

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2395 OF 2013

Mahadeo S/o Bhimrao Kendre,
Age : 40 Years, Occu. : Agriculture,
R/o. : Bhojnakwadi, Post : Dharmapuri,
Tq. : Parli-Vaijanath, Dist. : Beed. .. Petitioner

Versus

1. State Election Commission.
2. The Election Officer,
Mr. M. K. Karad,
Age : 50 Years, Occu. : Service
Panchayat Samiti, Parli-Vaijanath
3. The Tahsildar,
Parli-Vaijanath,
Dist. : Beed
4. The Collector,
Beed, Dist. : Beed
5. Sau. Chhayabai Vithal Kendre,
Age : 50 Years, Occu. : Agriculture,
R/o. : Bhojnakwadi, Post : Dharmapuri,
Tq. : Parli-Vaijanath, Dist. : Beed
6. Anita Umesh Dighole,
Age : __ Years, Occu. : Agriculture,
R/o. : Bhojnakwadi, Post : Dharmapuri,
Tq. : Parli-Vaijanath, Dist. : Beed
7. Chandrakant Bhanudas Fad,
Age : __ Years, Occu. : Agriculture,
R/o. Bhojnakwadi, Post : Dharmapuri,
Tq. : Parli-Vaijanath, Dist. : Beed
8. Golal Bamaji Fad,
Age : 45 Years, Occu. : Agriculture,
R/o. : Bhojnakwadi, Post : Dharmapuri,
Tq. Parli-Vaijanath, Dist. : Beed

9. Mathurabai Chimnaji Kedar,
Age : 50 Years, Occu. : Agriculture,
R/o. : Bhojnakwadi, Post : Dharmapuri,
Tq. : Parli-Vaijanath, Dist. : Beed
10. Sachita Rajabhau Kedar,
Age : 25 Years, Occu. : Agriculture,
R/o. : Bhojnakwadi, Post : Dharmapuri,
Tq. : Parli-Vaijanath, Dist. : Beed .. Respondents

Shri V. D. Salunke, Advocate for the Petitioner.
Shri S. T. Shelke, Advocate for the Respondent No. 1.
Respondent No. 2 Served.
Shri S. G. Karlekar, A. G. P. for Respondent Nos. 3 and 4.
Shri S. S. Thombre, Advocate for Respondent Nos. 5 to 10.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

CLOSED FOR JUDGMENT ON : 04.03.2016
JUDGMENT PRONOUNCED ON : 23.03.2016

JUDGMENT (Per S. V. Gangapurwala, J.) :-

1. The petitioner vide the present petition seeks declaration that the election of Grampanchayat, Bhojnakwadi, Post – Dharmapuri, Taluka – Parli-Vaijanath be set aside and the election of Respondent Nos. 5 to 10 i.e. elected members of the Grampanchayat, Bhojnakwadi be set aside and directions be issued to conduct fresh elections.

2. Mr. Salunke, the learned counsel for the petitioner states that, provisional voters list for election was published. The petitioner alongwith other voters took objection to the provisional voters list thereby stating that bogus names are included in the voters list. The voters list contains the names of residents of

other villages. There were also names of the persons who have not attended the age of majority in the voters list. However, the said objections have not been dealt with nor have been decided and pursuant to the said illegal and incorrect voters list the election for members of the Grampanchayat, Bhojnakwadi has taken place. The petitioner has pointed out specifically names of the persons whose names appeared in the voters list of other villages as voters in the Grampanchayat election and also in the voters list of Bhojnakwadi Grampanchayat. Even, specific names were given of the persons who had not attained the age of majority but whose names appeared in the voters list, however, blind eye was turned by the Respondents / Authorities to the same. The learned counsel relies on the judgment of the Apex Court in a case of **K. Venkatachalam V/s. A. Swamickan and another** reported in **A. I. R. 1999 S. C. 1723 (1).**

3. According to the learned counsel, the election based on such illegal voters list cannot be sustained. Some of the persons who have voted in Grampanchayat elections of Bhojnakwadi and also of other Grampanchayats and proof of the same is also placed on record. This would establish that the election for the Members of Grampanchayat, Bhojnakwadi has been materially affected because of such illegal votings. The learned counsel submits that, Election Petition on the ground that the list of voters was incorrect is not tenable. As such, the writ petition is the only efficacious remedy available. The learned counsel relies on the judgment of Division Bench of this Court in a case of **Dhondba and another V/s. Civil Judge, Junior Division, Hinganghat and others** reported in **1966 Mh. L. J. 869.** The elections cannot be held on the basis of such bogus list of voters and if objections are overlooked this High Court can interfere. The

learned counsel relies on the judgment of the Division Bench of this Court in a case of **Shivaji Marotrao Suryavanshi V/s. State of Maharashtra and others** reported in **2000 (2) Mh. L. R. 277.**

