

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

WRIT PETITION NO. 7084 OF 2022

Indubai Asaram Andhale

.. Petitioner

Versus

The State Election Commission,
Through its Commissioner and others

.. Respondents

Mr. Vithal M. Chate, Advocate for the Petitioner.

Mr. A. R. Kale, AGP for Respondents-State.

Mr. T. K. Sant, Advocate h/f Mr. A. B. Kadethankar, Advocate
for Respondent No. 1.

**CORAM : RAVINDRA V. GHUGE &
ANIL L. PANSARE, JJ.**

DATED : 11th JULY, 2022.

PER COURT:-

1. By this petition, the Sarpanch of Grampanchayat Limbodi, Taluka Ashti, District Beed has approached this Court with a specific prayer that the said village should be excluded from the Dhanora division and should be included in the Dhamangaon division considering the closeness of the village with Dhamangaon.

2. The petitioner has put forth prayer clause (B) and (C) as under :-

“(B) By issuing the writ of mandamus or any other appropriate writ, order or directions in like nature the respondents may please be directed to include village Limbodi in Dhamangaon Zilla Parishad Division by excluding from Dhanora Zilla Parishad Division for ensuing Beed Zilla Parishad Election-2022.

(C) Pending hearing and final disposal of this Writ Petition, the respondents may please be directed not to take further steps in regard to the Zilla Parishad and Panchayat Samiti elections so far, as Zilla Parishad Dhamangaon and Dhanora Divisions.”

3. There is no dispute that the petitioner had made a representation to the respondent Nos. 2 to 4 on 03.02.2022 which followed a decision of the Gramsabha dated 30.12.2021 praying for excluding the village Limbodi from the Dhanora division and to include it in the Dhamangaon division. For the present, the petitioner prays that no further steps be taken for holding elections to the Zilla Parishad and the Panchayat Samiti until the village Limbodi is excluded from the Dhanora division and placed in the Dhamangaon division.

4. It is undisputed that in 2007, the petitioner's village was in Dadegaon division. For the elections held to the Zilla Parishad and Panchayat Samiti in the years 2012 and 2017, the said village Limbodi was included in Dhanora division. Even for the proposed elections to be held in the year 2022, the said village continues to remain in Dhanora division for the third consecutive elections.

5. The Division Bench of this Court (Coram : Dipankar Datta, C.J. and Ravindra V. Ghuge, J.) have delivered a judgment on 05.07.2022 in Writ Petition No. 6765 of 2022 filed by Anant s/o. Baburao Golait (Gahilot) Vs. The State Election Commission of Maharashtra and others. The conclusions drawn by this Court in paragraph Nos. 19 to 28 read as under :-

“19. While perusing the decision in **State of Goa** (supra), we noticed that the decision of the Constitution Bench of the Supreme Court in **Lakshmi Charan Sen and others Vs A.K.M. Hassan Uzzaman and others**, reported in (1985) 4 SCC 689, was cited. Although any detailed discussion with reference to such decision is not available in **State of Goa** (supra), the conclusions recorded in paragraph 68 are in sync therewith. The Supreme Court culled out the principles from its earlier precedents, which each Court

ought to bear in mind while dealing with proceedings seeking relief in respect of election matters. Although Mr. Palodkar sought to draw support from paragraph 68.8, we have not been able to persuade ourselves to agree with him. We are conscious that a judgment of a Court cannot be read as if it were a statute, yet, the Supreme Court having expressed what are the results of its reading and understanding of the precedents, it would not be open for the High Court to take a view which strikes a discordant note with the view of the Supreme Court. The words in paragraph 68.8, on which we have laid emphasis, leave none in doubt that a challenge can be laid to orders relating to delimitation or allotment of seats including preparation of electoral rolls, which do not form part of the election process, in the manner provided by the statutory provisions dealing with delimitation of constituencies and allotment of seats to such constituencies. Here, it is the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereafter “1965 Act”, for short) which not only deals, in section 10, with ‘Elections and Publication of Names of Elected and Nominated Councillors’ but also provides, in section 21, how a dispute in respect of, *inter alia*, election of an elected councilor should be adjudicated. The remedy of the petitioners, therefore, would lie in a petition presented in the District Court in terms of sub-section (1) of section 21. Mr. Palodkar was heard by us to contend that a dispute of the nature raised in these writ petitions is not capable of being adjudicated by the District Court. We have no reason to agree with him, yet, even if we assume this contention to be correct,

the constitutional validity of section 21 could require a challenge on the principle of *ubi jus ibi remedium* and the lack of a forum. That is not the challenge in any of the writ petitions. Thus, resting on paragraph 68.8 of the decision in **State of Goa** (supra), we hold that these writ petitions are not maintainable.

