

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.7356 OF 2015

Bhagyashri w/o Prabhakar Ghante,
age: 24 years, Occ: Household,
R/o At Post Kasar Sirsi,
Taluka Nilanga, District Latur.

Petitioner

Versus

01 The State of Maharashtra,
through the Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-400 032.

02 The State Election Commissioner,
Maharashtra State, Mumbai.

03 The Collector, Latur,
District Latur.

04 The Returning Officer,
Tahsildr, Nilanga,
District Latur.

Respondents

Mr.S.V.Chandole, advocate for the petitioner
Mr.S.G.Karlekar, A.G.P. for Respondents No.1, 3 and 4.
Mr.S.T.Shelke, advocate for Respondent No.2.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 21st July, 2015

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioner, who, in all probabilities, is likely to be elected as a member of the village panchayat, is requesting for issuance of directions to Respondents No.2, 3 and 4 to postpone the programme of first meeting of Gram Panchayat Kasar Sirsi, Tq. Nilanga, scheduled to be held on 26.07.2015 for the purposes of electing *Sarpanch* and *Upa-Sarpanch*.

3 The petitioner contends that general elections of Village Panchayat Kasar Sirsi were held on 22.04.2015 for electing members. However, at the general elections, 16 members were declared elected and one post of member remained vacant. The Election Commission declared programme of bye-elections for filling up one vacancy of member by issuing notification on 23.06.2015. As per the programme of election, stage of acceptance of nomination papers commenced from 04.07.2015 and nomination papers were accepted up to 10.07.2015. 13.07.2015 was the date prescribed for scrutiny of nomination papers, whereas, 15.07.2015 was the date prescribed for withdrawal of nomination papers and publication of final list of contesting candidates. If necessary, the votes are scheduled to be recorded on 25.07.2015 and result of the election would be declared on 27.07.2015, as per the programme already declared.

4 The petitioner contends that since she is the only candidate at the bye-elections on the date and day prescribed for publication of final list of contesting candidates, the election authorities ought to have declared her as returned candidate since there is no contest. It is further contended that term of earlier elected body of village panchayat comes to an end on 25.07.2015 and as such, the Collector has declared the programme for electing *Sarpanch* and *Upa-Sarpanch* and prescribed first meeting of the village panchayat on 26.07.2015. The petitioner states that since result of the bye-election is not yet declared, the Collector be directed to postpone first meeting of the elected body of the village panchayat so as to facilitate the petitioner to participate in the process of election of *Sarpanch* and *Upa-Sarpanch*.

5 In our view, without disturbing the programme and instead of directing postponement of the meeting scheduled to be held on 26.07.2015, this petition can be disposed of by issuing suitable directions to the Respondents to declare the petitioner as elected candidate and to permit her to participate in the meeting scheduled to be held on 26.07.2015. Reference to Rule 15 of the Maharashtra Village Panchayats Election Rules, 1959, is necessary. The Rule prescribes that where the number of candidates qualified to be chosen to fill any of the reserved seats, all such candidates shall be forthwith declared to be duly elected

to fill the respective reserved seats and in respect of the remaining such reserved seats it shall be deemed that the election has not resulted in the return of the required number of qualified persons willing to take office within the meaning of sub-section (3) of Section 10.

6 In the instant matter, petitioner is the only candidate who belongs to reserved category and the vacancy is also prescribed for such reserved category. In this view of the matter, in view of sub-rule 2(ii) of Rule 15 of the Maharashtra Village Panchayats Rules, 1959, the Returning Officer shall forthwith declare the petitioner as returned candidate. Upon declaration of the petitioner as an elected member, the Collector, who has been invested with the powers under Rule 37 of the Bombay Village Panchayats Election Rules, 1959, shall immediately forward name of the elected member to the Standing Committee and shall simultaneously publish the list of elected members as reported by the Returning Officer by causing a list to be posted up at his office and at the office of village panchayat. The Returning Officer is directed to immediately communicate the declaration as regards elected candidates at the election, by fax to the office of Collector without wasting any time. The Collector shall act in accordance with Rule 37 proviso and issue necessary publication immediately on receipt of list/name of elected member, as stated above, from the Returning Officer. The Collector shall complete the formality in

respect of communication of the name of elected member to the Standing Committee and make necessary publication under the relevant Rules within two days from today. The Presiding Officer appointed for the meeting convened for conducting election of *Sarpanch* and *Upa-Sarpanch*, shall permit the petitioner to participate in the process of election. The petitioner voluntarily states that the procedural formality of receipt of notice of election of *Sarpanch* and *Upa-Sarpanch* may be dispensed with and same is accordingly dispensed with.

7 Rule is accordingly made absolute. There shall be no order as to costs.

8 Parties to act upon authenticate copy of this order.

P.R.BORA
JUDGE

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R.M.BORDE
JUDGE