

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

WRIT PETITION NO. 14612 OF 2021

Aarti w/o Santosh Pawar,
Age; 32 years, Occ; Household,
R/o; Pangri (Gosavi), Tq. Mantha,
District Jalna.

...PETITIONER

V E R S U S

- 1) The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32.
- 2) Additional Divisional Commissioner No.-1
Aurangabad Division, Aurangabad.
- 3) The District Collector, Jalna
Taluka and District Jalna.
- 4) Rajendra s/o Babulal Pawar,
Age; 33 years, Occ; Gram Panchyat
Member,
R/o; Pangri (Gosavi), Tq. Mantha,
District Jalna.
- 5) The Presiding Officer,
Shri S.D. Dighe, Tahsil Office,
Mantha, Tq. Mantha,
District Jalna.
- 6) The Gram Sevak,
Gram Panchyat, Pangri,
Tq. Mantha, District Jalna.

- 7) Parmeshwar S/o Pandurang Mankar,
Age; 55 years, Occ; Sarpanch,
- 8) Jyoti w/o Ramesh Chavan,
Age; 30 years, Occ; Grampanchyat
Member,
- 9) Premalabai w/o Uttam Rathod,
Age; 55 years, Occ; Grampanchyat member,
- 10) Ananta s/o Vijay Chavan,
Age; 40 years, Occ; Grampanchyat Member,
- 11) Usha w/o Bhagwan Jadhav,
Age; 30 years, Occ; Grampanchyat Member,
- 12) Digambar s/o Limbaji Chavan,
Age; 36 years, Occ; Grampanchyat Member,
- 13) Shivkanta w/o Satish Rathod,
Age; 32 years, Occ; Grampanchyat Member,
- 14) Asha w/o Santosh Raimule,
Age; 35 years, Occ; Grampanchyat Member,
- 15) Anita w/o Rohidas Pawar,
Age; 38 years, Occ; Grampanchyat Member,

The Respondent Nos. 7 to 15,
all R/o Pangri (Gosavi),
Tq. Mantha, District Jalna.

...RESPONDENTS

Advocate for the Petitioner : Mr. S.S. Thombre
A.G.P. for the Respondent/State : Ms.D.S.Jape
Advocate for Respondent No. 6 : Mr. M.S. Karad
(Respondent Nos. 4, 5, 7, 8, 10 to 15 are served)
Advocate for Respondent No. 9 : Mr. Santosh S. Jadhavar

CORAM : KISHORE C. SANT, J.

Date of Reservation : 09.08.2023

Date of pronouncement : 18.10.2023

J U D G M E N T :-

01. The present petition is by Upa-Sarpanch of the Grampanchyat, Pangri, Tq. Mantha, District Jalna, challenging the proceedings and subsequent orders in respect of an election to the post of Upa-Sarpanch. The petitioner is challenging the judgment and order dated 16.11.2021 passed by the learned Additional Divisional Commissioner-1, Aurangabad in an appeal filed by the petitioner, whereby an order is passed by the learned Collector in a dispute filed by respondent No. 4. The learned Collector by the judgment and order allowed the dispute holding that election of the petitioner to the post of Upa-Sarpanch is illegal and set aside the election.

02. The facts in short are as follows :

An election to the post of 11 members to the Grampanchyat was held in the month of January, 2021. The post of Sarpanch was reserved for persons belonging to Scheduled Caste. After the election to the post of members was over, a meeting was convened to hold an election to the post of Sarpanch and Upa-Sarpanch on 10.02.2021. In the said meeting respondent No. 4/disputant requested the Presiding Officer to hold voting by way of secret ballot. The said request was turned down and election was

taken by raising of hands. A dispute, therefore, came to be filed alleging that since an election was held by raising hands. Though there was a specific demand of vote by secret ballot, the said was turned down illegally. It is prayed to cancel the proceedings of the special meeting.

03. The petitioner and the Sarpanch namely Parmeshwar Mankar filed their say. It is the case of the petitioner that for the post of Sarpanch there was only one nomination and there was no question of voting for the post of Sarpanch. An application filed to hold an election by secret ballot was for the post of Sarpanch and not for the post of Upa-Sarpanch. Since there was no need of voting for the post of Sarpanch, an application for voting by the secret ballot was rejected. Though an election of Sarpanch and Upa-Sarpanch is taken in the same meeting, however, technically there are two different proceedings for election of these two posts. An application for secret ballot was thus for the post of Sarpanch and not for Upa-Sarpanch. Rejection and refusal of secret ballot was thus, for the post of Sarpanch. No election process in any way was affected so far as an election to the post of Upa-Sarpanch is concerned.

