

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

WRIT PETITION NO. 2965 OF 2021

Sardar Gulzar Tadvi
and others

.. Petitioners

Versus

The State of Maharashtra and others

.. Respondents

Mr. B. R. Waramaa, Advocate for the Petitioners.

Mr. A. R. Kale, AGP for Respondent Nos. 1 to 3.

Mr. A. B. Kadethankar, Advocate for Respondent No. 4.

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 15th February, 2021.

PER COURT:-

. The post of Sarpanch for Grampanchayat Vadri Kh., Taluka Yawal, District Jalgaon is reserved for SC (female) category. The SC (female) candidate is not available. The same has been made available for SC candidate.

2. Mr. Waramaa, learned counsel for the petitioners submits that second proviso to Rule 4-A of Maharashtra Village Panchayats (Sarpanchas and Up-Sarpanchas Election Rules), 1964 (hereinafter referred as to the 'Rules of 1964') runs contrary to Section 30 of the Maharashtra Village Panchayats Act, 1959 (hereinafter referred as to

the 'Act of 1959'). Section 30 of the Act of 1959 does not envisage shifting of reservation, otherwise the balance of keeping 50% seats for women would not be maintained. The rules cannot override the provisions of the statute. The learned counsel relies on the judgment of the Division Bench of this Court in case of ***Suresh Balkrishna Pogale Vs. State of Maharashtra and others*** reported in ***2003 (3) Mh.L.J. 782***.

3. We have heard the learned A.G.P for respondent Nos. 1 to 3 and Mr. Kadethankar, learned counsel for respondent No. 4.

4. The factual matrix as discussed above is undisputed. The post of Sarpanch of the Grampanchayat Vadri Kh., Taluka Yawal is reserved for SC (female) category. SC (female) candidate is not available. The same has been made available for SC category. Rule 4-A of Rules of 1964 reads thus :

[(4-A) Notwithstanding anything contained in these rules, if the office of the Sarpanch is reserved for the Scheduled Castes, or the Scheduled Tribes or, as the case may be, the category of Backward Class of citizens (including *Vimukta Jatis* and Nomadic Tribes), and no elected member belonging to such Cases, Tribes or as the case may be, the category of Backward Class of citizens is available, then such office for the same tenure shall be allotted by draw of lots to any of the categories for which the office of the Sarpanch may be reserved under Section 30 of the Act :

Provided that, in case where there is only one elected member belonging to a particular category for which such office has been reserved and has, filed the nomination form, then such office shall be declared for such member and if there are one or more elected members of such category and none of them have filed the nomination form, then such office for the same tenure shall be allotted by draw of lots to any of the categories for which the office of the Sarpanch may be reserved under Section 30 of the Act :

Provided further that, in a case where the office of the Sarpanch is reserve for women belonging to the Scheduled castes or the Scheduled Tribes or, as the case may be, the category of Backward Class of citizens (including *Vimukta Jatis* and Nomadic tribes), and no elected women member belonging to such Castes or Tribes or as the case may be, the category of Backward Class of citizens, is available then the office of the Sarpanch, for the same tenure, shall be treated as : (i) if originally reserved for women belonging to the Scheduled Castes, then for the Scheduled Castes, (ii) if originally reserved for women belonging to the Scheduled Tribes, then for the Scheduled Tribes and, (iii) if originally reserved for women belonging to the Backward Class of citizens, then for the Backward Class of citizens.]

5. Under the impugned order the second proviso to Rule 4-A has been applied.
6. The Rules of 1964 are framed by the State in exercise of the powers conferred by sub-section (2) of Section 176 r/w Section 30 and

sub-section (2) of Section 33 of the Maharashtra Village Panchayats Act. The same is a piece of subordinate legislation. The statute nowhere prescribes how the seat becoming vacant for SC (female), ST (female), OBC (female) shall be filled in. The rules in no way run counter to the statute or the provisions therein contained. The rules take care of the contingency arising due to the non availability of the post. The only limitation to the subordinate legislation is that the same should not run counter to the statute under which they are prayed.

7. Moreover, the said rules are also not subject matter of challenge in the present writ petition.

8. In the light of that, writ petition stands dismissed. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.