

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

943 WRIT PETITION NO.402 OF 2023

PATHAN ABEDABI TAHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE RURAL
DEVELOPMENT DEPARTMENT AND OTHERS

...

Advocate for Petitioner : Mr Hrishikesh V. Tungar
AGP for Respondent/State : Mr S.B. Yawalkar
Advocate for Respondent No. 2 : Mr A.B. Kadethankar

**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 11-01-2023

PER COURT :

1. Heard the learned advocate Mr Tungar for the petitioner, Mr Yawalkar, learned AGP for the State so also Mr Kadethankar, learned advocate for respondent No.2 - State Election Commission.

2. The petitioner, who is the newly elected member of Gram Panchayat is seeking postponement of the election of the Upa-Sarpanch on the ground that a lady who was elected as a member as also Sarpanch has subsequently tendered resignation of the post of member and is seeking postponement of the first meeting and requesting to conduct election of member first.

3. Mr Tungar, learned advocate submits that when the Rule 4 of Bombay Village Panchayats (Sarpanch and Upa-Sarpanch Panchayat) Election Rules, 1964 (**Rules**) require notice to be issued to all the members, it would not be complied with in view of the vacancy.

4. At the outset, it is necessary to observe that there is no mandate of law requiring Election Commission to fill-in the vacancies before conducting election of Upa-Sarpanch according to the provisions of Section 33 read with Section 28 of the Village Panchayats Act. Besides, Rule 11 which prescribes the coram for the meeting to be called for electing the Sarpanch or Upa-Sarpanch merely requires one half of the total members of the Panchayats to be present. When admittedly, out of 10 members there is only one vacancy and if the coram under Rule 11 is complied with, it cannot be said that existence of the vacancy of a member should cause any impediment in convening the first meeting for election of Upa-Sarpanch as is contemplated under Section 33 read with Section 28 which requires the first meeting to be convened as soon as possible after the the result is notified.

5. Granting any relief as is claimed would run counter to the statutory mandate of holding the elections of Upa-Sarpanch under those provisions.

6. The writ petition is devoid of merits and is dismissed in limine.

[S.G. CHAPALGAONKAR, J.]

[MANGESH S. PATIL, J.]

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