

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

WRIT PETITION NO. 1439 OF 2020

Varsha Rohan Sanap

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Yuvraj V. Kakde, Advocate for the Petitioner.

Shri A. R. Kale, A.G.P. for the Respondent No. 1.

Shri A. B. Kadethankar, Advocate for Respondent Nos. 2, 3 and 5.

**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 21ST JANUARY, 2020.

FINAL ORDER :

. Mr. Kakade, the learned counsel for the petitioner submits that, the name of the petitioner was included in the voters list meant for Legislative Assembly Elections. The name of the petitioner is appearing at Sr. No. 931 in the voters list of Legislative Assembly Constituency. The petitioner is desirous to contest the by-election of the Ahmednagar Municipal Corporation. The respondent No. 5/Returning Officer asked for explanation from the petitioner about the name of the petitioner not appearing in the voters list.

2. The learned counsel further submits that, the name of the petitioner did not appear in the voters list for the election of the respondent No. 4/Corporation. The petitioner was under

impression that as her name is already recorded in the voters list of Legislative Assembly Constituency elections, the same would axiomatically operate. The learned counsel submits that, Sec. 23 read with Sec. 27(1)(e) of the Representation of Peoples Act, 1950 permits correction in the electoral roll till the last date of filing of nomination. The last date for filing of nomination is today. The respondents ought to have considered the claim of the petitioner.

3. Mr. Kadethankar, the learned counsel for respondent Nos. 2, 3 and 5 submits that, the Election Commission under the notification dated 19th December, 2019 had declared 04th October, 2019 as cut off date i. e. the names of the persons appearing in the electoral rolls of the Legislative Assembly Elections as on 04th October, 2019 only would be considered as valid voters for the election of respondent No. 4/Corporation. The name of the petitioner is recorded in the Legislative Assembly Elections voters list after 04th October, 2019. The petitioner had not raised objection to the provisional voters list published. Thereafter final voters list is published on 11.01.2020. The petitioner did not raise objection to the provisional voters list, nor to the final voters list. The learned counsel relies on the judgment of the Division Bench of this Court in a case of Savio O. Fernandes and others Vs. State Election Commission and others reported in *1996 Bombay 343*, so also another judgment of the Division Bench of this Court in a case of Azar Jahangirdar Shaikh Vs. The State Election Commission and others reported in *2014(2) All MR 637* and the judgment in a case of Sumit Santosh Sahadev (Varma) Vs. Electoral Registration Officer and others reported in *2014(1) All M.R. 56*.

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

5. It is not disputed that the name of the petitioner does not appear in the provisional voters list published by the respondents for the by-election of the Ahmednagar Municipal Corporation. The petitioner did not raise objection to the provisional voters list. The name of the petitioner does not appear in the final voters list. Sec. 07-A of the Maharashtra Provincial Municipal Corporations Act provides that the Assembly roll 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 the different wards in the City. The Election Commissioner has notified 04th October, 2019 as the cut off date. It is admitted fact that, upto 04th October, 2019, the name of the petitioner did not appear in the electoral roll of the State Legislative Assembly Elections.

6. It is only if the name of the petitioner appears in the voters list, then the petitioner is entitled and empowered to contest the election. Section 23(3) read with Sec. 27 of the Representation of Peoples Act, 1950 as relied by the petitioner has been considered at length in the case of **Savio O. Fernandes and others Vs. State Election Commission and others**, (supra). The similar contention as raised by the petitioner is negatived in the said judgment. The judgment in a case of **Savio O. Fernandes and others Vs. State Election Commission and others**, is further considered by the Division Bench

of this Court in a case of Azar Jahangirdar Shaikh Vs. The State Election Commission and others and in a case of Sumit Santosh Sahadev (Varma) Vs. Electoral Registration Officer and others (supra). In the light of that, it would not be possible to accept the contention of the petitioner.

7. Even if the contention of the petitioner that, voters list can be corrected/amended till the last date of filing of nomination is accepted, still the petitioner would not succeed, as on the last date of filing of nomination, the name of the petitioner is not included in the voters list. The voters list is not amended as on the last date of filing of nomination. The voters list for the election of the respondent No. 4/Corporation is not amended, nor the name of the petitioner is included in the voters list. As such, the petitioner is not entitled to contest the election. It is only the persons whose names are appearing in the voters list would be entitled and eligible to contest the election.

8. In the light of the above, no case for interference is made out, as such, the writ petition is dismissed. No costs.

9. The parties to act on authenticate copy.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

