

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION (WP) NO. 1444 /2021**  
**[W.P.(S.T.) NO. 4514/2021]**

1. Surajsingh S/o Dhirajsingh Tudanle  
Age 38 years, Occ: Agriculturist,  
R/o Warkhed, Taluka Malkapur,  
Dist. Buldhana. .... PETITIONER

**// VERSUS //**

1. State of Maharashtra  
Through Secretary, Department of Rural  
Development, Mantralaya, Mumbai-32.
2. State Election Commission,  
through its Commissioner,  
having office at 1<sup>st</sup> Floor,  
New Administrative Building,  
Hutatma Rajguru Chowk,  
Madam Cama Road, Mumbai-32.
3. District Collector, Buldhana  
(Gram Panchayat Election Department)  
Dist. Buldana. .... RESPONDENT(S)

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Shri A.J. Thakkar, Advocate for the petitioner  
Shri Neeraj R. Patil, AGP for respondent nos. 1 and 3/ State  
Shri J.B. Kasat, Advocate for respondent no. 2  
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**CORAM : SUNIL B. SHUKRE AND  
AVINASH G. GHAROTE, JJ.**

**DATED : 19/03/2021**

**ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)**

Heard. **Rule.** Rule made returnable forthwith.

2. Heard finally by consent.

3. The grievance of the petitioner is that even though the post of the Sarpanch for which election is to be held in the present term, was reserved in the earlier term for the category of Scheduled Caste, respondent no. 3, while following the procedure prescribed in Sub-rule 4-A of Rule 2 of the Bombay Village Panchayats (Sarpanch and Upsarpanch) Election Rules, 1964 (hereinafter referred to as the “Rules of 1964”), included the category of Scheduled Caste while drawing lots in order to fix the reservation by rotation.

4. The learned Counsel for the petitioner submits that the Minutes of Meeting held in this regard on 04.03.2021 records the fact that earlier this post was reserved for the category of Scheduled Caste and that the category of Scheduled Caste would not be included in the draw of lots. He further submits that in reality what happened was contrary to what is stated in the Minutes of Meeting. While drawing the lots, the category of Scheduled Caste was also included, which was admittedly not permissible on the part of respondent no. 3, so submits the learned Counsel.

5. Shri Patil, learned AGP for respondent nos. 1 and 3 submits that this fact mentioned in the Minutes of Meeting is incorrect and contrary to what is prescribed in Sub-rule 4 of Rule 2 of the Rules of 1964. He invites our attention to reply specifically filed in this regard on behalf of respondent nos. 1 and 3.

6. Shri Kasat, learned Counsel for respondent no. 2 submits that although respondent no. 2 has no role to play in the matter, he would only submit that nothing more is permissible to be done by respondent no. 3 than what is stated in Sub-rule 4-A of Rule 2 of the Rules of 1964.

7. There is no doubt about the fact that the impugned Minutes of Meeting do mention the basis of the consideration behind the draw of lots. It notes down that while drawing the lots, the category for which the seat was earlier reserved would have to be excluded and also the category for which the seat was reserved for the present term would also be required to be removed out of consideration. But, the facts so noted in the Minutes of Meeting (Clause 3) are substantially contrary to the mandate of Sub-rule 4-A of Rule 2 of the Rules of 1964 and, therefore, need to be ignored. Ultimately, it is the mandate of law which is binding and not the incorrect facts about position of law. This is on the principle that no admission against law would change the law. Let us now see the

mandate of Sub-rule 4-A of Rule 2 of the Rules of 1964 which could be well understood if it is reproduced here. It goes as under:

*“(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 reserved 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.”*

It would be clear from Sub-rule 4-A of Rule 2 of the Rules of 1964 that when a seat is reserved for a particular category of woman and no woman candidate from that category and even no male candidate from that category is available, the reservation of the seat would have to be fixed by rotation by drawing of lots and while drawing the lots, what is required to be excluded from the lots is only the category for which the seat is reserved for the present term and not the category for which it was reserved in earlier term.

8. This Rule of fixation of reservation by rotation through draw of lots as contained in First Part of Sub-rule 4-A of Rule 2 of the Rules of 1964 is qualified by the provisions made in its two provisos. The First Proviso deals with the contingency where one elected person or two or more elected persons belonging to the category for which the seat is reserved in the present term are available. The Second Proviso contemplates a situation where a woman candidate for which the seat is reserved is not available, but a male candidate belonging to the category for which the seat is reserved is available. Both these contingencies, in the present case, are not there as it is an admitted fact that the seat was reserved for Scheduled Tribe (Woman category) for the present term and

no candidate, woman or male, was available for being elected to the post of Sarpanch and, therefore, First Part of Sub-rule 4-A of Rule 2 of the Rules of 1964 would only have to be followed. We find that this Part of Sub-rule 4-A of Rule 2 of the Rules of 1964 has been strictly followed in the present case. Therefore, we find no merit in the contention of the learned Counsel for the petitioner that even though the seat of the Sarpanch was reserved for Scheduled Caste category in the earlier term, it was required to be included in the lots to be drawn for filling up the post of the Sarpanch in the present term.

9. Thus, we find no merit in the petition. The petition stands dismissed. Rule is discharged. No costs.

**JUDGE**

**JUDGE**