

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12218 OF 2022

Sagar Devidas Kamble & Anr. ... Petitioners

Versus

The Election Commission of India
Through Its Chief Election Commission & Ors. ... Respondents

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Dr. Uday P. Warunjikar with Mr. Sumit Kate and Mr. Jenish Jain for
the Petitioners.

Mr. S.B. Shetye with Ms. Sarika Shetye for the Respondent No.2.

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**CORAM : NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATE : 12 OCTOBER 2022

P.C. :

Heard the learned Counsel for the parties.

2. The Petitioners-two voters, who have just become major, have filed this petition questioning the action of the Respondent No.2-The Election Commission of Maharashtra of notifying a date for the purpose of taking into consideration the voters list prepared under the Representation of the People Act, 1951 for the election for the Gram Panchayats including the Gram Panchayat where the Petitioners reside.

3. The Petitioner No.1 submitted a form to be included in the voters list upon becoming major on 22 May 2022. It was accepted on 10 June 2022 and the voter card was issued by the Respondent No.1. Similarly, a form of the Petitioner No.2 was accepted on 5 June 2022. According to the Petitioners, in light of inclusion of their names in the voters list, they would be entitled to vote for the ensuing election of the village panchayat within whose jurisdiction they reside, however, in view of the impugned notification issued by the Respondent No.2 taking the relevant date of 31 May 2022, they would be deprived from voting.

4. The learned Counsel for the Petitioners submitted that though the Respondent No.2- Election Commission of Maharashtra is empowered under Section 12 of the Maharashtra Village Panchayat Act, 1959 to notify a date for the purpose of adopting the electoral roll prepared under the provisions of the Representation of the People Act, 1951, this exercise cannot be arbitrary. The learned Counsel submitted that there is no reason coming forth as per selection of 31 May 2022 as the relevant date under Section 12 of the Act of 1959. The learned Counsel submitted that perusal of the notification for 2 June 2022 for the election to be held for the Gram Panchayat whose term has expired on January 2021 to April 2022 and for the Municipal Council and Zilla Parishad, a pattern emerges the Election Authority taking the last date of the preceding month as a cutoff date, and nothing is shown as why the same is being deviated from in the present case. The learned Counsel for the Petitioners

submitted that if the earlier pattern would be followed, the relevant date in the present case would be 30 September 2022.

5. The learned Counsel for the Respondent No.2-Election Commission of Maharashtra submitted that by the notification of 4 October 2022, the election is to be held for 7649 Gram Panchayats in the State whose term is expired between October 2022 and December 2022 and it is not a case of only two Petitioners suffering prejudice. The learned Counsel submitted that in all the notifications the date is of 31 May 2022 and earlier dates were because of postponement of the election, the date has been arrived at. He submitted that there is no such pattern and the Authority has to take a decision for large number of local bodies.

6. Under Section 12 of the Act of 1959, there is no statutory stipulation as what date that should be taken as a relevant date by the State Election Authority. The State Election Authority does not prepare the electoral roll but only adopt the roll prepared for the Maharashtra Legislative Assembly and stipulates the relevant date. Any date chosen by the State Election Authority would patently give rise to challenge such as the present one at the behest of those who are deprived of voting because of the cutoff date. Therefore prejudice cannot be granted. For the argument of violation of statutory mandate for which we do not find any mandate under the relevant Statute. It is the Petitioners who are trying to discern a pattern and thereafter criticizing the Respondent No.1 for not

following the pattern they have invented. Unless the pattern that is sought to be argued by the Petitioners is statutorily engrafted, the same cannot be recognized and enforced. Further we note that for all the elections the date is consistent as 31 May 2022.

7. According to us, when the election authority will have to take a decision as regards 7649 Gram Panchayats, which is an important task entrusted to the Election Commission, its decision to fix a suitable date which cannot be casually reviewed and not that at the behest of every person, who falls on the other side of the cutoff date; the Election Authority is called upon to justify the selection of a suitable date. Assuming judicial review is permissible no violation of the statutory mandate is shown. Therefore, the petition cannot be entertained and is accordingly rejected.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)

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