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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4141 OF 2022

Swati Harishchandra Suryawanshi
Age – 30 years, Occ – Household and Agriculture
R/o Donja, Taluka-Paranda
District - Osmanabad

PETITIONER

VERSUS

1. Maina Hanumant Shinde
Age – 27 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
2. Pandurang Kundlik Suryawanshi
Age – 46 years, Occ – Agriculture
R/o Donja (Bangalwadi), Taluka – Paranda
District – Osmanabad
3. Appasaheb Khemchand Pol
Age – 31 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
4. Ranjit Abasaheb Suryawanshi
Age – 39 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
5. Amol Shrikurshna Patil
Age – 35 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
6. Ashwini Arun Kale
Age – 31 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
7. Taramati Santosh Shirsat
Age – 38 years, Occ – Agriculture

RESPONDENTS

R/o Donja, Taluka – Paranda
District – Osmanabad

8. Kashibai Popat Daashwant
Age – 53 years, Occ – Agriculture
R/o Donja (Bangalwadi), Taluka – Paranda
District – Osmanabad
9. Shilpa Ramchandra Ghogare
Age – 37 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
10. The Presiding Officer – Cum Returning Officer,
Village Panchayat Donja
Taluka – Paranda, District – Osmanabad
11. Santosh Suresh Dhembre
Age – 35 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
12. The Additional Divisional Commissioner
Aurangabad Division,
Aurangabad, District – Aurangabad
13. The Collector,
Osmanabad, District – Osmanabad

WITH
WRIT PETITION NO. 4148 OF 2022

Santosh Suresh Dhembre
Age – 35 years, Occ – Household and Agriculture
R/o Donja, Taluka-Paranda
District - Osmanabad

PETITIONER

VERSUS

1. Pandurang Kundlik Suryawanshi
Age – 46 years, Occ – Agriculture
R/o Donja (Bangalwadi), Taluka – Paranda
District – Osmanabad
2. Maina Hanumant Shinde

RESPONDENTS

Age – 27 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad

3. Appasaheb Khemchand Pol
Age – 31 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
4. Ranjit Abasaheb Suryawanshi
Age – 39 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
5. Amol Shrikurshna Patil
Age – 35 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
6. Ashwini Arun Kale
Age – 31 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
7. Taramati Santosh Shirsat
Age – 38 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
8. Kashibai Popat Daashwant
Age – 53 years, Occ – Agriculture
R/o Donja (Bangalwadi), Taluka – Paranda
District – Osmanabad
9. Shilpa Ramchandra Ghogare
Age – 37 years, Occ – Agriculture
R/o Donja, Taluka – Paranda
District – Osmanabad
10. The Presiding Officer – Cum Returning Officer,
Village Panchayat Donja
Taluka – Paranda, District – Osmanabad
11. Swati Harishchandra Suryawanshi
Age – 30 years, Occ – Household & Agriculture

R/o Donja, Taluka – Paranda
District – Osmanabad

12. The Additional Divisional Commissioner
Aurangabad Division,
Aurangabad, District – Aurangabad
13. The Collector,
Osmanabad, District – Osmanabad

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Mr. Shrikant G. Kawade, Advocate for petitioners
Mr. K. B. Jadhavar, AGP for respondent - State
Mr. D. J. Ghodke h/f Mr. A. T. Jagtap, Advocate for
respondents No. 1 to 8

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th SEPTEMBER, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.
2. Since both these petitions raise similar questions of law and fact, they were heard together and are being decided by this common judgment.
3. Election of the petitioners, on the posts of *Sarpanch* and *Up-Sarpanch* is set aside by the impugned order passed by the Collector. The orders of the Collector are confirmed in appeal, by the Commissioner.

4. The petitioners are elected as members of Gram Panchayat Donga (Bangalwadi), Taluka – Paranda, District – Osmanabad. On 1st February, 2021, a notice, convening meeting on 9th February, 2021 for election of *Sarpanch* and *Up-Sarpanch* was issued by the Returning Officer. The said notice was served on all the eleven members of the said village panchayat. On 9th February, 2021, the petitioners filed their nomination forms for the posts of *Sarpanch* and *Up-Sarpanch* by 10.15 a.m. and 11.05 a.m. On 9th February, 2022, the respondents did not attend the meeting at 2.00 p.m., the schedule time of the meeting and the meeting was adjourned to 10th February, 2022 at 2.00 p.m. for want of quorum. Accordingly, the meeting was held on 10th February, 2021 and since nomination forms of only the petitioners were there, the petitioners were declared as *Sarpanch* and *Up-Sarpanch*. Even this meeting was not attended by the respondents No.1 to 9 / other members of the Village Panchayat.

5. The respondents, thereafter, filed election dispute under section 33 (5) of the Maharashtra Village Panchayat Act, challenging the election of the petitioners, before the Collector. The Collector, after hearing the parties, allowed the dispute and set aside the election of the petitioners. The petitioners

unsuccessfully challenged the order of the Collector, by filing appeals under section 33 (3) of the said Act. Hence, the present petitions.

