

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

78 WRIT PETITION NO.2433 OF 2021

VITTHAL SHRIRANGRAO JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. M S Deshmukh a/w S S
Gangakhedkar

AGP for Respondents : Mr. S B Yawalkar

Advocate for Respondents : Mr. A. B. Kadethankar For R.no.1,
Mr. C V Dharurkar for R-7.

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CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.

Dated: March 20, 2023

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PER COURT :-

1. Heard Mr. Deshmukh, learned counsel for the petitioner.
2. The petitioner is a voter from respondent no.6 Village Panchayat is seeking relief of issuance of writ of quo-warranto with a declaration that respondent no.7 be held to be not eligible to continue as a Member of respondent no.6 Gram Panchayat. It is the case of the petitioner that respondent no.7 become a returned candidate on January, 15, 2021 that is on which election of respondent no.6 Village Panchayat was held. Prior to that, inspite of there being enrollment process, respondent no.7 got herself enrolled by the approaching the concerned officer in a day, as it can be seen from the say;
aaa/-

submitted an application for enrollment on the same day. It was processed and accepted. According to Mr. Deshmukh, the petitioner having realized said issue has raised an objection to the respondent on 24th November, 2020 and sought deletion of name of respondent no.7. The respondent Tahsildar has sought report from the Booth Level Officer vide communication dated November 27, 2020 and Booth Level Officers have confirmed that name of respondent no.7 was recorded at sr.no.696 and her husband at 695. Village Development Officer has also certified that respondent no.7 and her husband are not residents of said village panchayat. As such, according to him, respondent no.7, not being permanent resident of village within the jurisdiction of respondent no.6 village panchayat, writ of quo-warranto needs to be issued thereby directing discontinuation of the said respondent from the post of Member of the village panchayat.

3. After election, admittedly, it was open for the petitioner to question the same before the Election Tribunal as contemplated under section 15 of the The Village Panchayats Act, 1958.

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4. Taking shelter of sub-section 7 of the Act, Mr. Deshmukh submits that since enrollment of respondent no.7 as a voter was because of mistake by the officer, provisions of sub-section (7) of section 15 will come in and election cannot be set aside. However, if we appreciate the aforesaid submissions what can be noticed is that respondent no.7 had not come out such stand of committing an error rather the petitioner is seeking writ of quo-warranto based on the claim that respondent no.7 is not permanent resident of the village which falls within the jurisdiction of respondent no.6 to become voter of said village panchayat. The record referred above during the course of the hearing depicts that it was brought to the notice of the Tahsildar that respondent no.7 was not permanent resident of village. Under such an eventuality, it can be said that election petition, if so preferred would have been hit by sub-section 7 of section 15 of the Act.

5. In the aforesaid background, we are of the view that discretionary relief in exercise of writ jurisdiction cannot be granted in the present petition when respondent no.7 is declared as elected candidate.

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6. As such, we refrain ourselves from exercising writ jurisdiction. In case, if the petitioner takes out a case for setting aside election of the respondent no.7, the same be decided in accordance with law and without being influenced by dismissal of the present writ petition. It is clarified that the time consumed by the petitioner be taken into account in case, the issue of limitation crops up.

7. Writ Petition stands disposed off accordingly. Pending civil application stands disposed off.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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