4. The learned counsel further submits that, merely because whole election is challenged that would not mean that the petition is not maintainable. If, wide scale illegalities are committed in the election process the whole election can be challenged by way of writ petition. The learned counsel relies on the judgment of the Apex Court in a case of **Bar Council of Delhi and another V/s. Surjeet Singh and others** reported in **A. I. R. 1980 S.C. 1612.** According to the learned counsel when the foundation of election itself is based on manipulation then this Court can exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **Bhaurao Kalu Koli V/s. State of Maharashtra and others** reported in **2007 (6) B. C. R. 6.** The learned counsel relies on the judgment of **The Chief Commissioner of Ajmer and another V/s. Radhey Shyam Dani** reported in **A. I. R. 1957 S. C. 304,** to submit that the elections held on imperfect Electoral Rolls would acquire no validity and would be liable to be challenged at the instance of parties concerned. As it is the essence of the elections that proper Electoral Rolls are maintained. It is also the duty of the Authorities to see that the persons enrolled as electors possessed the requisite qualifications. The learned counsel submits that, though under Section 12 of the Bombay Village Panchayats Act, 1958 the Electoral Rolls of the Maharashtra Legislative Assembly prepared under the provisions of the Representation of Peoples Act, 1950 is to be adopted as list of voters for such ward or

village. Still, Section 13 of the Bombay Village Panchayats Act, 1958 clearly lays down that it is only the persons qualified to vote can only find their place in valid voters list. If, the persons are not the residents of the village they cannot be valid voters for the election of the members of the Grampanchayat of the said village. This aspect has not been considered while preparing the voters list.

5. Mr. Salunke, the learned counsel further contends that, even as per Section 17 of the Representation of Peoples Act, 1950 no person is entitled to be registered in the electoral roll for more than one constituency. The said provision would apply in the present case also as there is no provision in the present statute.

6. Mr. Shelke, the learned counsel submits that, the objection has to be submitted in Form No. 7 raising objection to the voters list which is not submitted by the petitioner. The voters list is prepared as per Section 12 of the Bombay Village Panchayats Act, 1958. The said voters list is in consonance with the voters list of Maharashtra Legislative Assembly. The petitioner has nowhere shown that the said voters list is not in conformity with the voters list of Maharashtra Legislative Assembly.

7. Mr. Thombre, the learned counsel for the Respondent Nos. 5 to 10 submits that, the elections have been conducted on the basis of a valid voters list. The petitioner himself contested the election on the basis of the same voters list and after having lost in the election has approached this Court that too after the period for filing Election Petition was over. The respondents are declared as elected candidates on 27.11.2012 and the petitioner has filed the present petition in February, 2013. The petitioner has not availed the alternate remedy of filing Election Petition. There are

disputed questions of fact involved. The learned counsel submits that, even as per Article 243 (O) of the Constitution of India there is a clear bar for interference in the election process in the writ jurisdiction. The voters list is in conformity with Section 12 and 13 of the Bombay Village Panchayats Act, 1958.

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

9. Before we advert to the submissions canvassed by the learned counsel for respective parties it would be appropriate to refer to the relevant provisions -

“The Bombay Village Panchayats Act, 1958

Section 12 [List of voters]

(1) *The electoral roll of the Maharashtra Legislative Assembly prepared under the provisions of the Representation of the Peoples Act, 1950 (XLII of 1950), and in force on such day as the State Election Commissioner may by order notify in this behalf for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters for such ward or village.*

(2) *An officer designated by the State Election Commission in the this behalf shall maintain a list of voters for each such ward or village.*

Section 13 [Persons qualified to vote and be elected]

(1) *Every person who is not less than 21 years of age on the last date fixed for making nomination for every general election or bye-election and whose name is in the list of voters shall, unless disqualified under this Act, or any other law for the time being in force, be qualified to vote at the election of a member for the ward to which such list pertains.*

(2) *Every person whose name is in the list of voters*

shall, unless disqualified under this aCt or under any other law for the time being in force, be qualified to be elected for any ward of the village. No person whose name is not entered in the list of voters for such village shall be qualified to be elected for any ward of the village.

(3) Subject to any disqualification incurred by a person, the list of voters, shall be conclusive evidence for the purpose of determining under this Section whether any person is qualified or is not qualified to vote, or as the case may be, is qualified or is not qualified to be elected, at any election."

"The Bombay Village Panchayats Election Rules, 1959

Rule – 3 [Maintenance and custody of lists of voters]

(1) The Officer designated by the State Election Commissioner under sub-section (2) of Section 12 of the Act shall maintain a list of voters of each ward of the village which shall contain the names of all persons who are enrolled as voters in the electoral roll of the Maharashtra Legislative Assembly from that part of the constituency of the Assembly as is included in each such ward. Such officer shall authenticate each list of voters so maintained and shall sign every page thereof and shall seal it with the common seal of the panchayat.

