

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8640 OF 2015

1. Shri Yogesh Pandharinath Dalvi,
Age : 37 years, Occu.: Sarpanch
of Jogeshwari Gram Panchayat,
Tq. Gangapur, Dist. Aurangabad
R/o. Naigaon Bakwalnagar,
Tq. Gangapur, Dist. Aurangabad.
2. Shri Sanjaykumar Dashrath Dubile,
Age : 35 years, Occup.: Agril.,
R/o. Jogeshwari, Tq. Gangapur,
Dist. Aurangabad.

...PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai - 32.
2. The Collector,
Aurangabad.
3. The Presiding Officer,
For Election of Sarpanch and
Upsarpanch to Jogeshwari Gram
Panchayat, Tahsil Office,
Gangapur, Tq. Gangapur,
Dist. Aurangabad.

...RESPONDENTS

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Mr. V.D. Sapkal, Advocate for Petitioners;
Mrs. A.V. Gondhalekar, AGP for Respondent State

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

DATE :August 20th, 2015

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

1. Heard. Rule. With the consent of the learned Counsel for the parties, the petition is taken up for final disposal at admission stage.

2. The petitioner no.1 Yogesh Pandharinath Dalvi in Writ Petition No.8640/2015 is Sarpanch of village Panchayat, Jogeshwari, taluka Gangapur, district Aurangabad. According to the petitioners, the elections to the Village Panchayat were held during the earlier tenure and the results were declared on 6.9.2010. The first meeting of the Village Panchayat was conducted on 14.9.2010. The elections of the Village Panchayat for the term between the year 2015 and 2020 are held and the results are declared on 6.8.2015. The Collector has issued a notice for holding elections to the posts of Sarpanch and Upa Sarpanch of the newly elected body of the Panchayat on 21.8.2015. The petitioners are, thus, objecting to the holding of elections for the posts of Sarpanch and Upa Sarpanch for the tenure between the years 2015 and 2020 on 21.8.2015 on the ground that holding of such meeting, and election of the Sarpanch and Upa Sarpanch from amongst the newly elected members, has an effect of curtailing the tenure of existing Panchayat. The petitioners further contend that the present

tenure of the Village Panchayat shall come to an end on 13.9.2015 and that it would be impermissible to hold elections for the post of Sarpanch before expiry of the tenure.

3. Article 243(E) of the Constitution of India provides for duration of the Panchayat. It is laid down under Sub-Article (1) of Article 243(E) that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Sub article (3) of Article 243(E) prescribes that an election to constitute a Panchayat shall be completed before the expiry of its duration specified in clause (1). Article 243C (1) provides that subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats. Sub Article (3) of Article 243C prescribes that the Legislature of a State may, by law, provide for the representation of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level. Sub Article (5) of Article 243C provides that the Chairperson of a Panchayat at the village

level shall be elected in such manner as the Legislature of a State may, by law, provide. Article 243N provides that the existing law which is inconsistent with the provisions of Part IX shall be continued until amended or repealed or for a period of one year, whichever is earlier. Thus, there is expectation to bring law in conformity with Part IX of Constitution of India.

4. Section 10 of the Maharashtra Village Panchayats Act, 1958, provides for constitution of the Panchayats. Sub-section (4) of Section 10 of the Act of 1958 provides that notwithstanding anything contained in sub-section (1), where two-thirds or more of the total number of members are required to be elected under sub-clause (i) of clause (a) of sub-section (1) are elected, failure to elect the remaining members shall not affect the constitution of the Panchayat. It is, thus clear that on election of two thirds or more of the total number of members, the constitution of the Panchayat is complete.

In the instant matter, there is no dispute that the elections for constituting the Panchayat for the tenure between 2015 and 2020 is complete and all the seats that are required to be filled in in the said Panchayat have been filled in by holding the elections. Section 11 of of the Act of 1958 contemplates that an election to constitute a Panchayat shall be completed in the case of a Panchayat, existing for the time

being, before expiry of its duration of five years as prescribed in sub-section (1) of Section 27.

It is, thus, obligatory on the part of the State to conduct the elections of the Village Panchayat as mandated by Section 11 as well as Article 243E of the Constitution of India before completion of tenure of the existing Panchayat. Section 27 of the Act of 1958 provides for term of the office of the members. The members of a Panchayat shall, save as otherwise provided in the Act, hold office for a term of five years. Section 28 provides for commencement of the term of the office of the members whereas; sub-section (1) thereof provides that the term of the office of the members elected at the general election or appointed under sub-section (3) of Section 10, shall be deemed to commence on the date of the first meeting of the Panchayat. The first meeting of the Panchayat shall be held on a day fixed by the Collector as soon as may be after publication of the names of the elected members under Section 10 and such date shall not, in case of first meeting after general election, be later than the day immediately following the day of expiry of the term of outgoing members.

5. It is contended by the petitioners that the duration of the Panchayat has been prescribed under Article 243E of the

Constitution which is specified as five years from the date appointed for its first meeting. The term of the Panchayat of five years is guaranteed under Article 243E of the Constitution of India and any law contrary to the Constitutional provision shall not be valid.

(It is also not the case of the petitioners nor it has been controverted on behalf of the State that the existing law for the State is not in conformity with the mandate of the Constitutional provisions contained in Part IX; whereas the provisions of the State Act are supplementary and are in conformity with the Constitutional provisions.)

Although the term of the Panchayat has not been prescribed under the Act, the tenure of the elected members is specified under Section 27 and which term shall be of five years' duration. The commencement of the term of office of a member shall be the first meeting of the Panchayat. The Collector is mandated to hold first meeting of the Panchayat after publication of the names of the elected members under Section 10 and it is further mandated that such date shall not be later than the day immediately following the day of expiry of the term of the outgoing members.

In the instant case, the collector has prescribed 21.8.2015 as the date of the first meeting of the newly elected

members of the Panchayat. It is not a matter of dispute that the existing term of the members of the Panchayat, which has been constituted in the year 2010, shall come to an end on 13.9.2015. If the elections are permitted to be held as directed by the Collector, it would have an effect of curtailing the tenure of the existing Panchayat which is entitled to continue and the elected members thereof are entitled to continue in office upto 13.9.2015.

As contemplated under under Section 28, once the first meeting of the newly elected members of the Panchayat is held for electing the Sarpanch and Upa Sarpanch, the tenure of the new body of the Panchayat would commence and such tenure will come to an end at expiry of five years. Thus, if the meeting, as scheduled, is permitted to be held, the duration of the Panchayat prescribed under Article 243E would be curtailed; apart from the fact that it will have an effect on the membership of the elected members of the Panchayat whose term is protected by virtue of Section 27 of the State Act and that they are entitled to continue in office upto 13.9.2015.

6. In view of the facts and circumstances as enumerated above, we are of the view that the petition presented by the petitioners deserves to be allowed and the

same is accordingly allowed.

(a) The notice dated 13.8.2015, issued by the Presiding Officer for holding first meeting of the Village Group Gram Panchayat, Jogeshwari, scheduled on 21.8.2015 is quashed and set aside.

(b) It would be open for the Collector to convene the first meeting of the Village Group Gram Panchayat, Jogeshwari, for electing Sarpanch and Upa Sarpanch in accordance with the provisions contained in Section 28(1)(i) of the Maharashtra Village Panchayats Act, 1958.

Rule made absolute in above terms. No costs.

Sd/-
(P.R.BORA)
JUDGE

Sd/-
(R.M.BORDE)
JUDGE

AGP/8640-15wp