

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

WRIT PETITION NO. 2829 OF 2014

Suryakant Shivaji Munde,
Age : 29 Years, Occu. : Advocate,
R/o Kesapuri Camp,
Tq. Majalgaon, Dist. Beed. .. Petitioner

Versus

1. State Election Commission,
Through : State Election
Commissioner, Madam Kama
Road, in front of Mantralaya,
Mumbai.
2. Collector-cum-District Election
Officer, Collector Office, Beed.
3. Tahsildar-cum-Taluka Election
Officer, Tahsil Office, Majalgaon,
Tq. Majalgaon, Dist. Beed.
4. Returning Officer,
Grampanchayat Office,
Kesapuri, Tq. Majalgaon,
Dist. Beed.
5. Gram Panchayat Office, Kesapuri,
Through : Village Extension Officer,
Kesapuri, Tal. Majalgaon, Dist. Beed.
6. Suhas Suresh Sasane,
Age : Major, Occu. : Labour,
R/o Kesapuri Camp,
Tq. Majalgaon, Dist. Beed.

7. Sau. Meera Deepak Wadmare,
Age-Major, Occu. : Household,
R/o. As above.
8. Sau. Vijaya Vijay Holikatti,
Age-Major, Occu. : Household,
R/o. as above.
9. Sau. Aasma Shaikh Atik,
Age-Major, Occu. : Household,
R/o. as above.
10. Sau. Shakilabegum Shaikh Mainuddin,
Age-Major, Occup.:
R/o. As above.
11. Vijay Ramchandra Holikatti,
Age-40 years, Occu. : Labour,
R/o Kesapuri, Tq. Majalgaon,
Dist. Beed. .. Respondents

Shri Sudarshan J. Salunke, Advocate for the Petitioner.

Shri S. T. Shelke, Standing Counsel for Respondent Nos. 1 and 4.

Shri K. D. Mundhe, A.G.P. for Respondent Nos. 2 and 3.

None present for respondent Nos. 5, 7 and 10.

Respondent Nos. 6, 8 and 9 are served.

CORAM : S. V. GANGAPURWALA, J.

Closed for Judgment on : 13.12.2017

Judgment Pronounced on : 12.01.2018.

JUDGMENT :-

. Rule. Rule made returnable forthwith. With the consent of learned counsel for parties, taken up for final hearing.

2. The petitioner contested the election of Kesapuri Village Panchayat and is declared as elected from Ward No. 4 on the reserved seat of Other Backward Class category. The respondent No. 11, voter of the village panchayat Kesapuri from Ward No. 4 assailed the election of the petitioner by filing election petition bearing Election Petition No. 03 of 2013 before the Civil Judge Senior Division, Majalgaon. The respondent No. 11 challenged the election of the petitioner basically on the ground that the name of the petitioner appears in the voters list for the election of village panchayat Govindwadi, Tq. Majalgaon. The election for the village panchayat Govindwadi was conducted on 26.11.2012. The petitioner had cast his vote in the village panchayat election of Govindwadi held on 26.11.2012 and subsequently contested the election for village panchayat Kesapuri held on 06.12.2012 and is elected. The petitioner could not have been voter in both the village panchayats, as such was disqualified from contesting the election as a member of village panchayat Kesapuri. The learned Civil Judge Senior Division, Majalgaon accepted the contention of the respondent No. 11 and set aside the election of present petitioner as a member of village panchayat Kesapuri under his judgment and order dated 10.03.2014 in Election Petition No. 03 of 2013. The petitioner has assailed the said judgment in the present writ petition.

3. Mr. S. J. Salunke, the learned advocate for the petitioner submits that, neither the Maharashtra Village Panchayat Act,

1958 (erstwhile Bombay Village Panchayat Act), (hereinafter referred to as "Act of 1958") nor Representation of Peoples Act 1950 and 1951 disqualifies a person to contest election on the ground that the name of such person appears in the voters list of two different village panchayats. The learned advocate relies on the judgment of the Apex Court in a case of **Shyamdeo Pd. Singh Vs. Nawal Kishor Yadav** reported in **AIR 2000 SC 3000**, so also another judgment of the Apex Court in a case of **Baburao Vs. Manikrao and another** reported in **AIR 1999 SC 2028(1)**. The learned advocate also relies on the judgment of the Division Bench of this Court in a case of **Ramdas Sheoramji Vs. Panjab Govindraoji and others** reported in **AIR 1970 Bombay 96**.

4. Mr. V. D. Salunke, the learned advocate for the respondent No. 11 strenuously submits that, Sec. 16 of the Representation of Peoples Act, 1950 (for short "Act of 1950") lays down disqualification for registration in an electoral roll and Sec. 17 of the Act of 1950 specifically provides that no person shall be entitled to be registered in the electoral roll for more than one constituency. The learned advocate also refers to Sec. 62 of the Representation of Peoples Act, 1951 (for short "Act of 1951") and more particularly Sub Sec. 2 and 3 to submit that no person shall vote at an election in any constituency if he is subject to any of the disqualification referred to in Sec. 16 of the Act of 1950 and further no person shall vote at an general election in more than

one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void. The learned counsel further submits that, even sub Sec. 4 of Sec. 62 of the Act of 1951 precludes a person from voting in the same constituency more than once notwithstanding that his name may have been registered in the electoral roll for that constituency for more than once, and if he does so vote, all his votes in that constituency shall be void. The learned advocate to buttress his submissions relies on the judgment of the Apex Court in a case of Chief Election Commissioner Vs. Jan Chaukidar (Peoples Watch) and others reported in 2013(5) **Bom.C.R. 772.**

5. Mr. V. D. Salunke, the learned advocate further submits that, Sec. 13 of the Act of 1958 lays down that every person is qualified to vote unless disqualified under this Act or any other law for the time being in force. "Or any law for the time being in force" would include the Representation of Peoples Act and a person whose name appears in the voters list of two different village panchayats and having exercised his right to vote in the election of the other gram panchayat would be disqualified to contest the election of any other gram panchayat. The petitioner has exercised his right to vote in village panchayat Govindwadi a month back and thereafter was disqualified to contest the election of village panchayat Kesapuri. Sec. 13 of the Act of 1958 will have to be read in consonance with the provisions of Sec. 62

of the Act of 1951 and Sec. 17 of the Act of 1950. The petitioner was disqualified from voting at an election of village panchayat Kesapuri, as he had already exercised his right to vote at the election of village panchayat Govindwadi. The petitioner *inter alia* was disqualified to contest the election. The learned Trial Judge while allowing the election petition filed by the respondent No. 11 has rightly considered this aspect and allowed the election petition setting aside the election of the petitioner. The petitioner would not be an elector within the meaning of Sec. 2(e) of the Act of 1951 as he is subject to disqualification mentioned in Sec. 16 of the Act of 1950.

6. I have also heard Mr. S. T. Shelke, the learned standing counsel for respondent Nos. 1 and 4 and the learned Assistant Government Pleader for respondent Nos. 2 and 3.

7. I have considered the contentions canvassed by the learned counsel for respective parties.

8. The gravamen of the election petition was that, as the petitioner had exercised his right to vote in the election of village panchayat Govindwadi, he was disqualified to contest the election of village panchayat Kesapuri, though his name appeared in the voters list of village panchayat Kesapuri and Govindwadi.

9. The right to elect, though it is fundamental to democracy, is neither a fundamental right nor a common law right. It is purely a statutory right. So is the right to be elected. So is the right to dispute an election. Dehors the statute, there is no right to elect, no right to be elected and no right to dispute an election. They are statutory creations and therefore, subject to statutory limitation. A election petition is not an action at common law nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity always remain strangers to election law. In the trial of election dispute, Court is put in a straight jacket.

10. The Maharashtra Village Panchayat Act, 1958 (for short "Act of 1958") is a complete code in itself and lays down the entire scheme for election process commencing from issuance of notification, calling upon election of member or members and right upto the final resolution of dispute, if, any concerning election. The elections of village panchayat have to take place in accordance with the provisions of Act of 1958 and rules framed thereunder.

