

(2024) 10 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 11123 Of 2024

Chandrakant Nimba Patil

APPELLANT

Vs

State Election Commissioner Through The Chief Election
Commissioner And Others

RESPONDENT

Date of Decision : 18-10-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 324, 329(b)
Representation of the People Act, 1950 — Section 17, 18, 23(3), 62, 62(2), 62(3),
62(4), 62(5)
Registration of Electors Rules, 1960 — Section 10, 11, 12, 13, 13(1), 13(2), 13(3), 14,
15, 16, 17, 18, 19, 20, 21, 21A, 22, 23, 24, 25, 26

Citation : (2024) 10 BOM CK 0016

Hon'ble Judges : Vibha Kankanwadi, J; S. G. Chapalgaonkar, J

Bench : Division Bench

Advocate : Rajendra Deshmukh, Amol R. Joshi, A. B. Kadethankar, V. D. Sapkal,
Alok Sharma

Final Decision : Dismissed

Judgement

Vibha Kankanwadi, J

1. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

2. The petitioner is invoking constitutional powers of this Court under Article 226 and 227 of the Constitution of India and seeks writ of mandamus against the respondents to consider his representations dated 02.08.2024, 16.08.2024, 20.08.2024, 29.08.2024 and 20.09.2024 addressed to them to identify, verify and remove names of voters those are registered in voter's list for more than one occasion/time. He also seeks writ of mandamus to direct respondent Nos.1 and 2 to provide adequate infrastructure to election machinery at district level to identify, verify and remove names of voters, whose names have been registered in the voter's list on more than one occasion/time.

3. The petitioner is a Member of Legislative Assembly, Maharashtra State, who has been duly elected from Muktainagar Constituency in District Jalgaon. The elections for the Legislative Assembly for the State of Maharashtra are scheduled by the end of 2024. The Election Commission of India has notified the schedule of revision of Electoral Roll. Respondent No.2 made request to the Election Commission of India by letter dated 01.08.2024 for revision of Electoral Roll with 01.07.2024 as qualifying date. On 02.08.2024, the petitioner had submitted representation to respondent No.3 thereby bringing it to the notice of respondent No.3 that several persons, whose names were already appearing in the voters list, are again registered. This action is to give effect to bogus voting and defeat the election exercise. In the said representation, a specific prayer was made that every voter, whose name is to be recorded in voters list, be recorded after verifying the fact that the name of such voter is already recorded in the voters list or not. He prayed for deputing Government servants to undertake the said task of identifying duplication of names of the voters. The said representation has been given to various authorities on the same day. Respondent No.1 had then forwarded the said letter/representation by the petitioner to respondent No.2 for further action. An E-mail was given to respondent No.3 on 17.08.2024 whereby the petitioner submitted specific objection to draft Electoral Roll along with evidence providing the manner in which names of individuals have been duplicated. According to the petitioner, there are about 43 thousand names of the persons in the list, whose duplication has been effected or is in existence. Petitioner also submitted the objection to the draft electoral list on 20.08.2024 to respondent No.4. Once again objection was raised on 29.08.2024 and in September 2024 also. Respondent No.4 had organized a Committee wherein it was expressed that in the event of availability of infrastructure, namely, DSE/PSE TAB and old voters search portal by respondent Nos.1 to 3; respondent No.4 would be in a position to take steps to ascertain and verify repeated inclusion of names of the individuals in the voters list. However, thereafter the petitioner has not received any response. One more letter was addressed by the petitioner praying that his objection be considered and necessary steps be taken. As no actions have been taken, the petitioner has filed the present petition.

