

(2021) 04 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition No. 1188 Of 2021

Ajit Anant Desai And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 29-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Co-Operative Societies (Election To Committee) Rules, 2014 — Rule 40, 41, 42, 48

Citation : (2021) 04 BOM CK 0033

Hon'ble Judges : R. D. Dhanuka, J;V. G. Bisht, J

Bench : Division Bench

Advocate : Surel S. Shah, Yuvraj D. Patil, Deelip Patil Bankar, A. V. Anturkar, Tanaji Mhatugade, Ajinkya Udane

Final Decision : Dismissed

Judgement

R. D. Dhanuka, J

1. By this petition filed under Article 226 of the Constitution of India, the petitioners who claim to be members of the respondent no.4-society have prayed for a writ of mandamus directing the respondent nos. 2 and 3 to postpone and or extend the date of raising objections to the provisional voters list as provided for in the notification dated 9th April, 2021 to a suitable date and direction to the respondents to not proceed with finalization of voters list pursuant to the notification dated 9th April, 2021.

2. Mr. Shah, learned Counsel for the petitioners invited our attention to the order dated 10th February, 2021 passed by this Court in Writ Petition No. 489 of 2021 in case of Ajit Anant Desai v/s. State of Maharashtra and Ors. and would submit that pursuant to the said order passed by this Court

directing the Election Authority to proceed with the election process expeditiously, the Election Authority has issued a Notice on 9th April, 2021. He submits that the objections to the provisional voters list were to be raised by the concerned parties during the period between 12th April, 2021 and 22nd April, 2021.

3. Learned Counsel invited our attention to the order passed by the Government of Maharashtra on 21st April, 2021 thereby imposing lockdown in the State of Maharashtra till 1st May, 2021 upto 7:00 a.m. and would submit that in view of the stringent conditions imposed by the State of Maharashtra in the said order dated 21st April, 2021 it was not possible for the petitioners to collect documents to enable the petitioners to raise objections in respect of the provisional voters list.

4. It is submitted by the learned Counsel that that in some of the cases the voters who are though alive have been shown as dead and some of the voters who have though died, their names continue in the provisional voters list.

5. It is submitted by the learned Counsel that since the election is already postponed, no prejudice would be caused to the respondent no.1 if the date of finalization of the provisional voters list, which is fixed as 6th May, 2021 is extended to enable the petitioners to collect the documents and to raise the objections in respect of the provisional voters list.

6. Learned Counsel for the respondent nos. 2 and 3, Election Authority on the other hand opposes this petition on the ground that pursuant to the said notice dated 9th April, 2021 inviting objections in respect of the provisional voters list, 150 persons have submitted objections by filing hard copies and 8 objections were received by email. 20 Applications were received from the persons alleging that their names were shown as dead though are alive.

Learned Counsel states that the last date for inviting the objections was 22nd April, 2021. After 22nd April, 2021, the concerned officer has already heard those objections on 27th April, 2021. After considering all those objections, list would be finalized on 6th May, 2021. It is submitted that no details are furnished in the Writ Petition filed by the petitioner as to which voters are alive who are shown as dead or which voters are already dead though ample opportunity was available to all the objectors during the period between 12th April, 2021 and 22nd April, 2021 even by raising objections by email.

7. It is submitted by the learned Counsel for respondent nos. 2 and 3 that even if the petitioners or the other voters would not have raised any objection, under Rule 40 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short "the said Rule 2014") each voter entering the polling station is required to carry out with him photo identity proof as prescribed by the Election Commission of India, Central and State Government or photo identity card issued by society as per provisions in bye-laws of that society. The presiding officer may employ at the polling station such persons as he thinks fit to help in the identification of the voters or to assist him at the time of taking poll. Learned counsel also placed reliance on Rule 41, 42 and 48 of the said Rules 2014 and would submit that all the apprehensions of the petitioners that somebody would impersonate the dead voters as well as the persons who are shown dead but are alive are baseless and contrary to the said Rules 2014. He submits that those voters who had raised objection in respect of the provisional voters list, their objections are being considered.

8. Mr. Anturkar, learned Senior Counsel for the respondent no.4 vehemently opposes this petition on the ground that this Court has already directed the Election Authority to conduct and proceed with the election proceeds expeditiously as per order dated 10th February, 2021. He submits that after considering various SOPs issued by the State of Maharashtra and similar submissions in Writ Petition No. 1119 of 2021 filed by Makarand Balkrushna Borade v/s. State of Maharashtra and Ors. and in companion matters this Court rejected those arguments by considering the statement made by the State Government that they would follow the safeguards provided in various notifications/SOPs issued by the State of Maharashtra in respect of covid-19. We are informed by the learned Senior Counsel that the Special Leave Petition filed against the said order dated 9th April, 2021 passed by this Bench has been dismissed.

9. Learned Senior Counsel for the respondent no.4 submits that there are provisions pointed out by the learned Counsel for the respondent nos. 2 and 3 providing sufficient safeguard which take care of the grievances made by the appellant in this case.

10. Mr. Shah, learned Counsel for the petitioners in rejoinder submits that this petition shall be considered as a representation by the respondent. No

prejudice would be caused if an opportunity is granted to the petitioners to lodge objection. He further submits that in the election programme issued by the Election Authority on 9th April, 2021, there is no date prescribed for hearing objection by the Election Authority. After prescribing the last date for lodging objection i.e. between 12th April, 2021 and 22nd April, 2021, the next step prescribed in the said programme is to decide the objection on 3rd May, 2021.

11. We are not inclined to accept the submission of Mr. Shah, learned Counsel for the petitioners that the petitioners are prevented from raising any objection within the reasonable period of time in respect of the provisional voters list and that no prejudice would be caused, if the date of finalizing the provisional voters list is postponed.

12. A perusal of the notification dated 9th April, 2021 issued by the Election Authority clearly indicates that the objections were to be raised in respect of the provisional voters list during period between 12th April, 2021 and 22nd April, 2021. The said notification also indicates that the objection could be raised even by email at the email id prescribed in the said notification. The order dated 21st April, 2021 extending the lockdown upto 1st May, 2021 did not affect the petitioners from raising objection by email within the time prescribed. We are inclined to accept the statement made by the learned Counsel for the respondent nos. 2 and 3 that during the period between 12th April, 2021 and 22nd April, 2021 about 150 objections were filed with the office of the Election Authority by various persons. 8 Persons have raised objections by email and 20 Applications were received raising objections that they were allegedly shown as dead though were alive. All these objections which were received within the period prescribed in the said notification are being considered by the Election Authority. There is no substance in the submission of Mr. Shah, learned Counsel for the petitioners that no date was prescribed for granting any hearing between 22nd April, 2021 and 3rd May, 2021. The date 3rd May, 2021 prescribed in the said notification was for deciding the objection. Granting hearing is one of the part of the said process between the last date of filing objection and the date of considering objection.

13. The learned Counsel for the respondent nos. 2 and 3 clarified that as per the said notification the final voters list would be declared on 6th May,

2021.

14. This Court has already considered similar arguments in the order dated 9th April, 2021 in case of Makarand Balkrushna Borade (supra) in Writ

Petition No. 1119 of 2021 and has dismissed the batch of petitions. Special Leave Petition filed against the said order passed by this Court is

dismissed. The process of finalization of the provisional voters list is part of the election programme which is already declared.

15. Be that as it may, Under Rule 40 of the said Rules 2014, the presiding officer is empowered to employ at the polling station such persons as he

thinks fit to help in the identification of the voters or to assist him at the time of taking poll. Each of such voters is required to enter the polling station

with his photo identity proof as prescribed by the Election Commission of India, Central or State Government or Photo Identity Card issued by society

as per provisions in bye-laws of that society. The polling agent is entitled to challenge the identity of a person claiming to be a particular voter by

depositing a sum of Rs.50 in cash with the presiding officer for each such challenge under Rule 41.

The presiding officer is empowered to hold the summary inquiry into the allegations and may for that purpose require the challenger to adduce

evidence in proof of the challenge and the person challenged to adduce evidence in proof of his identity and put to the person challenged any question

necessary for the purpose of establishing his identity and require him to answer them on oath. The presiding officer is empowered to debar the person

from casting the vote, if the presiding officer is satisfied that the challenge has been established. He can forfeit the amount of deposit made by the

polling agent, if it is found that such objection is frivolous or has not been made in good faith.

16. In view of the aforesaid provisions, in our view the apprehension of Mr. Shah, learned Counsel for the petitioners that somebody would

impersonate the dead members is taken care of by the legislature under those Rules. The petitioners have not even bothered to give any details of

such dead voters who according to the petitioners may be impersonated by someone on the date of election. In our view, the petition is totally devoid

of its merits and is accordingly dismissed with cost. The petitioners are directed to pay cost of Rs.25,000 in one set to the Maharashtra Legal Service

Authority within one week from today and shall produce the receipt evidencing the proof of payment of such cost to the Sheristedar of this Court within one week thereafter.