20. The second reason has its roots in the self-imposed restrictions, which a writ court is required to abide by in the course of exercise of its discretionary jurisdiction. The decision of the Supreme Court in **Anugrah Narain Singh and another Vs State of U.P. and others**, reported in (1996) 6 SCC 303, considered the decision in **Lakshmi Charan Sen** (supra) in some detail. The law laid down by the Supreme Court in **Lakshmi Charan Sen** (supra) that an election cannot be allowed to be stalled on the complaint of a few individuals, for, such stalling would cause grave injustice to other voters having the right to elect representatives to the local bodies, was reaffirmed. The conclusions recorded by the Supreme Court in an order dated 30th August, 1982, which formed part of the final judgment/decision in **Lakshmi Charan Sen** (supra) were noticed in **Anugrah Narain Singh** (supra), to the effect that no High Court in exercise of its powers under Article 226 of the Constitution shall pass any order, interim or otherwise, having the tendency or effect of postponing an election that is reasonably imminent and in relation to which its writ jurisdiction is invoked, and that imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The Court emphasized that "*the more*

imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution". The High Courts were also urged to bear in mind self-imposed limitations on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections.

21. The decision in **Lakshmi Charan Sen** (supra) was rendered upon a challenge being laid to electoral rolls prepared and published for election to the West Bengal Legislative Assembly. The reliefs claimed by the petitioners are captured in paragraph 11 of the decision. It is clear on a reading thereof that the stage at which the Calcutta High Court had been approached was a stage preceding the setting in motion of the election process by publication of a notification. There is a close resemblance of the stage here and the grievances appear to be the same. Considering the views expressed by the Supreme Court in **Lakshmi Charan Sen** (supra), we have no doubt that it would not be proper for us to interfere, particularly when the elections to the Municipal Councils are imminent and that the election notification would be announced in a day or two, and particularly when none of the writ petitions is intended to facilitate the smooth progress of the elections. We have referred to the interim prayers made in all these writ petitions *infra*. All the petitioners intend to have the elections stalled and the wards formed only after

consideration of their objections. The message of the Supreme Court is loud and clear: interference is permissible to subserve the progress of the election and to facilitate its completion, not when the interference by the Court would have the effect of postponing the elections indefinitely.

22. The third and the equally weighty reason, if not the most important reason on facts and in the circumstances, is based on the orders dated 4th May 2022 and 17th May 2022 passed by the Supreme Court in S.L.P. (Civil) No. 19756/2021 (**Rahul Ramesh Wagh Vs The State of Maharashtra**) and companion proceedings, as well as the judgment dated 10th May 2022 in Writ Petition (Civil) No. 278 of 2022 (**Suresh Mahajan Vs The State of Madhya Pradesh and another**).

23. In **Rahul Ramesh Wagh** (supra), the Supreme Court is seized of challenges to the constitutional validity of sections 2, 3, 4(1)(a) and 5 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2022, sections 2 to 6 of the Maharashtra Village Panchayat and the Maharashtra Zilla Parishad and Panchayat Samiti (Amendment) Act, 2022, and section 2 of the Mumbai Municipal Corporation (Amendment) Act, 2022. The challengers contended that the amending enactments purport to take away the authority of the State Election Commission, Maharashtra regarding delimitation which, according to the constitutional scheme, ought to rest with such Commission. The Court in its order dated 4th May 2022

observed that a deeper examination of the issue is necessary for which the petitions must proceed for further hearing. After considering various provisions of the Constitution and relevant statutory provisions, the Court went on to order as follows:

“Accordingly, the election programme of such local bodies must proceed and the State Election Commission is obliged to notify the election programme within two weeks from today in respect of such local bodies including to continue with the process from the stage as on 10.3.2022, on the basis of the delimitation done prior to coming into force of the Amendment Act(s) w.e.f. 11.03.2022.

In other words, the delimitation as it existed prior to 11.03.2022 in respect of concerned local bodies be taken as notional delimitation for the conduct of overdue elections and to conduct the same on that basis in respect of each of such local bodies.

Insofar as providing reservation for scheduled castes and scheduled tribes, the mandate of the Constitution and statutory provision must be followed; and in so far as other backward classes, compliance of triple test as predicated by this Court in *Vikas Kishanrao Gawali Vs. State of Maharashtra reported in (2021) 6 SCC 73* must be adhered to. Absent such compliance, no reservation can be provided in the local bodies for that category which may go for elections with immediate effect in terms of this order.

As requested by the learned counsel for the State, we place on record that all steps taken by the State Election Commission and we may add even the State Government, on the basis of the directions given in terms of this order will be subject to the outcome of these proceedings.

We make it clear that until the delimitation is done by the State Government in terms of Amendment Act(s) of 2022, the State Election Commission shall give effect to this order also in respect of upcoming elections in respect of local bodies which would become due by efflux of time.

List these petitions/matters on 12.07.2022.

The State Election Commission to file compliance report before the next date of hearing. In case of any difficulty, liberty is granted to the State Election Commission to apply before the returnable date and to ensure that election programme in respect of concerned local body is taken forward without any interruption.”