6. Heard learned advocate for the petitioners. Learned advocate for respondents No.1 to 8 and the learned Assistant Government Pleader for the respondent – State. Perused the grounds raised in the writ petitions and the documents placed on record as well as the replies filed by the respondents.

7. Learned advocate for the petitioners states that the meeting was convened on 9th February, 2021 and all the members of the village panchayat were served with the notice of meeting of 9th February, 2021. Though respondent No.1 (in writ petition No. 4141 of 2022) has claimed that she has not signed nomination form of the petitioner as proposer, it is clear from the say filed by the returning officer before the Collector that in his presence, she had signed nomination form of the petitioner, being proposer. According to him, as per Rule 11 (3) and (4) of the Bombay Village Panchayat (Sarpanch and Up-Sarpanch) Election Rules, 1964 (hereinafter, for short "the said Rules"), since meeting dated 9th February, 2021 was adjourned due to insufficient quorum, requirement of quorum was not necessary on the adjourned date and since only the petitioners had filed

nomination forms and nobody else, they were rightly declared elected as *Sarpanch* and *Up-Sarpanch*. He submits that respondents No.1 to 9 did not participate in the meeting either on 9th February, 2021 or on 10th February, 2021. He submits that since the petitioners are declared elected after following due procedure, the Collector has erred in setting aside their election, by giving erroneous reasons. The Commissioner has also failed to appreciate the contentions of the petitioners in the proper perspective and has wrongly rejected the appeal filed by the petitioners. According to him, the Collector and the Commissioner have misinterpreted the rules, while passing the impugned orders. By relying on "*Ratnamala Ashokrao Shinde and Another V/s Election Officer, Gram Panchayat, Palodi 2006 (6) Mh.L.J. 801*", he submits that the election officer is free to evolve his own procedure for ensuring fair elections as Rule 10 (2) of the said Rules, does not stipulate any particular procedure. He, therefore, submits that both the impugned orders are unsustainable and the same are liable to be quashed and set aside and the petitions deserve to be allowed.

8. On the other hand, learned advocate for respondents No.1 to 8 has supported both the impugned orders. In support of his submissions, he has placed reliance on "*Jyoti Gautam Patil V/s*

Presiding Officer and Others” 2001 (2) Bom. C.R. 725.

9. Learned Assistant Government Pleader also supported both the impugned orders and urged to dismiss the writ petitions.

10. Admittedly, the petitioners were the only candidates, who had filed nomination forms on 9th February, 2021 and respondents No.1 to 9 have never participated in the meeting dated 9th February, 2021 or in the adjourned meeting dated 10th February, 2021. The record reveals that nomination forms filed by the petitioners were scrutinized by the returning officer on 9th February, 2021.

11. Relevant provisions of Rule 9 of the said Rules, read thus -

“9. Scrutiny of nominations, etc - (1) After the commencement of the meeting convened under sub-section (1) of Section 33, the Presiding Officer shall scrutinise all nomination papers delivered to him under Rule 6, decide any objection which may be made to any nomination and may either on such objection or on his own motion reject any nomination if it does not satisfy Rule 6, 7 and 8.

(2) The Presiding Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(3) After the scrutiny under sub-rule (1) is over the Presiding Officer shall read out to the members present at such meeting the names of the members who in his opinion have been duly nominated together with those of their proposers.”

12. It is thus clear that the scrutiny of the nomination forms can only be held after commencement of the meeting, convened under sub section (1) of section 33 of the said Act.

13. Admittedly, in the present case, meeting dated 9th February, 2021 was adjourned for want of quorum, to 10th February, 2021. The scrutiny of nomination forms of the petitioners was done by the Returning Officer on 9th February, 2021, which is contrary to Rule 9 of the said Rules. This ground is sufficient for setting aside the election of the petitioners. Therefore, this Court is not inclined to interfere in the impugned order of setting aside of the election of the petitioners, in exercise of extraordinary writ jurisdiction.

14. Learned advocate for the petitioners strenuously contends that the returning officer is free to evolve his own procedure, as Rule 10 (2) does not stipulate any particular procedure, as is held in "**Ratnamala**" (*supra*). There cannot be any dispute on the said proposition, however, in the present case, since there is clear violation of Rule 9 of the said Rules, the said ruling will not help petitioners'.

15. In "**Jyoti Gautam Patil**" (*supra*), division bench of this Court has held that - "*In our opinion the Presiding Officer committed an error in*

dealing with the objection filed by the member challenging the nomination filed by the petitioner for contesting the post of Sarpanch as there was no requisite quorum to commence with the meeting and ought to have adjourned the meeting without transacting any business in accordance with sub-rule (2) of Rule 11”

These observations support the case of the respondents.

16. Since the election of the petitioners is found to be vitiated for violation of Rule 9 of the said Rules, this court is not going into other aspects of the matter.

17. Apart from the above, it is clear from the record that out of 11 members of the village panchayat, nine are against the petitioners. The petitioners have lost confidence of majority. In this view of the matter also the petitioners cannot be permitted to continue on their posts.

18. For the aforesaid reasons, there is illegality or perversity in the orders impugned in the present writ petitions. Writ petitions, being devoid of merits, are dismissed. No costs. Rule discharged.

[NITIN B. SURYAWANSHI]
JUDGE