

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**992 WRIT PETITION NO.13666 OF 2021
WITH CA/13183/2021 IN WP/8541/2021**

SHAIKH NIZIM RASHID AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. N.I. Jadhav
AGP for Respondent No. 1, 3 & 4 : Mr. A.R. Kale
Advocate for Respondent No. 2 : Mr. A.B. Kadethankar

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**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

DATE : 8th DECEMBER, 2021

PER COURT :-

1. Mr. Jadhav learned advocate for the petitioners strenuously contends that de-limitation of ward is improper and inclusion of the voters is illegal. No proper procedure is adhered to while formation of the ward and finalizing the voters list. In formation of the wards and finalizing the voters list transparency ought to have been maintained, but the same is not done here. The circulars issued by the Election Commission were followed in breach. According to learned counsel, this Court can interfere if glaring illegality has been caused for smooth progress of the election. The learned counsel relies on the Judgment of the Apex Court in the case of *Dravida Munnetra Kazhgam (DMK) Versus Secretary Governors Secretariate and others* reported in *2019 (17) Scale 160*.

2. We have heard the learned Advocate for respondent No. 2.

3. Para No. 14 of the judgment (supra) reads as under:-

“14. The contention of the respondents that the present proceedings amount to “calling in question an election” and hence not being maintainable in view of the express constitutional embargos of Articles 243O and 243ZG does not impress us for the present proceedings are only to further the expeditious completion of prerequisites of a fair election. Hence, the following ratio of a coordinate Bench in [Election Commission of India v. Ashok Kumar and Others](#) [2000 (8) SCC 216] squarely applies to the present case: -

“(2) Any decision sought and rendered will not amount to “calling in question an election” if it sub-serves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body been shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.”

4. Sub-para(4) of paragraph No. 14 of the aforesaid judgment clearly states that without interrupting, obstructing or delaying the progress of

the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings. In the present case, election programme has been declared on 30th November, 2021. The nomination papers are accepted from 1st December, 2021 and last date for filing the nomination was 7th December, 2021, writ petition is filed on 4th December, 2021. After declaration of the election programme and acceptance of nomination papers, interference at this stage would stall the elections, the same would not be permissible under Article 226 of the Constitution of India. Full Bench of this Court in the case of *Karmaveer Tulshiram Autade Versus State Election Commission, Mumbai and others reported in 2021 (2) Mh.L.J. 349* has held that even challenge to the acceptance and rejection of nomination papers would not be permissible in writ jurisdiction. The said judgment is delivered for the elections of Gram Panchayats. A reference can also be made to Article 243-ZG.

4. In view of the above, it would not be possible to interfere at this stage. Writ petition is disposed of. The petitioners are at liberty to assail the subject-matter raised in the petition in appropriate proceedings as may be permissible under law after elections are over. In that event, all the contentions are kept open. No costs.

5. In view of disposal of writ petition, the civil application stands disposed of.

(S.G. DIGE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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