

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

WRIT PETITION NO. 13135 OF 2023

1. Rambhau Uttam Rathod,
Age : 47 years, Occu. Agril,
2. Madhukar Rama Rathod,
Age : 50 years, Occu. Agril,
3. Suresh Sakharam Rathod,
Age : 45 years, Occu. Agril.,

All R/o. Village Devla Tanda,
Tq. Loha, Dist. Nanded.

...Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The State Election Commission,
Through Collector – Nanded,
Tq. & Dist. Nanded.
3. The Sub Divisional Officer,
Kandhar, Tq. Kandhar,
Dist. Nanded.
4. The Tahsildar, Loha,
Tq. Loha, Dist. Nanded.
5. Village Development Officer,
Village Panchayat, Devla Tanda,
Tq. Loha, Dist. Nanded.

...Respondents

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Mr. Anil M. Gaikwad – Advocate for the petitioners

Mr. P. K. Lakhotiya – AGP for respondent/State

Mr. A. B. Kadethankar – Advocate for respondent no. 2

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**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATED : 18th OCTOBER, 2023

PER COURT :-

1. This petition was sworn on 14.10.2023. A circulation note was moved on 16.10.2023, after the petition was registered and urgent circulation was granted for today.

2. These are three petitioners before us, who have put forth prayer clauses B, C, D and E as under :-

B] Issue writ of mandamus or any other writ, order or direction in the nature of writ of mandamus directing the authorities to hold the elections to the village Panchayat Devla Tanda by adopting the voters list as per the final ward formation published on 21/04/2023 by including the voters from House No. 364-405 for ward No. 1, House No. 406 to 420 for Ward No. 2 and House No. 421 to 554 for Ward No. 3 by quashing and setting aside the voters list as has been published by the authorities below Exhibit-C and for that purpose issue necessary order.

C] Issue writ of mandamus or any other writ, order or direction in the nature of writ of mandamus directing the respondents authorities to maintain the voters from House No. 364 to 405 in ward No.

1, House No. 406 to 420 in Ward No. 2 and House No. 421 to 554 in Ward No. 3 as prayed in the representation dated 17/08/2023 and the chart below Exh-D and for that purpose issue necessary order.

- D] Pending hearing and final disposal of the present Writ Petition allow the voters to vote in the Ward Numbers as per the finalized ward formation by referring to their house numbers as published on 21/04/2023 and for that purpose issue necessary order.
- E] Grant ad-interim relief in terms of prayer clause [D].

3. It is stated that these three petitioners are residing in Ward No. 1 and their names were included in the voters list of Ward No. 2. It is contended that they are shocked that the voters list has been published contrary to the ward formation. The petitioners, however, submit that the ward formation was published on 17.03.2023 as under: -

Ward No.	Population	House Numbers in the Ward	Total Number of Members to be elected
1	474	364-405	3
2	316	406-420	2
3	316	420-554	2

4. It is now contended that as per the finalized ward formation, following are the houses which are located in the three

wards :-

As per the finalized ward formation	As per the voters list published ward wise
1 – House No. 364 – 405	House No. 364 – 385
2 – House No. 406 – 420	House No. 386 – 420
3 – House No. 421 – 554	House No. 421 - 554

5. The petitioners submit that the said Village Panchayat, Deola Tanda, Tal. Loha, Dist. Nanded, consists of three wards. Seven members are to be elected from the said three wards. Three members from the first ward, two members each from the second and third ward.

6. There is no dispute that the objections were called for as regards the voters list in between 10.08.2023 to 20.08.2023. Apparently, the objection raised by two petitioners, dated 17.08.2023, is addressed to the Sub-Divisional Officer, Sub-Division Office, Kandhar and the Tahsildar, Tahsil Office of Loha. The said objection was not as per Form No. 7 as required under Rule 13 of the Registration of Electors Rules, 1960 [hereinafter referred to as '1960 Rules'].

7. The learned advocate for the petitioners strenuously submit that around 105 voters are shifted from ward no. 1 to ward no. 2. They claim to be a part of this chunk of voters. They contend that the final voters list declared on 25.08.2023 clearly indicates 105 voters

in ward no. 2. The petitioners, thereafter, claim to have addressed representations, to various authorities. According to them, there is no remedy available, but to approach this Court.

8. The learned advocate appearing on behalf of the State Election Commission submits on instructions and which are not disputed, that the election program was declared on 03.10.2023, the filing of the nomination forms commenced on 16.10.2023 and would conclude on 20.10.2023. The scrutiny of the nominations would occur on 23.10.2023. The final contesting candidates list would be declared on the same day. Polling is scheduled on 05.11.2023.