4. Reply has been filed on behalf of respondent Nos.3 and 4 by Mr. Girish Rameshwar Wakhare, Tahsildar Muktainagar, District Jalgaon in the capacity as Assistant Electoral Registration Officer, Muktainagar Assembly Constituency, District Jalgaon. He has stated that the Election Commission of India is duty bound to hold free and fair elections and right to vote is a statutory right. Such right cannot be denied to any elector by merely filing a complaint. The Election Commission of India has put a very sturdy mechanism to ensure that the right to vote is exercised by each and every eligible citizen. It is stated that when the petitioner had given complaint raising objection that 43,276 electors names appear more than once, the Electoral Registration Officer (for short "ERO") made a request to the petitioner to give full details in Form 7. The details given by the petitioner in his so called representation is incomplete and, therefore, it is

difficult to verify. The list provided by the petitioner is without the photo of the voter, where he raises the question of duplicate names. The information has to be provided by an individual thereby raising objection in respect of appearance of the name of a particular voter by filing Form 7, then only ERO can take up the matter further. If the ERO comes to the conclusion that there is substance in the submission or objection, then only the multiple entries of the same elector can be deleted. The procedure laid down has to be undergone before the final action is taken. The affiant has given the procedure that is required to be followed for raising objection. In the nutshell, he says that unless those objections would have been taken against individual person by filing appropriate form, the ERO was not in a position to decide the said dispute. He further submits that the Election Commission of India had conducted a drive to verify Demographically Similar Entries (DSE) and the Photo Similar Entries (PSE). The said exercise has been carried out throughout the country including Muktainagar Assembly Constituency. District Election Officer and ERO had arranged a meeting with all political parties. Those meetings were held on 09.01.2024, 05.07.2024 and 20.07.2024. In the said meetings, the political parties were apprised about the procedure followed for updation, formation of polling booths and to conduct the elections as per the procedure. When proper objection was not filed, there was no question of taking action. Respondent No.4 had given letter/decision by bringing to the notice of the petitioner as to how the actions have been taken and under which provisions of law, copy of the same is served upon his authorized person. No appeal appears to have been preferred. The affiant clearly says that he has followed the handbook for Returning Officers wherein it has been specifically guided that no suo moto deletion shall be done in an election year. Respondent No.4 has given an assurance that there shall not be bogus voting. ERO would revise the Electoral Roll based on the objection raised as per the Form 7 till date of announcement of election. He reiterates that even personal hearing was given to the petitioner on 04.09.2024 and the legal position was apprised to him. The petitioner ought to have made an application for deletion of those 43,246 names by filling Form 7 i.e. for each of the elector. He therefore prays that the petition should be dismissed.

5. Heard learned Senior Counsel Mr. R. S. Deshmukh instructed by learned Advocate Mr. Amol R. Joshi for the petitioner, learned Advocate Mr. A. B. Kadethankar for respondent No.1 and learned Senior Counsel Mr. V. D. Sapkal instructed by learned Advocate Mr. Alok Sharma for respondent Nos.2 to 5.

6. Learned Senior Counsel Mr. R. S. Deshmukh appearing for the petitioner has taken us through the schedule of summary revision of Electoral Roll as undertaken by the Election Commission of India with the Chief Electoral Officer, Maharashtra by letter dated 01.08.2024 which was followed by the representations by the petitioner to various authorities, who are respondents here. It is submitted that in each representation it was pointed out that there is duplication of names of many electors/voters, whose names are appearing in the voters list and it is in fact a big scam. He had also represented that instead of

