

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

933 WRIT PETITION NO.1724 OF 2019

Mr. Vilas s/o Pandit Patil,
Age : 40 years, Occup. Business,
R/o. Tilak Nagar, Jalgaon Road, Sillod,
Tq. : Sillod, District Aurangabad.

... **PETITIONER**

VERSUS

1. The State Election Commissioner,
Maharashtra State.
New Administrative Building
In front of Mantralaya, Madam Kama
Road, Hutatma Rajguru Chowk, Mumbai.
2. Electoral Registration Officer,
Aurangbad, District Aurangabad.
3. Assistant Electoral Registering
Officer/Tahsildar, Sillod,
Tq. Sillod, District Aurangabad.
4. Returning Officer/Tahsildar, for
Sillod Municipal Council, Sillod,
Tq. Sillod, District Aurangabad.

... **RESPONDENTS**

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Advocate for Petitioners : Mr. V. D. Sapkal
AGP for Respondent Nos. 2, 3 and 4 : Mrs. R. P. Gour
Advocate for Respondent No. 1 : Mr. Kadethankar

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**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 7th February, 2019

ORAL ORDER :

1. Heard Mr. V. D. Sapkal the learned counsel appearing for
the petitioner at length. Considering the urgency claimed in the

petition, the petition is taken up for hearing/disposal at the stage of admission. It may not be necessary for us to refer the facts in detail, suffice it to say that the grievance of the petitioner is in respect of deletion of his name in the voters list.

2. The learned counsel Mr. Sapkal by inviting our attention to a draft Electoral Roll, published for the year 2019, a copy of which is placed on record submitted that in the list, the name of the petitioner finds place at Sr. No. 202. There is also reference to the other family members of the petitioner, such as father of the petitioner at Sr. No. 201, wife of the petitioner at Sr. No. 203, brother of the petitioner at Sr. No. 204 and sister in law of the petitioner at Sr. No. 205. The petitioner was carrying a justifiable expectation of finding his name in the voters list finalized for the Sillod Legislative Assembly Constituency. The voters list was published on 31.01.2019 and the petitioner was surprised to see that in the said voters list though the petitioner was placed at the same serial i.e. 202, the entry was recorded against the petitioner as deleted. The petitioner was then further surprised to see that except this entry against the petitioner, of deletion all the other entries of the family members were intact. The same thing happened in the publication of the Draft Voters List for the Sillod Municipal Council for the Year 2019. The petitioner, being aggrieved by this act immediately approached the respondent No. 3 -

the Assistant Electoral Registering Officer/Tahsildar Sillod with a request to take immediate steps and include his name in the voters list.

3. True it is, that the petitioner in the application suspected foul-play and a statement is made that the deletion of the name of the petitioner is a purposeful act. The petitioner also immediately submitted an on line application on the National Voters Service Portal as it was suggested to him. The copy of the application submitted by way of online process is also placed on record at Exhibit-F. As there was no action on the application submitted by the petitioner, the petitioner was left with no choice but to approach this Court by filing the present Writ Petition. As the urgency was claimed in the petition, we have called upon the learned Assistant Government Pleader to seek instructions immediately.

4. The learned Assistant Government Pleader appears for the Respondent Nos. 2, 3 and 4 and Mr. Kadethankar appears for respondent No. 1.

5. The learned AGP placed on record a communication received by her through the respondent No. 2, to the Collector and District Election Officer as well a communication to the respondent No.1 dated 04.02.2019. These communications are taken on record and marked as Exh. 1 collectively for identification. Perusal of the

communication to the District Collector and District Election Officer, Aurangabad shows that for preparation and finalization of voters list, the assistance was provided by a private entity, namely, J.M.K.Infotec. It is then stated that the petitioner had raised certain objection and that objection was forwarded to the private entity by way of online data entry process. It is further stated that the operator committed an error in the data entry and instead of taking steps in view of the objections of the petitioner, inadvertently, the entry against the petitioner was recorded as deleted. It is also submitted further that as large number of applications/objections were received by the office, by online process as well as by offline process and on the day when the entry was to be recorded, the command of the website was operating in a excessive slow pace. There were also certain technical problems in command. As this fact was brought to the notice of the Election Commission, the Election Commission as an immediate step closed the earlier system and made available new system with a command. Thus, it took some time in completing the process. Then the voters list was submitted for assessment scrutiny/micro scrutiny. It is further stated in the communication that while undertaking this exercise, the center level officer, one Smt Dudhe erred in verifying the voters list and without taking proper care and caution, the list was submitted for finalization. The another officer who was also working as Supervisor

Shri G. D. Shaikh also committed the same mistake and negligence in duty. It is stated in the communication that immediate action is taken against Smt. Dudhe of her suspension and the Departmental Inquiry is initiated against Mr. Shaikh.

