

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.12576 OF 2021**

Deepak Shivram Pathare ..Petitioner

Versus

The State of Maharashtra and Others ..Respondents

...

Mr. S. S. Thombre, Advocate for the Petitioner.

Mr. D. R. Kale, Incharge Government Pleader for Respondents-State.

Mr. A. B. Kadethankar, Advocate for Respondent No.2.

**WITH
CIVIL APPLICATION NO.12487 OF 2021**

Vandana Dnyaneshwar Murkute ..Applicant

Versus

Deepak Shivram Patare and Others ..Respondents

...

Mr. Ajeet B. Kale, Advocate for the Applicant.

Mr. D. R. Kale, Incharge Government Pleader for Respondents-State.

Mr. S. S. Thombre, Advocate for petitioner in WP.

Mr. A. B. Kadethankar, Advocate for Respondent No.2.

...

**CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATED : 04th DECEMBER, 2021.

PER COURT:-

1. The petitioner is assailing the decision of the respondents reserving the post of the President of Panchayat Samiti, Shrirampur for Other Backward Class category. The election to the same

was scheduled in the meeting dated 18.11.2021. This Court on 17.11.2021 issued notice to respondent no.5 and had observed that, the meeting scheduled on 18.11.2021 for electing President of Panchayat Samiti, Shrirampur may proceed further, however, the result of the same may not be declared. It appears that, the meeting scheduled on 18.11.2021 had taken place, however, the result is not declared.

2. Mr. Thombre, learned counsel for the petitioner strenuously contends that, on 12.12.2019 and 30.12.2019 the Notification was issued for reserving the posts of President of Panchayat Samities in Ahmednagar district. As per the said Notification, out of 14 Panchayat Samities, 7 posts were reserved. 4 posts for O.B.C, 2 for S.C. and 1 for S.T. The elections thereafter took place. In case of Jamkhed Panchayat Samiti, the post of President was reserved for S.T. The candidate from S.T. category was not available. The lots were drawn and in the lots, the post went to O.B.C. The election for the post of President of 14 Panchayat Samities in the district of Ahmednagar took place. The post of President of Panchayat Samiti, Shrirampur was reserved for O.B.C. Subsequently, the President of Panchayat Samiti, Shrirampur was disqualified and now on 18.11.2021 the elections for the post of President of Panchayat Samiti, Shrirampur was scheduled.

3. The learned counsel further submits that, if the President of Panchayat Samiti, Shrirampur is to be elected from O.B.C. category, the same would exceed 27% reservation. The O.B.C. reservation cannot exceed beyond 27% under any circumstances. The learned counsel heavily relied upon the judgment of the Apex Court in a case of **Vikas Kishanrao Gawali Vs. The State of Maharashtra and Others** reported in (2021) 6 SCC 73. The learned counsel further submits that, the Apex Court in the said judgment has categorically observed that, view taken by it would apply with full force to the interpretation and application of the provisions of the stated Act(s) and the State Authorities must immediately move into action to take corrective and follow up measures in right earnest including to ensure that future elections to the concerned local bodies are conducted strictly in conformity with the exposition of this Court in **K. Krishna Murthy and Ors. Vs. Union of India (UOI) and Ors.** reported in (2010) 7 SCC 202, for providing reservation in favour of OBCs. The Apex Court very specifically observed that, reservation of O.B.C. may be upto 27% meaning thereby that reservation cannot exceed even by a fraction of 27%.

4. The learned counsel further submits that, in this case 4 seats are reserved for O.B.C.. The same would be 28.57% that is beyond 27%, as such, the same is illegal. The judgment of the Apex Court in case of **Vikas Kishanrao Gawali Vs. The**

State of Maharashtra and Others (supra) applies for future elections. If the post of President of Panchayat Samiti, Shrirampur is to be filled in from O.B.C. category that would be against the mandate of the judgment of the Apex Court in a case of **Vikas Kishanrao Gawali Vs. The State of Maharashtra and Others** (supra). The mandate of the Ordinance issued by the State of Maharashtra thereby amending Section 58(c) of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 would also be violated. The learned counsel also relies on the circular of the State Election Commission dated 18.11.2021 following the guidelines of the Apex Court in respect of the elections to the posts that are fallen vacant. The District Collector, Ahmednagar is also declaring the bye-elections of Grampanchayats in accordance with the directives of the State Election Commission.

5. The learned counsel further submits that, merely because 2019 Notification was not challenged earlier at earlier point of time that would not negate the right of the petitioner to assail it when the seat has become vacant. The seat has become vacant now and as the fresh election is being held for the said post, the petitioner would get the fresh cause of action to assail the same.

