

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 10775 OF 2017

Narayan Shamrao Ingle
& others

Petitioners

Versus

The State Election Commission
& others

Respondents

Mr. V.D. Salunke, advocate for petitioners.
Mr. A.R. Kale, A.G.P. for respondents 2 to 4.
Mr. S.T. Shelke, advocate for respondent no.1.

**CORAM : R.M.BORDE &
SMT. VIBHA KANKANWADI, JJ.
DATE : 21st SEPTEMBER, 2017**

PER COURT:

1. Petitioners are praying for issuance of directions to respondents to include names of 34 electors in the voters list prepared for the purpose of election to Village Panchayat Kumbharzari, Tq. Jafrabad, Dist. Jalna.

2. According to petitioners, their names did appear in the Legislative Assembly Electoral Roll in the year 2014. However, at subsequent point of time, it was revealed that their names have been wrongfully deleted. Petitioners were desirous of exercising their right to vote at the time of Zilla Parishad election however, since their names did not find place in the voters list prepared for election to Zilla Parishad, they could not exercise their right. Petitioners thereafter took steps for inclusion of their names in the voters list, however, their names were not included. Petitioners have approached this Court with contention that their names have

been deleted from the electoral roll fraudulently and at the instance of objectors. It is further contended that the then Naib Tahsildar Mr. S.T.Khambhat has in illegal manner directed deletion of their names. Petitioners rely upon the report of the Tahsildar, Jafrabad dated 20.01.2017 to substantiate their contention that their names have been illegally deleted from the electoral roll at the instant of Mr. S.T. Khambhat. Petitioners as such contend that their names need to be restored in the Legislative Assembly roll and consequently, shall also be included in the voters list prepared for the purpose of holding elections to the Village Panchayat.

3. Learned counsel for State Election Commission contends that infact the names of petitioners did appear in the electoral roll for the Legislative Assembly constituency during the year 2014 however, during the summary revision conducted after Legislative Assembly election, it was noticed that petitioners are not residing in the village and as such, their names have been deleted. It is the contention of the State Election Commission that the names have been deleted in observance of the procedure prescribed under the rules. It is further contended that the names of petitioners and others were wrongfully included in the voters list. During the subsequent revision in the year 2016 noticing irregularities which appear to have been pointed out by the objector, the names were deleted. The names of 56 electors were not included in the voters list prepared during the revision conducted in the year 2016 and as such, those do not appear in the Legislative Assembly Constituency voters list prepared on 01.01.2016. Respondents contend that it was an inadvertent error on the part of the official to include the names of petitioners and others in the voters list

during the year 2016, which have been rightly deleted from the voters list prepared subsequently. It is the contention of respondent - State Election Commission that the voters list of the concerned Legislative Assembly Constituency as on 01.01.2017 shall be the basis for elections to the Village Panchayat in accordance with section 12 of the Maharashtra Village Panchayat Act. The names of petitioners do not appear in the list of voters prepared for Legislative Assembly as on the notified date i.e. 01.07.2017. Section 12 of the Maharashtra Village Panchayat Act, 1959, provides that the electoral roll of the Maharashtra Legislative Assembly prepared under the provisions of the Representation of the People Act, 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. Sub-section (2) of section 12 provides that the officer designated by the State Election Commission in this behalf shall maintain a list of voters for each such ward or village.

4. Rule 3 of the Maharashtra Village Panchayats Election Rules, 1959 reads thus :

3. Maintenance and custody of lists of votes -

(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.]

5. Relying upon Rule 3 of the Rules of 1959, it is tried to be contended on behalf of petitioners that since petitioners have voted in the year 2014 and their names did appear in the electoral roll prepared for the Legislative Assembly at the relevant time, their names are liable to be maintained in the voters list prepared for the Village Panchayat. The statement made cannot be accepted in view of mandate of section 12 of the Act which provides that the list of voters prepared for Legislative Assembly Constituency in force on such day as the Election Commissioner may by order notify would be the basis for preparation of the electoral roll for the Gram Panchayat. As has been recorded above, the date notified by the State Election Commission is 01.07.2017 and on the aforesaid date, admittedly, the names of the petitioners do not find place in the electoral rolls of the concerned Legislative Assembly constituency.

6. We have not gone into the merits of the contention of

petitioners that their names have fraudulently deleted from the electorol roll of the Legislative Assembly Constituency in the year 2014. Rule 21(A) of the Registration of Electors Rules, 1960 provides for procedure for deletion of names from the voters list which reads thus :

21A. Deletion of names - If it appears to the registration officer at any time before the final publication of the roll that owing to inadvertence or error or otherwise, the names of dead persons or of persons who have ceased to be, or are not, ordinarily residents in the constituency or of persons who are otherwise not entitled to be registered in that roll, have been included ion the roll and that remedial action should be taken under this rule, the registration officer, shall -

- (a) prepare a list of the names and other details of such electors;
- (b) exhibit on the notice board of his office a copy of the list together with a notice as to the time an place at which the question of deletion of these names from the roll will be considered, and also publish the list and the notice in such other manner as he may think fit; and
- (c) after considering any verbal or written objections that may be preferred, decide whether all or any of the names should be deleted from the roll:

Provided that before taking any action under this rule in respect of any person on the ground that he has ceased to be, or is not, ordinarily resident in the constituency, or is otherwise not entitled to be registered in that roll, the registration officer shall make every endeavour to give him a reasonable opportunity

to show cause why the action proposed should not be taken in relation to him.

It has not been demonstrated before us that the procedure prescribed under Rule 21A has been adhered to while deleting names of the petitioners from the electoral roll. We are not considering the validity of the action of deletion of names of petitioners in the instant petition for the reason that there is remedy provided under Rule 23 of the Registration of Electors Rules, 1960 and, it would be open for the petitioners to adopt appropriate remedy for redressal of their grievance.

7. For the reasons recorded above, no interference is called for in the instant petition at this stage. Writ petition is devoid of substance hence stands rejected.

8. Pending civil application, if any, does not survive and stands disposed of.

SMT. VIBHA KANKANWADI
JUDGE

R.M.BORDE
JUDGE

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