6. It is also stated that the petitioner is desirous of contesting the election and he has submitted the form, which in turn is forwarded to the NVSU Portal with the positive recommendation. The respondent No.2 requested the District Election Officer to include the name of the petitioner in the voters list. All these facts are reiterated in the communication forwarded to respondent No.1 – the State Election Commission. On the backdrop of these communications, the learned AGP submitted that the authority for correction of entries or inclusion of name of petitioner in electoral roll vests with respondent No. 1 – the State Election Commission. Learned counsel Mr. Sapkal, at this juncture, submitted that respondent No. 3 who is Assistant Electoral Officer/Tahsildar, Sillod himself possesses the requisite authority and powers. Mr. Sapkal invited our attention to the relevant provisions of the Representation of People Act, 1950. Firstly, Mr Sapkal invited our attention to Section 13-B, wherein, reference is made to the Electoral Registration Officer. It is a submission of Mr. Sapkal, learned counsel for the petitioner, that the conjoint reading of clause 1 and 2 of Section 13-B makes it amply clear that the power and authority vests with the

Electoral Registration Officer for preparation and revision of the Electoral Roll for the constituency. Then he also referred to Section 13-C and Section 22 in support of his submission. Section 22 of the Act reads thus:

[Sec. 22. Correction of entries in electoral rolls. —If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency—

(a) is erroneous or defective in any particular,

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll, the electoral registration officer shall, subject to such general or special direction, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry [after proper verification of facts in such manner as may be prescribed]:

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him. [after proper verification of facts in such manner as may be prescribed].

7. Mr. Sapkal further submitted that the Section 22 leaves no scope to state that both the contingencies are taken into consideration, such as an application made to the Electoral Registration Officer or a correction on the motion of the officer himself, if an entry in the electoral roll is erroneous or defective in any particulars. It was also the submission of Mr. Sapkal that deletion of the name of the petitioner from the voters list is an act which can safely be said either an erroneous act or defective act. Thus, Mr. Sapkal also placed a heavy reliance on the order of this Court to submit that in identical circumstances this Court affirmed the position of the law that the Assistant Electoral Registration Officer is the competent authority possessing the requisite powers to correct the electoral rolls. It may be useful for our purpose to refer to certain observations, as we are guided by the decision of this Court on which Mr. Sapkal has placed reliance. It would be useful for our purpose to refer to certain observations of the Division Bench of this Court in the Writ Petition No. 4359/2017, which read thus:

2. The petitioner is praying for issuance of directions to respondent no. 6 to correct the voters list and include the name of the petitioner in the voters list for the elections of Newasa Nagar Panchayat in view of the directions issued by the Electoral Registering Officer on 21.1.2017.

4. The petitioner, as such, moved an application raising objection within the stipulated period for correction of the

mistake and inclusion of her name in Block No.41.

7. In the instant matter, the name of petitioner does appear in the electoral rolls of Newasa Legislative Assembly Constituency and the name also does appear prior to the notified date prescribed by the State Election Commissioner, and as such, it was mandatory to incorporate her name in the voters list prepared for the elections of Newasa Nagar Panchayat.

8. Respondent no.6 has erroneously turned down the objection raised by the petitioner and has committed material irregularity. The order passed by respondent no. 6 rejecting the request of the petitioner to incorporate her name in the voters list deserves to be quashed and set aside and same is accordingly quashed and set aside. Respondent no. 6 is directed to include the name of the petitioner in the electoral rolls for the elections to Newasa Nagar Panchayat forthwith.

8. Thus, we are unable to accept the submission of the learned AGP and we find substance and merit in the submission of Mr. Sapkal that it is the Assistant Electoral Registering Officer who can take appropriate steps, as the power and authority vests with him to correct the erroneous entries and accordingly correct the voters list by inclusion of name of the petitioner. Accordingly, we allow the petition in terms of prayer clause B and C. We further direct respondent Nos. 2 to 4 to take appropriate steps in compliance of the prayer clause B and C as expeditiously as possible and not later than 10.02.2019.

9. With aforesaid directions the petition is disposed of.

10. Authenticated copy be supplied to the learned counsel appearing for the respondent No. 1 as well as the learned AGP for respondent Nos. 2, 3 and 4.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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