

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12338 OF 2022

Makarani Tajmohammad Allarkha
Age : 46 years, Occu : Business
R/o House no. 1117, Makaranifali,
Tq : Akkalkuwa, Dist. : Nandurbar

.. Petitioner

VERSUS

1] The State of Maharashtra
Through its Collector, Nandurbar

2] Election Commissioner,
Through its District Election Officer,
Dist. : Nandurbar

3] Election Officer alias Tahasildar
Akkalkuwa, Dist. : Nandurbar

.. Respondents

...
Advocate for petitioner : Ms. Surekha P. Mahajan
AGP for the respondent no. 1 : Mr. A.R. Kale
Advocate for the respondents nos. 2 and 3 : Mr. A.B. Kadethankar
...

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

DATE : 15 DECEMBER 2022

ORDER (MANGESH S. PATIL, J.) :

Heard both sides and perused the record.

2. The petitioner is seeking a direction to hold the elections of ward no. 5 of Akkalkuwa gram panchayat scheduled on 18-12-2022 by adhering to the final voters' list published on 21-10-2022.

3. Learned advocate Ms. Mahajan for the petitioner would submit that in spite of publication of a final voters list on 18-12-2022 in accordance with section 12 of the Maharashtra Village Panchayat Act, 1958, a revision has been undertaken by the respondents and a fresh final voters list has been published on 01-12-2022 even when the election programme has started with publication of notice by the respondent - Tahsildar on 18-11-2022 and the voting is to take place on 18-12-2022. Such action of the respondents has no legal basis or sanctity. It is an arbitrary decision taken at the eleventh hour and even ignoring the decision of this Court in writ petition no. 11632 of 2022 dated 25-11-2022 in the matter of Sufiyankhan Jangyankhan Makrani Vs. The State of Maharashtra through its Secretary and others. She submits that such a change in the voters list during the ongoing process is absolutely illegal and the petitioner would be adversely affected since he has been an elected *Sarpanch* for last number of years.

4. Ms. Mahajan would further submit that the electoral roll prepared under section 21 of the Representation of People Act, 1950 on the cut-off date prescribed by the election authority forms the basis for finalization of voters list under section 12 of the Maharashtra Village Panchayats Act, 1958. In spite of such a bar, a revision has been undertaken and a fresh final voters list has been published on 01-12-2022 which is absolutely illegal.

5. Learned advocate Mr. Kadethankar who appears for the Election Commissioner submits that such revision in the final voters list has been undertaken with the approval of the State Election Commission and is in accordance with its election order dated 25-09-2017 which permits such revision till the last date of filing the nomination in limited cases. Before finalizing the voters list which was published on 01-12-2022, a proposal was received from the Election Officer - respondent no. 3 and having found that it is in accordance with the election order dated 25-09-2017, the approval was granted. He points out that if it is found that the names of the voters have been included in the wards other than the place of their residence, such a correction has been permitted. He would submit that the order issued by the Election Commission in exercise of Article 243 ZA of the Constitution and section 12 of the Maharashtra Village Panchayats Act, 1958, has the sanctity of law and there is no illegality.

6. Mr. Kadethankar would further submit that in the peculiar facts and circumstances, when the petitioner alone is approaching this Court and complaining about the modification in the final voters list, no order can be passed which would affect the number of other voters when they are comfortable with the final voters list modified and published on 01-12-2022.

7. At the outset, it is necessary to emphasize the fact that the only prayer in the petition is for issuing a *mandamus* directing the respondents to undertake the voting in accordance with the final voters list published on 21-10-2022. Conspicuously, challenge to the final voters list modified and published on 01-12-2022, is absent. For this reason alone, no relief can be granted to the petitioner.

8. Besides, the election order dated 25-09-2017 (Exhibit-R-2) comprehends a situation and permits modification of even a final voters list published under section 12 of the Maharashtra Village Panchayats Act, 1958 *albeit* in the circumstances covered therein like insertion of some names in some wards due to some mistake or omission to insert the names of the voters in a particular ward. This order prohibits inclusion of new names or deletion of the names. It also indicates that such correction can be made till the last date of filing of nominations. Admittedly, the last date for filling up the nomination as per the election programme was 02-12-2022 and the modified final voters list has been published on 01-12-2022.

9. There is nothing before us, as a fact, to demonstrate that the decision of the respondents to modify the final voters list is based on incorrect state-of-affairs or is prompted by some *mala fides* or has been done with some ulterior motive much less to deprive the petitioner

of his right or interest. Therefore, it cannot be said that the modification of the final voters list suffers from any vice.

10. Again, as has been rightly put up by Mr. Kadethankar, when other voters have no objection regarding the final voters list, no orders can be passed merely on a request of the petitioner alone which would have any effect on the right of the other voters who are comfortable to be placed in a particular ward.

11. In writ petition no. 11632 of 2022 (supra), this Court had merely dismissed the petition of an individual, in respect of the selfsame voters list and formation of wards on the ground that the petitioner therein was seeking to put up a challenge to the voters list under the guise of putting up a challenge to the ward formation. That order would not debar the respondents herein from resorting to revision of the final voters list in accordance with the election order dated 25-09-2017.

12. The petition is dismissed.

13. Rule is discharged.

[Y. G. KHOBRAGADE]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE