

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

WRIT PETITION NO.4883/2021

Sujata Bhaskar Thorat and two others PETITIONERS.

-VS-

**The State of Maharashtra, Secretary Rural Development
Department, Mantralaya, Mumbai and six others. .. RESPONDENTS**

Shri V.N.Patre, Advocate for petitioners.

Ms. H.N.Jaipurkar, Assistant Government Pleader for respondent nos. 1 to 4.

Shri K.S.Narwade, Advocate for respondent nos. 5 to 7.

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

DATE :- MARCH 24, 2022.

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In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

2] The challenge raised in this writ petition is to the reservation of the post of Sarpanch for candidates from Backward Class of citizens at Gram Panchayat, Isapur by draw of lots. Further challenge is also raised to the Notification dated 26.11.2021 by which the reservation for the post of Sarpanch from the Scheduled Tribes (women) category has been modified to Backward Class of citizens .

3] The petitioner no.1 is an elected member of Gram Panchayat, Isapur having contested the said elections from general female category. The petitioner no.2 is also an elected member of the Gram Panchayat from the Scheduled Tribes (female) category while the petitioner no.3 has been elected to the Gram Panchayat from the Backward Class of citizens (female) category. The Gram Panchayat consists of thirteen members and the post of

Sarpanch was reserved for members from Scheduled Tribes (women) category. No candidate however was available at Gram Panchayat, Isapur who could fill in the post of Sarpanch from that category. The Collector therefore by his communication dated 26.10.2021 directed that the reservation for the post of Sarpanch be determined by drawing lots as per provisions of Rule 2A(4-A) of the Maharashtra Village Panchayats (Sarpanch and Upa-Sarpanch) Election Rules, 1964 (for short, the Rules of 1964). This was to be done by following the provisions of Section 30 of the Maharashtra Village Panchayats Act, 1959 (for short, the Act of 1959). Accordingly a notice was issued by the Tahsildar convening a meeting of the members of the Gram Panchayat on 15.11.2021. In the meeting held on that date and after following the procedure prescribed by Rule 2A(4-A) of the Rules of 1964 after draw of lots amongst candidates from the Scheduled Castes Category and the Backward Class of citizens, the post of Sarpanch was reserved for Backward Class of citizens. The petitioners on 24.11.2021 made a representation in that regard to the Collector. On 26.11.2021 the change in the reservation as was earlier declared was effected. Thus the reservation of the post of Sarpanch for candidates from the Backward Class of citizens is challenged in this writ petition.

4] Shri V. N. Patre, learned counsel for the petitioners submits that reservation of the post of Sarpanch for members from Backward Class of citizens was contrary to Rule 2A(4-A) of the Rules of 1964 as well as Section 30 of the Act of 1959. Inviting attention to relevant provisions, it was submitted that there ought to be 50% reservation of the post of Sarpanch in

every district. If however no woman candidate from a particular reserved category was available, the post in question ought to be reserved for woman from other reserved categories by which 50% reservation as prescribed would be maintained. Instead of modifying the reservation in favour of woman from the other reserved categories, the post of Sarpanch has been reserved not specifically for women but for members from the Backward Class of citizens. This has resulted in violation of the spirit behind prescribing 50% reservation for women candidates. Hence the Resolution dated 15.11.2021 as well as the Notification dated 26.11.2021 were liable to be set aside.

5] Ms. H. N. Jaipurkar, learned Assistant Government Pleader for respondent nos. 1 to 4 relied upon the affidavit filed by the respondent nos. 2 and 3 and submitted that the draw of lots was conducted as prescribed by Rule 2-A (4A) of the Rules of 1964. Therein the reservation as prescribed under Section 30 of the Act of 1959 was to be considered. By following these provisions the lots were drawn from amongst Scheduled Castes and Backward Class of citizens. The petitioners did not raise any objection in that regard on 15.11.2021. A similar procedure was followed in about seven Gram Panchayats and hence there was no illegality committed.

Shri K.S.Narwade, learned counsel for the respondent nos. 5 to 7 has also opposed the writ petition. He submitted that the post of Sarpanch had been kept vacant as an interim arrangement and the charge of that post was given to the Up-Sarpanch who was the husband of the petitioner no.1. With a view to continue that arrangement, the petitioners had challenged

the minutes of meeting dated 15.11.2021. According to him, 50% of the seats in various Gram Panchayats in the Tahsil were already reserved for women candidates and there was no requirement of any further reservation for women from the reserved category. Since 50% seats were already reserved, the Authorities rightly did not permit drawing of lots for women from other reserved categories. The learned counsel sought to place reliance on the decision in *Sanjay Ramdas Patil vs. Sanjay and others (2021) 10 SCC 306* and submitted that the writ petition was liable to be dismissed.

6] We have heard the learned counsel for the parties and we have perused the relevant provisions relied upon by them. We have thereafter given due consideration to the respective submissions. It is not in dispute that the post of Sarpanch at Gram Panchayat Isapur was reserved for woman from the Scheduled Tribes category. However in the General Elections no candidate from Schedule Tribes category, either male or female, was elected. As a consequence the Tahsildar sought to fill in the post of Sarpanch in terms of Rule 2A(4-A) of the Rules of 1964. In that process the lots were drawn to enable the Sarpanch from Scheduled Caste category and Backward Class of citizens to be elected. The lot drawn was for candidates from the Backward Class of citizens. Consequentially, the Naib Tahsildar on 26.11.2021 modified the reservation for Isapur Gram Panchayat alongwith other Gram Panchayats in the Tahsil.

According to the petitioners since there was no woman member elected from the Schedule Tribes category, the reservation ought to have

been determined by drawing lots from other reserved categories (women). In other words, if no woman member from Scheduled Tribes category was available then the lots ought to have been drawn from amongst members belonging to Scheduled Castes (women) or Backward Class(women). Failure to do so would result in frustration of the provisions of the Rules of 1964. On the other hand, according to the respondents, while working out reservation for the entire Tahsil 50% seats were already reserved for women candidates and lots were then drawn as per the provisions of Rule 2A(4-A) of the Rules of 1964.

7. Rule 2A(4-A) being relevant is reproduced hereunder:

“Rule 2-A : Reservation of seats for the election of Sarpanch :

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[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 maybe reserved under Section 30 of the

Act:

Provided further that, in a case where the office of the Sarpanch is reserve from 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.]”

As per the aforesaid Rule if there is no elected member belonging to a reserved category for which the office of Sarpanch is reserved then the office for the same tenure has to be allotted by draw of lots to any of the categories for which the office of Sarpanch may be reserved under Section 30 of the Act of 1959. Section 30 of the Act of 1959 has been referred to in Rule 2A(4-A) of the Rules, 1964 and Section 30(4) being relevant is reproduced hereunder :

Section 30 sub-section 4:

“(4) There shall be reservation in the offices of the Sarpanchas in the Panchayats for the members belonging to the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of citizens and women as follows :

(a) the number of offices of Sarpanchas to be reserved for the Scheduled Castes and the Scheduled Tribes in the panchayats shall bear, as nearly as may be, the same proportion to the total number of such offices in the panchayats as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State [excluding the population of the Scheduled Tribes in a panchayat comprising entirely the Scheduled Areas] bears to the total population of the State:

[Provided that, the office of the Sarpanch of a Panchayat comprising entirely the Scheduled Areas shall be reserved only for the persons belonging to the Scheduled Tribes :

Provided further that, the office of the Sarpanch of a Panchayat falling only partially in the Scheduled Areas shall be reserved for the persons belonging to the Scheduled Tribes in accordance with the provisions of clause (a)]:

[Provided also that], [one-half of the total number of offices] so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes;

(b) the offices of Sarpanchas to be reserved for persons belonging to the category of Backward Class of citizens shall be 27 percent, of the total number of such offices in the panchayats:

Provided that, [one-half of the offices] so reserved shall be reserved for women belonging to the category of Backward Class of citizens.

(c) [one-half of total number of offices of Sarpanchas] (including the number of offices reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) in the panchayats shall be reserved for women.”

Under the aforesaid provision the office of Sarpanch can be reserved for persons belonging to Scheduled Tribes, Scheduled Castes and Backward Class of citizens. Second proviso to Rule 2A(4-A) of the Rules 1964 stipulates that if the office of Sarpanch is reserved originally for woman belonging to the Scheduled Tribes category then in the absence of any such woman from that Category being available, the office would be reserved for the Scheduled Tribes category. Similar is the position when the office of Sarpanch is reserved for woman from the Scheduled Castes category and from Backward Class of citizens.

8] From the aforesaid provisions it becomes clear that when the office of Sarpanch is reserved for a particular category and there is no elected member belonging to such reserved category available, the office of Sarpanch has to be allotted by draw of lots to any of the categories for which the office of Sarpanch may be reserved under Section 30 of the Act of 1959. This is exactly what has been done by the Naib Tahsildar. Since the office of Sarpanch was reserved for woman from Scheduled Tribes category and there was no woman member from the said Category available, by drawing lots from the members belonging to Scheduled Castes category and Backward Class of citizens, the post of Sarpanch has been reserved for Backward Class of citizens. There was no occasion for the Naib Tahsildar to take recourse to the second proviso to Rule 2A(4-A) of the Rules of 1964 for the reason that there was no member, male or female, from the Scheduled Tribes category who was elected. Thus, the Naib Tahsildar has rightly sought to reserve the post of Sarpanch in terms of Section 30 of the Act of 1959 and first part of Rule 2A(4-A) of the Rules of 1964. No illegality has thus been committed in that regard.

9] The contention of the petitioners that if there was no woman member from Scheduled Tribe category for whom the office of Sarpanch was reserved, the office of Sarpanch ought to have been reserved for woman from Scheduled Caste category or Backward Class of citizens does not find support in the aforesaid statutory provisions. Even the second proviso to Rule 2A(4-A) does not contemplate the same. Hence that contention cannot be accepted.

10] For the aforesaid reasons, we do not any case made out to interfere in writ jurisdiction. The writ petition is thus dismissed leaving the parties to bear their own costs.

Results of the election to the post of Sarpanch, if not declared, shall be declared forthwith.

At this stage, the learned counsel for the petitioners seeks stay of the order. The request is opposed by the learned counsel for the respondents. Since the election for the post of Sarpanch has not been held in view of the interim order, we do not find any reason to extend the same. The request is therefore rejected.

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

(A.S.CHANDURKAR, J.)

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