

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

WRIT PETITION NO. 9583 OF 2015

Rajubai w/o Sarjrao Sawant

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. N.L. Jadhav, advocate for petitioner.

Mr. U.S. Mote, AGP for the State.

Mr. R.M. Deshmukh, advocate for respondent no. 6.

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CORAM : R.M. BORDE &

P. R. BORA, JJ.

DATE : 22nd SEPTEMBER, 2015.

PER COURT :

1. Petitioner is praying for quashment of notice for holding elections to the post of Sarpanch and Upa Sarpanch of Village Panchayat Chindpur(Bdk), Tq. Paranda, Dist. Osmanabad.

2. It is contended by petitioner that the meeting has been convened by the Junior Engineer, Minor Irrigation, Zilla Parishad, Sub Division Paranda, which is not permissible in view of section 33 of the Maharashtra Village Panchayat Act. Section 33(1) provides that the meeting for electing Sarpanch and Upa Sarpanch shall be called on the date fixed by the Collector. Section 33(2) provides that the meeting called under sub-section (1) shall be presided over by such officer as the Collector may by order appoint in this behalf. The officer aforesaid, shall when presiding over such meeting, have the powers and follow the procedure prescribed, but shall not have the right to vote. It is the contention of the petitioner that the Junior Engineer has been authorised by the Tahsildar under delegated powers

given to him by the Collector. It is contended that further delegation by the Tahsildar is not permissible in view of section 33 of the Act. The contention raised by petitioner in respect of delegation of powers by delegatee is controverted by State and it is pointed out that Collector has authorised Junior Engineer to preside over meeting.

3. Reliance is placed on the judgment in Writ Petition No. 2835/2010 in the matter of Siddhaling Sambhappa Todkar & others vs. State of Maharashtra decided on 05.08.2010. In the aforesaid decision, it was pointed out that the powers of the Collector have been delegated to the Additional Collector and the Additional Collector has further delegated the powers to the Tahsildar for issuing notice and, the Tahsildar further delegated the powers to the Naib Tahsildar, which is not permissible in law. In Writ Petition No. 5415/2012 in the matter of Balasaheb Sitaram Jawale Vs. The State of Maharashtra and others decided on 06.07.2012, interim order was passed directing the stay to the election. Since it is not a final decision, the petitioner cannot derive any benefit. Writ petition was disposed of on the basis of the communication made by the Additional Collector addressed to the Tahsildar asking him to conduct elections personally. Reliance is also placed on a judgment in the matter of Sitaram Bansi Pawar Vs. State of Maharashtra reported in 1998(2) Mh.L.J. 79, wherein it has been held that the Tahsildar or the Returning Officer are not empowered to fix the date of the election.

4. In the instant matter, it has been pointed out that the Collector has

issued order prescribing date of meeting for holding election in Osmanabad district in 63 Gram Panchayats. Thus, since the Collector has prescribed the date of election for election Sarpanch and Upa Sarpanch, the argument advanced by learned counsel for petitioner placing reliance on section 33 of the Maharashtra Village Panchayat Act, does not require consideration. Section 33(1) itself provides that a meeting for electing Sarpanch and Upa Sarpanch shall be called on the date fixed by the Collector for the election of the Sarpanch and Upa Sarpanch whereas section 28(1) provides that the term of office of the members elected at a 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. It is further provided that the first meeting of the panchayat shall be held on a day fixed by the Collector as soon as may be after the publication of the names of the elected members under section 10, and as such date shall not (i) in the case of first meeting after general election, be later than the day immediately following the day of expiry of the term of outgoing members. It is thus clear that section 28(1)(i) mandates the Collector to hold meeting for electing Sarpanch and Upa Sarpanch immediately on the next day of the expiry of the term of the outgoing members. It has been brought to our notice that the Collector has adhered to the mandate of section 28(1)(i) of the Act and has prescribed the date of the meeting. In view of the reasons set out above, the grievance raised by petitioner in the instant petition does not deserve consideration. Petition is devoid of substance hence stands rejected.

(P. R. BORA)
JUDGE

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(R. M. BORDE)
JUDGE