

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

WRIT PETITION NO. 2943 OF 2023

Prakash S/o Subhashrao Kanode,
Age 36 years, Occu.: Agril.,
R/o Babultara, Tq. Partur,
District Jalna.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32.
 2. The Collector, Jalna,
District Jalna.
 3. Tahsildar Va. Taluka Election Officer,
Tahsil Office, Partur, Tq. Partur,
District Jalna.
 4. Returning Officer,
Gram Panchayat Babultara,
Tq. Partur, District Jalna.
 5. Deelip S/o Raosaheb Lahukare,
Age 29 years, Occu. : Business,
R/o Babultara, Tq. Partur,
District Jalna.
 6. Chandrakala Babasaheb Kanode,
Age 55 years, Occu. : Agril. & Household,
R/o Babultara, Tq. Partur,
District Jalna.
- .. Respondents

Shri Gautam J. Karne, Advocate for the Petitioner.
Shri Y. G. Gujrathi, A.G.P. for the Respondent Nos. 1 to 4.
Shri S. S. Palnitkar, Advocate for the Respondent No. 5.

CORAM : SHAILESH P. BRAHME, J.

DATE : 27TH OCTOBER 2023.

ORAL JUDGMENT :

. Rule. Rule is made returnable forthwith. With the consent of learned counsel for the parties heard finally at the admission stage.

2. The petitioner is challenging the order dated 08.02.2023 passed by the learned Joint Civil Judge Junior Division, Partur dismissing Election Petition No. 02 of 2023 on the point of limitation. The petitioner filed proceedings under Section 15 of the Maharashtra Village Panchayat Act (hereafter referred as to the 'Act' for the sake of brevity and convenience).

3. The undisputed facts revealed in the present petition are that there was election of village panchayat Babultara, Tq. Partur, Dist. Jalna. As per the programme voting took place on 18.12.2022 and results were declared on 20.12.2022. The notification from the office of the Collector was to be issued on 23.12.2022. The petitioner filed Election Petition No. 02 of 2023 in the Court of Civil Judge Junior Division, Partur challenging the election of the present respondent No. 5 on 06.01.2022.

4. The learned Judge held that as per Section 15 of the Maharashtra Village Panchayat Act (hereinafter referred as to the 'Act'), limitation reckoned from the date of declaration of

result that is 20.12.2022 and not from the publication of the notification that is 23.12.2022. The petition was held to be filed beyond the period of 15 days and it was dismissed.

5. The learned counsel for the petitioner submits that the period of 15 days has to be counted from the date of notification that is 23.12.2022. He submits that the provisions of the Limitation Act 1963 apply to the situation. He further submits that the notification to be issued by the office of the Collector has a significance which cannot be ignored and, therefore, the date of declaration of result is immaterial. According to him the learned Judge has committed grave error of jurisdiction in dismissing the matter on hyper technical ground. He would submit that serious issues have been raised in the election petition challenging validity of the respondent No. 5. He would rely upon the following judgments of this Court.

- I. Sangitabai W/o Vasudeo Rajput Vs. State of Maharashtra reported in 2017(6) Mh.L.j. 841.
- II. Gita Lahanu Pawar @ Gauri Lahanu Pawar Vs. Kalavatibai Kashinath Pawar and others reported in 2019(4) Mh.L.J. 808.
- III. Savita Devidas Adhane Vs. State of Maharashtra and others reported in 2019(5) Mh. L. J. 625.
- IV. Shaikh Ibrahim Janmohammad Vs. Tekchand Fakirchand Rathod and others reported in 1986 Mh.L.J. 902

6. Per contra the learned counsel for the respondent No. 5 supports the impugned order. According to him the learned Judge is justified in holding that the limitation reckons from the date of declaration of result which is a statutory provision. He would submit that the provisions of the Limitation Act do not apply to the given case. He seeks reliance upon the judgment of this Court rendered in the matter of **Umesh Tukaram Kamble Vs. Shamrao Sakharam Patil and others** reported in **2008(2) Mh. L. J. 727**.

7. I have gone through the rival submissions canvassed by the learned counsel for the parties.

8. The election petition filed by the petitioner was under Section 15 of the Act. The proceedings are at the first instance. The proceedings are governed by Section 15 of the Act. Section 15(1)(i) of the Act indicates the limitation of 15 days after the date of declaration of result of the election. The date of declaration of election in the present matter is 20.12.2022 and not 23.12.2022. Besides that there is no express provision in the Act empowering the Court to condone the delay or make the provision of Limitation Act applicable to the proceedings U/Sec. 15 of the Act.

