

DSS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8048 OF 2021**

Dadasaheb Dyanu Khadsare and ors.

...Petitioners

V/s.

Dattatray J. Deshmukh and ors.

...Respondents

Mr. Prasad Dani, Sr. Advocate a/w. Mr. Dattar Mane, Ms Sanjali Bidawe and Mr. Akash Yadav for the Petitioners.

Mr. Atul Damale, Sr. Advocate a/w. Mr. P.D. Patil for Respondent Nos.1 to 4.

Mr. P.V. Nelson Rajan, AGP for the Respondent / State.

CORAM : G. S. KULKARNI, J.

DATE : NOVEMBER 29, 2021.

PC :

1] Heard Mr. Prasad Dani, learned Senior Advocate for the petitioners, Mr. Atul Damale, learned Senior Advocate for respondent Nos.1 to 4 and Mr. P.V. Nelson Rajan, learned AGP for respondent / State.

2] Petitioner Nos. 1 and 2 contested elections for the Upa-Sarpanch and Sarpanch respectively of Grampanchayat Deshmukhwadi and are stated to have been elected on 10 February, 2021. Respondent nos. 1 to 4 challenged the said election by initiating proceedings before the Deputy Collector, Sangli on the ground that there was no notice as also no procedure followed to hold such elections on 10 February, 2021. They contended that for want of coram, the petitioners were declared to be elected which was totally illegal. The Deputy Collector, Sangli rejected the proceedings as initiated by respondent nos. 1 to 4. Being aggrieved by such order passed by the Deputy Collector, respondent nos. 1 to 4 approach the Additional

Divisional Commissioner, Pune Division by filing an appeal. By the impugned order, such appeal filed by respondent nos. 1 to 4 has been allowed.

3] Mr. Dani, learned Senior Advocate for the petitioners in assailing the impugned order would submit that the Election Officer had adopted a proper procedure under the Bombay Village Panchayats (Sarpanch and Upa-Sarpanch) Election Rules, 1964. He submits that notice conducting such election was issued on 2.2.2021, by which it was notified that the election was to be held on 9.2.2021 at 2.00 p.m. Accordingly, on 9.2.2021, the Election Officer had convened a meeting of the elected members of the Gram Panchayat who would vote in the said meeting to elect Upa – Sarpanch and the Sarpanch. Mr. Dani submits that the Election Officer, however, for want of Quorum, postponed the election to be held on 10.2.2021. The Election Officer hence issued a fresh notice on 9.2.2021 (annexed at page 31). Such notice was in the same form as the earlier notice dated 2.2.2021 which again notified a complete election programme having the programme like the time for submission of nomination, scrutiny of nomination, return/withdrawal of nomination and ultimately the election at 2.00 p.m.

4] It appears from the record and more particularly on perusal of the minutes of meeting held on 10.2.2021 at 11.00 a.m. nothing happened as stated in the notice dated 9.2.2021 and no other actions were taken and at 2.00 p.m., elections had taken place and petitioner Nos.1 and 2 were declared as Sarpanch and Upa-Sarpanch.

5] In case of respondent Nos.1 to 4, an opportunity to participate in the said election was not available and as per the notice dated 9.2.2021 published by the Election Officer. Mr.Dani, learned Senior Advocate for the petitioners, has drawn my attention to the relevant rules, which according to him were required to be followed by Election Officer in holding elections to the post of Sarpanch and Upa-Sarpanch and more particularly, the provisions under Rule 11 which provides for Quorum. Sub-rule 4 of Rule 11 speaks about adjourned meeting and provides that initial meeting which was adjourned under sub-rule (3) of Rule 11 shall be held again on the next day at the same place and hour and that a notice of such adjournment shall be fixed on the notice board at the office of Panchayat and the election shall be held at such adjourned meeting or at any subsequent adjournment thereof whether there be quorum present or not. It is submitted that requirements of sub-rule 4 of Rule 11 was complied in holding the meeting which on 10.2.2021 and hence, election of petitioner Nos.1 and 2 which had accordingly, taken place cannot be questioned.

6] On the other hand, Mr. Damale, learned Senior Advocate for respondent Nos.1 to 4, has vehemently opposed this petition. By inviting the Court's attention to the findings of fact as recorded by the learned Additional Divisional Commissioner in paragraph 6.4 of the impugned order to the effect that there was no clear notice to the members of the Gram Panchayat that the meeting which was held on 10.2.2021 at 2.00 p.m. was an adjourned meeting and/or it was a meeting as suggested by the petitioner and sub-Rule (4) of Rule 11 is totally unclear. It is submitted that the notice dated 9.2.2021 did not contemplate that it was to be taken only as as notice under Rule 11 sub-rule (4). He would submit that the notice clearly suggest that it was not a notice of adjournment but notifying a

regular/normal election programme for the day (10/2/2021) which did not take place. It is submitted that his clients remained present on 10.2.2021 at 11.00 a.m., however, the procedure as notified in the notice dated 9.2.2021 was not following by the Election Officer as nothing happened at 11.00 a.m. as published in the said notice. He, therefore, submits that due to such chaos on which clear findings of facts are recorded by the Additional Divisional Commissioner in regard to the conduct of said elections, no interference would be called for in the present petition.

7] Having perused the record and having heard learned counsel for the parties, in my opinion, the findings as recorded by the Additional Divisional Commissioner in passing the impugned order cannot be said to be in any manner perverse or illegal. This appears to be a clear case where the Election Officer by issuance of a defective notice dated 9.2.2021 had created sufficient confusion and chaos in the minds of members of Gram Panchayat, who had assembled to submit their nominations at 10 a.m. on 10.2.2021 as clear from the Election Officer's notice dated 9.2.2021.

8] It is also clear that at 11.00 a.m. as notified in the notice, nothing had taken place and directly the elections were held at 2.00 p.m. on 10.2.2021 in which the petitioner Nos.1 and 2 were declared elected unopposed. In these circumstances, the Additional Divisional Commissioner had come to a conclusion that a fair and proper opportunity was not available to respondent Nos.1 to 4 to participate in the election process in view of such confusion created by the Election Officer. Also on a perusal of notice dated 9.2.2021, certainly it cannot be accepted that the notice was issued under sub-rule (4) namely to hold such meeting, as an adjourned meeting. If it was to be such notice, then the position would have been different and the

election could not have been held, but the ground reality was something different as clearly seen from the record.

9] In the above circumstances, I find no merit in the petition and the petition is accordingly, dismissed. No order as to costs.

(G. S. KULKARNI, J.)