

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4606 OF 2018

Kallappa Balu Kumtole & Anr.

.... Petitioners

versus

State of Maharashtra & Ors.

... Respondents

.....

- Mr.D. Sutar, Advocate for Petitioner.
- Mr.A.I. Patel, AGP for Respondent Nos.1 to 3.
- Mr.Ritesh Ratnam, Advocate for Respondent No.5.
- Mr.R.B. Hudad, Advocate for Respondent No.4.

**CORAM : SHANTANU S. KEMKAR &
SARANG V. KOTWAL, JJ.**

DATE : 05th OCTOBER, 2018.

P.C. :

Parties through their Counsel. By consent heard finally.

2. The learned Counsel for the Petitioner has pointed out that the question involving in this Petition has already been decided by the Division Bench of this Court at Aurangabad in various Writ Petitions including **Writ Petition No.209/18** in the case of **Anuja Kalyan Gore Vs. State of Maharashtra & Ors.** on 06/03/2018.

3. After going through the said judgment dated 06/03/2018 passed by the Division Bench of this Court at Aurangabad, more particularly paragraph Nos.20 to 25 we find that the question involved in this Petition is directly covered by the said judgment. The paragraph Nos.20 to 25 are extracted below for ready reference :

“20. It is thus clear that merely because Sarpach has been conferred with casting of votes, it does not take away his entitlement to exercise the right to vote as a Member of the Village Panchayat. Such an interpretation would be in consonance with the constitutional provisions of Article 243-C-4 of the Constitution of India.

21. The respondents, for furthering their arguments and to support the interpretation put forth by them have relied upon a decision of the Supreme Court in the matter of S.K. Gupta & another

versus K.P. Jain and another (1979 STPL(LE) SC 734), as well as B. Premanand and Ors. Vs. Mohal Koikal and Ors. (AIR 2011 SC 1925).

The decisions cited at the bar lay down general principles in respect of interpretation of statute. However, those are of little help for the respondents.

22. *While interpreting a statute, the Court keeps lien against a construction which reduces the statute to a futility. It is well settled that where the language of a statute leads to manifest contradiction of the apparent purpose of the enactment, the Court has the power so to read it as to carry out the obvious intention of the Legislature. (M Pentiah versus Veeramallapa Mudala 1961 SC 1107).*

23. *A statute or an enabling provision therein, must be so construed as to make it effective and*

operative on the principle “ut Res Magis Valeat Quam Pereat”. It is on application of this principle that every effort should be made by a Court to find a meaning, looking at substance and not mere form, and that difficulties in interpretation do not make a provision bad as not being capable of interpretation, so long as a definite meaning can properly be extracted.

24. *In the instant case, if the construction as canvassed by the respondents is to be accepted, the interpretation would lead to a conclusion that the amended provisions restrict the right of the Sarpanch to cast vote at the meeting of village Pnahcayat which would obviously be in conflict with the provisions of Article 243-C-4 and such an interpretation shall have to be avoided. A statute has to be interpreted in such a manner so as to bring it within the realm of constitutionality. Any*

interpretation which renders the provision futile or in conflict with the constitutional provision shall be avoided.

25. *For the reasons recorded above, the writ petitions deserve to be allowed and same are accordingly allowed. The impugned communication issued by the State Government dated 1.11.2017 is quashed and set aside. It is declared that a directly elected Sarpach is entitled to exercise right conferred upon an elected member of Panchayat including the right to cast vote at the meeting convened to elect Upa-sarpanch of village Panchayat.”*

4. It has also been stated by learned AGP that the State Government has also now issued a letter on 03/07/2018 implementing the order passed by the Aurangabad Bench and making position clear by cancelling the earlier letter dated 01/11/2017.

5. Having regard to the aforesaid we allow the Petition. We are not inclined to agree with the submissions made by learned Counsel for Respondent No.5 that since the Petitioner was not a party before the Aurangabad Bench, the Petition may be disposed of, but the order be stayed enabling the Respondent No.5 to challenge the same before the Hon'ble Supreme Court. We decline the said prayer and dispose of this Petition in terms of the order passed in Writ Petition Nos.209/18.

6. Rule is made absolute in terms of prayer clause (a), (b) and (c).

(SARANG V. KOTWAL, J.)

(SHANTANU S. KEMKAR, J.)