(2) The officer aforesaid shall from time to time carry out in the authentic copy of each list of voters maintained under sub-rule (1) all corrections which may be made in the electoral roll of the Maharashtra Legislative Assembly and shall initial below each correction so made.

(3) The lists of voters maintained under this rule shall be kept in the panchayat chest or safe under lock and key and the officer whose duty is to keep the key of the chest or safe shall be responsible for the safe custody of the said lists.

(4) Copies of lists of voters maintained under this rule shall be kept open for public inspection at the village chavdi if any , and at the village panchayat office.

(5) The an officer authorised by the State Election Commissioner shall at least fifteen days before the

date fixed for the nomination of candidates for every general election of the village panchayat, give a public notice of the places where copies of the relevant lists of voters are kept open for public inspection. Such notice shall be affixed at the village panchayat office and at the village chavdi, or if there be no village chavdi, at any other conspicuous public place in the village .”

10. It is a fact that the petitioner contested the election held for the member of a Grampanchayat,, Bhojnakwadi and after having lost in the election has filed the present writ petition. It can be gathered from the documents filed that the petitioner had initially raised objection to the voters list on the grounds -

- {1} name of some of the voters also appear as voters for other Grampanchayat,
- {2} the voters list contain names of persons who are dead,
- {3} it also contain names of persons who have not attained the age of majority.

11. Perusal of the scheme of preparation of voters list for the election of a Grampanchayat it is manifest that Sections 12 and 13 of the Bombay Village Panchayats Act, 1958 and Rule 3 of the Bombay Village Panchayats Election Rules 1959 are to be considered. Section 12 of the Bombay Village Panchayats Act, 1958 lays down that the electoral roll of Bombay Legislative Assembly prepared under the Representation of Peoples Act, 1950 and in force on such date as the State Election Commissioner may by order notify in this behalf for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters for such ward or village. The persons whose names appeared in the voters list of the Maharashtra Legislative Assembly are required to be maintained. The Panchayat Act and

the Rules do not provide for machinery to consider the objection about non-attainment the age of majority. If the name of such a person appears in the Maharashtra Legislative Assembly Voters list then his name is to be included in the voters list of the panchayat elections. The correction will first have to be carried out in that regard in the Maharashtra Legislative Assembly Voters List. In the present case, no such application was made to carry out the necessary amendment in the voters list of Maharashtra Legislative Assembly. The same is to be adopted for elections of the panchayat. The same would apply in case of the voters who according to the petitioner were no more.

12. One of the major grievance of the petitioner is that the voters list of Bhojnakwadi contain the names of the persons whose names also appear in the voters list of another Grampanchayat. Section 12 of the Bombay Village Panchayats Act, 1958 as observed above requires that the officer designated by the State Election Commissioner shall maintain the list of voters for each such ward or village. It has to notify the voters list for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters for such ward or village.

13. In writ jurisdiction it cannot be considered whether the said persons were not residents of Bhojnakwadi village or were residents of some other village. We would have considered this objection, had the petitioner approached this Court before the conduct of election or before he had filled in his nomination paper. It is trite that, if, the illegality strikes at the root of the matter then, this Court can exercise its jurisdiction under Article 226 of the Constitution in appropriate matter but not as a matter of course. Further here in this case, though, initially petitioner

raised the objection to the voters list, the petitioner subsequently filled in the nomination and contested the election on the basis of the same voters list and after having lost in the election after lapse of 3 to 4 months has approached this Court. The petitioner took a chance on the basis of the same voters list to get elected. However, having failed in the election has approached this Court. The petitioner submitted himself to the said voters list. The petition at the behest of such a litigant certainly cannot be entertained. There was certainly much time gap between the preparation of the final voters list and filing in the nominations. However, the petitioner did not challenge the voters list earlier by approaching the Court. On the contrary ventured to contest the election on the basis of same voters list. In light of the above, we are not inclined to entertain the petition.

14. There is another facet to the case though none of the parties has raised any objection to the same. On going through the documents filed by the petitioner it is found that the petitioner had contested the election from ward No. 1 against Shrirang Maroti Fad and said Shrirang Maroti Fad is declared elected having defeated petitioner by 12 votes. Said Shrirang Maroti Fad is not made party in the present writ petition. The said detail appears at page 104 of the writ petition. In absence of one of the elected candidate also the petition cannot be entertained.

15. Considering the above conspectus of the matter, the writ petition is dismissed however with no orders as to costs.

[A. M. BADAR, J.]

sam/Mar.16

[S. V. GANGAPURWALA, J.]