getting the work done through BLO, it should be assigned to the Government servants. Though personal hearing was given on 29.08.2024, yet the decision has not been made known to the petitioner and in view of some decision which has been annexed along with the reply, the petitioner says that he has not received the copy of the said communication. Learned Senior Counsel submits that it is the bounden duty of the respondent No.1 that the election should be held in free atmosphere and should be fair. By pointing out Rules 10 to 26 of the Registration of Electors Rules, 1960 (hereinafter referred to as the "Electors Rules"), he submits that when the objections have been raised, they will have to be decided and it cannot lie in the mouth of respondent Nos.3 and 4 that objection raised in respect of so many persons should be in Form 7. None of the objections/representations have been properly answered by ERO. He relies on the decision in *Shyamdeo Prasad Singh Vs. Nawal Kishore Yadav*, [(2000) Supp. 2 SCR 668], wherein it has been held by the Hon'ble Apex Court that the ERO is not justified in sitting over the objections received to the Draft Electoral Roll on ground of unavailability of time. Inclusion of person or persons in the Electoral Roll by an authority empowered in law to prepare the electoral rolls though they were not qualified to be so enrolled cannot be a ground for setting aside of an election of returned candidate and therefore, every precaution will have to be taken. Stress has been given by the learned Senior Counsel on Section 62 of the Representation of the People Act, 1950 (hereinafter referred to as the "Act of 1950") and the observation in respect of the same in *Shyamdeo Prasad Singh (Supra)*, wherein it is held that "Section 62 can clearly be divided into two parts. One part is sub-section (1) which is couched partly in positive form and partly in the negative. A person who is not entered in the electoral roll of any constituency is not entitled to vote in that constituency though he may be qualified under the Constitution and the law to exercise the right to franchise. To be entitled to cast a ballot the person should be entered in the electoral roll. Once a person is so entered he is entitled to vote in that constituency.The other part of Section 62 consists of sub-sections (2) to (5). In spite of a person having been entered into an electoral roll and by virtue of such entry having been conferred with a right to vote, such right may yet be defeated by existence of any of the disqualifications or ineligibilities enacted by sub-sections (2) to (5)." Learned Senior Counsel further relies on the Constitution Bench decision in *Indrajit Barua and others Etc. Vs. Election Commission of India and others*, [(1985) Supp. 3 SCR 225], wherein it has been held that preparation of Electoral Rolls is not a process of election and reliance was placed on the decision in *Laxmi Charan Sen and others Vs. A. K. M. Hassan Uzzaman and others*, [AIR 1985 SC 1233], wherein it has been held that it may be difficult consistently with that view, to hold that preparation and revision of electoral rolls is a part of the 'election' within the meaning of Article 329(b). Thereby learned Senior Counsel submits that still in view of the development during the pendency of the writ petition that the elections have been declared i.e. scheduled to be held on 20.11.2024, yet till the nomination papers are filled in i.e. 04.11.2024, the Election Commission can be asked to revise the Electoral Roll. Further reliance has been placed on the

decision in Baidyanath Panjiar Vs. Sitaram Mahto and others, ([1970] 1 SCR 839), wherein it has been held that "Section 23(3) of the Act of 1950 is mandatory in nature that prescribes when amendment cannot be made to Electoral Roll, it does not set out any mode or procedure regarding registration of voter. He further relies on the decision in Lal Babu Hussein and others Vs. Electoral Registration Officer and others, ([1995] 1 SCR 877). While disposing of the matter, the Hon'ble Supreme Court had given various directions in respect of revision of, deletion of names already on rolls, however, it can be seen that those are mainly taking into consideration the Citizenship Act, 1955 and the Rules made thereunder. He lastly relied on the decision in P. T. Ranjan Vs. T. P. M. Sahir and others, ([2003] Supp. 4 SCR 84], wherein it has been reiterated that Section 23(3) of the Act of 1950 is mandatory in nature. It has been observed that the Electors Rules does not prescribe when formal publication of Electoral Roll be made.

7. Per contra, the learned Senior Counsel Mr. V. D. Sapkal appearing for respondent Nos.2 to 5, after relying upon the affidavit-in-reply, submits that respondent Nos.3 and 4 have followed the rules. Rule 13 of the Electors Rules specifically prescribes in sub-rule (1) that the inclusion of name of a person as new elector shall be in Form No.6 and signed by the applicant. Sub-rule (2) of the Rule 13 prescribes that every objection to the inclusion of a name in the roll shall be in Form 7 and preferred only by a person whose name is already included in that roll. Sub-rule (3) of Rule 13 provides that every objection to a particular or particulars in an entry in the roll shall be in Form 8 and shall be preferred only by the person to whom that entry relates. Rule 14 prescribes for manner of lodging claims and objections and Rule 15 lays down the procedure of designated officers. Rule 17 prescribes that any claim or objection which is not lodged within the period, or in the form and manner, herein specified, shall be rejected by the registration officer. Admittedly, the petitioner has not filed Form 7 in respect of those persons whose names according to him have been duplicated. Rule 17 gives no discretion to the registration officer when the objection is not in form. In fact, even personal hearing is not even contemplated, but still respondent No.4 gave it and apprised the petitioner about the legal position. Respondent Nos.3 and 4 were following the Handbook for Returning Officer 2023, paragraph No.11.3.2(ii), to deal with manner of lodging claims and objections in respect of bulk applications. It is specifically laid down as guideline by the Election Commission of India that the authorized officers should only accept individual applications. Claims and objections, presented in bulk, by any individual/organization should not be entertained. Therefore, when the petitioner wanted to file bulk objections or a single page application, but in respect of more than 43 thousand persons without filling Form 7, then respondent Nos.3 and 4 were justified in not taking any action. When the statutory authority is following the rules laid down, then writ of mandamus cannot be issued. He places relies on the decision of this Court in Mahendra Bapusaheb Gund Vs. The State of Maharashtra and others, [Writ Petition No.6706 of 2022 decided by this Court on

04.07.2022]. Though it was a case of village panchayat election, it was held that even the incomplete Form 7 cannot be looked into by the Electoral Officer. He, therefore, prayed for the dismissal of the writ petition.

8. The learned Senior Counsel for the petitioner, in reply, has submitted that the guidelines in the form of handbook are the administrative directions and that cannot be taken as steps in not following the rules. When the petitioner has raised the objection within the stipulated period as per the schedule and pointed out that the duplication of names is in respect of around 43 thousand electors, then respondent Nos.3 and 4 should not insist that those objections should be in Form 7.

9. The first and the foremost fact that is required to be noted is that respondent Nos.3 and 4 are accepting that the petitioner had submitted the objection i.e. the one page objection stating that there are duplication of entries in respect of many voters. The duplication is in respect of name, which has been shown in different wards and also upon different voter ID. That means he wanted to say that many voters have taken more than one voter card and as a result of which, there is duplication of their names. He also says that in respect of certain voters, though the names of such voters str appearing in Muktainagar Constituency, but they have changed their residence may be at Dombivali, Mumbai, Pune etc. The petitioner had prepared list of about 43,276 entries which has also been made available to the respondents as well as this Court running in more than 100 pages. Of course it does not contain the photographs in view of the fact that it has been prepared by him. From the affidavit-in-reply, we can get that the respondent Nos.3 and 4 are not denying the said fact completely, however, they are specifically on the procedure. The letter which was issued by respondent No.4 to respondent No.3 on 30.08.2024 depicts that the said list was given by the petitioner to respondent No.4 and according to respondent No.4, if DSE/PSE TAB and old voter search portal is made available by Election Commission of India, then the duplication can be identified in other wards. Such task may be within reach, but the question is whether it can be made on the basis of the objection raised by the petitioner that too when there are rules in existence. We would like to consider Rule 21A of the Electors Rules, which reads thus :-

"21A. If it appears to the registration officer at any time before the final publication of the roll that owing to inadvertence or error or otherwise, the names of dead persons or of persons who have ceased to be, or are not, ordinarily residents in the constituency or of persons who are otherwise not entitled to be registered in that roll, have been included in the roll and that remedial action should be taken under this rule, the registration officer, shall—

(a) prepare a list of the names and other details of such electors;

(b) exhibit on the notice board of his office a copy of the list together with a notice as to the time and place at which the question of deletion of these names from the roll will be considered, and also publish the list and the notice in such

other manner as he may think fit; and

(c) after considering any verbal or written objections that may be preferred, decide whether all or any of the names should be deleted from the roll:

Provided that before taking any action under this rule in respect of any person on the ground that he has ceased to be, or is not, ordinarily resident in the constituency, or is otherwise not entitled to be registered in that roll, the registration officer shall make every endeavour to give him a reasonable opportunity to show cause why the action proposed should not be taken in relation to him.]”