9. The learned advocate for the petitioners relies upon a judgment delivered by the Hon'ble Supreme Court in the matter of **State of Goa v. Fouziya Imtiaz Shaikh** reported in 2021 (8) SCC 401, more specifically, paragraph no. 63(ii) and (v). Paragraph no. 63 reads as under :-

63. A conspectus of the aforesaid judgments in the context of municipal elections would yield the following results.

- I. Under Article 243 ZG(b), no election to any municipality can be called in question except by an election petition presented to a Tribunal as is provided by or under any law made by the Legislature of a State. This would mean that from the date of notification of the election till the date of the declaration of result a judicial hands-off is mandated by the non-obstante clause contained in

Article 243ZG debarring the writ court under Articles 226 and 227 from interfering once the election process has begun until it is over. The constitutional bar operates only during this period. It is therefore a matter of discretion exercisable by a writ court as to whether an interference is called for when the electoral process is “imminent” i.e. the notification for elections is yet to be announced.

- II. If, however, the assistance of a writ court is required in subserving the progress of the election and facilitating its completion, the writ court may issue orders provided that the election process, once begun, cannot be postponed or protracted in any manner.**
- III. The non-obstante clause contained in Article 243ZG does not operate as a bar after the election tribunal decides an election dispute before it. Thus, the jurisdiction of the High Courts under Articles 226 and 227 and that of the Supreme Court under Article 136 of the Constitution of India is not affected as the non-obstante clause in Article 243ZG operates only during the process of election.
- IV. Under Article 243ZA(1), the SEC is in overall charge of the superintendence, direction and control of the preparation of electoral rolls, and the conduct of all municipal elections. If there is a constitutional or statutory infraction by any authority including the State Government either before or during the election process, the SEC by virtue of its power under Article 243ZA(1) can set right such infraction. For this purpose, it can direct the State Government or other authority to follow the Constitution or legislative enactment or direct such authority to correct an order which infracts the constitutional or statutory mandate. For this purpose, it

can also approach a writ court to issue necessary directions in this behalf. It is entirely upto the SEC to set the election process in motion or, in cases where a constitutional or statutory provision is not followed or infringed, to postpone the election process until such illegal action is remedied. This the SEC will do taking into account the constitutional mandate of holding elections before the term of a municipality or municipal council is over. In extraordinary cases, the SEC may conduct elections after such term is over, only for good reason.

V. Judicial review of a State Election Commission's order is available on grounds of review of administrative orders. Here again, the writ court must adopt a hands-off policy while the election process is on and interfere either before the process commences or after such process is completed unless interfering with such order subserves and facilitates the progress of the election.

VI. Article 243ZA(2) makes it clear that the law made by the legislature of a State, making provision with respect to matters relating to or in connection with elections to municipalities, is subject to the provisions of the Constitution, and in particular Article 243T, which deals with reservation of seats.

VII. The bar contained in Article 243ZG(a) mandates that there be a judicial hands-off of the writ court or any court in questioning the validity of any law relating to delimitation of constituency or allotment of seats to such constituency made or purporting to be made under Article 243ZA. This is by virtue of the non-obstante clause contained in Article 243ZG. The statutory provisions dealing with delimitation and allotment of

seats cannot therefore be questioned in any court. However, orders made under such statutory provisions can be questioned in courts provided the concerned statute does not give such orders the status of a statutory provision.

- VIII. Any challenge to orders relating to delimitation or allotment of seats including preparation of electoral rolls, not being part of the election process as delineated above, can also be challenged in the manner provided by the statutory provisions dealing with delimitation of constituencies and allotment of seats to such constituencies.
- IX. The constitutional bar of Article 243ZG(a) applies only to courts and not the State Election Commission, which is to supervise, direct and control preparation of electoral rolls and conduct elections to municipalities.
- X. The result of this position is that it is the duty of the SEC to countermand illegal orders made by any authority including the State Government which delimit constituencies or allot seats to such constituencies, as is provided in proposition (IV) above. This may be done by the SEC either before or during the electoral process, bearing in mind its constitutional duty as delineated in the said proposition.

10. Considering the submissions of the learned advocate for the petitioners that their residences are in ward no. 1 and their names figure in ward no. 2, we have referred to clause (ii) under paragraph no. 63 from State of Goa (supra), as pointed out by him. Needless to

state, that it is the law laid down by the Hon'ble Supreme Court that the assistance of a Writ Court is required in subserving the progress of the election and facilitating its completion. The Writ Court may issue orders provided that the election process, once begun, cannot be postponed or protracted in any manner. We further refer to clause (v) under paragraph no. 63 wherein the Hon'ble Supreme Court has held that the judicial review of a State Election Commission's order is available on grounds of review of administrative orders. Here again, the Writ Court must adopt a hands-off policy while the election process is on and interfere either before the process commences or after such process is completed, unless interfering with such order subserves and facilitates the progress of the election.

