

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

WRIT PETITION NO.2863 OF 2018

Nitesh s/o. Laxman Parihar,
Age: 30 years, Occupation: Agri.
R/o. Jawla Bazar, Tq.Aundha-Nagnath,
District : Hingoli. **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
 2. The Collector, Hingoli
Dist. Hingoli.
 3. The Tahsildar/Presiding Officer,
Aundha-Nagnath, Tq.Aundha-Nagnath,
Dist. Hingoli.
 4. The Secretary,
Gram Panchayat, Jawala-Bazar,
Tq.Aundha-Nagnath, Dist. Hingoli
- RESPONDENTS**

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Mr.R.J.Nirmal, Advocate for the petitioner
Mr.S.J.Salgare, AGP for the Respondent/State

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Date: 16.03.2018

ORDER: (Per S.S.Shinde, J.):

1] Not on board. On mentioning taken on board.

2] This Petition under Article 226 of the Constitution of India takes exception to the notice dated 12.03.2018 issued by respondent no.3 for holding the special meeting for the election of the Sarpanch.

3] Learned counsel appearing for the petitioner submits that the Maharashtra Village Panchayats Act [for short 'said Act'] has been amended by way of issuance of the Maharashtra Ordinance No. II of 2018, whereby Section 30 has been amended, and in the said Section 30-A-1A has been added. In view of the said amendment, the election for the post of Sarpanch is made direct from the voters of the said village. It is submitted that by the impugned notice, the elected members of the

Grampanchayat are called upon to participate in the meeting which is scheduled to be held on 17.03.2018 to elect the Sarpanch from the elected members of the Panchayat. According to the learned counsel appearing for the petitioner, in view of the amendment as aforesaid, there is now provision for direct elections for the post of Sarpanch from voters, and therefore calling such meeting to conduct election for the post of Sarpanch from the elected members of the Grampanchayat is not permissible, and is contrary to the mandate of amended provision of Section 30 of the said Act.

4] It is further submitted that it is only, in case, the post of Sarpanch and Upa Sarpanch becomes vacant simultaneously, the meeting needs to be conducted for the election of the post of Sarpanch and Upa Sarpanch. However, in the present case, the

petitioner is holding the post of Upa Sarpanch, and therefore, the charge of the post of Sarpanch should have been given to him instead of conducting elections for the post of Sarpanch. Therefore, he submits that the Petition deserves to be allowed.

5] On the other hand, learned AGP appearing for the respondent-State submits that the new Amendment would apply prospectively and not with retrospective effect. The term of the Jawla-Bazar Grampanchayat is for 5 years commencing from the year 2015, and therefore, the aforesaid amendment which has been introduced in the year 2018, cannot be made applicable with retrospective effect.

6] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, and learned AGP appearing for the respondent-State. At the

outset it would be apt to reproduce herein below Section 43 of the Maharashtra Village Panchayats Act which reads thus:

43. Filling up of vacancies. -

(1) Any vacancy of which notice has been given to the [Collector] in the prescribed manner due to the disablement, death, resignation, disqualification, [confirmation of no confidence motion,] absence without leave or removal of a Sarpanch or Upa-Sarpanch ***, shall be filled, by the election of a Sarpanch or Upa-Sarpanch *** who shall hold office so long as the Sarpanch or Upa-Sarpanch *** in whose place he has been elected, would have been elected, would have held office if the vacancy had not occurred:

[Provided that, the post of the Sarpanch or Upa-Sarpanch, as the case may be, fallen vacant

under this sub-section shall be filled in within thirty days from the date of such vacancy.]

(2) The meeting for the election of a Sarpanch under sub-section (1) shall be convened by the [Collector] in the manner described in sub-section (1) of section 33.

7] In view of the aforesaid provision, in our opinion the impugned notice has been rightly issued by respondent no.3, *secondly*, there is no provision in the Maharashtra Village Panchayats Act, which mandates/contemplates that unless the post of Sarpanch and Upa Sarpanch becomes vacant at a time, there can not be election for the post of Sarpanch or Upa Sarpanch as the case may be. The aforesaid amendment to Section 30 of the said Act would apply prospectively. Admittedly, the elections of the Village

Panchayat Jawla Bazar have been taken place in the year 2015, and the term of the said elected members is for 5 years, and therefore, the provisions of Section 43 of the said Act, reproduced herein above, shall govern the elections for the post of Sarpanch and Upa Sarpanch.

8] For the reasons afore-stated, we do not find any substance in the Writ Petition, hence the Writ Petition stands rejected.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE

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