10. Perusal of this rule therefore would indicate that such power can be exercised suo moto also in respect of those entries which are the outcome of inadvertence or error or otherwise when the names of dead persons or of persons who have ceased to be, or are not, ordinarily residents in the constituency or of persons who are otherwise not entitled to be registered in that roll. This rule will have to be read with Section 17 of the Act of 1950, which provides that no person shall be entitled to be registered in the Electoral Roll for more than one constituency. Section 18 of the said Act of 1950 provides that no person shall be entitled to be registered in the Electoral Roll for any constituency more than once.

11. The Election Commission of India is a constitutional body created under Article 324 of the Constitution of India. It is an independent body for conducting elections to the parliament and legislative bodies. Article 324 of the Constitution of India prescribes the duties of the Election Commission of India, which specifically include an obligation to ensure that elections conducted through it/by it, are free, fair and are true reflections of the will of the voters. Thus, even in respect of suo moto action that can be taken under Rule 21A of the Electors Rules, proviso puts a condition to issue show-cause notice and hear the person against whom any action under the rule is proposed.

12. Those rules of Electors Rules have been framed which channelize the registration of the electors. The various stages are taken into consideration and thereupon, how a person can get his name registered, when his name can be deleted, when objection can be taken and how the objections and claims are required to be handled, are regulated under these rules. Rule 13(2) of the Electors Rules specifically deals with deletion of name from the existing roll and it says that every objection for such action shall be in Form 7 and preferred by a person whose name is in such roll. This rule will have to be read along with Rule 17 of the Electors Rules which prescribes that any claim or objection which is not lodged in the form and manner specified, then it shall be rejected by registration officer. Here, admittedly, objection raised by the petitioner was in bulk or in respect of bulk entries and not annexed with Form 7. Together with these two rules i.e. Rule 13 and Rule 17, we will have to consider the Handbook for Returning Officer. Periodically the Election Commission of India issues such Handbook for Returning Officer and the latest is the Handbook of 2023. The

learned Senior Counsel for the petitioner raised point that handbook is the administrative directions or guidelines, however, we do not agree to the same. This point is not res integra. In *Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari and Ors.*, [AIR 2014 SC 1290 :: 2014 (5) SCC 312], taking into consideration the earlier decisions, it has been observed that :-

"25. It is a settled legal proposition that the instructions contained in the handbook for Returning Officer are issued by the Election Commission in exercise of its statutory functions and are therefore, binding on the Returning Officers. Such a view stands fortified by various judgments of this Court in *Ram Sukh v. Dinesh Aggarwal*, AIR 2010 SC 1227; and *Uttamrao Shivdas Jankar v. Ranjitsinh Vijaysinh Mohite Patil*, AIR 2009 SC 2975. Instruction 16 of the Handbook deals with cases as to when the ballot is not to be rejected. The Returning Officers are bound by the Rules and such instructions in counting the ballot as has been done in this case."

In that case instruction 16 of handbook was in question, but here, the reliance is placed on instruction 11.3.2, which reads thus :-

"11.3.2 Manner of lodging claims & objections:-

(i) Rule 14 of Registration of Electors Rules, 1960 provides that every claim or objection shall either be presented to Electoral Registration Officer or to such other officer as may be designated by him, or be sent by post to the Electoral Registration Officer, or be submitted electronically to the Electoral Registration Officer. For this purpose, each Booth Level Officer shall be designated as the Designated Officer to manage the designated location during the period for lodging claims & objections. They shall be given adequate number of printed copies of blank application forms for distribution to the applicants. They should be fully clearly informed that no fee shall be charged for any application form. The objective is to facilitate the lodging of claims & objections in all parts of the constituency including the rural, difficult and inaccessible areas.

