

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

WRIT PETITION NO.13681 OF 2017

Sou.Vanita Anil Dhiwar

..Petitioner

V/s.

The Collector of Pune & Ors.

..Respondents

Mr.R.M. Hardas i/b Mr.Sumit V. Khaire for the Petitioner.

Mr.A.B. Vagyani, G.P. a/w. Ms.A.A. Purav, AGP for the Respondent-State.

Mr.S.S. Salunkhe for Respondent No.3.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 11th FEBRUARY 2019

P.C.

1. Heard learned counsel for the respective parties.
2. Rule. Rule made returnable forthwith.
3. The petitioner is elected Sarpanch from Village-Dalimb, Taluka-Daund, District-Pune and his tenure from commenced from 2017 and would continue till 2023. The petitioner is aggrieved by the Communication issued by the Section Officer Rural Development Department, State of Maharashtra addressed to all the

Collectors/Joint Executive Officers of all Zilla Parishad. The petitioner prayed for quashing and setting aside of the said letter by which the Sarpanch is held not entitled to vote in the elections to be held for electing the Up-sarpanch and retaining his casting vote in case the votes secured by the candidates are equal.

4. During the pendency of the petition the elections of Upsarpanch is declared in respect of Dalimb Grampanchayat on 17.12.2017. On 12.12.2017 this Court passed following order :-

“1. Heard Mr.Hardas, learned Counsel for Petitioner and Mr.Vaghyani, learned GP for the State. The issue in this Writ Petition is – in the case of equality of votes, in the election of Up-sarpanch, whether the Sarpanch, in addition to his right to exercise casting vote also has a right to vote as a member. The issue is debatable. We, therefore, direct the learned GP to file reply to this petition. The Petitioner be given copy of the reply well in advance. Stand over to 25th January 2018.

2. By way of ad-interim order, we direct that election of Up-sarpanch in respect of village Dalimb, Taluka-Dound, Dist-Pune shall be subject to final outcome of this writ petition.”

5. Accordingly, the election were held on 17.12.2017 and respondent No.3 was declared as elected candidate only by margin of one vote. In such circumstances, the contention of the petitioner is that his vote was decisive and would turn the fate of the decision.

The petitioner had amended his Writ Petition and has impleaded Shri.Sagar Ramesh Mhaske who was elected as Up-sarpanch.

6. Mr.Hardas, learned counsel for the petitioner invited our attention to the decision of the Aurangabad Bench dated 06.03.2018 in Writ Petition No.209 of 2018 in the case of Anuja w/o. Kalyan Gore V/s. State of Maharashtra and Others wherein the Division Bench of this Court has held that merely because Sarpanch has conferred with casting vote, it does not take away his entitlement to exercise the right to vote as a Member of the Village Panchayat. Such an interpretation would not be in consonance with the constitutional provisions of Article-234-C-4 of the Constitution of India. Resultantly, the Writ Petition's were allowed and the impugned communication issued on 01.11.2017 was quashed and set aside. The Division Bench also declared that a directly elected Sarpanch is entitled to exercise right conferred upon an elected member of Panchayat including the right to cast vote at the meeting convened to elect Up-sarpanch of village Panchayat.

7. Mr.Salunkhe, learned counsel for respondent No.3 does not dispute the proposition laid down by this Court in Writ Petition

No.209 of 2018. However, he submitted that the petitioner has got alternative remedy under Section 33(5) of the Bombay Village Panchayat Act, 1958. Therefore, this Court should not interfere in the election of the respondent No.3 as a Upasarpanch.

8. The issue involved in the petition was also directly involved in the Writ Petition No.209 of 2018 before Aurangabad Bench. The Aurangabad Bench after considering the rival submission that going through the relevant circular on provisions of law came to the conclusion that Sarpanch is entitled to the vote in the election of Upasarpanch. In view of this decision, the State Government at a latter stage has issued letter dated 03.07.2018 and cancelled the letter dated 01.11.2017 which is impugned in this petition. In these circumstances, the petitioner could not have been restrained from participating in election of the Upasarpanch of the Village-Dalimb.

9. It is true in the event of dispute for validity of the election of the Sarpanch and Upasarpanch, remedy is available in Clause-5 and such dispute can be entertained by the Collector. However, in the present, case while passing interim order we have made it clear that the election of the Upasarpanch would be subject

to the outcome of the petition. The petition involves only one question, namely, whether the petitioner is entitled to participate in the election of the Upasarpanch. Since we are in agreement with the view taken by the earlier Division Bench of this Court at Aurangabad we hold that the petitioner is entitled to participate in the election of the Upasarpanch.

We allow this petition in terms of prayer clause A1 and A2. Consequently, election of the respondent No.3 to the post of Upasarpanch held on 17.12.2017 is set aside.

10. The Collector and concerned Officer shall hold fresh election for the post of Upasarpanch for Village-Dalimb as expeditiously as possible and in any case within a period of four weeks from the date of receipt of this order.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)