

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7192 OF 2015

Rajendra Mukunda Patil

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri S. B. Talekar, Advocate for the Petitioner.

Shri S. S. Tope, A.G.P. for Respondent Nos.1, 3 and 4.

Shri S. T. Shelke, Standing Counsel for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 03RD AUGUST, 2015.

PER COURT :

. Present petition is filed on 14.07.2015 challenging the voters list.

2. We have heard Mr. Talekar, the learned counsel for the petitioner extensively. The learned counsel submits that, final voters list was published on 13.06.2015. Once final voters list is published, there cannot be change in the voters list. However, in the present matter, according to the learned counsel voters list is changed and tampered after the final voters list is published. The learned counsel relies on the voters list as annexed from page Nos. 21 to 91 and another voters list from page Nos. 103 to

149. According to the learned counsel both these voters lists are given as final voters lists. There are changes in names of the persons in both the lists. The first voters list is obtained pursuant to the application given on 07th July, 2015 and the another voters list is obtained by giving application on 10.07.2015. This shows that, after 07th July, 2015, the final voters list has been tampered. To buttress his submissions, the learned counsel relies on the amount paid for obtaining the certified copies i. e. Rs. 10/- per page were charged i. e. Rs. 470/- and Rs. 710/-. According to the learned counsel, the respondents are not in a position to rebut the averments about the changes made in the voters lists after the preparation of the final voters list. The learned counsel submits that, the said voters lists stand vitiated inter alia whole election process pursuant to the preparation of final voters list dated 30.06.2015 would stand vitiated. If the elections are conducted on the basis of final voters list, the same would also vitiate the elections. According to the learned counsel the judgment of the Apex Court in a case of Sant Sadguru Janardhan Swami (Moingiri Maharaj) Sahkari Dugdh Utpadak Sanstha Vs. State of Maharashtra reported in (2001) 8 SCC 509 has been interpreted by the subsequent judgment of the Apex Court wherein the Apex Court has held that, even the Court in the writ jurisdiction can go into the legality of the voters list. The learned counsel relies on the judgment of this Court in a case of

Chandrakant Mahadev Patole and others Vs. State of Maharashtra and others reported in 2009 (0) BCI 536, so also the judgment of the Apex Court in a case of **Pundlik Vs. State of Maharashtra** reported in 2005(5) All MR SC 1082.

3. Mr. Shelke, the learned counsel for the Election Commission states that, voters list is finalized on 13.06.2015 and thereafter no changes are made in the same.

4. Mr. Tope, the learned Assistant Government Pleader submits that, the list which is given on 09.07.2015 was the provisional voters list. The record room of the Tahsil office has given the draft voters list. The voters list from page Nos. 103 onwards is the final voters list. The learned A. G. P. submits that, in view of Sec. 12(1) of the Bombay Village Panchayat Act, the voters list of Legislative Assembly election shall be the voters list of panchayat election. The learned A. G. P. relies on the judgment of the Apex Court in a case of **Sant Sadguru Janardhan Swami (Moingiri Maharaj) Sahkari Dugdh Utpadak Sanstha Vs. State of Maharashtra** reported in (2001) 8 SCC 509.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. The elections are to take place on 04th August, 2015 i. e. tomorrow. The petition is filed after the date fixed for scrutiny of nomination forms.

7. Be that as it may, it is a case of disputed questions of facts. As to whether list supplied earlier i. e. page Nos. 21 to 91 is the provisional list or the final voters list would be also question of fact, for which an enquiry is required to be made in that regard. At the 11th hour, it would not be appropriate to pass any orders. Any orders passed would also affect the election of all other candidates who are not before this Court.

8. The petitioner also has remedy subsequent the elections which can be considered as is held by the Apex Court in a case of **Sant Sadguru Janardhan Swami (Moingiri Maharaj) Sahkari Dugdh Utpadak Sanstha Vs. State of Maharashtra** referred supra.

9. In the light of that, we dispose of the writ petition with liberty to the petitioner to assail the election of returned candidate, if the petitioner choses to do so. The petitioner is also at liberty to take such other steps as is permissible in law. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]