

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

WRIT PETITION NO. 530 OF 2018

UDDHAV POMA AADE
VERSUS
THE ADDITIONAL COMMISSIONER AURANGABAD AND OTHERS

...
Advocate for the Petitioner : Shri Patil Hanmant V.
AGP for Respondents 1, 2 and 4 : Shri V.S.Badakh.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 23rd January, 2018

ORAL ORDER:

1 The Petitioner is aggrieved by the order dated 13.12.2016 passed by the Additional Collector, Nanded by which, the election of the Petitioner as an Upa-Sarpanch of village Kothari, has been set aside on account of breach of Rule 10(2) of the Bombay Village Panchayats (Sarpanch and Upa-Sarpanch) Election Rules, 1964 (herein after referred to as "the said Rules, 1964").

2 The Petitioner is also aggrieved by the order dated 20.11.2017 passed by the Additional Commissioner, Aurangabad by which, the appeal filed by the Petitioner against the order dated 13.12.2016, has been dismissed.

3 I have considered the strenuous submissions of the learned

Advocate for the Petitioner and the learned AGP on behalf of Respondent Nos.1, 2 and 4.

4 The entire dispute turns upon Rule 10 of the said Rules, 1964.

5 A special meeting was convened by the Tahasildar on 29.07.2016 for conducting the elections to the positions of Sarpanch and Upa-Sarpanch of the said village. Before the meeting could commence, five members, out of the nine elected members to the Village Panchayat, approached the Chairperson with a memorandum signed by each of them praying for conducting the elections by "show of hands". The said Village Panchayat actually has a membership of eleven members. For some reasons, two seats have been kept vacant and only nine persons were elected. On the date of the special meeting, a maximum of nine elected members were available, who were eligible to sit in the meeting and vote.

6 However, one elected member by name Prabhakar Ghanshyam Meshram also made an application to the Chairperson at the same moment praying that the voting for the elections should be conducted by "secret ballot". As five persons have requested for elections to be conducted by show of hands, the Chairperson ignored the application filed by Prabhakar Meshram and conducted the elections by show of hands. The Petitioner and Respondent No.6 were elected as Upa-Sarpanch and Sarpanch, respectively, in such a special meeting. Both are a part of the said group of five members.

7 Prabhakar Meshram raised a Dispute before the District Collector under Section 33(5) of the Maharashtra Village Panchayats Act, 1958. By the impugned judgment dated 13.12.2016, the District Collector concluded that when one person had prayed for voting to be conducted by secret ballot, the Chairperson could not have ignored his request. The Dispute was allowed and the elections were set aside.

8 For similar reasons, the appeal of the Petitioner was dismissed by the Additional Commissioner by the impugned judgment dated 20.11.2017.

9 The learned Advocate for the Petitioner has strenuously criticized the impugned orders and contends that the normal rule is to conduct the elections by show of hands. It is only by way of an exception that the elections can be conducted by secret ballot. He further submits that five members, who formed the majority view on the basis of which, the Petitioner has been elected, have always been together. They have voted in favour of the Petitioner in the elections and have also stood by him before the Authorities below in the proceedings. Even if the voting was to be conducted by secret ballot, the Petitioner would have been elected. The mandate of the majority cannot be ignored by the Authorities below.

10 The learned AGP submits that Rule 10(2) of the said Rules, 1964 is very clear and requires no interpretation. Even if one person

prayed for voting by secret ballot, the rule prescribes that his request has to be respected keeping in view that the voting normally is to be conducted by show of hands. He, therefore, submits that the impugned orders cannot be termed as being perverse or erroneous.

11 For clarity, it would be apposite to reproduce Rule 10(1) and (2) of the said Rules, 1964 as under:-

- "10. Procedure for election :-
- (1) If only one candidate has been duly nominated for the office of the Sarpanch or Upa-Sarpanch, he shall be declared to have been duly elected as Sarpanch or, as the case may be, Upa-Sarpanch.
 - (2) If more than one candidate have been so nominated, the Presiding Officer shall proceed to elect the Sarpanch or as the case may be, Upa-Sarpanch. The voting at such election shall be by show of hands. If, however, [any member present at the meeting so demands,] the voting shall be by ballot. The candidate who obtains the highest number of votes shall be declared to have been duly elected as Sarpanch or, as the case may be, Upa-Sarpanch. When any equality of valid votes is found to exist between any two or more candidates and the addition of one vote will entitle any of them to be declared as Sarpanch or, as the case may be, Upa-Sarpanch, the determination of the candidate to whom such additional vote shall be deemed to have been given shall be made by lot to be drawn by the Presiding Officer in such manner as he shall determine."

