

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

WRIT PETITION NO. 11735 OF 2022

Sindhu Vasant Ghule,
Age 37 years, Occ. Household,
Derde Madhi Road, 5 Chari,
Kumbhari, Tq. Kopargaon, Dist.
Ahmednagar

... **Petitioner**

VERSUS

- 1) The State of Maharashtra,
Through Rural Development Department,
Mantralaya Mumbai.
- 2) State Election Commission
Through Secretary
First Floor, new Administration Building,
Hutatma Chowk, Madam Cama Road,
Mumbai – 400 032.
- 3) The Collector,
Ahmednagar, Tq. & Dist. Ahmednagar.
- 4) District Election Officer,
Parag Building, M.I.R.C.
Ahmednagar.
- 5) Block Development Officer,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.
- 6) Tahsildar Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.

... **Respondents.**

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Advocate for the Petitioner : Mr. Shaikh Ashraf Patel h/f Mr. A. P. Avhad
A.G.P. for the Respondents/State : Mrs. M.A. Deshpande.
Advocate for Respondent No. 2 : Mr. A.B. Kadethankar

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRAGADE, JJ.**

DATE : 28.11.2022.

PER COURT :

Heard learned advocate for the petitioner, the learned A.G.P. and

learned advocate Mr. Kadethankar, who appears for the respondent No. 2- State Election Commission.

2. Rule. The Rule is made returnable forthwith. At the request of the parties, the matter is heard finally at the stage of admission.

3. The petitioner is aggrieved by the election of Sarpanch undertaken pursuant to Section 43 of the Maharashtra Village Panchayat Act, 1958 (hereinafter 'the Act') to fill up a vacancy which had occasioned on account of disqualification of an earlier Sarpanch.

4. By the impugned communication dated 21.10.2022, the Collector has informed the petitioner his inability to undertake and examine legality or otherwise of the election in the absence of any provision under the Act on the only ground that since the process was for filling up a vacancy under Section 43, there was no provision which empowered him to examine its legality.

5. The learned advocate for the petitioner submits that under Section 33(5) the Collector has the power and jurisdiction to decide the dispute regarding validity of the election of a Sarpanch. The post was earmarked for reserved category. It was filled from open category.

6. Learned advocate Mr. Kadethankar for the respondent No. 2 points out that in view of Section 43, even the powers of Section 33 including the power under sub Section 5 would vests with the Collector.

7. The learned A.G.P submits that the petitioner has not followed the procedure prescribed under sub Section 5 of Section 33 of the Act and his petition having not been routed through as is contemplated therein and even the time stipulated therein having expired, the Collector would not be in a position to decide the petitioner's representation under Section 33(5) of the Act.

8. It is apparent that by the impugned communication the Collector has specifically informed *inter alia* that since it was a process for filling up of a vacancy undertaken pursuant to Section 43 of the Act he had no power. Section 43 reads as under :

“ 43- Filling up of vacancies.

(1) Any vacancy of which notice has been given to the [Collector] in the prescribed manner due to the disablement, death, resignation, disqualification [confirmation of no confidence motion,] absence without leave or removal of a Sarpanch or Upa-Sarpanch, shall be filled, by the election of a Sarpanch or Upa-Sarpanch, who shall hold office so long only as Sarpanch or Upa-Sarpanch, in whose place he has been elected would have held office if the vacancy had not occurred:

[Provided that, the post of the Sarpanch or Upa-Sarpanch, as the case may be, fallen vacant under this sub-section shall be filled in within thirty days from the date of such vacancy.]

[Provided further that, the post of directly elected Sarpanch fallen vacant, then such post shall be filled in by election from amongst the members of the panchayat themselves within thirty days from the date of such vacancy.]

2. The meeting for the election of a Sarpanch under sub-section (1) shall be convened by [Collector] in the manner described in sub-section (1) of Section 33.”

9. As can be seen, in respect of a process for filling up of a vacancy under Section 43, the Collector has to convene a meeting as described in sub Section 1 of Section 33 by virtue of sub Section 2 of Section 43 of the Act. It is, therefore, apparent that even the legislature while providing for filling up of vacancy under Section 43 was conscious of the process to be followed and has taken precaution to provide that the procedure to be followed should be in accordance with sub Section 1 of Section 33 of the Act. If that is so, in our considered view, it cannot be said that the Collector has no power in respect of election of the Sarpanch undertaken to fill up a vacancy under Section 43 when the legislature expected him to follow the procedure under Section 33 sub Section 1 of the Act.

10. By virtue of provision of sub Section 5 of Section 33 of the Act, the dispute arising out of the validity of the election of Sarpanch reaches the Collector. If that be so, the impugned communication of the Collector refusing to exercise the jurisdiction and powers vesting in him under sub Section 5 of Section 33 is on unsustainable ground.

11. We allow the writ petition partly. We quash and set aside the impugned communication dated 21.10.2022 and expect the Collector to take a decision under Section 33(5) of the Act on its own merits, as early as possible and in any case within six weeks from today.

(Y. G. KHOBRAGADE, J.)

(MANGESH S. PATIL, J.)

mkd/-