

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11640 OF 2016

Shri Balkrishna Jayasing Barge	...	Petitioner
Versus		
State Commission, Maharashtra		
Through the State Election Commissioner,		
And Others	...	Respondents

AND

WRIT PETITION NO.12231 OF 2016

Somnath Mahadeo Mali	...	Petitioner
Versus		
The State of Maharashtra		
through the Department of Urban Development		
And Others	...	Respondents

AND

WRIT PETITION NO.12236 OF 2016

Shri Rajesh Kisan Navale And Another	...	Petitioners
Versus		
The State of Maharashtra		
And Others	...	Respondents

AND

WRIT PETITION NO.12266 OF 2016

Kiran Jagannath Mutrak	...	Petitioner
Versus		
The State of Maharashtra		
And Others	...	Respondents

WITH

WRIT PETITION NO.12267 OF 2016

Yogesh Shivram Borale And Another	...	Petitioners
Versus		
The State Election Commissioner And Others	...	Respondents

AND

WRIT PETITION NO.12374 OF 2016

Gulnaj Salim Shaikh And Others	...	Petitioners
Versus		
State Election Commissioner of		
Maharashtra And Others	...	Respondents

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Mr. S.S. Patwardhan i/b R.M. Pethe for the Petitioner in Writ Petition No.11640 of 2016.

Mr. S.B. Shetye a/w Mrs. D.S. Mondkar for Respondent No.1 in Writ Petition No.11640 of 2016 and for Respondent No.4 in Writ Petition No.12231 of 2016 and Writ Petition No.12236 of 2016, for Respondent No.5 in Writ Petition Nos.12266 of 2016 and 12267 of 2016, FOR Respondent No.1 in Writ Petition No.12374 of 2016.

Mrs. R.A. Salunkhe, AGP for the State in all petitions.

Mr. R.S. Khadapkar for Respondent No.11640 of 2016.

Mr. S.S. Aradhye for the Petitioner in Writ Petition No.12231 of 2016.

Mr. Y.S. Jahagirdar, Senior Advocate a/w Mr. S.M. Sabrad for the Petitioner in Writ Petition No.12236 of 2016.

Mr. Girish R. Agrawal for Respondent No.7 in Writ Petition No.12236 of 2016, Writ Petition No.12266 of 2016 and Writ Petition No.12267 of 2016.

Mr. R.D. Suryavanshi for the Petitioner in Writ Petition Nos.12266 of 2016 and 12267 of 2016 (not on board, taken on board).

Mr. N.R. Bubna for the Petitioner in Writ Petition No.12374 of 2016.

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**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATE : 26 OCTOBER, 2016.

P.C. :

. Heard learned Counsel appearing for the respective Petitioners, learned AGP and Mr. S.B. Shetye for the State.

2 The above petitions pertained to the elections of various Municipal Councils. The State Election Commission has declared Election programme of various Municipal Councils. The grievance of the Petitioners in the above petitions is regarding non transposition of voters from one ward to another, non inclusion of the names of the voters and deletion of names of voters in the voters list of the Municipal Council.

3. Mr. Patwardhan, learned Counsel for the Petitioner took us through the provisions of Representation of the People Act, 1950 and more particularly provisions under Sections 22 and 23 and Rule 26 and 30 of

Registration of Electors Rules, 1960. Mr. Patwardhan, also relied on decision of Apex Court in the case of **PT. Rajan Vs. T.P.M. Sahir (2003) 8 SCC 498**, Mr. Patwardhan, heavily relied upon the provisions of sub-section (3) of Section 23 of the Registration of Electors Rules, 1960 to contend that the names of the voters can be added, transposed or deleted before the last date of nomination. He also submitted that by virtue of Rule 30 of Registration of Electors Rules, 1960, the Petitioners' names either can be included, transposed or deleted in the electoral roll i.e. adopted for the purpose of the Municipal Council Election.

4. It would be advantageous to refer to Sections 11 and 12 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, which read as under:

“11. The electoral roll of the Maharashtra Legislative Assembly prepared under the provisions of the Representation of the Peoples Act, 1950, for the time being in force, on such date as the State Election Commissioner may, by general or special order notify, shall be divided by the State Election Commissioner into different sections corresponding to different wards in the municipal area ; and a printed copy of each section of the roll so divided and authenticated by the State Election Commissioner or an officer authorised by him, shall be the list of voters for each ward.]

12. (1) Every person whose name is in 4[the list of voters] maintained under 5[section 11] shall be qualified to vote, and every person whose name is not in such list shall not be qualified to vote, at the election of a Councillor for the ward to which such list pertains.

(2) The list of voters maintained under 6[section 11] shall be conclusive evidence for the purpose of determining under this section whether a person is qualified or is not qualified to vote, as the case may be, at any election.”

5. In the instant case, the State Election Commission by Notification dated 23 June 2016, adopted electoral roll of the Maharashtra Legislative Assembly as on 10 September 2016 for the purpose of division of the same

in different Sections corresponding to different wards of the municipal area. Admittedly, the names of the Petitioners are not entered in the electoral roll of Maharashtra Legislative Assembly as on 10 September 2016. Hence, by virtue of sub section (1) of section 12 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965, these Petitioners are not qualified to vote for election of Councillor.

6. In *PT. Rajan Vs. T.P.M. Sahir (2003) 8 SCC 498*, the Apex Court upon considering the provisions of sections 22 and 23 of the Representation of the People Act, 1950 and the provisions of Registration of Electors Rules, 1960 held that in amendment, transfer, transposition or deletion made in the electoral roll pursuant or to in furtherance of the direction made by the competent authority in the electoral roll upto the specified date for filing nomination would be valid. It was held that in terms of section 23 (3) what would be invalid will be addition and deletion of names made after the date and time of filing of the nomination. In the said case the Apex Court has not considered the provisions of sections 11 and 12 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. This decision therefore, is not applicable to the facts of the present case.

7. Mr. Jahangir, the learned Senior Advocate for the Petitioner in Writ Petition No. 12236 of 2016, invited our attention to the Apex Court decision in the case of **Rajbala Versus State of Haryana (2016) 2 Supreme Court Cases 445** to contend that the right to vote is a constitutional right. The said proposition cannot be disputed nonetheless it need not be emphasised that this constitutional right can be exercised only within the framework of law. As stated earlier by virtue of sub Section (1) Section 12 of the Maharashtra Municipal Councils, Nagar Panchayats and

Industrial Townships Act, 1965, the petitioners whose names are not entered in the voters list as well as the PEtioners whose names were deleted from the voters list as on the notified date are not qualified to vote and hence, have no right to vote. The Petitioners whose names are not transposed from one ward to another are not precluded from voting as they are qualified to vote from the wards wherein their names are recorded in the electoral roll. Consequently there is not infringement of right to vote.

8. Taking into consideration the totality of the facts and circumstances, we are not inclined to entertain the present petitions. The petitions are dismissed.

(ANUJA PRABHUDESSAI, J.)

[RANJIT MORE, J.]