6. Mr. D. R. Kale, learned Incharge Government Pleader submits that, the post of

President of Panchayat Samiti, Shrirampur was reserved for O.B.C. under the year 2019 Notification. The said Notification is still in force, as such, the post of President of Panchayat Samiti, Shrirampur is being filled in from O.B.C. candidate. Accordingly only 4 posts of Presidents are reserved for Other Backward Classes of citizens in the district. It was only because S.T. candidate was not available, the lots were drawn and according to the lots the post of President of Panchayat Samiti Jamkhed went to O.B.C.. It cannot be said that, reservation is exceeding 27%.

7. Mr. A. B. Kale, learned counsel for intervenor submits that, 2019 Notification reserving the post of President of Panchayat Samiti, Shrirampur for O.B.C., would continue till the term is over. The term would be over in February-2022. The learned counsel also places reliance on the judgment of the Apex Court in a case of **K. Krishna Murthy and Ors. Vs. Union of India (UOI) and Ors.** (supra). According to the learned counsel, the petitioner did not challenge the Notification of the year 2019 earlier. Now would not be entitled to assail it. According to the learned counsel, the reservation to the O.B.C. was 27.67% and so it will have to be rounded to 27%. The reservation does not exceed 27%.

8. Mr. Kadethankar, learned counsel appears for respondent nos.2 and submits that, election for

the post of President of Panchayat Samities are conducted by the State Government. The State Election Commission has no role to play in the same. He clarifies that, the State Election Commission conducts the election of the Members of the Panchayat Samities and Grampanchayat. As per the guidelines issued by the State Election Commission, the fraction is not rounded to the nearest higher. Even the fraction of a percentage would not be increased by the State Election Commission. The learned counsel further submits that, State Election Commission is not concerned with conducting the election of President of Panchayat Samities. It has not issued any directives for the said election.

9. We have considered the submissions canvassed by the learned counsel for the respective parties.

10. No doubt, the judgment of the Apex Court in a case of **Vikas Kishanrao Gawali Vs. The State of Maharashtra and Others** (supra) mandates that, all the future elections have to be conducted according to the dictum of the Apex Court in a case of **K. Krishna Murthy and Ors. Vs. Union of India (UOI) and Ors.** (supra). The Apex Court also observed that, expression "shall be" preceding 27%, be construed as "may be" including to mean that reservation for OBCs may be up to 27% but subject

to the outer limit of 50% aggregate in favour of SCs/STs/OBCs.

11. In the present case aggregate reservation is not exceeding 50%. The same is within 50%. The district is considered as unit. There are 14 Panchayat Samities in the district. Out of 14 Panchayat Samitis, only 7 posts are reserved and 7 posts are meant for General category. The reservation does not exceed outer limit of 50% in aggregate. However, reservation of O.B.C. exceeds 27%. According to the petitioner it is 28.57% whereas according to the intervener the same is 27.67%.

12. The question would be how far this Court should exercise its writ jurisdiction in respect of the Notification issued in the year 2019. The election for the post of President of Panchayat Samities in Ahmednagar district were held as per the Notification dated 12.12.2019 and 30.12.2019. The petitioner also participated in the said election, in a way accepting the said Notification. The President of Panchayat Samiti, Shrirampur was elected from O.B.C. candidate. The said post was reserved for O.B.C. under Notification of the year 2019 at the relevant time petitioner did not assail the same. The President from O.B.C. category of Panchayat Samiti, Shrirampur namely Sangeeta Shinde was elected. She was disqualified while in office on 25.10.2021 and for the remaining term the

election for the post of President of Panchayat Samiti, Shrirampur is directed to be held under order dated 09.11.2021. The election program was declared and 18.11.2021 was the scheduled date of the meeting to elect the President of Panchayat Samiti, Shrirampur from O.B.C. category. The remaining term would be only three months. The said elections are held pursuant to the Notification of December 2019 under which the post of all Presidents of Panchayat Samities in Ahmednagar district were filled in including that of the President of Panchayat Samiti, Shrirampur. Now only for remainder three months, the petitioner is assailing the Notification of the year 2019. It would be too late in the day now to consider the challenge to the Notification of December 2019 for remainder period of three months only. The bye-election is to be held for the remainder period of three months. The petitioner has participated in the election process for the election to the post of President pursuant to the same Notification of December 2019 without raising objection to the reservations made pursuant to the said Notification and now for the first time challenging the 2019 Notification at the time of bye-election for remainder period of three months.

13. The election to the post of President of the Panchayat Samiti Shrirampur was never made subject to the decision in any petition. It does not appear that, said Notifications were assailed

at the relevant time. The parties have accepted it. In view of that, at this stage we are not inclined to exercise our writ jurisdiction.

14. Writ Petition accordingly disposed of. No costs.

15. In view of disposal of Writ Petition, Civil Application No.12487/2021 is also disposed of.

16. At this stage learned counsel for the petitioner seeks extension of interim order for further period of three weeks.

17. It would be seen that, not even three months of period remained for new incumbent. In view of that, we are not inclined to pass further orders of continuing the interim order. In case, the petitioner succeeds, then certainly, the parties would be governed by the judgment that may be delivered by the Apex Court.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE