

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5676 of 2016

Bhagwan s/o Nagorao Betkar

Petitioner

Versus

State of Maharashtra & others

Respondents

Mr.S.T.Veer, advocate for the petitioner.

Mr.S.S.Dande, A.G.P. for Respondents No.1 to 3.

**CORAM : R.M.BORDE &
K.L.WADANE, JJ.
DATE : 19th July, 2016**

PER COURT:

Heard.

2 The petitioner is objecting to the election of *Sarpanch* of the village *panchayat*.

3 According to the petitioner, the *Sarpanch*, who was elected from General category, had passed away and as such, one seat of member had fallen vacant. The village *panchayat* consists of seven members and according to the petitioner, since the *panchayat* is not constituted with seven members, it was impermissible for the Collector to hold election for the post of *Sarpanch*.

4 Our attention is invited to Section 43 of the Maharashtra Village Panchayats Act, 1959, which provides for filling up of vacancies of a *Sarpanch* or *Upa-Sarpanch*. It

prescribes that the meeting for the election of a *Sarpanch* under sub-section (1) shall be convened by the Collector in the manner prescribed in sub-section (1) of Section 33. Section 33(1) provides that on the establishment of a *Panchayat* for the first time under this Act, or on the expiry of the term of a *panchayat* a meeting shall be called on the date fixed under sub-section (1) of Section 28 by the Collector for the election of the *Sarpanch* and *Upa-Sarpanch*. In the case where the offices of both, the *Sarpanch* and *Upa-Sarpanch*, become vacant simultaneously, a meeting shall be called on the date fixed by the Collector, for the election of the *Sarpanch* and *Upa-Sarpanch*. Section 30(1) relates to election of *Sarpanch*. It provides that every *Panchayat* shall be presided over by a *Sarpanch* who shall be elected by, and from amongst, the elected members thereof.

5 It is the contention of the petitioner that since election of the *Sarpanch* shall be from amongst the elected members of the *panchayat* and there is vacancy of one member, it is not permissible for the Collector to hold election for the post of *Sarpanch*. Section 11(2) provides for filling up the vacancies that may occur during continuance of the term.

6 The contention raised by the petitioner is not acceptable and such view has been recorded in number of judgments of this Court. Section 10 of the Act prescribes for constitution of the *panchayat*. Section 10(1)(a) provides that a *panchayat* shall consists of, such number of members not being less than seven and not more than seventeen as the State Government may prescribe, who shall be elected in accordance

with Section 11. A *panchayat* shall consists of at least seven members. However, sub-section (4) of Section 10 provides that notwithstanding anything in sub-section (1) where two-thirds or more of the total number of members 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 constitution of the panchayat. A *panchayat*, in spite of vacancy occurred in total number of members, shall be deemed to have been validly constituted if two-thirds or more of the total number of members occupy the office.

7 Since the village *panchayat* is duly constituted as more than two-thirds or more of the total number of members are occupying the office, it is the statutory duty of the Collector to hold election for the post of *Sarpanch* within prescription of the Act of 1959. The challenge raised in the petition is devoid of merits.

8 Writ Petition stands dismissed.

K.L.WADANE
JUDGE

adb/wp567616

R.M.BORDE
JUDGE