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

PUBLIC INTEREST LITIGATION NO. 112 OF 2019

Asha w/o Rajendra Jangam @
Asha d/o Uttamrao Aglave and others **....Petitioner**

Versus

The Union of India and others **....Respondents**

Mr. B.L. Sagar Killarikar, Advocate for petitioners.

Mr. Bhushan B. Kulkarni, Advocate for respondents 1, 2 & 6.

Mr. Alok M. Sharma, Advocate for respondents 3 to 5.

**CORAM : DIPANKAR DATTA, CJ. &
RAVINDRA V. GHUGE, J.**

DATED : JULY 06, 2022.

PER COURT :

This public interest litigation is at the instance of twelve citizens of the country. The first eleven petitioners are holders of public offices and claim that their services have been utilized in the past by the Election Commission of India for conducting polls. The twelfth petitioner claims to be a person having acquaintance with rules and regulations regarding elections and has assisted all other petitioners in collecting information so as to protect the rights of a 'voter on election duty', as defined in rule 17 of the Conduct of Election Rules (hereafter '1961 Rules' for short).

2. The concern expressed in the public interest litigation stems from the personal experience of the first eleven petitioners. They claim that although public officers deputed for election duty are

responsible for free, fair and smooth conduct of polls, at times, they stand deprived of their right to vote. Accordingly, it has been prayed that: -

- (A) record and proceedings giving rise to the public interest litigation be called for;
- (B) the Election Commission of India be directed to ensure that a 'voter on election duty' is not deprived in future of his right to vote;
- (C) the respondents 1 to 4 be directed to initiate action against the respondent no. 5 – District Election Officer - and other concerned subordinate officers for violating sub-rule (4) of rule 23 of the 1961 Rules;
- (D) the respondents be directed to ensure that a 'voter on election duty' is entitled to exercise his right to vote being a part and parcel of his right guaranteed by Article 19-1(a) of the Constitution as well as count the same, irrespective of the consequences, for the purposes of general election held in 2019 for Aurangabad parliamentary constituency.

3. Although the petitioners refer to certain instances where postal ballots were not received by voters on election duty, Mr. Killariker, learned counsel appearing for the petitioners has conceded that in the past couple of years several corrective steps have been taken by the Election Commission of India and the situation is now vastly improved. However, it is his contention that the Election Commission ought to be directed to ensure that those who opt for voting by applying in Form 12 receive the ballot papers well in time so as to exercise his/her voting right

effectively.

4. Mr. Sharma, learned counsel appearing for the respondents 3 to 5 including the Election Commission of India invites our attention to the averments made in the reply affidavit and contends that proper measures have been taken to ameliorate the grievances of voters on election duty. He has also invited our attention to rule 20 of the 1961 Rules and contended that such provisions provide adequate opportunity to the voters on election duty to exercise their rights of voting and the protection envisaged therein is sufficient to hold that there is no denial of any right.

5. For facility of convenience, rule 20 is reproduced hereunder: -

"20. Intimation by voters on election duty.— (1) A voter on election duty who wishes to vote by post at an election shall send an application in Form 12 to the returning officer so as to reach him at least seven days or such shorter period as the returning officer may allow before the date of poll; and if the returning officer is satisfied that the applicant is a voter on election duty, he shall issue a postal ballot paper to him.

(2) Where such voter, being a polling officer, presiding officer or other public servant on election duty in the constituency of which he is an elector, wishes to vote in person at an election in a parliamentary or assembly constituency and not by post, he shall send an application in Form 12A to the returning officer so as to reach him at least four days, or such shorter period as the returning officer may allow, before the date of poll; and if the returning officer is satisfied that the applicant is such public servant and voter on election duty in the constituency, he shall—

- (a) issue to the applicant an election duty certificate in Form 12B,
- (b) mark 'EDC' against his name in the marked copy of the electoral roll to indicate that an election duty certificate has been issued to him, and
- (c) ensure that he is not allowed to vote at the polling station where he would otherwise have been entitled to vote."

6. Having read Rule 20, it is clear that an option is allowed to be exercised by a 'voter on election duty' to either vote through postal ballot or to vote by remaining present in person at an election. For the former, an application of the nature prescribed in Form 12 has to be filled in whereas for the latter, an application has to be made in Form 12A. Those who opt for casting vote in person are required to be issued a certificate in Form 12B, viz. Election Duty Certificate (hereafter 'EDC' for short). An 'EDC' mark has to be made in the copy of the electoral roll to indicate that an election duty certificate has been issued to the concerned voter and the EDC holder would not be allowed to vote at the polling station where he would otherwise have been entitled to vote.

7. In view of such statutory provisions, we are of the considered opinion that the concern expressed by the petitioners in the public interest litigation would stand adequately addressed. It would be open to the first eleven petitioners, if they are once again deputed for election duty, to opt for voting either through

postal ballot or by voting in person in the manner ordained by sub-rule (2) of rule 20 of the 1961 Rules. To sound a note of caution, we wish to observe that for those public officers who opt for voting through postal ballot by sending an application in Form 12, the Election Commission of India must ensure that the address to which the postal ballot is to be dispatched is complete in the real sense of the term and nothing is left out so as to render the process infructuous. There must be a genuine attempt to rule out the element of human error on the part of the officers/staff of the Election Commission. After all, the right to vote is a vital right of every citizen of the country and if those officers who assist the Election Commission in holding peaceful polls are themselves deprived, that would indeed not be a very acceptable situation. We encourage the Election Commission to ensure, at all times, that every citizen holding a public office, but who is required to perform a public duty at a polling station, is in a position to exercise his/her right to vote.

8. With the aforesaid observations, this public interest litigation stands disposed of. No costs.

[RAVINDRA V. GHUGE, J.]

[CHIEF JUSTICE]