.*

Case Law Reference

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| 1978 (2) SCR 272  | referred to | Para 8  |
| (2008) 8 SCC 216  | referred to | Para 9  |
| 353 U.S. 500, 521 | referred to | Para 11 |

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CIVIL APPELLATE JURISDICTION : Special Leave Petition  
(C) 6264 of 2017.

From the Judgment and Order dated 07.02.2017 of the High Court of Judicature at Bombay in Writ Petition No. 1663 of 2017. A

WITH

SLP (C) No. 5014 of 2017.

Dushyant Dave, Fali S. Nariman, Basanth R., Sr. Advs., Ashutosh Dubey, A. D. N. Rao, Azeem Samuel, Vipul D., Abhishek Chauhan, V. S. Rawat, Sushil Pandey, Sandeep Deshmukh, Subhash Jadhav, Ankur Chawla, Arunabh Chaudhary, Ms. Kanika Singh, Kalyani Lal, R. K. Mohit Gupta, Sangram Singh, V. Tomar, Nar Hari Singh, Sanjay Kharde, Pratul Bhadale, Kaartik Ashok, Advs. for the appearing parties. B

The Order of the Court was delivered by C

**CHELAMESWAR, J.** 1. Permission to file Special Leave Petition is granted.

2. These two matters arise out of Maharashtra Municipal Corporation Act, 1949 (Act No. 59 of 1949). Petitioners in these two SLPs are candidates at the ongoing Elections to the Municipal Corporation of Pune. D

3. Aggrieved by certain action taken by the respondents, two writ petitions came to be filed in the High Court of Bombay, one by the petitioner in SLP (Civil) ... CC No. 3350 of 2017 and the other by respondent no.4 in SLP (Civil) No.5014 of 2017. E

4. Reena Suresh Alhat's nomination was rejected by an order dated 4.2.2017. She challenged the rejection of her nomination by a writ petition. The writ petition was dismissed by the High Court by an order under challenge dated 7.2.2017 on the twin grounds of a constitutional bar and the existence of an alternative remedy. F

5. In the case of Reshma Anil Bhosale, the dispute is regarding the allotment of a symbol. The petitioner claimed to be a candidate sponsored by the Bharatiya Janata Party. The said symbol was allotted to the petitioner by an order of the respondent dated 8.2.2017. One of the contesting candidates questioned the allotment of the election symbol of BJP by filing a writ petition. *Rule nisi* was issued and by an interim order of the High Court, the order of the Election Commission allotting the symbol in favour of Reshma Anil Bhosale was stayed. G

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A 6. Hence these two special leave petitions.

B 7. It was passionately urged by the learned senior counsel appearing in both the matters that this Court ought to examine the questions of law involved in the petitions because these elections at the grass root level are of great importance in the civic administration of Pune. By the impugned orders, the High Court deprived the petitioners of their valuable electoral rights. Though the petitioners have an alternative remedy to challenge the election of returned candidates, such a remedy is time consuming and in the process a substantial (if not the entire) portion of the term of the office would expire and, therefore, this Court is bound to examine the cases on merits.

C 8. The remedy under Article 136 is a discretionary remedy though it does not mean that the discretion should be exercised whimsically. Learned counsel for the petitioners relied upon a judgment of the Constitution Bench in the case of *Mohinder Singh Gill & Another v. The Chief Election Commissioner, New Delhi & Others*, AIR 1978 SC 851, in support of the submission that in appropriate cases, this Court ought to interfere in certain specified circumstances in the election process notwithstanding the fact that the aggrieved candidate would have an opportunity to question the election at a later point of time by filing an election petition.

D 9. On the other hand, the caveator (one of the contesting candidates - respondents in SLP(C) No.5014 of 2017 relying upon a judgment of this Court in *Election Commission of India through Secretary v. Ashok Kumar & Others*, (2008) 8 SCC 216, argued that this Court clearly laid down the circumstances in which interference would be justified and the case on hand does not fall within the parameters indicated therein.

E 10. We see no reason to entertain the SLPs for the following reasons

F (i) The elections in question pertain to a local body under a local law of the State Legislature. The result of the election is most unlikely to have any effect on the affairs of this nation. We are even inclined to believe that the result of the election would not have any repercussions beyond Pune City.

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- (ii) The High Court is also a constitutional court, subject of course to the appellate jurisdiction conferred on this court by law. A
- (iii) The petitioners would still have a forum for adjudication of their respective rights and granting appropriate relief if they can successfully establish the infringement of their legal rights. B
- (iv) The appellate jurisdiction conferred by the Constitution under Article 136 is purely discretionary.
- (v) The pendency of huge number of matters in this Court coupled with the relative insignificance (from the point of view of the nation) of the injury to the petitioners herein are certainly factors which should weigh with this Court before entertaining these applications. C

11. We are only reminded of a caution given by Justice Frankfurter in *Rogers v. Missouri Pacific Railroad Co.*, 353 U.S. 500, 521 : 77 S. Ct. 443, 459 "The Court may or may not be "doing justice" in the four insignificant cases it decides today; it certainly is doing injustice to the significant and important cases on the calendar and to its own role as the supreme judicial body of the country." ... "Unless the Court vigorously enforces its own criteria for granting review of cases, it will inevitably face an accumulation of arrears or will dispose of its essential business in too hurried and therefore too shallow a way." D E

12. We regret our inability to examine the issues involved in these two cases. Special Leave Petitions are dismissed. F