

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

**WRIT PETITION NO. 12396 OF 2021**

- |    |                       |                |
|----|-----------------------|----------------|
| 1. | Ankush Arun Shinde    |                |
| 2. | Savita Appasaheb Raut | .. Petitioners |

**Versus**

- |     |                                                                             |                |
|-----|-----------------------------------------------------------------------------|----------------|
| 1.  | The Additional Commissioner,<br>Nashik Division, Nashik.                    |                |
| 2.  | The Collector,<br>Ahmednagar, Dist. Ahmednagar.                             |                |
| 3.  | Raban Sadik Shaikh                                                          |                |
| 4.  | Rupali Shankarrao Godade                                                    |                |
| 5.  | Ramjan Nizam Shaikh                                                         |                |
| 6.  | Janabai Arun Shinde                                                         |                |
| 7.  | Sitaram Chimaji Sasane                                                      |                |
| 8.  | Anita Gorakh Damale                                                         |                |
| 9.  | Tatyasaheb Balbhim Nirgude                                                  |                |
| 10. | Sanjay Baburao Pare                                                         |                |
| 11. | Gajrabai Chandrakant Pare                                                   |                |
| 12. | The Gramsevak,<br>Grampanchayat Arangaon,<br>Tq. Jamkhed, Dist. Ahmednagar. |                |
| 13. | The Returning Officer to the<br>Election of Sarpanch and Upsarpanch         | .. Respondents |

Mr. Abhijit S. More, Advocate for the Petitioners.  
Mr. S. B. Pulkundwar, AGP for Respondent Nos. 1, 2 & 13.  
Mr. D. S. Patil, Advocate h/f Mr. S.S. Gangakhedkar, Advocate for  
Respondent Nos. 4, 8, 9 to 11.

**CORAM : KISHORE C. SANT, J.**

**Date on which reserved for order : 27<sup>th</sup> June, 2023.**

**Date on which order pronounced : 24<sup>th</sup> July, 2023.**

**ORDER :-**

. By way of this petition, the petitioners have challenged the judgment and order passed by the Additional Commissioner, Nashik dated 25.10.2021. The petitioners are the Sarpanch and Upsarpanch respectively.

2. The facts in short are that, the petitioners and respondent Nos. 3 to 11 got elected to the post of member of Grampanchayat. Meeting of the newly elected members was scheduled on 09.02.2021 to elect Sarpanch and Upsarpanch. In the meeting some of the members demanded voting by secret ballot. It is for that reason the Returning Officer decided to conduct the election by way of secret ballot. In the meeting the present petitioners and respondent Nos. 3 and 4 filled in nomination forms. The petitioner No. 2 and respondent No. 4 filled in nomination form to the post of Upsarpanch whereas, petitioner No. 1 and respondent No. 3 filled in nomination form to the post of

Sarpanch. Their nomination forms were found to be in order and those were accepted as valid nominations. The respondent Nos. 5, 6, 7 and petitioner No. 1 requested for secret ballot. The symbols were allotted to the contesting candidates. The ballot papers were prepared. The respondent No. 3 received five votes and petitioner No. 1 received six votes to the post of Sarpanch. To the post of Upsarpanch respondent No. 4 received five votes and petitioner No. 2 received six votes. Thus, the petitioners were declared as elected to the post of Sarpanch and Upsarpanch respectively.

3. The respondent Nos. 3 and 4 filed appeal bearing Appeal No. 32/2021 before the Collector mainly on the ground that voting was taken by secret ballot merely on asking of some of the members. While allotting the symbols they were not given symbol of their choice. Though the objection to the allotment of symbol was taken, that was turned down. No information about preparing of ballot papers was made known to the members. The ballot box was not properly sealed. No proper care was taken to maintain the secrecy. The room in which the ballot box was kept was not closed by closing the windows and doors.

4. The respondents including these petitioners resisted the appeal by filing their say. The Collector by its judgment and order dated

09.08.2021 allowed the appeal of respondent Nos. 3 and 4 and cancelled the proceedings of meeting dated 09.02.2021. It is considered that, while preparing the ballot papers though the computer of the Grampanchayat was used, however the Returning Officer personally got the print out by going outside the building. There was no proper sealing of the ballot box. The respondents further observed that there was no secrecy maintained in the process.

5. Being aggrieved by the judgment and order passed by the Collector, the petitioners approached the Additional Divisional Commissioner, Nashik. The Additional Divisional Commissioner, however, rejected the appeal. The petitioners are thus before this Court mainly on the ground that there is no specific evidence to show the possibility of pre-arrangement or any prejudice caused to the candidates. No objection was taken by the respondent Nos. 3 and 4 while symbols were allotted to the nominated candidates. Both the authorities have failed to appreciate that there is no convincing evidence to allow the appeal by the Collector. The respondents participated in the election process, however, they did not object to allotment of symbols. It was not open thereafter for them to raise objection about the same. It is only after they are defeated, they filed an appeal before the Collector. The report of the Returning Officer

dated 06.03.2021 shows that during the election process the secrecy was maintained. The Returning Officer himself ensured that the secrecy is maintained in the election process. Learned advocate for the petitioners submits that, at no point of time the objection was raised during the entire process. He submits that, there is nothing in the rules of Bombay Village Panchayat (Sarpanch And Upsarpanch) Election Rules, 1964 as to how secret ballot is to be conducted. Though the Commissioner has also accepted that the objections were taken by respondent Nos. 3 and 4 and they had filed application before the Returning Officer, however, the same is not considered in the proceeding. The petitioners therefore prayed for quashing and setting aside the impugned judgment and order.