Upon an application being filed by the State Election Commission, the short order passed on 17th May 2022 records as follows:

“In deference to the observation made by the Court, learned counsel for the Maharashtra State Election Commission, in all fairness, submits that the State Election Commission will commence the process forthwith in respect of areas/districts which may not be affected by monsoon and even if

after notification, if the situation so warrants, the schedule can be modulated appropriately district-wise and local body-wise.

In view of the above, nothing more is required to be said in this application and the same is disposed of.

Pending applications, if any, stand disposed of.”

24. Paragraphs 28 and 31 of the judgment in **Suresh Mahajan** (supra) which intervened in the meanwhile being most relevant, we quote the same hereunder: -
“28. We were also informed by the learned counsel appearing for the Madhya Pradesh State Election Commission during the course of arguments that some writ petitions are pending before the High Court in which interim orders have been passed and that may come in the way of the State Election Commission to notify the election programme. In that regard, we make it clear and also direct that the State Election Commission must abide by the directions and observations in this order uninfluenced by any order of the High Court or the Civil Court on the subject of elections of the concerned local self-government, as the case may be. If any order passed or to be passed hereafter by the High Court or the Civil Court in the State of Madhya Pradesh, is in conflict with the directions given by this Court, the same shall be deemed to have been superseded in terms of this order and not to be acted upon without the prior permission of this Court.

31. We also make it clear that this order and directions given are not limited to the Madhya Pradesh State Election Commission/State of Madhya Pradesh; and Maharashtra State Election Commission/State of Maharashtra in terms of a similar order passed on 04.05.2022, but to all the States/Union Territories and the respective Election Commission to abide by the same without fail to uphold the constitutional mandate.”

25. The Supreme Court in **Suresh Mahajan** (supra) having taken note of the fact that there were no elections to the local bodies in the State of Madhya Pradesh, had observed that conducting elections to local bodies is not only a constitutional obligation of the State Election Commission but also of the State Government including the Constitutional Courts. The Court was also of the opinion that elections to such local bodies cannot brook any delay. Bearing in mind the necessity and importance of conducting timely elections to the local bodies, the Court observed that the State Election Commission, Madhya Pradesh must abide by the directions and observations in the judgment uninfluenced by any order of the High Court or the Civil Court on the subject of elections of the concerned local self-government, as the case may be, and if any order had been passed or is passed after 10th May by the High Court of Madhya Pradesh or any Civil Court in such State which is in conflict with the directions given by the Supreme Court, the same shall be deemed to have been superseded in terms thereof and cannot be acted

upon without the prior permission of the Court. Such direction was not confined only to the State of Madhya Pradesh but was extended to the State of Maharashtra as well as all other States/Union Territories across the country.

26. On due consideration of the judgment in **Suresh Mahajan** (supra), we cannot by a judicial fiat stall the elections which are imminent. The same have to be conducted and completed without any delay, as directed by the Supreme Court.

27. It is well known that a Court exercising plenary jurisdiction under Article 226 of the Constitution ought to issue a writ which would further public interest and not thwart it. What emerges, giving due regard to the law laid down by the Supreme Court in **State of Goa** (supra), **Anugrah Narain Singh** (supra) and **Lakshmi Charan Sen** (supra) is that an otherwise imminent election process, therefore, need not be derailed merely because there are certain disgruntled voices who wish to have the wards formed in the manner they like, while disligning the formation brought about by the State Election Commission. If there be any genuine legal grievance which calls for being addressed, the forum prescribed by law has to be approached.

28. Having held so, we repeat that the prayers of the writ petitions under consideration do not reveal that a single writ petition is intended to obtain relief for facilitating smooth progress of the elections; on the contrary, the interim prayers in all such writ petitions

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are such that grant thereof would have the effect of postponing the elections for an indefinite period. This, coupled with the judgment in **Suresh Mahajan** (supra) read with the order in **Rahul Ramesh Wagh** (supra), makes it clear as crystal that the elections to the local bodies cannot be stalled by any order passed by this Court; even if a stalling were directed, such order would be of no effect. “

6. It is thus apparent that, though the petitioner's village was in Dhanora division for two consecutive elections held in the years 2012 and 2017 and even for the present elections of the year 2022, the petitioner has approached this Court for seeking exclusion from the Dhanora division and inclusion in Dhamangaon division for the reason that Dhamangaon division is 5.5 Kms. from the village Limbodi and Dhanora division is 18.6 Kms. from the said village. To achieve this objective, the petitioner desires that the elections be stalled. We find that the elections are due and the Hon'ble Supreme Court has concluded that the High Court would not pass any order which is likely to stall the elections.

7. Considering the view taken in the case of Anant s/o. Baburao Golait (Gahilot) (supra), we find that the prayers

sought by the petitioner would not progress the elections.

In view of the above, we do not find that this petition could be entertained. The petition, is therefore dismissed.

8. We make it clear that, we have not expressed any view about the contention of the petitioner that the said village has been constantly pursuing it's deletion from Dhanora and would continue to pursue the cause with the Government for excluding them from Dhanora division so as to be included in Dhamangaon division.

9. No costs.

(ANIL L. PANSARE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

P.S.B.