

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3606 OF 2020

PETITIONER :- Firoz Khan Daddu Khan Pathan,
aged about 48 years, Occup. Agriculturist,
R/o.Tohogaon,Tehsil Gondpipri and dist.
Chandrapur.

...VERSUS...

RESPONDENTS :-

- 1) State Election Commission,
through its Commissioner, New
Administrative Building,
Opp. Mantralaya, Madam Kama Road,
Hutatma Rajguru Chowk, Mumbai-
400032.
- 2) Divisional Commissioner, Nagpur.
- 3) Collector Chandrapur, Chandrapur.
- 4) Tehsildar, Gondpipri, Tehsil Gondpipri,
Dist.Chandrapur.
- 5) Booth Level Officer (BLO), At Post
Tohogaon, Tehsil Gondpipri and
Dist.Chandrapur.

S.O.Ahmed, counsel for the petitioner.
Mr.J.B.Kasat, counsel for respondent no.1.
Mr.N.R.Patil AGP for respondent nos.2 to 4.

**CORAM : SUNIL B.SHUKRE &
AVINASH G. GHAROTE, JJ.**

DATE : 22.12.2020.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. We have already stated in detail the facts of this case and the nature of the grievance raised by the petitioner in this petition in our order dated 21.12.2020 and therefore, same are not reproduced again. The only question now would be whether the name of the petitioner could have been included in the voters' list, which was relevant on 25.09.2020, in terms of the order dated 14.12.2020. According to the learned counsel for the petitioner, it must be included for the reason that it was by mistake that the name of the petitioner was deleted from the voters' list, which was published on 25.09.2020.

4. Shri.J.B.Kasat, learned counsel for respondent no.1 submits that there are separate procedures given for revision of the voters' list prepared for Parliamentary and Assembly Elections

under Sections 22 and 23 of the Representation of the People Act, 1950 read with Rule 13 of the Registration of Electors Rules, 1960. He submits that it would be only after following the prescribed procedure that deletion or addition of the names in the electoral roll prepared for the Parliamentary and State Assembly Elections can be done. He further submits that at the same time, Section 12 of the Maharashtra Village Panchayats Act, is also relevant and it lays down that it is only the electoral roll of the Maharashtra Legislative Assembly prepared under the provisions of the Representation of the People Act, 1950 and enforced on such date as the State Election Commissioner may by order notify in this behalf for such part of the Constituency of the Assembly and is included in a ward or a village which will be the valid list of voters' for such ward or village. In other words, he further submits that it is only the voters' list published for the Parliamentary or State Assembly Elections and valid on the notified date would be the voters' list for the purposes of Gram Panchayat Elections. He points out that in the present case, such voters' list of Assembly was notified to be the voters' list for Gram Panchayat Elections by the State Election Commission on

25.09.2020 and therefore, it was necessary that name of the petitioner appeared in this list which was the list notified on 25.09.2020, but it was not there. Therefore, according to him, there is no merit in the present petition. Shri.N.R.Patil, learned AGP adopts the argument of learned counsel Shri. J.B.Kasat.

5. We have gone through the provisions of section 22 and 23 of the Representation of the People Act, 1950 and also of Rule 13 of the Registration of Electors Rules, 1960. This provision shows that revision in the voters list prepared for Parliamentary and State Assembly elections, is possible only in accordance with the prescriptions made therein. But, there is one more relevant section, which is section 12 of the Maharashtra Village Panchayat Act, which needs to be considered insofar as the gram panchayat elections are concerned. Section 12 of the Maharashtra Village Panchayats Act reads as under:-

“12. List of voters – (1) The electoral roll of the [Maharashtra Legislative Assembly] prepared under the provisions of the Representation of the People Act, 1950 (XLII of 1950), and in force on such day as the [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.

(2) An officer designated by the [State Election Commission] in this behalf shall maintain a list of voters for each such ward or village.”

6. It would be clear from the above referred section that for the purposes of gram panchayat elections, it is only that electoral roll of the Maharashtra Legislative Assembly, which has been notified and published for the purposes of gram panchayat elections on a particular date by the State Elections Commissioner, which is valid. In the present case, the electoral roll that was notified for the purposes of gram panchayat election by State Election Commissioner, was the electoral roll as it existed on 25.09.2020. In this roll, name of the petitioner was shown as deleted. In other words, the position that obtained on 25.09.2020 in the electoral roll for the Maharashtra State Assembly was that name of the petitioner was not included. That would mean that for the purposes of the gram panchayat election, the name of the petitioner could not be included in the voters list after 25.09.2020 and even if it is to be included in terms of the provisions contained

in Section 23 of the Representation of the People Act, 1950 read with Rule 13 of the Registration of Electors Rules, 1960, it would not be considered as valid for the purposes of the present gram panchayat elections. This is also the view taken by the Division Bench of this Court in the case of *Shri Savio O. Fernandes and another Vs. State Election Commissioner and others reported in AIR 1996 Bombay 343*. In that case, similar issue was involved but, provision of law was of Section 11, Goa Municipalities Act. This Section prescribes that the electoral roll for the Legislative Assembly for the time being in force on such date as the State Election Commissioner may by general or special order notify would be valid for the purposes of Municipal Elections. This provision of the law is in *pari materia* with section 12 of the Maharashtra Village Panchayats Act with the difference between municipal and gram panchayat elections. The Division Bench also dealt with the challenge to section 11 of the Goa Municipalities Act on the ground of it being ultra vires the provisions contained in the Representation of the People Act, 1950. The Division Bench rejected the challenge and also found that very little discretion has been conferred under Section 11 for making changes to the

electoral roll. The relevant observations of the Division Bench, as they appeared in para 37 of the case cited supra, are reproduced as under:

“37. The contention that as Section 11 of the Act does not contain any corrective machinery, that provision is ultra vires, cannot be accepted. The reason is that it would not be incumbent upon any legislature to provide such machinery twice over again. Under the provisions of the 1950 Act, such machinery has been provided in Sections 22 and 23 of the Act. After following that machinery, an electoral roll was finalised, and such finalised electoral roll formed the basis of voters list prepared by the authorities who are in charge of the conduct of the Municipal elections. The fact that Section 11 of the Act does not provide for a machinery for correcting the voters list will not render that section ultra vires. What Section 11 contemplates is that the electoral roll for the legislative Assembly for the time being in force on such date as the State Election Commissioner may by general or special order notify in that behalf shall form the basis for preparing a document which is to be deemed to be Municipal voters list. For converting the legislative Assembly electoral Roll into a voters list for the Municipal election, the only operation to be performed is "scissors and paste". Now as is clear from the facts and provisions of law, before the legislative Assembly Roll is finalised, it has to pass through a corrective procedure. In the present case as the affidavit-in-reply shows such corrective procedure has been followed. Draft roll was prepared, objections and claims were invited,

and thereafter, the draft roll was finalised by notification dated 1st December, 1995. The State Election Commissioner, by his order dated December 20, 1995, has taken that final Assembly Roll as the basis for preparing the voters list for conducting the elections to the Municipal Council. Therefore, neither Section 11 of the Act nor the voters list, on the basis of which the elections are going to be held could be faulted.”

7. In the result, we find no substance in the petition and it deserves to be dismissed. It stands dismissed. No costs.

JUDGE

JUDGE