

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11858 OF 2022

1. Bhagwat S/o Manjabpu Khemnar
Age : 51 years, Occu : Agriculture,
2. Biru S/o Laxman Halnar,
Age : 60 years, Occu : Agriculture,
3. Rasul S/o Sikandar Maniyar,
Age : 42 years, Occu : Agriculture,
4. Raosaheb S/o Damodhar Kotkar,
Age : 40 years, Occu : Agriculture,
All R/o. Ambhore, Tq. Sangamner,
Dist. Ahmednagar

.. Petitioners

VERSUS

1. The State Election Commissioner
The State Election Commission of Maharashtra,
New Administrative Building, 1st Floor,
Madam Cama Road, Hutatma Rajguru Chowk,
Mumbai – 400 032
2. Shri K. Suryakrushnmurti,
The Assistant Commissioner,
The State Election Commission of Maharashtra,
New Administrative Building, 1st Floor,
Madam Cama Road, Hutatma Rajguru Chowk,
Mumbai – 400 032
3. The District Collector,
Ahmednagar
4. The Sub Divisional Officer, Sangamner,
Tq. Sangamner, Dist. Ahmednagar
5. The Tahsildar, Sangamner,
Dist. Ahmednagar
6. The Sub Divisional Officer, Shirdi,
Tq. Rahata, Dist. Ahmednagar
7. Shri. Yogesh S/o Sampat Khemnar,
Age : Major, Occu : Agriculture,
R/o. Ambhore, Tq. Sangamner,
Dist. Ahmednagar

.. Respondents

WITH
CIVIL APPLICATION NO. 15945 OF 2022 IN WP/11858/2022

(Khemnar Balasaheb Dagdu and others
Vs.
The State Election Commissioner and Others)

AND
CIVIL APPLICATION NO. 15901 OF 2022 IN WP/11858/2022

(Bhagwat Manjabapu Khemnar and others
Vs.
The State Election Commissioner and Others)

...

Advocate for petitioner in WP and applicant in CA/15901/2022 : Mr. P.B. Shirsath
Advocate for the respondents nos. 1 and 2 : Mr. A.B. Kadethankar
AGP for the respondents nos. 3 to 6 : Mr. A.R. Kale
Advocate for applicant in CA/15945/2022 : Mr. C.K. Shinde
Advocate for respondent no. 7 : Mr. Narayan B. Narwade

...

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

RESERVED ON : 29 NOVEMBER 2022

PRONOUNCED ON : 02 DECEMBER 2022

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. Mr. Kadethankar waives service for the respondents nos. 1 and 2, learned AGP waives service for respondents nos. 3 to 6 and Mr. N.B. Narwade waives service for respondent no. 7.

3. By way of civil application no. 15945 of 2022, some persons have prayed for joining as co-petitioners. Learned advocate

for the petitioners Mr. Shirsath, on instructions, gives consent for adding them in the array of the petitioners. Civil application no. 15945 of 2022 is accordingly allowed and the applicants therein are permitted to be included in the array of the petitioners.

4. The petitioners are the 117 voters from the voters' list of Ambhore Gram Panchayat, Taluka – Sangamner, District - Ahmednagar but are aggrieved by report of the respondent no. 6 who is the Sub Divisional Officer, Shirdi, Taluka -Rahata, District - Ahmednagar dated 09-11-2022 submitted to the respondent no. 3 - Collector, Ahmednagar pointing out the errors in including their names in the constituency of Ambhore Gram Panchayat though they are residents of Kolwade and Pimprane villages and including their names in those constituencies.

5. Mr. Shirsath for the original petitioners and Mr. Shinde for the newly added petitioners would submit that by virtue of section 12 of the Maharashtra Village Panchayat Act, 1959 ("**V.P. Act**"), the electoral roll of the Maharashtra Legislative Assembly prepared under the provisions of the Representation of People Act, 1951 ("**R.P. Act**") as is in force on such date as the State Election Commissioner notifies forms the basis for finalizing the list of voters for the elections of the village panchayat.

The respondents nos. 1 and 2 - the State Election Commission has issued the election programme on 04-10-2022 and notified 31-05-2022 as the cut-off date in respect of the electoral rolls published for the legislative assembly under section 21 of the R.P. Act. They would submit that once such a notification is issued stipulating the cut-off date, no correction in the voters' list could have been undertaken except by following the procedure prescribed under section 22 of the R.P. Act.