(ii) No bulk application shall be received: The authorized officers should only accept individual applications. Claims & objections, presented in bulk, by any individual/organization should not be entertained. The same principle will be applicable to claims & objections sent in bulk by post. 'Bulk application' would mean applications that are submitted by one person on behalf of many other persons not belonging to the same family. Applications put in one and the same envelop also constitute bulk application. However, individual applications relating to the members of the same household, i.e. same family, presented together, may be accepted. The Election Commission has also made some relaxation in this matter and allowed Booth Level Agents of political parties to file applications, not exceeding 10, in a day. The Booth Level Agent concerned shall submit such applications along with a written declaration in format and list of applications. Electoral Registration Officer/ Assistant Electoral Registration Officer shall make the cross verification personally in case a Booth Level Agent submits more than

30 applications during the period of summary revision.”

13. The further instructions are in respect of how those objections/claims are to be decided. Instruction No.1.7.1 says that after final publication of rolls, no suo moto deletion shall be done in an election year. Deletion can be done only on the basis of Form 7 or on the basis of a request of deletion made by the concerned elector in duplication part of Form 8. Instruction No.1.7.2 says that Forms 7 and 8 received till the date of announcement of election will be taken up for disposal by the ERO concerned after expiry of the prescribed 7 days’ notice period. That means, Form 7 and 8 received till the date of announcement of election would be processed as per due procedure till the 10th day from the date of announcement. Forms 7 and 8 received after the announcement of election would be kept separately and shall be taken up for disposal only after completion of election. When these instructions are clear and insisting that each objection should be in Form 7, then if such procedure is not adhered to, no directions can be given to the Election Commission. Certainly, when the statutory authority has insisted for adherence of procedure/instructions, then writ of mandamus cannot be issued by taking note of the practical difficulty of the objector. At the cost of repetition, we say that the insistence of respondent No.4 for Form 7 is perfectly legal. Such decision was communicated to the authorized person or the person who was available in the office of the petitioner at Muktainagar office on 23.09.2024, of which acknowledgment has been produced on record, which was the sufficient indication by respondent No.4 that unless there would have been a compliance, the said objection will not be entertained.

14. One more fact to be noted from the said communication dated 23.09.2024 that it was specifically stated to the petitioner that he has a right to file appeal against the said decision under Rule 23 of the Electors Rules. Petitioner appears to have not approached the appellate authority, but directly came to this Court by invoking the constitutional powers. When a specific provision has been made for appeal, then before knocking the doors of the constitutional Court, the said remedy which is a statutory remedy should be exhausted. On this ground also, we are of the opinion that the petition deserves to be rejected. The ratio laid down in the decisions relied by the learned Senior Counsel for the petitioner are definitely required to be taken into consideration, however, the first fact is that almost each of them are dealing with the situation after the elections are over and secondly, the election commission is accepting its duty to conduct the elections in free and fair atmosphere.

15. We have observed that the insistence of the forms by respondent No.4 and also in the rules and instructions, is justified. Those forms have been created with specific intention and now, in view of digitization, everything would be then included in electronic form at one place. This would be easy for the respondents in conducting the elections. The officer filing the affidavit on behalf of respondent Nos.3 and 4 has in fact assured that still the upcoming elections would be held fairly and in free atmosphere. We hope and trust that some module would be

developed by the respondents so that bogus voting can be avoided.

16. We are also considering one more aspect that since the elections have been declared, now it will not be possible taking into consideration the huge number only from one constituency that the election commission would be in a position to correct the electoral roll by taking suo moto action under Rule 21A of the Electors Rules. But before we part, we will have to observe that certainly there is substance in what the petitioner is saying from the list that has been given by him. Some persons have obtained two or more election cards i.e. ID cards which is certainly offensive. Those persons who have migrated or shifted, their case is different and it has to be by rules or even in respect of those persons, who are dead, the procedure has to be adopted. But when it comes to obtaining second ID card, when already the previous is in existence in respect of the same address and ward, then such entries are capable of being corrected. We hope and trust that at some point of time, that may be before the next elections, the task would be undertaken by the authorities. However, in respect of present petition is concerned, at the cost of repetition, we would say that when respondent Nos.3 and 4 are following the statutory rules, then writ of mandamus cannot be issued.

17. The writ petition stands dismissed.

18. Rule is discharged.