6. Learned advocate for respondents vehemently opposes the petition. He submits that, the petition is not maintainable and deserves to be dismissed on this count alone. He submits that, the respondents had immediately filed applications to the Returning Officer that no proper procedure is followed. Though such application was filed, the Returning Officer did not take any action on that. He further submits that, immediately after the election was over, objection was raised and it was prayed to cancel the election process. However, this does not find place in the minutes of the meeting. He submits that, thus the

entire process was held against the democratic principles. He also points out that ballot box was not sealed by relying upon the rules in respect of sealing of the ballot boxes.

7. During the course of hearing learned advocate for the petitioners relied upon the judgment of Division Bench of this Court in the case of Maruti Bandu Patil Vs. Village Panchayat, Sidhanerli and others reported in 1981 AIR (Bombay) 378 wherein, it is held that when any member demands the election to be by way of secret ballot, then it should be conducted by way of secret ballot. Next judgment he relied upon is the judgment of this Court in Writ Petition No. 4759/2008 in the case of Kamla Ramrao Rathod Vs. Additional Commissioner, Amravati reported in 2009 (2) Mh.LJ 831 wherein, it is held that once the candidate has accepted the procedure of election, thereafter he is estopped from raising objection to the said procedure. Further he relied upon the judgment of this Court in Writ Petition No. 5838/2006 in the case of Ratnamala Ashokrao Shinde Vs. Election Officer reported in 2006 (6) Mh.LJ 801. In that case, the findings recorded by the Additional Collector and Additional Commissioner were quashed and set aside. The Additional Commissioner and Additional Collector in that case had held that the election was held by adopting long procedure. This Court held that the election was validly held. Last

judgment learned advocate relied upon is the judgment of this Court in Writ Petition No. 4045/2008 in the case of **Subhas Manikrao Lavhale Vs. Additional Commissioner, Amravati Division, Amravati and ors.** reported in **2009 (5) Mh.LJ 511** wherein, it is held that there are no specific rules for conduct of such elections by secret ballot. The irregularity in the procedure of election by secret ballot would not invalidate the election unless there is specific evidence produced to show the possibility of pre-arrangement or any prejudice caused to the candidate losing the election.

8. Learned advocate for respondents relied upon the judgment of the Hon'ble Apex Court in the case of **Laxmi Singh and others Vs. Rekha Singh and others** reported in **(2020) 6 SCC 812** wherein, it is held that it is necessary to maintain the purity of the election. Paragraph Nos. 14 and 16 of the said judgment are reproduced herein below :

14. It is to be observed that one of the fundamental principles of election law pertains to the maintenance of free and fair elections, ensuring the purity of elections. The principle of secrecy of ballots is an important postulate of constitutional democracy whose aim is the achievement of this goal. The question of whether the waiver of secrecy by individual voters is allowable during the election process, in the circumstances such as the present, where the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961, and the 1966 Rules mandate that voting in a no-confidence motion would take place by secret ballot requires detailed argumentation and analysis. Whether

the same is illegal de jure, or is allowable, or depends on the facts and circumstances of each case taking into account the impact on the principle of free, fair and pure elections is a question where we find the reasoning of the High Court somewhat lacking.

16. In the light of the above, we feel that ends of justice will be met if the Motion dated 1st October 2018 is put to revote at a meeting of the Zila Panchayat by way of secret ballot with the District Judge, Allahabad himself or his nominee Additional District Judge, Allahabad, acting as the Presiding Officer on a date and time to be fixed by the District Judge, which shall not be later than two months from today. This would, in our opinion, be a just and fair direction in the factual matrix of the present case given the respective contentions and stand of the parties.

9. This Court finds that, the respondent Nos. 3 and 4 could not exhibit exact prejudice that was caused to them in the election process. From the proceedings of the election it is seen that, both these petitioners received six votes each whereas, respondent Nos. 3 and 4 received five votes each. The report of the Returning Officer clearly shows that, till the elections were held, there was no objection taken by any of the participants. The objections were taken only after the election process was over and results declared. Though in applications states that secrecy was not maintained, however there is nothing in the said application to show that any of the member/voter was pressurized by these petitioners or any other person on their behalf. There were total 11 members. The number of votes tallies to the number of voters.

The affidavit filed by the Government though states that the election was not conducted in free atmosphere, however, they could not clearly exhibit as to how the secrecy was not maintained.

10. Considering all these submissions and the judgments cited, this Court finds that, a case is clearly made out to quash and set aside the impugned order passed by the Additional Commissioner. Ultimately what requires to be seen is that, as to which of the candidate has secured more votes. In this case it is clearly seen that, both the petitioners secured more votes than respondent Nos. 3 and 4. A case is clearly made out to call for interference at the hands of this Court by setting aside the impugned judgment and order.

11. The writ petition is allowed in terms of prayer clause (B).

12. The writ petition is disposed off accordingly.

( KISHORE C. SANT, J. )

PS.B.