

(2021) 01 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition (ST) No. 99659 Of 2020

Shrikant Ankush Sawant

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 11-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 243C, 243K, 243K(1), 243O, 243O(a), 327
Bombay Village Panchayats (Number Of Members, Divisions Into Wards And
Reservation Of Seats) Rules, 1966 — Rule 2(5)
Maharashtra Land Revenue Code, 1966 — Section 4
Bombay Village Panchayats Act, 1958 — Section 2(4)
Maharashtra Village Panchayat Act, 1959 — Section 15

Citation : (2021) 01 BOM CK 0006

Hon'ble Judges : S.J. Kathawalla, J; Vinay Joshi, J

Bench : Division Bench

Advocate : Pankaj Deokar, M.P. Thakur, S.B. Shetye, Irfan Shaikh, Sarika Shetye

Final Decision : Dismissed

Judgement

S.J. Kathawalla, J

1. By the above Writ Petition the Petitioners seek to challenge the formation of wards of Respondent No.7 - Gram Panchayat, Pateshwar Nagar,

District-Satara, whose elections are scheduled to be held on 15th January, 2021. In other words the Petition challenges the delimitation of Panchayat

area/constituencies determined by the authorities-Respondent Nos.3 to 6.

2. The reliefs sought in the above Writ Petition are as follows :

Â (a) that this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, order or direction in the nature of certiorari calling for

the records and proceedings in respect of formation of the wards of the Respondent No.7 finalized by the Respondent No.0 and after examining the

validity, legality and propriety thereof, same be quashed and set aside.

(b) that this Honâ??ble Court be pleased to issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the

Respondent Nos. 6 to reform the wards of the Respondent No. 7 in accordance with the provisions of the said Act of 1958 and guidelines issued

by the Respondent No. 2.

3. The facts which are relevant for deciding the reliefs sought in the above Writ Petition, are in brief set out hereunder :

3.1 On 29th November, 2019, Respondent No. 2 " State Election Commission published guidelines and procedure for formation of wards and

reservation of seats for village panchayats whose tenure was coming to an end between July 2020 and December, 2020.

3.2 The objections and suggestions with regard to formation of wards and reservation of seats were invited by the Tahsildar between 7th February,

2020 to 14th February, 2020, and forwarded to the Sub-Divisional Officer (SDO) on 20th February, 2020 for hearing.

3.3 On 29th February, 2020, the SDO gave hearing to the persons who had submitted their objections and suggestions and sent his report/proposal to

the Collector on 11th March, 2020, for his final decision on the formation of wards and reservation of seats.

3.4 In the meantime, elections were suspended due to the pandemic.

3.5 The order of suspension of election was revoked on 20th October, 2020 after which the final notification was published on 2nd November, 2020.

Thereafter, the State Election Commission declared the election programme on 11th December, 2020 and the District Collector was to publish the

election programme on 15th December, 2020. As per Schedule A to the said programme, nominations were to be filed between 23rd

December to 30th December, 2020; Scrutiny of nominations was fixed on 31st December, 2020; Withdrawal of nominations was allowed upto 4th

January, 2021 by 3.00 p.m.; Allotment of symbols and declaration of names of candidates were to be provided on 4th January, 2021 after 3.00 p.m.;

and the voting was fixed on 15th January, 2021.

3.6 The Petitioners admittedly filed their objections with regard to the formation of wards only on 7th December, 2020, i.e. after the final notification of

formation of wards was published.

3.7 The Petitioners fled the above Writ Petition on 21st December, 2020 seeking reliefs, set out in paragraph 2 hereinabove.

4. The Learned Advocate appearing for Respondent No.2 " State Election Commission has submitted that all steps to conduct the election have

been taken by the Election Commission. The ballot papers are printed and fixed on the Electronic Voting Machines (EVMs) which are already

set up and are kept at a secured venue and will be opened on the day of the election in the presence of all the candidates.

5. The Learned Advocate for Respondent No.2 states that since the Writ Petition is fled on 21st December, 2020, i.e. after all the steps as set out in

Clause 3 above are taken, it is trite law that the Court should not entertain the same.

6. We have enquired from the Advocate for the Petitioners as to why the Petitioners had not chosen to submit its objections during the time prescribed

i.e. between 7th February, 2020 and 14th February, 2020, but instead fled the same only on 7th December, 2020 i.e. after the final notification of

formation of wards was published. No answer is forthcoming.

7. Clause 1 of Article 243K of the Constitution of India pertains to Election to the Panchayats and provides that, "the superintendence, direction

and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election

Commissioner consisting of a State Election Commissioner to be appointed by the Governor."

8. Article 243-O " bars interference by courts in electoral matters. The same is reproduced hereunder :

"Article 243-O - Bar to interference by courts in electoral matters. - Notwithstanding anything in this Constitution "

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made

under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is

provided for by or under any law made by the Legislature of a State."

9. In the case of Jadhav Shankar Dyandeo and another v. Collector, Satara and another 2010 (6) Mh. L.J ., the Division Bench of this Court following

the decision of the Supreme Court in *State of Uttar Pradesh vs. Pradhan Sangh Kshettra Samiti* 1995 SCC Suppl. (2) 305, has inter-alia held that the delimitation of panchayat area, or the formation of the constituencies in the panchayat area as well as allotment of seats to such constituencies, cannot be entertained by the Court, since the objections were invited, the Petitioners had raised objections, hearing was given to them and it is only thereafter that the objections were rejected by the Collector Satara by passing the impugned order. Paragraph 12 of the said Judgment is relevant and is reproduced hereunder :-

12. It is therefore evident that the territorial area of a Panchayat is distinct and separate from the revenue limits of the village which also

include group of villages. Similarly, Article 240-C deals with compositions of panchayats and Article 240-K deals with Elections to the Panchayats.