They would also submit that it is only the Electoral Registration Officer for the constituency is conferred with the powers to undertake such correction, either on an application to be made to him or on his own motion. They would further submit that even such an application has to be filed in accordance with Form no. 7 stipulated under the Registration of Electors Rules, 1960. No such application in the prescribed form was submitted to the respondent no. 5 who is the election officer and no opportunity of being heard was also extended to the petitioners. The decision was not taken by the respondent no. 5 election officer who alone was competent to take a decision. Ignoring such legislative mandate, the impugned communication has been forwarded, thereby depriving the petitioners of their right to vote in Ambhore village panchayat election.

They submit that the petitioners are not intending to obstruct the ongoing election process but are merely interested in casting their votes in the election of Ambhore Gram Panchayat. They would cite following decisions:-

- i) ***Election Commission of India through Secretary Vs. Ashok Kumar and others; AIR 2000 SC 2979***
- ii) ***Shri Savio O. Fernandes and another Vs. State Election Commissioner and others; AIR 1996 BOMBAY 343***
- iii) ***Ahmednagar Zilla S.D.V. & P. Sangh Ltd. and another Vs. State of Maharashtra and others; (2004) 1 SCC 133***
- iv) ***Pundlik Vs. State of Maharashtra and others; AIR 2005 SC 3746***
- v) ***Ankushbhai S/o Juglal Baghele and others Vs. State of Maharashtra and others; 2022(4) Mh.L.J. 539***

6. Learned advocate Mr. Kadethankar would subscribe to the submissions of the learned advocate for the petitioners Mr. Shirsath and Mr. Shinde to the extent of the procedure to be followed for correction of the electoral rolls and also does not dispute the fact that by virtue of a notification, the State Election Commission has declared the cut-off date as 31 May 2022 for formation of voters' list in respect of the Gram Panchayat elections, as is stipulated under section 12 of the V.P. Act. However, he would submit that the election process has already begun and allowing the petition would protract the ongoing process and this Court should not exercise the powers under Article 226 of the Constitution which would have a tendency to protract or obstruct the process.

7. Learned AGP relies upon the decision in the matter of ***Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and others Vs. State of Maharashtra and others; (2001) 8 SCC 509*** and submits that even preparation of voters' list is a part of an election process and an intermediate stage in the process of election and this Court should not pass any order to obstruct the ongoing election process.

8. The rival contentions now fall for our consideration.

9. There is no dispute about the fact that the electoral roll for the legislative assembly prepared under section 21 of the R.P. Act forms the basis of the voters' list for election of village panchayat by virtue of section 12 of the V.P. Act. It also lays down that the date prescribed by the State Election Commission notified by it is the cut off date for preparation of such electoral roll. It is admitted that the respondents nos. 1 and 2 - State Election Commission has notified the cut-off date as 31 May 2022.

10. Any correction in such electoral roll can be undertaken under section 22 of the R.P. Act. It enables the Electoral Registration Officer to undertake such correction after an enquiry but pertinently such an action can be taken by him on his own motion or subject to such general or special direction as may be given by the Election

Commission after proper verification of the facts and after giving an opportunity of being heard to the person concerned of the proposed action. Even there is a provision to challenge such decision of the Electoral Registration Officer taken under section 22 by way of an appeal to the District Magistrate under section 24 of the R.P. Act.

11. We notice that in view of such specific wording of section 22, the submission of the learned advocates for the petitioners that no such correction can be undertaken except by filing of Form no. 7 of the Registration of the Electors Rules, 1960, cannot be accepted. The power can also be exercised by the Electoral Officer *suo motu* as well and even as per the instructions of the State Election Commission.

12. It does appear that the respondent no. 5 who is the Election Officer had rejected the objection raised by the respondent no. 7 by the order dated 21-10-2022. It appears that the respondent no. 7 being aggrieved by the order of respondent no. 5 - Election Officer approached the respondents nos. 1 and 2 with his application dated 22-10-2022 requesting for undertaking a fresh scrutiny of the fact that the petitioners were not residents of village Ambhore but were residents of village Kolwade and Pimparne.

The respondent no. 2 - Assistant Commissioner by his communication dated 27-10-2022 directed the respondent no. 3 - Collector to get the respondent no. 7's objection to be enquired into

through the respondent no. 6 who is the Sub Divisional Officer, Shirdi and calling upon the respondent no. 3 - Collector to submit a report. It is pursuant to such a direction by the respondents nos. 1 and 2 that the respondent no. 6 has undertaken the exercise and by the impugned report communicated the respondent no. 3 - Collector as to how the petitioners were not residents of Ambhore but were residents of village Kolwade and Pimparne and recommending deletion their names from the electoral rolls of village Ambhore and including their names in the rolls of other two villages as enlisted in the report.

