

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

908 WRIT PETITION NO.7465 OF 2021

RIJWAN LALMOHAMMAD SHIAKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Nikhil S. Jaju.

AGP for Respondent/State: Mr. S. G. Karlekar.
...

CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.

DATE : 07th September, 2021.

P.C.:

. Mr. N. S. Jaju, learned counsel for petitioner submits that the election of Village Panchayat Eklahare was held on 15th January, 2021. Nine members were to be elected. Out of nine members, seven were reserved for Scheduled Caste, Scheduled Tribe, Other Backward Class and Women. The reservation of seats were earmarked against the statutory provision of Section 10 of the Maharashtra Village Panchayat Act. According to the learned counsel, the present petition would be maintainable challenging their elections. The learned counsel relies upon the judgment of the Apex Court in the case of **Election Commission of India through Secretary Vs. Ashok Kumar and others**, reported in, **AIR 200 Supreme Court 2979** and submits that the election is open to judicial review on the ground of *malafide* or arbitrary exercise of powers or the statutory body being shown to

have acted in breach of law. According to the learned counsel, here in the present matter, the Election Commission and the authorities holding the elections have acted against the statutory provisions i.e. Section 10 of the Maharashtra Village Panchayat Act.

2 The petitioner claims to be a voter for the election for the members of the Gram Panchayat Eklahare. The reservation of the posts were published well in advance. The petitioner did not raise objection to the same. The petitioner allowed the elections to conclude without any demur. Four months after the elections are concluded and the members of the Gram Panchayat have taken charge, the present writ petition is filed.

3 The petitioner, if he is so interested, ought to have objected to the conduct of the election at an appropriate time. The petitioner consciously did not take objection to the process of the election and after the election is over, has challenged the entire election in the present writ petition. The election of the members of the Gram Panchayat can be assailed under Section 15 of the Maharashtra Village Panchayat Act. Alternate remedy is available. As the alternate remedy has become time barred, that cannot be a reason to entertain the present writ petition. The election of a returned candidate cannot be set aside except in accordance with the election petition or the

remedy as provided under the statute. Reference can be had to Article 329 of the Constitution of India.

4 In light of the above, no relief can be granted. The writ petition is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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