

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3249/2021

Yogita W/o Liladhar Pimpalshende,
Aged 38 years, Occu: Housewife,
R/o Marda, Tq. Warora, District Chandrapur.

PETITIONER

.....VERSUS.....

1. The Maharashtra Election Commission,
New Administrative Building, Opposite Mantralaya,
Madam Cama Road, Hutatma Rajguru Square,
Mumbai – 400 032, Through : It's Secretary.
2. Returning Office, Grampanchayat Marda, Tahsil
Warora, Tq. Waroda, District Chandrapur/
Tahsildar Warora, Dist: Chandrapur.
3. District Collector, Chandrapur District Chandrapur.
4. Balaji S/o Natthuji Jogi,
aged about 58 years, Occ. Agriculturist.
5. Kavita Ajay Pimpalshende,
aged about 32 years, Occ- Nil.
6. Manisha w/o Vijay Garse,
aged about 35 years, Occ-Nil.
7. Nilesh Ajabrao Pote,
aged about 30 yrs. Occ-Business.
8. Savita W/o Ramchandra Nakshine,
aged about 32 years, Occ Business.
9. Balaji S/o Shamrao Kamble,
aged about 51 years, Occ – Agriculturist.
10. Pratibha Dipak Pimpalshende,
aged about 28 years, Occ-Nil.

Respondent Nos.4 to 10, r/o Marda, Tq. Warora,
District Chandrapur.

11. Gram Panchayat Marda, Tq. Warora,
District Chandrapur, Through: It's Secretary.

RESPONDENTS

Shri A.P. Thakre, counsel for the petitioner.

Shri J.B. Kasat, counsel for the respondent no.1.

Shri N.R. Patil, Assistant Government Pleader for the respondent nos.2 and 3.

Mrs. R.S. Sirpurkar, counsel for the respondent nos.4, 5, 9 and 10.

Shri T.M. Shende, counsel for the respondent nos.7 and 8.

CORAM : A. S. CHANDURKAR AND SMT.M.S. JAWALKAR, JJ.

DATE : 25TH MARCH, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. On 15.12.2020, a notification was published with a view to hold elections of Members of Gram Panchayat Marda. Seven members were to be elected from three Wards. The petitioner on 29.12.2020 filed her nomination form for the post of Member under the category of Backward Class of Citizens from Ward No.1. The fifth respondent also filed her nomination form under the same category. There were thus two nomination forms that were filed for contesting elections in the category of Backward Class of Citizens from Ward No.1. On scrutiny, the petitioner's nomination form was found to be valid while the nomination form of the fifth respondent came to be rejected. The fifth respondent being aggrieved by the order rejecting her nomination form filed Writ Petition No.116 of 2021. On 04.01.2021 the learned Single Judge while issuing notice in the writ petition granted ad-interim relief and directed the Returning Officer to accept the nomination form of the fifth respondent, the same being made subject to the result of the writ petition. Consequently, the nomination form of the fifth respondent was accepted. In the elections held on 15.01.2021 the fifth respondent was declared

elected having secured more votes than the petitioner. Notification dated 29.01.2021 indicating the names of elected candidates was published by the Collector.

3. On 09.02.2021, Writ Petition No.116 of 2021 was held to be not maintainable in view of the judgment of the Full Bench of this court in *Karmaveer Tulshiram Autade & Others Versus State and Election Commission & Others* decided on 13.01.2021. Accordingly, while dismissing the writ petition as not maintainable this Court directed that the consequence of dismissal of the writ petition would follow. In view of dismissal of writ petition, the petitioner on 10.02.2021 issued a communication to the Returning Officer and requested that she be declared as elected unopposed since there was no other candidate besides the fifth respondent who had contested the elections. The petitioner also prayed that she be permitted to participate in the election for the post of Sarpanch. That request was reiterated on 12.02.2021. The petitioner however was not permitted to participate in the election of Sarpanch and consequently the fifth respondent was declared elected on the post of Sarpanch. Being aggrieved the petitioner has challenged the action of the Returning Officer of not declaring her as elected unopposed in the category of Backward Class of Citizens. In support of the reliefs sought in the writ petition, the learned counsel for the petitioner placed reliance on

the judgment of the Division Bench of this Court in *Salma Bi Syed Noor Attar Versus The Collector, Buldana* in Writ Petition No.4031 of 2021 dated 08.02.2022 which arose in similar facts as well as the decisions in *Baby Samuel Versus Tukaram Laxman Sable & Others* [1996(1) Mh.L.J. (SC) 9], *Baburao Vishwanath Mathpati & etc. Versus State of Maharashtra & Others* [1996(1) Mh.L.J. 366] and *Baburao Kalu Koli Versus State of Maharashtra & Others* [2008(2) Mh.L.J. 203]. It was prayed that the petitioner be declared elected as Member of the Gram Panchayat.

4. Reply has been filed by the fifth respondent opposing the prayers made in the writ petition. It has been stated that the writ petition was not maintainable as the relief of declaration of being elected unopposed as sought by the petitioner could only be granted in an Election Petition. Under Section 15 of the Maharashtra Village Panchayats Act, 1959 (for short, 'the Act of 1959') the remedy of seeking such declaration could be sought. It is further stated that the elections to the Gram Panchayat having been held and the fifth respondent having been declared elected after securing majority of the votes her election was required to be set aside by invoking the statutory remedy and not by approaching this Court under Article 226 of the Constitution of India. It is further stated that even if the election of the fifth respondent is set

aside as a consequence of vacation of the ad-interim order dated 04.01.2021, it would not be permissible to declare the petitioner as elected since such relief cannot be granted even under the Act of 1959. The vacancy created on account of the election of the fifth respondent being set aside will have to be filled in by holding a by-election. In support of aforesaid submissions, the learned counsel for the fifth respondent placed reliance on the decisions in *Gawaji Alias Gawaja Sawleram Sarode Versus State of Maharashtra & Others* [1992(1) **Mh.L.J.** 294], *RashidaBi S.K. Musa Versus Laxmibai Babasaheb Bhalekar & Others* [1997(1) **Mh.L.J.** 383] and *Santosh Maruti Walanj Versus Manoj Sadashiv Jadhav* [2013(1) **ALL MR** 518]. It is thus submitted that no relief can be granted to the petitioner.

Other learned counsel for the respondents adopted the submissions made on behalf of the fifth respondent.

5. We have heard the learned counsel for the parties at length and we have given due consideration to their respective submissions. At the outset it may be stated that an identical issue based on somewhat similar facts was raised for consideration in *Salma Bi* (supra). There too, two candidates had submitted their nomination forms out of which the nomination form of one candidate was rejected. That candidate had challenged the order rejecting her nomination paper by filing a writ

petition in this Court. On the strength of an ad-interim order that was made subject to the result of that writ petition, the said candidate contested the elections and was declared elected. The writ petition challenging rejection of the nomination paper was however subsequently held to be not maintainable and while dismissing the same it was directed that the consequence of such dismissal of the writ petition would follow. Since the petitioner (Salma Bi) in that writ petition was the sole candidate in that election she sought a declaration that she was elected unopposed. Such declaration not having been granted by the Returning Officer or the State Election Commission she had approached this Court in Writ Petition No.4031 of 2021. Various contentions were raised to oppose the relief sought by the said petitioner of a declaration that she had been elected unopposed. Bar of Article 243-O of the Constitution of India as well as availability of statutory remedy under the Act of 1959 was put forward by the fourth respondent while opposing the said writ petition. By the judgment dated 08.02.2022, the division Bench to which one of us (A.S. Chandurkar, J.) was a party held in paragraphs 22 and 23 as under:-

“22. For aforesaid reasons, we find that the petitioner is entitled for the reliefs sought in the writ petition. The fourth respondent having contested the elections from Seat C in view of the ad-interim order dated 04.01.2021 has no right to continue on the post as Member of Gram Panchayat, Dongaon in view of dismissal of Writ Petition No.85 of 2021 after vacating

the interim order and directing the consequences to follow. The respondent nos.1 to 3 erred in not gathering the true import of the consequences of dismissal of Writ Petition No.85 of 2021 despite the clear order passed on 08.07.2021 that the interim order stood vacated and the consequences ought to follow. In addition, the said ad-interim order dated 04.01.2021 was made subject to the outcome of the writ petition.

23. *In view of aforesaid the following order is passed:*

(I) The communication dated 07.09.2021 issued by the Deputy Commissioner, State Election Commission to the Collector as well as the subsequent communication dated 08.09.2021 issued by the Deputy District Election Officer, Buldana to the petitioner is set aside.

(II) It is declared that as a consequence of dismissal of Writ Petition No.85 of 2021 by vacating the ad-interim order dated 04.01.2021 and directing the consequences to follow, the petitioner is entitled to a declaration that she stands elected as Member of Gram Panchayat Dongaon, Taluka Mehkar, District Buldana from Seat C. The fourth respondent shall yield that seat to the petitioner. The respondent nos.1 to 3 shall do the needful accordingly.”

Thus, it was held that the petitioner therein was entitled to a declaration that she was elected as Member of the Gram Panchayat in the place of the successful candidate.

It may be mentioned that the aforesaid judgment of this Court was challenged before the Hon’ble Supreme Court and on 16.03.2022 Special Leave to Appeal (C) No.4405/2022 came to be dismissed.

6. We thus find that the present petitioner is similarly situated as the petitioner in Writ Petition No.4031 of 2021. The only difference in the present proceedings is that on 11.02.2021 the Tahsildar, Warora has declared that in view of the orders passed in Writ Petition No.116 of 2021 the fifth respondent had lost the right to hold the post of Member from Ward No.1. That seat was declared to be vacant and the fifth respondent was not permitted to participate in the election for the post of Sarpanch/ Upa Sarpanch. It is for this reason that the learned counsel for the fifth respondent by relying upon the decision in *Gawaji Alias Gawaja Sawleram Sarode* (supra) has sought to urge that the vacancy created on account of the fifth respondent vacating the post of Member of the Gram Panchayat would have to be filled by holding a by-election. The facts in the aforesaid decision indicate that the unsuccessful candidate at the Gram Panchayat election had filed an election petition under Section 15 of the Act of 1958. The Civil Court upheld the challenge to the election of the returned candidate but did not grant a declaration that the petitioner stood elected in his place. That order was challenged by the said unsuccessful candidate who had preferred the election petition by filing writ petition in this Court. The learned Single Judge held that Section 15 of the Act of 1958 did not empower the court trying the election petition to grant such declaration that another contesting candidate be held to be elected. On that count, the order passed by the Civil Court was upheld

and it was directed that the vacant seat be filled by holding a by-election. This view has been followed in the subsequent decision in *Rashida Bi* (supra).

7. The ratio of the aforesaid decisions cannot apply to the facts of the present case for the simple reason that the petitioner is not seeking a declaration of she being elected as a Member of the Gram Panchayat consequent to the election of the fifth respondent being set aside in proceedings under Section 15 of the Act of 1959. The petitioner seeks restoration of status quo ante and relies upon the principle of restitution for the reason that the fifth respondent could contest the elections only on account of the ad-interim order passed by this Court in her writ petition which was subsequently held to be not maintainable. While dismissing that writ petition, it was specifically directed that the consequences of such dismissal should follow. It was only on account of the ad-interim order that the fifth respondent could contest elections and thereafter get elected. If the order of rejection of her nomination paper is restored as a consequence of the challenge to that order being unsuccessful, the entire foundation of the case of the fifth respondent would stand removed. The other consequence would be that the petitioner would be the sole candidate who had validly filed her nomination paper and but for the ad-interim order she would have been declared elected unopposed without

requiring any election to be held. For these reasons the said contention of the fifth respondent therefore cannot be accepted. Though it was also urged that the fifth respondent has now received her validity certificate the same cannot result in any favourable order in favour of the fifth respondent.

8. By filing C.A.W. No.471 of 2022 the petitioner has sought to incorporate an additional prayer in the writ petition of seeking a declaration that she be declared elected unopposed as Member of Gram Panchayat Marda. Though the application has been opposed by the learned counsel for the respondents, we are satisfied from the averments in the writ petition that the aforesaid declaration has infact been sought by the petitioner in the writ petition. The proposed amendment is thus formal in nature. The civil application is accordingly allowed.

9. As a result of the aforesaid discussion, the petitioner is entitled to the reliefs as sought. Accordingly it is declared that as a consequence of dismissal of Writ Petition No.116 of 2021 by vacating the ad-interim order dated 04.01.2021 and directing the consequences to follow, the petitioner is entitled to a declaration that she stands elected as Member of Gram Panchayat Marda, Taluka Warora, District Chandrapur from Ward No.1. The fourth respondent shall yield that seat to the

petitioner. The respondent nos.1 to 3 shall do the needful accordingly. Consequently, the notification dated 29.01.2021 to the extent it declares the fifth respondent to be elected as Member of Gram Panchayat Marda from Ward No.1 in the Backward Class of Citizens category is set aside. The petitioner is free to raise a challenge to the election of the fourth respondent as Sarpanch and ninth respondent as Upa-Sarpanch in accordance with law consequent to the present adjudication.

10. Rule is made absolute in aforesaid terms with no order as to costs.

(SMT.M.S JAWALKAR, J.) (A.S. CHANDURKAR, J.)

APTE