

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

**WRIT PETITION NO. 8553 OF 2015
WITH CA/16067/2015 IN WP/8553/2015**

**RAKESH AMRUT PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Bagul D.S.
AGP for Respondents: Mr.A.P.Basarkar
Mr.A.N.Sabnis,Adv. For R.5.
Mr.A.S.Sawant,Adv. For applicant in C.A.16067/15**

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**CORAM : S.V.GANGAPURWALA &
A.M.BADAR,JJ.**

DATED : 16TH FEBRUARY,2016

PER COURT :-

Mr.Bagul,Advocate for petitioner submits that the post of Sarpanch of village Gram Panchayat, Torkheda was meant for open category as per notification published in the official gazette dated 26/6/2015. The learned counsel submits that the petitioner is elected as a Member of Gram Panchayat, Torkheda from open category. According to the learned counsel, the Returning Officer on 17/8/2015 issued notice stating that the post of Sarpanch of Gram Panchayat, Torkheda is reserved for O.B.C. women. According to the learned counsel, the same is not permissible for two reasons : (1) as per

rotation policy, the said seat could not have been reserved for O.B.C. women as for the last election also the said post was reserved for O.B.C. men. The learned counsel submits that Rule 2(A) of the Bombay Gram Panchayat (Sarpanch and Up-Sarpanch) Election Rules, 1964 lays down a mandate that the State Government by notification in the official gazette has to specify and allot the office of Sarpanch to be reserved for various categories. In the present case, the post of Sarpanch of Gram Panchayat, Torkheda vide notification in the official gazette was meant for open category the same could not have been changed by the Returning Officer.

2] Mr. Bagul, the learned counsel submits that the Government has amended the Maharashtra Village Panchayat Act, 2011, by Act No.19. As per the said Amendment instead of 1/3rd seats for women the Government reserved 50% of the total number of post of Sarpanch for women. The Amendment was not applicable to the elections which were already held as it came into force subsequently and as such, post of Sarpanch will have to be reserved for women. In fact the post of Sarpanch of Gram Panchayat, Torkheda ought to have been reserved for O.B.C. women. However, it was occupied by male candidates since 2010. According to the learned counsel, the notice for convening the meeting is not by following due procedure of law.

3] We have considered the submissions. Section 2(A) (2) of the Bombay Village Panchayat (Sarpanch and Up Sarpanch) Election Rules, 1964, reads as under :

“2-A] Reservation of seats for the election of Sarpanch : (1) The State Government shall, by notification in the Official Gazette, specify the number of offices of Sarpanchas in the Village Panchayats in the State to be reserved for the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of citizens and women (including the women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens.)

(2) The State Government shall, by notification in the Official Gazette, allot the offices of Sarpanch to be reserved for the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of citizens and women as specified under sub-rule (1) to Districts as follows :

(a) The offices to be reserved for the Scheduled Castes and Scheduled Tribes in each District shall be allotted in such manner that such reservation shall bear, as nearly as may be, the same proportion to the total number of offices of Sarpanchas in the District as the population of the Scheduled Castes and Scheduled Tribes in that District bears to the total population of that District;

(b) The offices to be reserved for the category of Backward Class of citizens in each District shall as far as practicable, be allotted in proportion of twenty-seven per cent of the total number of offices of Sarpanchas in that District;

(c) The offices to be reserved for the women (including the women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) in each District shall, as far as practicable, be allotted in proportion of one-third of the total number of offices of Sarpanchas in that District.”

4] Reading the said provision, it is manifest that the State Government shall by notification under the official gazette allot the office of Sarpanch to be reserved for the category as detailed therein. In the present case, notification was issued on 28/6/2015 stating thereby that the post of Sarpanch of Gram Panchayat Torkheda is meant for open category. No subsequent notification is placed on record by the respondent to state that the said reservation was changed. The Returning Officer simply notified convening the meeting for election of Sarpanch and stated that the said post of Sarpanch of Gram Panchayat, Torkheda would be reserved for O.B.C. women, the same is without any notification being published in official gazette as required under Section 2(A) of the Rules of 1964. Said act cannot be sustained.

5] In light of above, the impugned notice dated 17/8/2015 Exh.J page 40 is quashed and set aside.

6] It is made clear that we have passed the order solely on the ground that the notification in official gazette states that the post of Sarpanch of village Torkheda is meant for open category and there is no subsequent notification reserving the said post for O.B.C. women. We have not considered any other ground on the rival contentions.

7] Writ Petition is allowed. In view of disposal of Writ Petition, Civil Application No.16067/2015 is disposed of.

(A.M.BADAR,J.)

(S.V.GANGAPURWALA,J.)

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