Pertinently, the respondent no. 6, in his report had specifically indicated that he had not only heard the learned advocate for the respondent no. 7 but even the arguments of the learned advocate for the petitioners were also heard and by a speaking order, he had opined that necessary correction needed to be made in the voters' list of all the three villages.

13. It is important to note at the cost of repetition that by virtue of section 22 of the R.P. Act, an exercise of correction can be undertaken even at the instance of the State Election Commission.

Section 22 reads as under:-

“22. Correction of entries in electoral rolls.—If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency—

(a) is erroneous or defective in any particular,

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll, the electoral registration officer shall, subject to such general or special direction, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry after proper verification of facts in such manner as may be prescribed:

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him after proper verification of facts in such manner as may be prescribed.”

14. If this is the state of affairs, when the respondent no. 6, on the instructions of the respondents nos. 1 and 2 - State Election Commissioner, has undertaken an enquiry, that too by extending an opportunity of being heard to the petitioners and the respondent no. 7 and by a speaking order has suggested modification in the electoral rolls, it cannot be said that the report is without any power or jurisdiction and is contrary to the scheme of section 22 of the R.P. Act.

15. Apart from the above state-of-affairs, though strictly speaking the facts in this matter and in the matter before the Full Bench of this Court in the case of ***Karmaveer Tulshiram Autade and others Vs. State Election Commission and others; 2021 AIR (Bom.) 90*** are different, the principle laid down therein would be

squarely applicable to the fact situation of the matter in hand. After going through several decisions of the Supreme Court, it has been held that a petition under Article 226 of the Constitution would not be maintainable if it calls in question a step in the process of election which would have the effect of interrupting, obstructing or protracting the election. Though it was a matter of rejection of nomination form by the Returning Officer, the principle laid down therein would certainly bind this Court.

16. The learned advocates for the petitioners would vehemently submit that though the election process in the matter in hand has already commenced, the objections being raised by the petitioners regarding legality of the voters' list would not be a ground to challenge the election since it is not covered by section 15 of the V.P. Act. However, the Full Bench has even considered a similar argument in paragraph no. 64 in following words:-

“64. Having noticed the decision in Bharati Reddy (supra), we consider it appropriate to examine whether section 15 of the MVP Act provides a remedy to an aggrieved voter or any candidate who wishes to call in question the validity of any election of a member of a Panchayat; further, whether illegal/improper rejection of nomination paper of an individual seeking to contest an election could form a valid ground for invalidating the election of the successful candidate. Sub-sections (1) and (2) of section 15 of the MVP Act, in our view, provides complete answers to the aforesaid questions. Under sub-section (1), validity of any election of a member could be brought in question by any candidate at such election or by any person qualified to vote for any election in the manner and before the authority (Judge) as ordained. Sub-section (2) provides the procedure to be followed by the Judge upon receiving an election petition and the extent of relief that could

be granted by him. The Judge is vested with the power to conduct inquiry and to pass necessary order confirming or amending the declared result, or setting the election aside. The submission of Mr. Deshmukh, relying on sub-section (5), that the Judge has the power to interfere only if a corrupt practice has been committed by the successful candidate within the meaning of sub-section (6) does not appear to us to be sound. Though sub-section (5) refers to a particular contingency which could invalidate an election, sub-sections (1) and (2) are not controlled by sub-section (5). Sub-section (1) and (2), read together, are of wide import and would take within its fold a grievance raised against illegal/improper rejection of nomination paper. We, thus, conclude that the MVP Act, a complete code in itself in relation to Panchayati Raj in Maharashtra, does provide the necessary machinery for vindication of *ubi jus ibi remedium* and for appropriate redressal of grievance of any disgruntled individual who perceives that he has been wronged by the Returning Officer. The decision in Bharati Reddy (*supra*) is, therefore, distinguishable on facts."

17. In view of such interpretation put on section 15 of the V.P. Act, the submission of the learned advocates for the petitioners are not maintainable. For all these reasons, when the election process has already begun, we refrain from exercising the powers under Article 226 of the Constitution of India.

18. The petition is dismissed.

19. However, it would be open for the petitioners to re-agitate the issue post the election.

20. Pending civil application no. 15901 of 2022 is disposed of.

[Y.G. KHOBGRAGADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/