

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2440 OF 2021

Nilesh Sahebrao Marathe,
Age-37 years, Occu:Agri.,
R/o-Velhane (Bk),
Tq. & Dist-Dhule

...PETITIONER

VERSUS

The State of Maharashtra,
Through the Secretary,
General Administration Department,
Mantralaya, Mumbai
and others.

...RESPONDENTS

...

Mr.Amol S. Sawant, Advocate for Petitioner.
Mr.D.R. Kale, Government Pleader for Respondent No.1
Mr.A.B. Kadethankar Advocate for Respondent No. 2.
Mr.V.D. Hon, Senior Counsel along with Mr. A.V. Hon
Advocate for Respondent Nos. 4, 6 and 7.

...

**CORAM: DIPANKAR DATTA, CJ AND
MANGESH S. PATIL, J.**

DATE : 22nd OCTOBER, 2021

ORDER :

1. The prayers in this writ petition dated 30th January 2021
are as follows:-

“ A] The Hon’ble High Court may be pleased to quash
and set aside the election of ward No. 3 of
Grampanchayat Velhane (Bk), as well as the

subsequent list of voters published by Returning Officer by including and deleting the names of voters for ward No. 3-C of Grampanchayat Velhane (Bk) and further be pleased to pass necessary orders for the said purpose;

B] The Hon'ble High Court may be pleased to direct the respondent No. 2 to initiate and conduct the inquiry of Returning Officer, Grampanchayat Velhane (Bk) for changing the final list of voters and further be pleased to pass necessary orders for the said purpose;

C] The Hon'ble High court may be pleased to direct the respondents to conduct the election of ward No. 3 of Grampanchayat Velhane afresh as per the final list of voters published by the Returning Officer on 10.12.2020 and further be pleased to pass necessary orders for the said purpose."

2. Not only on perusal of the aforesaid prayers but also on perusal of paragraph 3 of the writ petition, it is clear that the petitioner seeks to question the validity of elections of the candidates from Ward No. 3 of Velhane Grampanchayat and has prayed for conducting of fresh elections.

3. The ground on which the validity of the relevant elections is questioned by the petitioner is that after the election programme was announced on 11th December 2020, alteration in

the voters list was effected by the returning officer quite illegally on 13th January 2021, i.e., a couple of days prior to the date of polling.

4. Having regard to the provisions of Article 243-O(b) of the Constitution of India read with Section 15 of the Maharashtra Village Panchayats Act, 1959 (for short "1959 Act"), as interpreted by a Full Bench of this Court in its decision reported in *2021 (2) All Maharashtra Law Reporter 1 (Karmaveer Tulshiram Autade and others vs. The State Election Commission and others)*, we had expressed our mind to Mr. Sawant, learned counsel for the petitioner, that this Court lacks the jurisdiction to entertain this writ petition.

5. Although Mr. Sawant has sought to contend that the ground on which the elections of the private respondents is sought to be assailed would not be available to be urged in an election petition that could be filed under Section 15 of the 1959 Act, we are not persuaded to accept such contention. The alleged act of alteration of voters list, as per the admission of the petitioner, occurred on 13th January 2021 after the election programme was declared on 11th December 2020. Any act in respect of an election after commencement of the election

programme affecting the right of a party who is either a candidate or a voter at the election can be assailed after the election result is declared, before the specially constituted tribunal vested with powers to examine the question of validity of the election. Section 15(1) of the 1959 Act does not put any fetter on the petitioner's right to urge such ground.

6. Having regard to the law laid down by the Supreme Court right from the decision reported in *A.I.R. 1952 SC 64 (N.P. Ponnuswami vs. The Returning Officer, Namakhal Constituency, Namakkal, Salem District and others)*, we have no hesitation to hold that this writ petition before this Court, as on the date of its presentation, is not maintainable and that the remedy of the petitioner lay before the competent tribunal under Section 15 of the 1959 Act.

7. This writ petition consequently stands dismissed. No costs.

8. At this stage, Mr. Sawant submits that the period of limitation for filing an election petition has expired and that we ought to condone the delay if the petitioner wishes to pursue such remedy. We are conscious that limitation for approaching the specially constituted tribunal under Section 15 of the 1959

Act has expired during the pendency of this writ petition. Obviously, Section 5 of the Limitation Act, 1963 would not apply to an election petition which is in the nature of an original proceeding like a suit. However, if the petitioner is so advised and if at all he chooses to approach the specially constituted tribunal to challenge the validity of the election of the private respondents, he may seek exemption from the law of limitation as provided in the Code of Civil Procedure. If an approach is made with full particulars and in accordance with law, we have no doubt in our mind that the specially constituted tribunal shall consider the election petition in accordance with law and pass appropriate order thereon without being influenced in any manner by reason of dismissal of this writ petition.

[MANGESH S. PATIL, J.]

[CHIEF JUSTICE]

asb/OCT21