

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4538 OF 2016

1. Sau. Indubai Bhujanga Shinde,
Age 45 years, Occ. Household & Agri.
R/o Ladka, Tq. Kandhar,
Dist. Nanded.
 2. Sau. Rajabhai Balaji Amanwad,
Age 50 years, Occ. Household & Agri.
R/o Ladka, Tq. Kandhar,
Dist. Nanded.
 3. Shankar Maruti Katemod
Age 35 years, Occ. Agriculture
R/o Ladka, Tq. Kandhar,
Dist. Nanded.
 4. Sau. Daivshala Vitthal Boyewar
Age 37 years, Occ. Household & Agri.
R/o Ladka, Tq. Kandhar,
Dist. Nanded.
 5. Bali Gnyanoba Gaikwad
Age 50 years, Occ. Agriculture,
R/o Ladka, Tq. Kandhar,
Dist. Nanded.
- ... Petitioners

Vs.

1. The Additional Commissioner,
Aurangabad Division, Aurangabad.
2. The Additional Collector, Nanded,
District Nanded.
3. The Presiding Officer
Sarpanch and Deputy Sarpanch
Elections of Village Gram Panchayat
Ladka, Tq. Kandhar, Dist. Nanded.
4. Sau. Bharatbai Ananda Shinde
Age 35 years, Occ. Household & Agri.
R/o Ladka, Tq. Kandhar,
Dist. Nanded.

5. Pathan Chandkhan Sarwarkhan
Age 30 years, Occ. Agriculture
R/o Ladka, Tq. Kandhar,
Dist. Nanded.
6. Sau. Chhayabai Kishanrao Shinde
Age 40 years, Occ. Household & Agri.
R/o Ladka, Tq. Kandhar,
Dist. Nanded.
7. Digambar Tejrao Shinde
Age 29 years, Occ. Agriculture
R/o Ladka, Tq. Kandhar,
Dist. Nanded.
8. The Gram Panchayat, Ladka
Tq. Kandhar, Dist. Nanded.
Through its Gram Sevak ... Respondents

Mr. V.D. Hon, Senior Advocate, h/f. Mr. A.V. Hon for the petitioners.
Mr. S.K. Tambe, AGP for respondent nos. 1 to 3.
Mr. F.R. Tandale, Advocate for respondent nos. 4 to 7.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 16-06-2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties. Gram Panchayat though served no appearance has been caused.

2. Learned counsel for the petitioner Mr. V.D. Hon, Senior Advocate submits that, it is not in dispute that, the petitioners have been declared elected in the meeting held on 28/10/2015 as Sarpanch and Up-Sarpanch respectively, and the results of the meeting show that the petitioners have been elected by majority of

4:2. He submits that in the face of such situation wherein the result shows that democratic will, for procedural reasons the elections may not be faulted with. Apart from aforesaid, he submits that in the meeting scheduled for elections of Sarpanch and Up-Sarpanch, the will of elected members of Gram Panchayat for voting by show of hands or by ballot had also been sought by the Returning Officer whereunder, majority of the members have opted for voting by show of hands.

3. On aforesaid background he submits that, since the petitioners have got elected by majority of votes, decisions rendered by the two authorities i.e. Additional Collector as well as Additional Commissioner would not be sustainable which overwhelmingly show that those have been decided hyper technically for not taking voting by ballot pursuant to rule 10 (2) of Maharashtra Village Panchayat Sarpanch and Up-Sarpanch Election Rules 1964, when there had been demand in this respect.

4. Learned AGP and learned advocate Mr. Tandale counter and oppose the submissions, submitting the contention that the result shows will of majority is in the facts and circumstances of the case is fallacious. They contend that it may not be that in the absence of vote by ballot, the true will and true mind is disclosed by the results. There are various circumstances by which the persons

are inhibited from disclosing their true minds. It is for that purpose, the rule mandates that when a person demands there is no other alternative but for the Returning Officer to take vote by ballot and not by show of hands. In the present matter, it is not disputed at all that at least four members of the Gram Panchayat had opted for voting by ballot.

5. It is contended that, having regard to the mandate under rule 10(2) of the Maharashtra Village Panchayat Sarpanch and Up-Sarpanch Election Rules 1964, taking of vote by show of hands for election was not called for and it is untenable. They support their submissions with a decision in the case of **Maruti Bandu Patil Vs. Village Panchayat Sidhnerli and Ors. 1981 MLJ 255** its head note which reads as under:

Bombay Village Panchayat (Sarpanch ad Up-Sarpanch) Election Rules 1964, R. 10(2) and Bombay Village Panchayats Act (3 of 1959), S.33- Election of Sarpanch and Up-Sarpanch-Demand by member that voting should be by ballot-Ballot voting was therefore mandatory-Election not so held of Sarpanch and Up-Sarpanch is illegal and liable to be set aside.

Rule 10 of the Bombay Village Panchayat (Sarpanch and Up-Sarpanch) Elections Rules 1964 in the matter of election of Sarpanch and Up-Sarpanch requiring voting to be by ballot if any member makes a demand in that respect is mandatory. The provisions of voting by ballot requiring the Presiding Officer to hold election by ballot if any member present at the meeting so demands is peremptory and mandatory in nature. The purpose of voting by ballot is to keep voting secret so that it may not be known from the ballot paper itself as to who had voted for whom. Rule 10 provides a regulatory procedure for

achieving free and fair election. Therefore, interpretative process must advance the basic postulate of free and fair election. The election by ballot is to be held when demand is made, which provision has been made to help voters to vote free from any inhibition, fear or apprehension of being subjected to some sort of calamity. The word used being "shall" clearly indicates that the provision is mandatory and non-compliance with the said provision must result in setting aside the election of the person concerned.

6. And they particularly emphasise that, the Division Bench has clearly held that non-compliance with the provision shall result in setting aside of the election of the persons concerned.

7. Learned senior advocate along with Mr. Ajinkya Deshmukh, make an attempt to support their submissions with a decision of Hon'ble Single Judge of this Court in the case of **Ratnamala Ashokrao Shinde & Anr. Vs. Election officer, Gram Panchayat, Palodi & Ors. reported in 2006 MLJ P.801** wherein according to them, if the situation demands the election officer may evolve his own procedure for ensuring fair elections. The observations of the Hon'ble Single Judge however, have been altogether in different context of facts. On perusal of that judgment it emerges that it has been observed by Hon'ble Single Judge as under:

A plain reading of the aforesaid rule would make it manifest that normally the voting at such election shall be by show of hands. Still, however, when any member so demands then the election officer has no discretion in the matter and must direct that the

election shall be by secret ballot. In the present case, it is undisputed that such a demand was made by three members.

8. Observation in said judgment is about evolution of procedure by returning officer to ensure fair election and not in respect of allowing the voting by show of hands when the demand had been made for voting by ballot.

9. In the face of facts, and situation emerging from the aforesaid observations of the Division Bench as appearing in the head note as well as the observations quoted herein-above of the Hon'ble Single Judge, it is difficult to fall in the line of arguments as sought to be advanced by learned senior advocate.

10. The writ petition thus is untenable and as such is dismissed. Rule discharged.

(SUNIL P. DESHMUKH)
JUDGE