Article 240-K(1) contemplates the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to

the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. [Sub

clauses 2, 3, 4 of Article 240-K are not relevant for deciding the issue in question]. Article 240-O prohibits interference by the court in electoral

matters and contemplates that notwithstanding anything in this Constitution the validity of any law relating to delimitation of constituencies or the

allotment of seats to such constituencies made or purporting to be made under Article 240-K, shall not be called in question in any court. Sub clause (b)

stipulates that no election to any Panchayats shall be called in question except by an election petition presented to such authority and in such manner

as is provided for by or under any law made by the Legislature of a State. It is therefore evident that as per the provisions of Article 240-O(a)

once the power exercised by the State Election Commission in relation to delimitation of constituencies or allotment of seats to such constituencies of

the Panchayat, such action cannot be called in question in any court. The issue is no more res integra and is covered by the decision of the Apex

Court in case of *State of Uttar Pradesh* (cited supra). Relevant observations are in paragraph 45 of the said judgment, which reads thus :

(45) WHAT is more objectionable in the approach of the High Court is that although clause (a) of Article 240-O of the Constitution enacts a bar

on the interference by the courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the

constituencies or the allotment of seats to such constituencies made or purported to be made under Article 240-K and the election to any panchayat,

the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in

this connection, refer to a decision of this court in *Meghraj Kothari vs. Delimitation Commission*. In that case, a notification of the Delimitation

Commission whereby a city which had been a general constituency was notified as reserved for the Scheduled Castes, This was challenged on the

ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This court held that the

impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article

27 of the Constitution, and that an examination of S. 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were not

subject to the scrutiny of any court of law. There was a very good reason for such a provision because if the orders made under S. 8 and 9 were

not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of

the constituencies from court to court. Although an order under Section 8 or Section 9 of the Delimitation Commission Act and published under

Section 10 (1) of that Act is not part of an Act of Parliament, its effect is the same. Section 10 (4) of that Act puts such an order in the same position as

a law made by Parliament itself which could only be made by it under Article 27. If we read Articles 240-C, 240-K and 240-O in place of Article 27

and S.2(kk), 11-F and 12-BB of the Act in place of S. 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the

panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged nor the court

could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given.

Even this challenge could not have been entertained after the notification for holding the elections was issued. The High court not only entertained

the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was

issued on 018881994.â??

The plain reading of the above referred observations made by the Apex Court would show that if provisions of Article 240-C, 240-K and 240-O

are read together the delimitation of Panchayat area or the formation of the constituencies in the said areas and allotments of seats to the

constituencies could be challenged nor the court can entertain such challenge except on the ground that before delimitation, no objections were

invited and no hearing was given, even though this challenge also could not be entertained after the notification for holding the election is issued.

The law declared by the Apex Court is loud and clear and prohibits courts to entertain challenge in view of Article 240-C, 240-K read with 240-O in

respect of the above aspects, and therefore the challenge raised by the petitioners pertaining to delimitation of Panchayat area or that of formation of

constituency in the said area as well as allotment of seat to such constituencies cannot be entertained by this court since the objections were invited,

petitioners have raised objections, hearing was given to them and it is only thereafter the objections were rejected by the Collector Satara by passing

impugned order. The contentions canvassed by the petitioners based on Rule 2 (5) of BVP Rules, 1966 as well as Section 4 of MLR Code as well as

Section 2(4) of the BVP Act in view of Article 240-C, Article 240-K and 240-O coupled with the law declared by the Apex Court in State of Uttar

Pradesh (cited supra) is devoid of substance.â??

10. In the instant case, the Tahsildar had given an opportunity to all concerned, including the Petitioners to file their objections and suggestions with

regard to the formation of wards and reservation of seats between 7th February, 2020 to 14th February, 2020. However, admittedly the Petitioners

chose not to file any objections or suggestions within the time prescribed. If the Petitioners would have filed their objections/suggestions between 7th

February, 2020 and 14th February, 2020, the SDO would have enquired into the same, given a hearing to the Petitioners and submitted his report to the

Collector. It is only after the SDO submitted his Report to the Collector and after a final notification was issued in November 2020, that the Petitioners

woke up from their slumber and just four days prior to the publication of the election programme attempted to impugn the formation of wards. In view

of the decision of this Court in the case of Jadhav Shankar Dyandeo (supra),

which follows the decision of the Apex Court in State of Uttar Pradesh (supra), the grievance raised by the Petitioners at this late stage, i.e. when the elections are to be held on 15th January, 2021, cannot be entertained.

The Apex Court in the case of Anugrah Narain Singh and another v. State of U.P. and others (1996)6 SCC 303 (Paragraph 12) held, “Moreover, it is well settled by now that if the election is imminent or well under way, the Court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the Court and stall the elections.” However, it is clarified that the Petitioners can always pursue the remedy provided under Section 15 of the Maharashtra Village Panchayat Act, 1959. If the said remedy is pursued, it will be open for the parties to raise all their contentions. The above Writ Petition is accordingly dismissed.