

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

44 WRIT PETITION NO.5883 OF 2022

. Shahista Saddam Shaikh
Age: 29 yrs., Occu.: Agri.
Presently working as Sarpanch
of Village Panchayat, Kukadgaon,
Tq.Paranda, Dist.Osmanabad. ..Petitioner

VERSUS

1. The State of Maharashtra
Through the Additional Commissioner,
At Aurangabad Division, Aurangabad.
2. The District Collector,
Osmanabad.
3. The Tahsildar,
Paranda, Tq.Paranda,
Dist.Osmanabad.
4. Shri G.T.Gore
Presiding Officer/Returning Officer
appointed for the purpose of election of
Sarpanch and Up-Sarpanch of
Grampanchayat, Kukkadgaon, Tq.Paranda,
Dist.Osmanabad.
5. Amrut Baban Wayase
Age: 33 yrs., Occu.: Agri.,
R/o. Kukadgaon,
Tq.Paranda, Dist.Osmanabad.
6. Mr.B.S.Rathod
The Then Gramsevak – presently working
as Village Development Officer, Pathrud
Tq.Bhoom, Dist.Osmanabad. ..Respondents

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45 WRIT PETITION NO.5884 OF 2022

. Limbaji Dashrath Mandave
Age: 56 yrs., Occu.: Agri.,
Presently working as Upsarpanch
of Village Panchayat, Kukkadgaon,
Tq.Paranda, Dist.Osmanabad. ..Petitioner

VERSUS

1. The State of Maharashtra
Through the Additional Commissioner,
At Aurangabad Division, Aurangabad.
2. The District Collector,
Osmanabad.
3. The Tahsildar,
Paranda, Tq.Paranda,
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Presiding Officer/Returning Officer
appointed for the purpose of election of
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Grampanchayat, Kukkadgaon, Tq.Paranda,
Dist.Osmanabad.
5. Amrut Baban Wayase
Age: 33 yrs., Occu.: Agri.,
R/o. Kukadgaon,
Tq.Paranda, Dist.Osmanabad.
6. Mr.B.S.Rathod
The Then Gramsevak – presently working
as Village Development Officer, Pathrud
Tq.Bhoom, Dist.Osmanabad. ..Respondents

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Advocate for Petitioners : Shri Abhijit S. More
AGP for Respondent Nos.1 to 3 : Shri S.N.Morampalle
Advocate for Respondent No.4 : Shri Sudhir K. Chavan
Advocate for Respondent No.5: Shri Ankush N. Nagargoje,

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CORAM : M.G.SEWLIKAR, J.**DATE : 1st August, 2022****ORAL JUDGMENT :-**

1. Rule. Rule made returnable forthwith. With the consent of the parties petitions are taken for hearing for final disposal at the admission stage.

2. Petitioners and respondent No.5 are the members of the Gram Panchayat, Kukkadgaon, Tq.Paranda, Dist.Osmanabad. The general elections of Gram Panchayat Kukkadgaon, Tq.Paranda, Dist.Osmanabad took place in the month of January, 2021. The petitioners got elected as members of said Gram Panchayat. It is further alleged that on 9th February, 2021 respondent No.4, Returning Officer convened a meeting of the office bearers for the purpose of elections of Sarpanch and Upsarpancha. On the same day, the elections were held and the Petitioner in Writ Petition No.5883 of 2022 was declared elected as Sarpanch and the petitioner in Writ Petition No.5884 of 2022 was declared elected as Upsarpancha. Minutes of the meeting were prepared. Respondent No.5 signed the minutes of the meeting and accepted the procedure evolved by respondent No.4.

3. On 18th February, 2021, respondent No.5 filed an appeal before respondent No.2 - the District Collector, Osmanabad under Section 33(5) of the Bombay Village Panchayats Act, 1958 and raised dispute regarding election proceedings conducted by respondent No.4. On 1st February, 2022, respondent No.2 - the District Collector, Osmanabad, was pleased to reject the said appeal on the ground that there was no demand on the part of respondent No.5 regarding voting by secret ballot. Being

aggrieved and dissatisfied by the order passed by respondent No.2, respondent No.5 preferred appeal before respondent No.1. Respondent No.1 by his order dated 24th May, 2005 allowed the appeal on the ground that there was a demand of voting by secret ballot and that was not adhered to. Therefore, the procedure evolved by the Returning Officer is against the Rules. Holding this, he set aside the elections of the petitioners.

4. This order is being impugned in these petitions.

5. I have heard Shri A.S.More, learned counsel for the petitioners, Shri S.N.Morampalle, learned AGP for respondent Nos.1 to 3, Shri S.K.Kadam, learned counsel for respondent No.4 and Shri A.N.Nagargoje, learned counsel for respondent No.5.

6. Learned counsel for the petitioners submits that on 9th February, 2021 at 02:00 p.m. the elections of Sarpanch and Upsarpanch were held. Initially election of Sarpanch was held. Out of nine members, six members voted in favour of the petitioner in Writ Petition No.5883 of 2022 and three members voted against the said petitioner. Therefore, the petitioner in Writ Petition No.5883 of 2022 was declared elected as Sarpanch. Thereafter, election of Upsarpanch was held in which six members voted in favour of the petitioner in petition No.5884 of

2022. For the other candidate nobody raised his hand. Therefore, petitioner in petition No.5884 of 2022 was declared elected as Upsarpanch. The voting was held by raising of hands.

7. Shri More, learned counsel for the petitioners further submits that at no point of time there was any demand for secret ballot. He submits that the proceedings book show that there was no demand from any of the members about secret ballot. However, the proceedings book produced by respondent No.5 show that respondent No.5 had demanded voting by secret ballot. He submits that below the name of respondent No.5, a line is added in Devnagari script “गुप्त मतदान घेण्यात यावे.”. He submits that this is clear evidence of interpolation. He submits that an application came to be filed before the Returning Officer. The Returning Officer in the dispute raised by respondent No.5, has not testified that he was threatened and stones were pelted at him and because of which he accepted the application. He submits that on this basis, the learned Collector dismissed the dispute. Against this decision, appeal was preferred. The learned Additional Divisional Commissioner allowed the appeal holding that there was a demand of secret ballot. This demand was not adhered to and therefore, the entire election is set aside.

8. He further submits that there are two documents indicating

that in one document there is no remark of demand of secret ballot and in another document there is a remark of demand of secret ballot. He submits that in such a situation, it will be appropriate to remand the dispute to the Collector.

9. Learned counsel for respondent No.5 submits that there was demand of secret ballot by respondent No.5. An application was made on 9th February, 2021. In terms of Rule 10(2) of the Bombay Village Panchayat (Sarpanch and Up-Sarpanch) Election Rules, 1964, the voting has to be held in terms of secret ballot if the demand in that behalf is made. He further submits that the Returning Officer has not made any remark on the application that he had received it after the elections were over. He further submits that in terms of Rule 4 of the Bombay Village Panchayat (Sarpanch and Up-Sarpanch) Election Rules, 1964, "the Presiding Officer shall cause a notice of such meeting to be given to every member of the Panchayat at least three clear days before the date of such meeting". He submits that notice was issued on 9th February, 2021 and elections were held on the same day. He, therefore, prayed for dismissal of the petition. He placed reliance on the case of *Maruti Bandu Patil Vs. Village Panchayat Sidhnerli and Others* [1981 Mh.L.J. 255] and *Murlidhar Bhaiyaji Kapgate and Others Vs. Krishna Jairamji Meshram* [1991 (2) Mh.L.J. 897].

10. Learned counsel for the petitioners placed reliance on the case of *Subhas Manikrao Lavhale vs. Additional Commissioner, Amravati Division, Amravati and Ors.* [2009 (5) Mh.L.J. 511] for the proposition that Election Officer can evolve his own procedure. He has also placed reliance on the case of *Kalpna Laxman Bhujbal vs. Additional Commissioner, Amravati and Ors.* (Writ Petition No.490 of 2012 decided on 13th April, 2015).

11. I have given anxious consideration to the submissions made by the learned counsel for the petitioners and learned counsel for respondent No.5 in both the petitions.

12. In the case of *Maruti Bandu Patil* (supra), the Division Bench of this Court has held that “*the election by ballot is to be held when demand is made, which provision has been made to help voters to vote free from any inhibition, fear or apprehension of being subjected to some sort of calamity. The word used “shall” clearly indicates that the provision is mandatory and non-compliance with the said provision must result in setting aside the election of person concerned.*”

13. At page No.63 the alleged notice is annexed. The learned counsel for the petitioners submits that that is not a notice but that is a programme. Alleged election programme is styled as

notice. It mentions that the meeting will be held on 9th February, 2021. It appears that this ground was not raised in the dispute before the Collector nor it was raised in the proceedings in the appeal before the Additional Divisional Commissioner. Therefore, this ground cannot be raised at this stage.

14. So far as demand by secret ballot is concerned, application was made before the Returning Officer. He did not make any endorsement on application that it was received after elections were over. In terms of the Judgment of the Division Bench in the case of *Maruti Bandu Patil* (supra), when there is a demand for secret ballot it is mandatory for the Returning Officer to hold the elections by secret ballot. Despite there being a demand for secret ballot, the Returning Officer has not adhered to it. Therefore, elections of Sarpanch and Upsarpanch need to be set aside.

15. In this view of the matter, both the petitions are dismissed. No order as to costs. Rule is discharged.

(M.G.SEWLIKAR)
JUDGE