12 It is, therefore, obvious that normally the elections are to be conducted by show of hands. An amendment was introduced on 27.07.1966 to the extent that "If, however, [any member present at the

meeting so demands], the voting shall be by ballot". This would mean "by a secret ballot". With the amendment introduced by the Legislature, even if one person demands the voting by ballot, the Chairperson cannot ignore his request.

13 This rule has fallen for the consideration of the Honourable Supreme Court in the matter of Jaenendrakumar Phoolchand Daftari vs. Rajendra Ramsukh Mishra and others, 1994 (1) Mh.L.J. 100, wherein it was concluded that when any elected member prays for voting by ballot, the said voting has to be conducted by secret ballot since the request for secret ballot is an exception to the normal procedure of voting by show of hands.

14 The conclusions of the Honourable Supreme Court in paragraph Nos.7 and 8 in the Daftari case (supra) read as under:-

"7. According to Sub-rule (2), the Presiding Officer conducting the election of the Sarpanch or the Upa-Sarpanch among the contestants in a meeting of the members of the Panchayat concerned convened for the purpose, is required to call upon such members to vote by show of hands. But, it requires the Presiding Officer to carry out such election by secret ballot if any member present at the meeting, makes a demand in that regard. Thus, the sub-rule clearly specified the method by which the Presiding Officer shall proceed to have the Sarpanch or Upa-Sarpanch, as the case may be, elected. However, the question, is, whether the sub-rule permits the Presiding Officer of the election meeting to have the Sarpanch or Upa-Sarpanch, as the case may be, elected by calling the voters to elect the Sarpanch, by show of hands or by voting by

ballot, according to his choice. If it is to be so held, the requirement of holding of election by ballot on demand by any member present at the meeting convened under the sub-rule, becomes superfluous. No requirement in a Rule can be regarded as superfluous unless such a construction is likely to lead to an unwarranted anomaly. Having regard to the requirement of the provision which specifically provides as to how the Presiding Officer has to proceed to elect the Sarpanch or Upa-Sarpanch, as the case may be, we find it difficult to think that the Presiding Officer is given the choice or liberty of proceeding to have the Sarpanch or Upa-Sarpanch elected in a manner different from that indicated in the provision in Sub-rule (2) of Rule 10. Hence, the provision in Rule 10(2) of the Rules, in our view, makes it incumbent on the Presiding Officer to proceed to elect the Sarpanch or Upa-Sarpanch, as the case may be, in a meeting held by him by calling upon the voters in the meeting to elect the Sarpanch or Upa-Sarpanch, as the case may be, by show of hands unless there is a demand by any member present at the meeting to proceed with the election of the Sarpanch or Upa-Sarpanch, as the case may be, by having recourse to voting by secret ballot.

8. While Sub-rule (2) of Rule 10, requires the Presiding Officer to proceed to elect the Sarpanch or Upa-Sarpanch, as the case may be, by show of hands unless there is a demand for permitting the members to vote by secret ballot, Rule 13 requires that the Presiding Officer shall record the names of members voting for or against a candidate or being neutral in the minutes of the meeting and on the conclusion of the meeting to read out the same to the members before signing the same resulting in their deemed confirmation and becoming available for inspection by any member of the Panchayat. Hence, it becomes obvious that voting by show of hands is a general method contemplated in the said Rules while the voting by secret ballot is contemplated as an exception in a special situation. Thus, Rule 13 supports our

view that the Presiding Officer of the Meeting cannot call upon the members present in such meeting to vote by secret ballot in favour of one or the other candidates contesting the election for the Office of Sarpanch or Upa-Sarpanch unless a demand in that behalf is made by any member so present."

15 Considering the fact that the Honourable Supreme Court has laid down the law while interpreting Rule 10(2), this issue is no longer res-integra. The impugned orders of the Authorities below cannot be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

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(RAVINDRA V. GHUGE, J.)