9. The Act concerned is a complete code in itself. The relevant provisions deal with the matters of election. The matters of election are strictly regulated by the express

provision. The learned counsel for the respondent No. 5 has rightly pointed out the law laid down by this Court in case of **Umesh Tukaram Kamble Vs. Shamrao Sakharam Patil and others** cited supra. In that matter there was delay in filing the election petition under Section 15 of the Act. An application for condonation of delay was filed along with the petition and the delay was condoned by the judge. The order of condonation of delay was assailed in the High Court, which was quashed by the learned Single Judge by elaborate discussion considering the provisions of the Limitation Act, Bombay Village Panchayat Act and especially Section 29(2) of the Limitation Act. The discussion in paragraph No. 13 of the said judgment is as follows :

“**13.** The State Legislature while enacting the provisions of the Bombay Village Panchayats Act, 1958, legislated a specified period of limitation for challenging the validity of an election. An application to question the validity of the election of a member of a Panchayat has to be brought within 15 days after the date of the declaration of the result of the election. The object underlying the prescription of this period is that electoral disputes must be brought to adjudication on an expeditious basis. In a democracy, disputes in regard to the validity of elections must be resolved at the earliest. The necessity for repose is a matter of public policy. The resolution of electoral disputes cannot be relegated to an uncertain future. Elected representatives must be left unhindered in their task of governing. Section 15A furthers this object by enunciating that no election to a Panchayat shall be called in question except in accordance with the provisions of Section 15 and no Court other than the Judge referred to in that section shall entertain any dispute in respect of such an election. Section 15 makes detailed provisions in regard to the manner in which the validity of an election will be determined by the Judge and in respect of the

procedure which is to be followed. Sub- section (2) of Section 15 undoubtedly provides that for the purposes of the enquiry, it is open to the Judge to exercise all the powers of a Civil Court. That however, refers to an enquiry upon which, as sub- section (2) provides, the Judge proceeds to pass an order confirming or amending the declared result or setting the election aside. In other words, sub-section (2) contemplates an election petition which is instituted within the prescribed period of fifteen days. The powers of the Civil Court that are conferred upon the Judge by sub-section (2) of Section 15 cannot, by any logic, be extended to the condonation of delay in bringing the election petition within the prescribed period of fifteen days from the date of the declaration of the result. A construction that would be opposed to the mandate of sub-section (1) and which would negate the underlying object of prescribing a period of limitation of fifteen days must be eschewed. In these circumstances, the provisions of Section 15 and the underlying object lead to the conclusion that the applicability of the provisions of Section 5 of the Limitation Act, 1963 stands expressly excluded by the special or local law. To recapitulate, it is a settled principle that even in the absence of an express reference under the special law, it is open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and the scheme of the special law exclude their operation. The nature of the provisions contained in Section 15(1), the nature of the subject matter and the scheme of the special law in the present case exclude the application of Section 5 of the Limitation Act, 1963."

10. In view of the erudite exposition of law as stated above, I am of the considered view that Section 29 of the Limitation Act is not attracted. Besides that in the present matter there is no attempt by the petitioner seeking condonation of delay. The proposition laid down in para No. 13 stated above is aptly applicable to the present case. I propose to follow the same

course.

11. The learned counsel for the petitioner has referred to the judgments cited above. Some of the judgments are pertaining to the proceedings of appeal U/Sec. 14 of the Act. It is already clarified in the earlier paragraph of the judgment that election petition is proceeding at the first instance. The direct pronouncement applicable to the present matter would be that of **Umesh Tukaram Kamble Vs. Shamrao Sakharam Patil and others** cited supra. Considering the distinguishing fundamental facts, I am of the opinion that the judgments cited by the learned counsel for the petitioner are not applicable.

12. The judgment in the matter of **Savita Devidas Adhane Vs. State of Maharashtra and others** (supra) pertains to altogether different facts. The issue of limitation under Section 15 or 16 under the Act was not been germane. The judgment rendered in the matter of **Shaikh Ibrahim Janmohammad Vs. Tekchand Fakirchand Rathod and others** (supra) is also not applicable to the facts of the present case.

13. For the reasons stated above, the petition fails. Same is dismissed. However, there shall be no order as to costs. Rule is discharged.

[SHAILESH P. BRAHME, J.]

bsb/Oct. 23