

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

WRIT PETITION NO. 3648 OF 2020

Vrushali Sunil Mirkar

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Devdatt P. Palodkar, Advocate for the Petitioner.

Mr. D. R. Kale, A. G. P. for Respondent No. 1.

Mr. A. M. Sharma, Advocate for Respondent No. 2.

Mr. A. B. Kadethankar, Advocate for Respondent No. 3.

Mr. S. B. Deshpande, Advocate for Respondent Nos. 4 and 5.

**WITH
WRIT PETITION NO. 3653 OF 2020**

Khan Amer Anwar

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Devdatt P. Palodkar, Advocate for the Petitioner.

Mr. D. R. Kale, A. G. P. for Respondent No. 1.

Mr. A. M. Sharma, Advocate for Respondent No. 2.

Mr. A. B. Kadethankar, Advocate for Respondent No. 3.

Mr. S. B. Deshpande, Advocate for Respondent Nos. 4 and 5.

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

DATED : 13th MARCH, 2020.

PER COURT:-

. In both these petitions the petitioners are seeking directions against the respondents to consider 13.03.2020 as cutoff date for the

purpose of preparing municipal voters roll for the ensuing election of the Aurangabad Municipal Corporation.

2. Mr. Palodkar, learned counsel for the petitioners submits that as per Section 7 (A) of the Maharashtra Municipal Corporations Act (for short 'Act'), the assembly roll for the time in force on such date as the State Election Commissioner may, by general or special order notify is required to be considered for the purpose of municipal election roll. The assembly roll considering 01.01.2020 as the qualifying date has not been published by the Election Commission of India. The same would be published on 13.03.2020. The State Election Commission declared programme of the preparation of voters list, wherein the cutoff date to adopt assembly roll is declared as 31.01.2020. The voters list of the year 2020 is not available. The last voters list is of 04.10.2019 prepared for the assembly election of Maharashtra. Thereafter, thousands of voters have been registered. These voters would be denuded of their right of franchise. The petitioners approached the State Election Commission and pointed out that the updated assembly roll published by the Election Commission of India be considered for the purpose of preparation of municipal voters roll. The representation of the petitioners is not considered. The learned counsel to buttress his submissions that the respondents can still consider the draft electoral

roll published by the election commission of India on 13.03.2020 relies on the electoral voters list prepared at the time of general elections of Municipal Council, Sillod.

3. Mr. Kadethankar, learned counsel for the State Election Commission submits that the programme for holding the election of the Aurangabad Municipal Corporation is declared and date 31.01.2020 is the cutoff date. The draft voters list is published. The objections are to be submitted up to 16.03.2020 and the final voters list would be published on 26.03.2020. The elections are required to be held before the term of the corporation comes to an end. The term cannot be extended.

4. We had asked Mr. Sharma, learned counsel for the Election Commission of India the period within which the Election Commission of India would transfer the data of the electoral roll to the State Election Commission. The learned counsel upon instructions of the Joint Chief Executive Officer Mr. Walvi submits that if the request is made by the State Election Commission today then by 17.03.2020 the Election Commission of India would transfer the data of the draft electoral roll / photo electoral roll to the State Election Commission.

5. We have asked Mr. Kadethankar, learned counsel for the State

Election Commission as to whether it would not be possible to publish the supplement voters list and without disturbing the programme of publishing the final voters list the objection to the supplement voters list if published can be considered and finalized.

6. Mr. Kadethankar, learned counsel for the State Election Commission upon instructions submits that it would not be possible for the State Election Commission to consider the request of the petitioners. The cutoff date of 31.01.2020 was fixed by the State Election Commission and draft roll would be published by the Election Commission of India on 13.03.2020. After the draft electoral roll objections are invited by the Election Commission of India up to 15.04.2020 and the final publication of the electoral roll would be on 15.05.2020. If the names are taken from the draft electoral roll further objections will have to be considered and up to 26.03.2020 it would not be possible to conclude the exercise.

7. We do appreciate the anxiety of the petitioners that maximum number of valid voters should be allowed to participate in the election and exercise the right of franchise. The purpose is to see that the valid voters are not left out. The term of the corporation comes to an end on 28.04.2020. The elections are required to be held before the said date.

As per the programme for the voters list the objections are invited to the draft voters list up to 16.03.2020 and the final voters list is to be published on 26.03.2020. We understand that hardly 12 days remain before the publication of the final voters list.

8. The State Election Commission has power to fix the cutoff date as provided under Section 7 (A) of the Act. We also understand that the finalization of the voters list would involve a massive administrative work. No scheme and mechanism is provided for preparation of a separate voters list for Municipal Corporation Elections. It is also well settled that any scheme for inclusion or to raise an objection as to inclusion or non inclusion will have to be in relation to the assembly elections only.

9. Considering the aforesaid, it would be within the wisdom of the State Election Commission to consider about the pros and cons of the cutoff date.

10. The petitioners are relying on the voters list published for Sillod Municipal Council elections. In the said case the elections were to be held on 28.02.2019. The cutoff date was fixed as 11.01.2019. Subsequently, under communication dated 15.01.2019 the cutoff date was extended to 31.01.2019. Of course, the same may not be a

precedent.

11. It is for the State Election Commission to consider whether draft electoral roll published on 13.03.2020 by the Election Commission of India can be considered by the State Election Commission and the exercise of publishing the supplement voters list on the basis of the draft electoral roll published by the Election Commission of India on 13.03.2020 can be undertaken. The State Election Commission may consider the feasibility and viability of the same.

12. Writ petitions accordingly are disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.