11. In similar set of circumstances, in the matter of **Mahendra Bapusaheb Gund Versus The State of Maharashtra and others** [Writ Petition No. 6706 of 2022, this Court [**Dipankar Datta, C.J. (as His Lordship then was) and Ravindra V. Ghuge, J.**] delivered an order dated 04.07.2022. In the said matter, one private voter (petitioner) approached this Court contending that the private respondents are the residents of ward no. 4 and their names included in the final voters list of Ward no. 1 should be in ward no. 4. An objection was raised by the petitioner, though not in form no. 7, resulting in the rejection of the said objection. It was contended that the decision on the objection was not communicated to the petitioner in writing. He,

therefore, approached this court praying that the final voters list pertaining to ward no. 1 be altered and the respondents be directed to incorporate the names of private respondents in the final voters list in ward no. 4 by removing them from ward no. 1.

12. This Court considered the submissions of the learned advocates for the respective sides and also looked into the objection raised by the petitioner, which was on a plain paper. The particulars which are required to be set out in Form No. 7, were absent. Similar is the situation in this case wherein the objection, forwarded to the Sub-Divisional Officer and Tahsildar, was not carrying particulars that are necessary as required under Schedule 'A'.

13. This Court then concluded in paragraph no. 9, 11 and 12 (there is no paragraph by number 10) as under :-

9. Finally, we are left to consider the decisions cited by Mr. Kadethankar, delivered by a coordinate Bench of this Court at its principal seat in Writ Petition No. 3673 of 2020 (Suresh Nagnath Adsul Vs. Talathi, Village Shelgaon (R), Tal. Barshi, Dist. Solapur and others) and Writ Petition No. 3674 of 2020 (Milind Maryappa Mule and another Vs. Talathi, Village Hotagi Station, Tal. South Solapur, Dist. Solapur and others), both decided on 12th January, 2021. The coordinate Bench of this Court, in the similarly worded decisions, took into consideration the decision of the Supreme Court in the case of Anugrah Narain Singh and another Vs. State of U. P. and others, reported in (1996) 6 SCC 303 and declined to interfere. The decision in Anugrah Narain Singh (supra) reaffirmed the law laid down by the Supreme Court in the

case of Lakshmi Charan Sen Vs. A.K.M. Hassan Uzzaman, reported in (1985) 4 SCC 689, that an election cannot be allowed to be stalled on the complaint of a few individuals, for, such stalling would cause grave injustice to other voters having the right to elect representatives to the local bodies. In fact, the decision in the case of Anugrah Narain Singh (supra) referred to the conclusions recorded by the Court in an order dated 30th August, 1982, which formed part of the decision in Lakshmi Charan Sen (supra), to the effect that no High Court in exercise of its powers under Article 226 of the Constitution shall pass any order, interim or otherwise, having the tendency or effect of postponing an election that is reasonably imminent and in relation to which its writ jurisdiction is invoked and that imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The Court emphasized that "the more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution". The High Courts were also urged to bear in mind self-imposed limitations on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections.

11. Bearing in mind such position of law as well as having regard to the fact that the election notification is due to be published tomorrow, thereby signifying that the election process is imminent, we are left with no alternative but to dismiss the writ petition.
12. The writ petition stands dismissed. There shall be no order as to costs.

14. It, therefore, appears to us that if this petition is to be entertained today, when today is the third day of filing of the nomination forms and such filing would conclude on 20.10.2023 (two more days), 105 voters will have to be lifted / de-listed from the valid voters list of ward no. 2 and will have to be planted / inserted in the valid voters list of ward no. 1. If that happens, there would be a further imbalance of adding 105 voters to ward no. 1 and the voters list for ward no. 2 would then be depleted with the shifting of 105 voters. The voters list in ward no. 1 would then be inflated and the voters list in ward no. 2 would shrink.

15. The further impact, if the petition is to be favourably considered in the midst of the election, would be that, out of 105 voters to be inserted in the list of ward no. 1, some of the voters would intend to contest election and would be filing their nominations. This is bound to upset the election program and the present situation. Moreover, barring these three petitioners, 102 of such purportedly affected persons have not approached this court. It would mean that they rest content with inclusion of their names in ward no. 2.

16. Insofar as delay and laches on the part of these three petitioners, we find that the valid voters list was declared on 25.08.2023. All the voters were made known that this would be the

final voters list for ward nos. 1, 2 and 3. The election program was not yet declared. The petitioners, when they contend that the writ jurisdiction is the only remedy, should have approached this court earlier as they had five weeks at their disposal. The election program was declared on 03.10.2023. Even then they did not approach this court. Only after filing of the nomination forms began on 16.10.2023, that they filed this writ petition to seek reliefs as are set out in their prayers (after three days of the filing of the nomination forms).

17. In such circumstances, we are of the view that this petition cannot be entertained in the light of paragraph no. 63 (ii) and (v) of the judgment in State of Goa (supra) read with the order of this Court in the matter of Mahendra Gund (supra).

18. As such, **this petition fails and the same is disposed off.**

[Y. G. KHOBRAGADE]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE