

(2018) 09 BOM CK 0109

In the Bombay High Court

Case No : Public Interest Litigation No. 99 Of 2017.

Avantika Ramesh Lekurwale And Another

APPELLANT

Vs

State Election Commission Thr. Collector Cum District
Electoral Officer, Nagpur And Others

RESPONDENT

Date of Decision : 25-09-2018

Acts Referred:

Maharashtra Village Panchayat Act, 1958 — Section 12, 12(2), 15, 15A
Representation of Peoples Act, 1950 — Section 22, 23, 23(3)
Constitution of India, 1950 — Article 226, 243(O), 243(Q)
Bombay General Clauses Act, 1904 — Section 13(3), 14, 21
Goa Municipalities Act, 1968 — Section 11
Maharashtra Municipal Corporations Act, 1949 — Section 7A

Citation : (2018) 09 BOM CK 0109

Hon'ble Judges : B.P. Dharmadhikari, J;M. G. Giratkar, J

Bench : Division Bench

Advocate : Rahul Dhande, J.B. Kasat, S.M. Ukey

Final Decision : Disposed Off

Judgement

B.P. DHARMADHIKARI, J

1. Considering the orders passed earlier and the nature of controversy, we have heard the matter finally by issuing Rule and making it returnable

forthwith, with consent of parties.

2. Two petitioners in Public Interest Litigation seek a direction to respondents to act upon the enquiry reports dated 10.08.2017 and 23.08.2017, and

reports of Second enquiry dated 06.09.2017, 07.09.2017 and 08.09.2017. Accordingly, they seek deletion of names of certain person from the

electoral roll prepared under Section 12 of the Maharashtra Village Panchayat Act, 1958 (hereinafter referred to as "the 1958 Act" for short).

These rolls were then prepared for elections of Village Panchayats of Tarodi, Kem, Chikna, Aadka, Mahalgaon and Jakhegaon.

3. This Court has on 14.09.2017, issued notice in the matter and thereafter, on 29.09.2017, while granting request made by respondents, subjected

result of elections to further orders of the Court in this Public Interest Litigation. Date 29.09.2017 happened to be the last date for submission

of the nomination papers and polling was scheduled on 16.10.2017. We, in that order, have taken note of a fact that all persons likely to be

affected by our orders were not parties to the Public Interest Litigation and hence, with this order, we adjourned the matter to 01.11.2017.

Accordingly, the elections have been held and when the matter was considered further, during arguments a question arose "Whether because of

omission on the part of respondents to remove names from voters list, said elections were materially affected ?

4. This Court therefore, has passed an order to that effect and then petitioners made an effort to obtain further details from respondents to prove

the prejudice. Those details have also been placed on record with appropriate affidavits. It is in this background, that we are considering the

controversy.

5. Learned counsel for the petitioners has pointed out that petitioner no.1 resides at Tarodi, while petitioner no.2 resides at Kem. They are social

workers and hence, are interested in maintaining sanctity of the election process. They have therefore, pointed out the mischief which has affected

the election of various village panchayats held on 16.10.2017. Shri Dhande, learned counsel also pointed out that though voters list for holding

elections of village panchayat, Jakhegaon was/is prepared, no elections to that village panchayat have been held.

6. He submits that on 07.07.2017, because of grievance made by petitioners, the Assistant Electoral Registration Officer and Tahsildar, Kamptee

issued a communication for deleting names of voters appearing twice, so as to reduce chances of bogus voting. Our attention is also drawn to the

enquiry reports for villages Tarodi, Kem, Chikna, Aadka, Mahalgaon to demonstrate how the bogus voters were found in that enquiry in large

numbers.

7. Shri Dhande, learned counsel states that in so far as village Tarodi is

concerned, total number of persons, whose names needed removal was about 340.Â The enquiry report itself observes that 289 names could have been removed forthwith and for remaining 51 voters, suitable orders were solicited.

8. For village Kem, total number to be deleted was 64.Â He also invited our attention to a communication dated 07.09.2017, which recommendsÂ removal of 72 names from voters list of Kem village.

9. In so far as village Chikna is concerned, the Authorities find removal of 58 names necessary.Â For village Aadka, authorities recommend deletion of 63 names immediately, and in relation to 61 names guidance has been sought.Â In so far as village Mahalgaon, is concerned, the authorities recommend deletion of 187 names and seek specific orders in relation to other 22 names.

10. Shri Dhande, learned counsel submits that had timely steps being taken and names deleted from respective voters list, only eligible and qualified voters would have beenÂ able to participate in the election process.Â Authorities, have deliberately avoided to discharge their obligation and they have ignored the provisions of Sections 22 and 23 of the Representation of Peoples Act, 1950 (hereinafter referred to as â??the 1950 Actâ? for short).

11. He has invited our attention to reply affidavit filed before this Court to show that in that affidavit respondents have in paragraph no.9 accepted to implement the enquiry report after the elections then scheduled on 16.10.2017.Â He submits that those elections are over long back and now fresh elections are due in October, 2018 still the bogus voters are continuing in the voters list.

12. Inviting our attention to additional affidavits filed in order to demonstrate how the elections are materially affected because of this mischief, he submits that Sarpanch of village Tarodi has been elected in direct election with a margin of only 24 voters, while the number of bogus voters therein is

6.Â Inviting attention to village Kem, he states that there the margin ofÂ difference between winning candidate and losingÂ candidate is just 16, whileÂ the number of bogus voters is 19.Â For village Aadka, the candidate has lost only by margin of 18 voters, while figure of bogus voters is 59.

He contends that this material therefore shows that because of illegal omission

on the part of respondents to perform their statutory duty, elections at village Tarodi, Kem, Aadka are materially affected. Accordingly therefore, these elections which were held subject to outcome of this Public Interest Litigation, need to be quashed and set aside.

13. Shri Ukey, learned Addl.G.P. has at the outset commented upon the annexures filed with the later affidavit by petitioners to urge that the data extracted therein is incorrect, and not as per the information supplied to petitioners under Right to Information Act, 2005. Effort is to urge that said data has been wrongly used or incorrectly quoted to give an impression that the elections are materially affected. We therefore, have compared the charts which are prepared by petitioners on the strength of information received by them under Right to Information Act. That information received is also stated to be produced on record. We find that only effort is to demonstrate that winning margin is less than the number of so called bogus voters in the elections. Though there may be minor errors at one or two places, in calculation, we do not see it as an effort to mislead this court.

14. Learned Addl.G.P. has also contended that the present controversy requires investigation into several disputed facts, and hence, remedy of Election Petition stipulated under Section 15 of the 1958 Act is the only appropriate remedy. He therefore, states that this Public Interest Litigation should not be entertained. To urge that even otherwise, High Court should not, in extra ordinary jurisdiction, intervene in election of local authorities, he has relied upon Article 243[O] of the Constitution of India read with Section 15A of the 1958 Act. He has further submitted that direction by this Court subjecting elections to outcome of Public Interest Litigation, does not enable petitioner to seek relief to the prejudice of elected persons behind their back. The elected ward members are not parties, and hence, their elections cannot be set aside.

15. To point out the limited powers available to respondent nos. 2 and 3, in such matters, he relies upon provisions of Section 12 of the 1958 Act, read with Section 22 of the 1950 Act. He submits that the basic document which forms foundation for preparation of such voters list is the list of voters finalized in terms of 1950 Act, read with Registration of Electoral Rules, 1960.

16. He submits that as per the procedure, fresh list of electors in terms of 1960 Rules, is to be made available by the Election Commission of India on

1st January, every year, and that list is then to be used by respondent nos. 2 and 3 for the purpose of election of local bodies. He has invited our

attention to provisions of Section 22 of 1950 Act, particularly, the substantive part appearing in Clause [c], to urge that in absence of general or

special directions by the Election Commission of India, respondent nos. 2 and 3 cannot undertake any amendment to such voters list published on 1st

January. Here the authorities have after noticing errors, rightly recommended correction in it to Election Commission. After proper orders or

directions are received, the same shall be given effect to. Till then according to the then statutory scheme, list published on 1st January has to

prevail.

17. In so far as conduct of elections in village Tarodi, Kem and Aadka are concerned, he submits that material on record is insufficient to hold that the

voters whose names were to be removed, have participated in those elections. He contends that merely showing on record the fact that margin of

defeat in election is less than the said number, is not sufficient. Voters whose names are found included twice or then who were not alive or then

have ceased to be residents, must be shown to have voted in the said elections. As that has not been done, inference that outcome is materially

affected, cannot be drawn.

18. Without prejudice, he has invited our attention to the circular issued on 07.07.2017, to urge that the mode and manner of carrying out exercise of

voting at the time of voting and at respective polling centers prescribed therein, eliminates such bogus voters. He submits that there are no

pleadings on record to show that prescribed procedure has not been followed. He therefore, prays for dismissal of Public Interest Litigation.

19. Though the provision of Article 243[O] of Constitution of India or Section 15A of the 1958 Act are pressed into service to point out availability of

remedy of election petition, learned counsel for petitioner Shri Dhande, in reply submits that maintainability of this dispute in Public Interest Litigation

has not been questioned.

Election petition in relation to other village panchayats could not have been filed by the petitioners and hence, cognizance of prayers by this Court

directly in Public Interest Litigation under Article 226 of the Constitution of India, cannot be objected. He further points out that the present dispute

is revolving around the preparation of the voters list and when it was filed, the election as complete was not the goal. Because of time taken in

adjudication, the elections have in the meanwhile been held and hence, this Court has also passed appropriate orders to take care of that event.

Without prejudice he submits that as per the settled law, challenge about validity or otherwise of voters list cannot form subject matter of election

petition under Section 15 of the 1958 Act.

20. Shri Dhande, learned counsel has also relied upon some judgments to urge that in matters of present nature bar of alternative remedy does not

arise for consideration. According to him, in fact no other remedy is available to petitioners.

21. After hearing the respective counsel, we find that the provisions of Article 243 [O] lay down that no election to any Panchayat shall be called in

question, except by an election petition. Article 243[O] is non obstante provision, and therefore, it requires the challenges to be raised only in

election petition.

22. Section 15A of the 1958 Act is a similar provision which states that the election of Panchayat shall not be called in question, except in

accordance with the provisions of Section 15 and no Court not competent to hear selection petition shall entertain any dispute in respect of such

election. Both these provisions, therefore, envisage a situation in which the challenge being raised before other forum or Court should be beyond the

scope of election petition ie it can not be looked into by a Judge hearing the election petition under Section 15 of the 1958 Act. This Court has

very recently accepted this position again in a judgment reported at 2016 (4) ABR 667 (Sau. Soni Gajanan Kurkute .vrs. Election Officer, Gram

Panchayat, Taroda, Yavatmal and another). Law laid down in AIR 1967 Bom.232 (Dhondba Adku and another .vrs. Civil Judge, Junior Division,

Hinganghat and others), has been distinguished on facts in said judgment. This Division Bench in 1967 has observed as under?

10. Now, it is true that there is no specific provision, as it found sometimes in other statutes, for getting the voters' list corrected. In this connection

it may be said that the scope of correction is comparatively very small, as the list

has to correspond wholly with the voters' list maintained for the Bombay Legislative Assembly as on a particular date notified by the State Government. Mistakes, therefore, can only be with regard to the inclusion of certain names in certain wards. Even so, it is true that there is no specific provision for getting corrections made in this list. That, however, does not make any difference to the matter.

11. Section 14 of the Bombay General Clauses Act provides that where by any Central Act or Regulation made after the commencement of the Act, any power is conferred on any Government, then, unless a different intention appears, that power has to be exercised from time to time. Indeed, the section speaks of the power conferred on Government, but this principle is of general application, and we do not see why the principle should not apply to a person who is authorized to act under the statute. Similarly, section 21 provides that whereby any Bombay Act a power to issue notifications, orders, rules or by laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or by laws so issued. This again is an enunciation of the general principle and there is not reason why this principle should not apply to this case. The Panchayats Act has conferred power on the designated officer to prepare and maintain the voters' list as required, and in our view it must necessarily include the power to make necessary corrections which are within the scope of his authority. This is borne out from the fact that sub-rule (4) requires copies of list of voters to be kept open for inspection at the Village Panchayat office and the Chavdi. Everyone is free to go to the Village Chavdi and to the Panchayat office and inspect the copies of the voters' list. There is no limit of period prescribed for which the lists are to be kept open. Since the lists must be kept open, it must suggest, therefore, that there would be ample opportunity to any person to point out mistakes and get them corrected before the date of nominations. Even sub-rule (5) gives a sufficiently long notice prior to the nomination specifying the places where copies of relevant lists of Voters are kept open for public inspection. One of the essential purposes of keeping open these copies for public inspection must be, to have such mistakes corrected so far as are possible to be corrected within the framework of the Act. Though, therefore, there is no specific

provision made by the State Government by the rules for getting mistakes in the voters' lists rectified, still in over view it would be open to the petitioners to have the list corrected. If no steps are taken to have the same corrected, then for the purposes of election, under sub-section (3) of section 13 the list is conclusive evidence and cannot be challenged. â??

Â In para 14, the Division Bench holds that errors in the voters' list can not be raised as a ground for challenge in election petition. It therefore,

follows that dispute of nature canvassed by petitioners in PIL is not amenable to election petition under Section 15 even in relation to Panchayats

where they reside. With the result bar under Article 243[Q] or Section 15A, is not attracted.

23. This brings us to the consideration of question whether elections of villages Tarodi, Kem and Aadka are materially affected. The elections at

village Jakhegaon has still not been held.Â In so far as village Chikna is concerned, there is no effort to demonstrate that said election is materially affected.

24. Perusal of annexures show that at village Tarodi, total votes cast are 857.Â Out of these 857 votes, the winning candidate has secured 439

votes, while the candidate who lost, secured 415 voters.Â Thus, defeat is only by a margin of 24 votes.Â According to the documents placed

on record at Tarodi Village Panchayat, 340 voters are found bogus.Â Whether any of these 340 bogus voters have cast vote in polling held on

16.10.2017, is therefore, the cardinal issue.Â No such clinching material has been made available on record.

25. At this stage of dictation, learned counsel for petitioners has invited our attention to paragraph no.2 of the additional affidavit filed vide stamp

no. 7805/2018 on 03.07.2018.Â Paragraph no.2 has been pressed into service to urge that there in relation to villages Tarodi, Kem and Aadka, the

fact that bogus voters in excess of margin of loss have cast their votes, is pleaded.

26. This paragraph no.2 reads as under :

â??2. The petitioners state that in Village Tarodi which comprised of 3 wards.Â The total voters from Ward no.1 was 260 out of which there were 9

bogus voters.Â Ward no.2 comprised of 404 votes out of which 38 were bogus, Ward no.3 had 200 voters out of which 13 were bogus.Â Thus,

from Tarodi Village out of the total voters of 864 there are 60 bogus voters i.e. 6.94% of the total voters are bogus. The Petitioners stated that

there are 17 voters having their names on two different voting lists i.e. has been registered more than once in a constituency which being contrary to

Section 18 of the Representation of Peoples Act, 1950. Order passed by the Competent Officer for deleting the names of 21 bogus voters from the

voters list. The results from the election for the post of Sarpanch from Tarodi Village show that the difference of voters between the first candidate

one Arvind Haribhau Fulzele with 439 votes and the runner up candidate one Ramvilas Nathuji Sankale with 415 votes was a mere 24 votes out of

which total bogus votes are 60 bogus which clearly demonstrates that the election of Sarpanch is materially affected by allowing such bogus voters to

have participated in the said election. Annexed and marked as Annexure A (colly), are copies of the list of bogus voters from each ward,

result of Sarpanch election and list of voters of Tarodi Village.

The documents on which petitioners have placed reliance are not identified or annexed specifically. There is no specific oath to the effect that

persons named therein did cast the vote. These documents are not even certified as "true copies" and its contents are not backed by solemn

affirmation. All are compiled together and marked collectively. The petitioner has on the basis of these documents claimed to be received under

Right to Information Act, prepared a chart and such charts are petition page no. 280 onwards. Why the petitioners have avoided to support

contents thereof is not clear. The pleadings in relation to village Kem and Aadka are not different.

27. Moreover the solemn affirmation sworn by petitioner no. 2 Atul supporting the contentions in additional affidavit stamp. no. 7805 of 2018 on

03/07/2018 which introduce Annexures A or B or C collectively, does not carry mention to these documents filed as a bunch and its contents.

In first paragraph it is stated that the documents supplied by the Tahsildar as per orders of this Court are being brought on record with this affidavit.

But, then copies placed on record are not certified by the petitioners to be true copies of documents received by them from the Tahsildar. They have

not supported the contents thereof by proper affidavits. The heading of the register or signs of voters appearing therein therefore can not imply that

those persons have actually casted their vote. The affirmation declares that the contents of paragraphs 1 to 5 of the foregoing application are true to the best of my knowledge of the deponent. It also adds that very same contents paragraphs 1 to 5 are based on information and/or legal advice received by the applicants. Firstly, this solemn affirmation is not on any application and secondly, what can be accepted as true on information or advice can not be true to own knowledge. The pleadings in memo of writ petition are material and there the language is identical. Not only this the paragraph numbers are also left blank i.e., not filled in. While in additional affidavit (supra) fills in figures 1 & 5 in hand, in main affirmation in support of PIL on 13.09.2017, these spaces are left blank. In one more additional affidavit of 4 paragraphs filed vide stamp no. 14042 of 2017 on 07/11/2017, while declaring the contents as true as per my knowledge, the paragraph numbers are again left blank by petitioner no. 2 Atul. But in later part Atul declares that contents of paragraph nos. 1 to 4 (1 & 4 are in handwriting) of the foregoing petition are based on the information and/or legal advice received by the petitioners and that I believe the same to be true & correct.

28. In 2010(8) LJSOFT 170 Dashrath s/o. Reshmaji Gaddamwad V. State of Maharashtra Through its Secretary Tribal Development Department & ors. Division Bench of this Court observes:

24. The petitioner has filed affidavits before Scrutiny Committee, copies of which are produced along with petition. None of the affidavits were verified. As a matter of fact, the affidavit is to be modelled on the provisions contained in O.19, r.w.37 of the Code of Civil Procedure, 1908, (the Code), whether the Code applies in terms or not and when the statement is not based on personal knowledge, the source of information is required to be disclosed with adequate particulars. The importance of setting out the sources of information in affidavits had come up for consideration before the Apex Court in number of matters. One of the earliest decisions is State of Bombay Vs. Purushottam Jog Naik 1952 SCR 674 wherein, the Apex Court endorsed the decision of the Calcutta High Court in Padmabati Dasi Vs. Rasik Lal Dhar, ILR 37 Cal 259 and held that the sources of information should be clearly disclosed. The affidavit requires the deponent to set

out which statements are true to the knowledge of the deponent and which of them are true to his information. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence.

The importance of verification is to test the genuineness and authenticity of the information furnished or allegations made and also to hold the deponent responsible in the event falsity thereof is proved.

25. In the instant case, the affidavits are not only sketchy but they are defective. In none of the affidavits, the deponents have stated that the statements made in the affidavits are based on their personal knowledge. No source of information is disclosed. The affidavits of all the parties suffer from the mischief of lack of proper verification with the result such affidavits cannot be taken as admissible in evidence. Hence, the affidavits cannot be accepted being defective. They are liable to be rejected.â??

29. This judgment therefore does not permit petitioners to rely on these additional affidavits and also the documents filed collectively. The same are not of any assistance to advance their cause. â?? Election law itself is technical & here, when the elected candidates are not before us, We can not rely upon these pleadings & documents to infer that the elections are materially affected & therefore vitiated.â??

30. The statement on oath in additional affidavit no where specifically asserts that the named persons shown as bogus have cast their vote on

16.10.2017. Two petitioners do not allege and could not have remained present at all polling booths and as such, they can not have personal knowledge about the fact of casting the vote. Petitioners want us to draw that inference by comparing the charts with other documents. Contents of those documents also are not supported by any affidavit.â?? â?? In writ jurisdiction, we find this exercise without specific assertionsâ?? not possible.

31. Theâ?? other contention is about power with respondents to rectify the voters list.â?? Respondents have relied upon provisions of Section 12 of the

1958 Act, in an effort to show that unless and until the Election Commission of Indiaâ?? gives them specificâ?? directions, the names found to beâ??

included twice or names of deceased persons or names of ineligible persons cannot be deleted by them. Thus, they do not argue that the voters list

published on 1st January each year is sacrosanct and â?? can not be touched. They

only need authorization by general or special order to do so. Shri

Kasat, learned counsel for respondent no. 1 however has also relied upon the judgment of division bench of this Court (2014) 2 BomC.R.

131 Rani Laxman Wagh Vs. Electoral Registration Officer & ors. and judgment of Division Bench delivered at Goa in the case of Savio

O. Fernandes and others Vs. State Election Commission and others (AIR 1996 Bombay 343) as followed by this court in Ramdas Nana Andhale Vs.

Electoral Officer and others in W.P. No.8720 of 2013 (Coram: B.P. Dharmadhikari and Ravindra V. Ghuge, JJ.), dated 23rd October, 2013

reported in 2014 (1) LJSOFT 41 in to urge that any alternation in such list is not possible.

32. We find consideration of last judgment in case of Rani Laxman Wagh Vs. Electoral Registration Officer & ors. (supra) sufficient. Both earlier

judgments find consideration therein. Division Bench of this Court at Aurangabad, in said matter has observed that

12. Thus, while considering the claims, which are filed in accordance with law, the Honourable Apex Court concluded that the failure to finally

dispose off claims and objections cannot arrest the process of election to Legislature and that the election has to be held on the basis of the electoral

roll which is in force on the last date for making nominations.

13. This Court had yet another occasion to deal with the issue based on similar set of facts in the case of Ramdas Nana Andhale (supra). The

Aurangabad Bench of the Bombay High Court vide its order dated 23.10.2013 to which one of us (Ravindra V. Ghuge, J.) is a party has considered a

similar challenge in respect of voters' list for election of Ahmednagar and Dhule Municipal Corporations. In paragraph No.7 of the said order, the

Division bench of this Court has concluded as under:

7. We find that very same challenge has been gone into by the Division Bench of this Court at Goa. In fact, in said matter, there was challenge to

constitutionality of Section 11 of the Goa Municipalities Act on the ground that it does not permit correction in voters list for the purposes of Municipal

elections. That challenge has been turned down. Hence, impugned order dated 17.10.2013 does not call for any interference

14. It is seen that the scheme for using the voters list for the Municipal Corporation elections contains a mandate that voters list of Assembly is to be

used.Â

15. Any scheme and mechanism for preparation of a separate voters list for Municipal Corporation election is not provided. Even the machinery acting

under Representation of People Act, 1950 and Registration of Elector's Rules, 1960 have not been fastened with any obligation under Representation

of People Act 1950 and Registration of Electors Rules, 1960, independently or when read with MMC Act to revise the list and do additions or

amendments in the list of voters specially for the purpose of Municipal Corporation elections.

16. The availability of petitioner's right is dependent upon existence of a statutory provision in favour of such a claim.Â??

33.Â Â Â Thus, in judgment delivered at Goa, the absence of power to correct the voters list was not disputed and denial of that power to the

election officer formed subject matter of challenge with argument that it was unconstitutional. This law has been used at Aurangabad initially in

Ramdas Nana Andhale Vs. Electoral Officer and others (supra), and thereafter inÂ Rani Laxman Wagh Vs. Electoral Registration Officer and ors,

(supra).Â Both these judgments are on different law viz. Section 7A of Maharashtra Municipal Corporations Act, 1949 andÂ follow the view taken

at Goa. Dhondba Adku and another .vrs. Civil Judge, Junior Division, Hinganghat and others (supra),Â looked into by us above is a direct ruling on

same enactment andÂ clinches the controversy. It is not even comments upon by the respondents.Â Section 12 of the 1958 Act provides that

electoral roll of Maharashtra Legislative Assembly prepared under 1958 Act, shall be the voters list for a ward or village. Â SubÂsection [2] thereof

stipulates thatÂ an Officer designated by State Election Commission has to maintain list of voters forÂ each such ward or village. The provisions of

1960 Rules show the preparation of electoral roll or its updating, is a continuous process and respondents have urged andÂ didÂ notÂ dispute that

the Election Commission of India has to publish such list on 1st January every year.Â In view of this admitted position, we are not required to dwell

upon the provisions contained in the 1960 Rules, and we can directly come to provisions of Section 22 and 23 of 1950 Act.Â Section 12[2] of 1958

Act requiring Officer designated by State Election CommissionÂ â??to maintainÂ Â list of voters forÂ each such ward or village, shows an

obligation cast upon and power available to him to adapt the list of assembly / legislative constituency to a smaller area i.e. ward in village panchayat.

List so prepared has an independent existence. Dictionaries show that the verb 'To maintain', means to keep in existence or continuance;

preserve, retain, to keep in an appropriate condition, operation, or force; keep unimpaired, to keep in specified state, position, etc. Maintenance

envisaged in Section 12(2), is not a mere mechanical or clerical act but, it is continuous work also obliging him to update it. Contingencies which

warrant constant revision are already narrated by us above.

34. Section 23 of 1950 Act is on inclusion of names in the electoral roll. It permits any person whose name is not included in the electoral roll of the

constituency to apply to the Electoral Registration Officer for inclusion of his name in such list/roll. It also enables such Electoral Registration

Officer to direct inclusion of his name if he is satisfied about the entitlement of the applicant. Subsection [3] thereof states that no amendment,

transposition or deletion of any entry shall be made under Section 23 and no direction for inclusion of such name, shall be given after last date for

making a nomination for an election in that constituency or in Parliamentary constituency. Section 23 therefore, necessarily speaks of electoral roll

being used for the purpose of election of State Legislative Assembly or Parliamentary Constituency. Subsection [3] permits addition in deserving

cases till the last date of making nomination.

35. Section 22 of 1950 Act is about correction of entries in electoral roll. If on application made to the Electoral Registration Officer or of an act,

such officer after enquiry, is satisfied that any entry in the electoral roll in the constituency needs deletion on the ground that the person concerned is

dead or has ceased to be ordinarily a resident of the constituency, or otherwise, is not entitled to be registered in that roll, he can amend, transpose or

delete that entry after proper verification of facts. However, the exercise of power by him is subject to such general or special directions, if any, as

may be given by the Election Commission. Section 22, therefore, nowhere prohibits the competent authority or the respondents from undertaking

the exercise of removal or deletion of names from voters list. It only subjects that exercise to general or special orders of Election Commission, if

any. Here respondents have not pointed out any general or special order which

prohibits them from maintaining the list of voters. The Division

Bench of this Court in *Dhondba Adku and another .vrs. Civil Judge, Junior Division, Hinganghat and others (supra)*, has already answered this issue against the respondents.

36. It is also to be noted that respondents are not amending the electoral roll to be used for election of State Legislative Assembly of Parliamentary

Constituency. They are carrying out amendment only in a list of voters which is to be used for the purpose of elections in wards of village

panchayats.

37. The reference to guidelines issued on 01.07.2017 is irrelevant in this respect. The guidelines stipulate procedure to be followed when the

disputed names continue in voters list and the duplication of names or error is noticed by the officers who are entrusted with the responsibility of

supervising the election/polling. These guidelines cannot and do not override the powers given to the Electoral Registration Officer to carry out

necessary deletion or amendment. When Section 23 of 1950 Act permit addition till last date of making of nomination, it cannot be presumed that

in suitable cases deletion cannot be done by the Electoral Registration Officer. The person attaining the age of 18 years, returning to his native place

after long absence, deaths etc. are the contingencies which warrant constant updation, and it is not an annual event. Guidelines dated

01.07.2017 only apply when despite all this, the errors surface and can not be corrected for want of time or procedural constraints like principles of

natural justice. Guidelines can not override Section 12(2) of 1958 Act.

38. Here, the authorities have accepted the error and have also sought necessary guidance from their superiors. We find that as the errors were

noted, deletion has been found just and therefore recommended to superiors; it is not necessary for respondent nos. 2 and 3 to wait till 1st January,

2019 or then for appropriate orders from the Election Commission of India. The 1958 Act allows them to use the power to carry out necessary

amendment and deletion in the voters list to be used for the purpose of village panchayat elections.

39. The orders dated 29.09.2017 of this Court, while observing and directing that result of elections scheduled on 16.10.2017, shall be subject to its

further orders in the matter, specifically took note of the fact that the persons

who are likely to be affected are not parties in the Public Interest

Litigation.Â The affected persons i.e. those who have won, are not impleaded as respondents even thereafter till date.

40. In view of the discussion above, though elections which have already been held on 16.10.2017, cannot be set aside by this Court in present Public

Interest Litigation, we direct respondent nos. 2 and 3 to carry out necessary deletion from the voters list as per prayer clause [a], within a period of four weeks.

41. In view of this judgment, pending Civil Application No. 532/2018 moved by the petitioners does not survive, the same is accordingly disposed of.

42. Rule is made absolute in the aforesaid terms, with no order as to costs.