11. Sec. 11 of the Act of 1958 provides for an election to constitute a panchayat. Sec. 12 of the Act of 1958 deals with list

of voters. Sec. 12 of the Act of 1958 mandates that the electoral roll of the Maharashtra Legislative Assembly prepared under the provisions of the Act of 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 voters list prepared for the election of the Maharashtra Legislative Assembly and in force on the relevant date is the voters list for such ward or a village within its territorial jurisdiction. If, the name of the person of that village finds place in the voters list or the electoral roll of the constituency of the Assembly, then his name is to be included in the voters list for the election of members of the village panchayat.

12. Sec. 13 of the Act of 1958 prescribes that 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 of the village and be qualified to be elected for any ward of the village. Sec. 13-A of the Act of 1958 prescribes that, if a person is elected to more than one seat in a village panchayat, then unless, within the prescribed time he resigns all but one of the seats by notice in writing signed by him and addressed to the State Election

Commission or any other authorized officer by it in this behalf, all the seats shall become vacant. Sec. 14 and 14-A of the Act of 1958 prescribes the disqualification for a person to be a member of panchayat and Sec. 15 of the Act of 1958 prescribes the remedy of challenging the election of a member of panchayat by filing a election petition before the Civil Judge Junior Division.

13. Sec. 62 of the Act of 1951 provides for right to vote. In the instant matter sub section 2 to 4 of Sec. 62 of the Act of 1951 are being pressed into service by the Respondent No. 11. Said sub sections put embargo on the right of a person to vote at an election, if he is subject to any disqualification referred to in section 16 of the Act of 1950, so also he is precluded from voting at a general election in more than one constituency and also in the same constituency for more than once. If he does so vote into two different constituencies or for more than one in the same constituency his votes in all the constituencies shall be void. Section 16 of the Act of 1950 deals with disqualifications for registration in an electoral roll that may not be much relevant. Section 17 of the Act of 1950 provides that no person shall be entitled to be registered in the electoral roll for more than one constituency.

14. As observed supra Bombay Village Panchayat Act is a complete code in itself. The elections of the members of the Village Panchayat would be governed by the provisions of the Act

of 1958. The provisions of the Representation of Peoples Act can not be imported while considering challenge to the election of a member of Village Panchayat. The provisions of the Representation of Peoples Act 1950 and 1951 cannot be read into the provisions of the Village Panchayats Act in so far as the Act of 1958 does not provide.

15. The Division Bench of this court in the case of Ramdas Sheoramji Vs. Panjab Govindraoji and others (supra) has observed thus:

10. The question, therefore, now is whether Bainabai Kanerkar whose name is included in the list of overts for ward No. 1 as well as ward No. 4 having voted in both the Wards, here votes are liable to be excluded from both the wards being void. For this, we do not find any specific provision either in the Bombay Village Panchayats Act or in the rules framed under the said Act just as, there is a specific provision in that respect in the Representation of the People Act, 1951 or the Maharashtra Municipalities Act, 1965. In the absence of a specific provision to that effect, the votes given by Bainabai in ward No. 1 as well as in ward No. 4 cannot be excluded as she is not otherwise disqualified and in fact she is a qualified voter as contemplated by Section 13(1) of the Bombay Village Panchayats Act.

11. It is contended that the Representation of the People Act makes a provision for such a contingency and that should be applied to the elections of the Village Panchayats under the Bombay village Panchayats Act also. The provisions of the Representation of the People Act are not made applicable to the elections of the Village Panchayats under the Bombay Act

and it is only in certain respects that the provisions of the Representation of the People Act have been referred to in the Bombay Village Panchayats Act. For example, the provisions of the Representation of the People Act could be brought in by reference for the purposes of Sec. 12 and Section 13 of the Bombay Village Panchayats Act. The said Act has specifically been referred to in Section 12 of the Bombay Village Panchayats Act and also would be included in the term 'any other law for the time being in force' under Section 13(1) of the Bombay Village Panchayats Act. However, the whole of the Representation of the People Act cannot be made applicable to the elections under the Bombay Village Panchayats Act. It will not therefore, avail the respondent No. 1 to say that the provisions of Section 62(3) of the Representation of the People Act, 1951, should be read into the Bombay Village Panchayats Act and on its basis the votes of Bainabai should be excluded.

