

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO. 6635 OF 2022

(Sunil s/o Gangaram Dudhpachare Vs. State of Maharashtra & Ors.)

*Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders.*

Court's or Judge's order

Shri Akshay A. Naik, Advocate with Shri R.S. Kalangiware, Advocate for the petitioner.

Ms. N.P. Mehta, Assistant Government Pleader for respondent Nos. 1 and 2/ State.
 Shri J.B. Kasat, Advocate for respondent No.3.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.

DATE : DECEMBER 5, 2022.

The petitioner who is presently Sarpanch of Gram Panchayat, Suradevi, Tahsil – Kamptee, District – Nagpur by filing this Writ Petition on 18/10/2022 has challenged the notification dated 25/11/2020 issued by the Collector, Nagpur. By that notification, the reservation applicable to various Gram Panchayats in the District of Nagpur based on the census of the year 2011 came to be declared. The said reservation was to operate from 2020 to 2025. According to the petitioner, the said notification is in contravention of the law laid down by the Hon'ble Supreme Court in *Vikas Kishanrao Gawali Vs. State of Maharashtra And Others [(2021) 6 SCC 73]* inasmuch as the overall reservation prescribed for the Nagpur District exceeded 50% and the same was impermissible. On 20/10/2022, notice was issued in the Writ Petition and the respondents were called upon to file their replies within a period of four weeks. On 16/11/2022, consideration of the prayers made in the Writ Petition was deferred for a period of one week at the request of learned Counsel for the petitioner. In the meanwhile, on 9/11/2022, the State Election Commission declared the schedule of general elections for Gram Panchayats, 2022. It was stated therein that direct election for the post of Sarpanch would also be conducted along with the general elections for the Gram Panchayats. Vide Annexure-1 to the said notification, the election programme was declared. The elections were to be conducted for 7751 Gram Panchayats in the entire State. The petitioner sought leave to amend the Writ Petition and raise a challenge to the said notification dated 9/11/2022. The amendment as sought was allowed

on 23/11/2022. On 30/11/2022, the petitioner filed another application for amendment and sought to raise a challenge to the notification dated 5/3/2020 published by the Rural Development Department of the State Government. By that notification, the number of offices of the Sarpanchas in Village Panchayats and reservation thereof came to be indicated. The said amendment was allowed on 30/11/2022. The learned Counsel for the parties were accordingly heard on 2/12/2022.

2] Shri A.A. Naik, learned Counsel for the petitioner submitted that the reservation of the post of Sarpanch in the District of Nagpur exceeded 50% which was impermissible in view of the law laid down in *Vikas Kishanrao Gawali (supra)*. The total number of Gram Panchayats in Nagpur District was 768 while the posts reserved for various categories exceeded 50% in the light of the fact that only 331 posts were kept aside for the candidates from the open category. Inviting attention to the provisions of Section 30A-1A of the Maharashtra Village Panchayats Act, 1959 (for short “the Act of 1959”) as well the fact that the provisions of Section 30A-1B of the Act of 1959 had been deleted by virtue of Maharashtra Act No. XLII of 2022, it was submitted that the reservation for the candidates from the Other Backward Class category which was 27% could be brought down so as to make the total reservation for candidates to be 50%. A reference was also made to the Maharashtra Village Panchayats (Sarpanch And Upa-Sarpanch) Election Rules, 1964 (for short “Rules of 1964”) and especially Rule 2-A thereof. The State Election Commission being an independent authority by virtue of the provisions of Article 243K of the Constitution of India, it ought to have directed the State Government to modify the total reservation so as to ensure that the same did not exceed 50%. The State Election Commission as well as the Rural Development Department of the State Government ought to have followed the law laid down by the Hon’ble Supreme Court in *Vikas Kishanrao Gawali (supra)* by modifying the reservation for the post of Sarpanch as in the District. Placing reliance on the decision in *State of Goa And Another Vs. Fouziya Imtiaz Shaikh And Another [(2021) 8 SCC 401]*, it was submitted that the State Election Commission ought to have issued appropriate directions to the Rural

Development Department to ensure that the reservation for the post of Sarpanch in the entire District did not exceed 50%. A reference was also made to the orders passed in Special Leave Petition (C) No. 19756/2021 (*Rahul Ramesh Wagh Vs. The State of Maharashtra & Ors.*) wherein it was observed that the election process of local bodies was required to be completed in accordance with law as prevail.

It was further submitted that since the notification dated 9/11/2022 was published by the State Election Commission during pendency of the present proceedings, the same would not come in the way of the petitioner in raising challenge thereto notwithstanding the bar under Article 243O of the Constitution of India. Since the petitioner had approached this Court prior to declaration of the election programme, the Writ Petition could be entertained on merits and this Court could grant reliefs as prayed for. As regards raising of challenge to the notification dated 5/3/2020, it was submitted that reference thereto was made only in the reply filed by the State Government and therefore the petitioner was required to challenge the same by amending the Writ Petition. The petitioner therefore could not be non-suited on the ground that he had raised a belated challenge. It was thus submitted that the reliefs prayed for in the Writ Petition were liable to be granted.

3] Ms. N.P. Mehta, learned Assistant Government Pleader for respondent Nos. 1 and 2 opposed the aforesaid submissions. At the outset, it was submitted that the challenge as raised to the notification dated 25/11/2020 was highly belated especially when the said notification had been acted upon and elections to some of the Gram Panchayats in the District had already been held. Since the said notification was duly published in the Gazette, the petitioner could not contend that he had no knowledge of the same. She referred to various communications between the statutory authorities entered into thereafter to contend that due process of law had been followed. Referring to the affidavit-in-reply filed on behalf of the Collector, it was submitted that general elections of about 129 Gram Panchayats in the District had been conducted in January –

2021 itself. The election programme having been declared, interference with the same at this stage would not be desirable. The situation at hand had become irreversible and hence the petitioner was not entitled to any relief whatsoever. She sought to distinguish the decision in *State of Goa Vs. Fouziya Imtiaz Shaikh (supra)* by urging that legal recourse therein had been immediately taken while in the present proceedings, the notification dated 25/11/2020 was being subjected to challenge after almost two years. Hence, the Writ Petition was liable to be dismissed.

4] Shri J.B. Kasat, learned Counsel for respondent No.3 also opposed the Writ Petition. He too urged that the challenge as raised to the notifications dated 5/3/2020 and 25/11/2020 was belated. Pursuant to that notification, direct elections for the post of Sarpanch were already held. Assuming that the reservation for the entire District was required to be taken into account for determining whether the reservation exceeded 50%, it would be necessary to consider the District as a whole. Since the elections in some of the Gram Panchayats in the District were already held, the position had become irreversible and the prayers made in the Writ Petition were not liable to be considered at this stage. He further submitted that on completion of the earlier term of the existing Gram Panchayats, the election programme came to be published on 9/11/2022. It was not open for the petitioner to urge that notwithstanding the election programme being declared during pendency of the present proceedings, the bar under Article 243O of the Constitution of India would not apply. It was thus submitted that the Writ Petition was liable to be dismissed.

5] Having heard the learned Counsel for the parties at length and after giving due consideration to their submissions, we are of the considered opinion that the challenge as raised to the notification dated 5/3/2020 issued by the Rural Development Department as well as the notification dated 25/11/2020 issued by the Collector, Nagpur indicating the reservation in the Gram Panchayats in the District of Nagpur has been raised belatedly and the same dis-

entitles the petitioner for any relief under Article 226 of the Constitution of India. In our view, the following reasons dissuade us from entertaining the challenge on merits :

a] The notification dated 5/3/2020 was published in the Government Gazette at the instance of the Rural Development Department of the State of Maharashtra. By the said notification, the number of offices of Sarpanchas in Village Panchayats in the State reserved for the Scheduled Castes, Scheduled Tribes, category of Backward Class of citizens and women as well as the allotment of the offices of Sarpanchas so reserved in the 34 Districts of the State have been notified. The same is in exercise of powers under Rule 2-A of the Rules of 1964. This notification for the first time disclosed that insofar as Nagpur District is concerned, there are 768 Gram Panchayats of which 331 have been kept as un-reserved or for the open category. The said notification having been published in the Government Gazette, it is deemed to be a notice to the public at large. It would not be open for a citizen to feign ignorance of the same by urging that he was not aware of publication of such notification. The said notification having been published in the Government Gazette, it is a notice to the petitioner too.

Similar is the case with regard to the challenge raised to the notification dated 25/11/2020. That notification has been issued by the Collector, Nagpur indicating the reservation to be applicable for various Gram Panchayats and the posts of Sarpanch therein in the District of Nagpur. This notification by the Collector is pursuant to the exercise of powers under Rules 3A, B and 4 of the Rules of 1964. The petitioner does not claim that he was unaware of this notification dated 25/11/2020. As noted above, challenge to this notification has been raised by filing this Writ Petition on 18/10/2022.

The notification dated 5/3/2020 issued by the State Government and the notification dated 25/11/2020 issued by the Collector clearly indicate the extent of reservation applicable in the District of Nagpur and it is evident on perusal of

the same that the posts reserved exceed 50% thereof. Whether the reservation of posts of Sarpanchas ought to be 50% for the entire State or whether the reservation for each District has to be considered individually requires adjudication. In absence of any proper explanation for raising a belated challenge and for seeking legal redress, we are not inclined to exercise extraordinary jurisdiction and examine this question.

b] In the entire District, the posts of Sarpanch are shown to be 768 and the posts reserved therein exceed 50% as 331 posts are un-reserved. It is undisputed that on 15/1/2021, general elections for 129 Gram Panchayats in the District were held and results thereof were declared on 18/1/2021. It is thus obvious that the elections to be now held would be for the remainder Gram Panchayats excluding those where the elections are already held. If this Court interferes with the notifications dated 5/3/2020 and 25/11/2020 at this stage, the elections to 129 Gram Panchayats having already been held the same cannot be reversed. For accepting the petitioner's contention that the reservation for the post of Sarpanchas cannot exceed 50%, the number of posts reserved for Other Backward Class candidates would have to be brought down from 27% to ensure that the total reservation does not exceed 50%. With elections to 129 Gram Panchayats having been held, the cap on reservation would have to be applied for the remaining Gram Panchayats by segregating the said Gram Panchayats. In our view, the same would not be permissible since the figures pertaining to the entire District or the State for that matter would have to be kept in mind for accepting the prayer made by the petitioner of maintaining the reservation at 50%. The said notifications having been acted upon insofar as 129 Gram Panchayats in the District are concerned, we do not deem it appropriate to consider their validity *vis-a-vis* remaining Gram Panchayats at this belated stage.

c] The State Election Commission has on 9/11/2022 published the election programme for the Gram Panchayats in the entire State. The Tahsildars of the respective Tahsils have been directed to publish the election notice on 18/11/2022 and from 28/11/2022 filing of nominations has commenced. Today,

the scrutiny of nominations is to take place. Causing interference at this stage would fall foul to Article 243O of the Constitution of India. We also note that interference at this stage would not subserve and facilitate the progress of the election but on the other hand, it would result in delaying the holding of elections if the exercise of re-working the reservation is to be undertaken. In other words, since the election process has commenced and is imminent, we prefer to adopt a hands off policy.

The contention raised by the learned Counsel for the petitioner that the Writ Petition having been filed on 18/10/2022 the State Election Commission was not justified in issuing the notification dated 9/11/2022 does not warrant acceptance. The election programme has been declared for the entire State keeping in mind the fact that the term of the existing Gram Panchayats has come to an end. It can hardly be said that with a view to thwart the challenge raised by the petitioner, the State Election Commission has issued the said notification.

6] Hence, for all the aforesaid reasons, we are not inclined to examine the challenge raised to the notifications dated 5/3/2020 and 25/11/2020 on merits. Issuance of the notification dated 9/11/2022 is merely a result of culmination of the said process and as the challenge thereto has been raised when the election process has commenced, adjudication on merits is not warranted. Keeping the legal questions raised open, the Writ Petition is disposed of without being entertained on merits. The parties shall bear their own costs.

(ANIL L. PANSARE, J.)

(A. S. CHANDURKAR, J.)

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