

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

WRIT PETITION NO. 9880 OF 2019

Ajay Janardhan Thorat

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri V. P. Latange, Advocate for the Petitioner.

Shri A. R. Kale, A.G.P. for Respondent Nos. 1 and 2.

Shri Amit A. Yadkikar, Advocate for the Caveator.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 07TH AUGUST, 2019.

FINAL ORDER :

. Mr. Latange, the learned counsel for the petitioner submits that, election for the post of Sarpanch of Gram Panchayat, Kohregaon, Tq. Karjat, Dist. Ahmednagar is scheduled on 08.08.2019. The post of sarpanch has become vacant on account of resignation of person officiating as Sarpanch. The resignation is delivered by the said person on 21.06.2019. The Block Development Officer forwarded same on 24.06.2019. The election for the post of Sarpanch is now scheduled on 08th August, 2019.

2. The learned counsel for the petitioner further submits that,

there is no propriety in holding election for the post of Sarpanch prior to election of member. The person officiating as Sarpanch namely Yuvraj Shelke has resigned as Sarpanch and member of the gram panchayat. Other two members are also disqualified. Three vacant posts exist in the gram panchayat consisting of 13 members. The learned counsel submits that, the petitioner has right to contest the election for the post of member falling vacant. If the election of Sarpanch is held prior to election of member, his right to contest election for the post of sarpanch would be defeated.

3. Mr. Yadkikar, the learned counsel submits that, he has filed caveat in the matter, however, he is not made party. The learned counsel refers to Sec. 43 of the Maharashtra Village Panchayat Act and contends that the post of the Sarpanch cannot be kept vacant beyond thirty days. The election for the post of Sarpanch has to be conducted for filling in the post.

4. The learned Assistant Government Pleader also made submissions on the same line.

5. Section 43 of the Maharashtra Village Panchayat Act, 1959 reads thus :

The Maharashtra Village Panchayat Act, 1959

1.

2.

43. (1) Any vacancy of which notice has been given to the 2 [Collector] in the prescribed manner due to the disablement, death, resignation, disqualification, 3 [confirmation of no confidence motion,] absense without leave or removal of a Sarpanch or Upa-Sarpanch 4[** *], shall be filled, by the election of a Sarpanch or Upa-Sarpanch 4[**], who shall hold office so long only as Sarpanch or Upa-Sarpanch 4[**], in whose place he has been elected would have held office if the vacancy had not occurred:

5[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.]

Provided further that, the post of the directly elected Sarpanch fallen vacant under this sub-section shall be filled in by election in the manner laid down in section 30A-1A, within six months from the date of such vacancy."

(2) The meeting for the election of a Sarpanch under sub-section (1) shall be convened by 3[Collector] in the manner described in sub-section (1) of section 33.

5. First proviso to Section 43(1) of the Act mandates that, the post of Sarpanch or Upa Sarpanch falling vacant shall be filled in within thirty days from the date of such vacancy. The second

proviso to Section 43(1) concerns the filling up of the post becoming vacant of the directly elected Sarpanch. In that case the elections are to be held within six months from the date of vacancy.

6. In the present case, it is not disputed that the Sarpanch is to be elected from amongst the members of Gram Panchayat. In view of that, first proviso to Sec. 43(1) of the Act would apply.

7. The petitioner does not have a existing right to stall the election of sarpanch. The petitioner is not a member of the Gram Panchayat. The petitioner claims that he is interested in contesting election for the post of member that has become vacant on resignation of Mr. Yuvraj Shelke. The right of the petitioner even does not exists.

8. In the light of that, we do not see any error on the part of the Collector in declaring the election for the post of Sarpanch.

9. In view of the above, there is no merit in the petition. The writ petition as such is dismissed. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]