12. It has to be noted that a specific provision for this purpose has been made in the Representation of the People Act without which the Legislature must have thought that the votes of such a voter voting in more than one constituency could not be excluded. A similar provision has been made in a Local Act, namely the Maharashtra Municipalities Act, 1965, on the lines of Section 62(3) of the Representation of the People Act. There also the need must have been felt by the Legislature that without making such a provision the votes of such a voter could not be excluded. If that was the intention of the Legislature so far the Village Panchayat elections are concerned, such a provision also ought to have found place in the Village Panchayats Act; but there is no such provision either in the Act or the rules framed thereunder. The effect of this would naturally be that a person whose name appears in the voters' list for more than one ward and who is otherwise qualified to vote will be entitled to vote in more than one ward, since

there is no such prohibition laid down in the Act. Mr. Deshpande, the learned counsel for the respondent No. 1, however, contends that such a prohibition must be implied in the Act from the various rules to which he has drawn our attention. He referred to the provisions of Sec. 13-A under which a person cannot be elected to more than one seat and from this he wants us to infer that since a person could not hold more than one seat in the Village Panchayat, he also could not be a voter for more than one ward in a Village Panchayat, that is, he could not vote for two candidates from two different wards. It is also urged that except in the case of plural constituency, each voter must have one vote in the whole of the Village Panchayat and cannot have two votes. We cannot spell out any such result from the provisions of Sec. 13-A of the Act.

16. The afore-referred judgment of the Division Bench of this Court has held that Act of 1958 does not prohibit a person from voting in two wards of the Village Panchayat and the votes are not liable to be excluded. The Apex Court in a case of **Shyamdeo Pd. Singh Vs. Nawal Kishor Yadav** (supra) has observed that, there is distinction between a disqualification and not being qualified. The Apex Court in a case of **Baburao Vs. Manikrao and another** (supra) considered provisions of Representation of Peoples Act 1950 and 1951 and has held thus :

15. There is nothing to suggest in Section 16 of the 1950 Act that if a person's name finds place in more than one constituency that would automatically entail disqualification from contesting in any one of the constituencies.

17. It has been explicitly held by the Apex Court that, if a

persons name finds place in more than one constituency that would not automatically entail disqualification from contesting election of any one of the constituencies.

18. Only because the petitioner had cast his vote in Village Panchayat, Govindwadi, that would not in itself be a disqualification for the petitioner to contest the election of Village Panchayat Kesapuri. More particularly as his name finds place in the voters list of Kesapuri. The Act nowhere provides for such disqualification.

19. In a case of Chief Election Commissioner Vs. Jan Chaukidar (Peoples Watch) and others (supra) relied by the learned advocate for the Respondent No. 11, the Court was considering disqualification on the ground that person was confined in prison. In that context the Apex Court observed that a person has no right to vote by virtue of provisions of sub section 5 of section 62 of the Act of 1951 and is not an elector and is therefore is not qualified to contest the election. Sub section 5 of section 62 of Act of 1951 precisely deals with a contingency that if a person is confined in prison whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police, such person is not entitled to vote at any election, *inter alia* would be not entitled to contest the election. whereas the Apex Court in a case of Baburao Vs. Manikrao and another (supra) has very categorically observed that, even if the

entry of name of a person appears in the electoral roll of two constituencies, that in itself does not entail disqualification.

20. In the present matter, the provisions of the Maharashtra Village Panchayats Act, 1958 does not prescribe for disqualification to contest the election if the name of the person appears in the voters lists of two Village Panchayats and has exercised his right of vote in the election of another Village Panchayat. It is not the contention of Respondent No. 11 that the petitioner was otherwise disqualified on the ground as enumerated in Section 14 and 14A of the Act of 1958.

20. In the light of the above the impugned judgment cannot be sustained and is hereby set aside. Rule accordingly is made absolute in above terms.

Sd/-

[S. V. GANGAPURWALA, J.]