04. The learned Collector after considering the provisions of Section 33 (4) of the Bombay Village Panchyats Act, held that since an

application was received demanding voting by secret ballot, it was mandatory to hold voting by secret ballot and set aside an election to the post of Upa-Sarpanch. So far as the post of Sarpanch is concerned, it is held that since an election itself was not required for the post of Sarpanch, there is no question of violation of Section 33 (4) of the Act. The Collector held that the secret ballot was demanded for the post of Upa-Sarpanch.

05. The petitioner being aggrieved by the judgment and order passed by the learned Collector, filed an appeal before the learned Additional Divisional Commissioner-1, Aurangabad. The Additional Divisional Commissioner also held that the learned Collector has rightly passed an order. The learned Additional Divisional Commissioner further held that the order of the Collector is proper and rejected the appeal, the petitioner is thus, before this Court.

06. The learned Advocate Mr. Thombre for the petitioner submits that the application of the disputant was turned down by the learned Collector. The application demanding voting by secret ballot was for the post of Sarpanch and not for the post of Upa-Sarpanch. The proceedings of the election of Sarpanch was over and thereafter the proceedings of the election of Upa-Sarpanch was taken. In that proceedings there was no

application filed demanding voting by secret ballot. The disputant had not raised any objection immediately. The Presiding Officer has clearly recorded in the minutes that there was no objection raised by any of the parties during the proceedings and the dispute filed thereafter is without any substance. It is lastly submitted that both the authorities have failed to appreciate the basic aspects that there was no application for secret ballot for the post of Sarpanch. It is also contended that though a dispute was filed subsequently the disputant filed a pursis intimating that he does not want to proceed with the dispute. The Collector, however, inspite of the pursis proceeded to decide the dispute. The decision of the Collector is without jurisdiction for this reason.

07. The learned Advocate Mr.Jadhavar for respondent No.9 vehemently opposed the petition by pointing out that the application made by the disputant demanding secret ballot was for election to the post of Upa-Sarpanch. A meeting as per program for the scrutiny of nomination papers was over by 2.05 p.m. There was only one valid nomination paper for the post of Sarpanch and that was declared at 2.05 p.m. The application for secret ballot was filed at 2.10 p.m. By that time, it was clear that election to the post of Sarpanch was not required, as there was only one nomination received. The application was therefore clearly made for the

election of Upa-Sarpanch. He thus submits that the learned Collector and the learned Commissioner have rightly held that there is violation of Rule 33 (4) of the Act. About withdrawal, he submits that though the same was filed, it was for the Collector to decide the dispute once that was filed. When the dispute is filed, it is for the authorities to take cognizance of illegalities in the proceedings. It is submitted that the Collector has rightly proceeded further.

08. Mr. Jadhavar, learned Advocate relied upon the following judgments :

(a) **1994 (1) Mh.L.J. 100** – Jaenendrakumar Phoolchand Daftari vs. Rajendra Ramsukh Mishra and Others;

(b) **2018 (3) Mh.L.J. 529** – Uddhav Poma Aade vs. Additional Commissioner, Aurangabad and Others,

. in support of his submissions that once voting by secret ballot is demanded then it is mandatory for the authority and the Presiding Officer to hold an election only by secret ballot.

09. The learned AGP supports the order passed by the authorities. He has also produced on record a file containing the record of the election. The questions now before the Court are that :-

- 1) Whether there is violation of Section 33 (4) of the Bombay Village Panchyats Act ?
- 2) Whether an application of the disputant/respondent No. 4 requesting election by secret ballot was for the post of Sarpanch or for the post of Upa-Sarpanch and whether rejection of said application was proper ?
- 3) Whether an order passed by the learned Commissioner requires interference ?

10. For deciding the said questions, it is necessary to look into the provisions of Rule 10 of the Bombay Village Panchyats (Election to Sarpanch and Upa-Sarpanch) Rules, 1964, which reads as under :

“10. Procedure for election :- (1) If only one candidate has been duly nominated for the office of the Sarpanch or Upa-Sarpanch, he shall be declared to have been duly elected as Sarpanch or, as the case may be, Upa-Sarpanch.

*(2) If more than one candidate have been so nominated, the Presiding Officer shall proceed to elect the Sarpanch or as the case may be, Upa-Sarpanch. The voting at such election shall be by show of hands. **If, however, (any member present at the meeting so demands,) the voting shall be by ballot.** The candidate who obtains the highest number of votes shall be declared to have been duly elected as Sarpanch or as the case may be, Upa-Sarpanch. When any equality of valid votes is found to exist between any two or more candidates and the addition of one vote will entitle any of them to be declared as Sarpanch or, as the case may be, Upa-Sarpanch, the determination of the candidate to whom such additional vote shall be deemed to have been given shall be made by lot to be drawn by the Presiding Officer in such manner as he shall determine.”*

11. By reading of the Rule 10 (2) it is clear that when any member present at the meeting demands voting by secret ballot, then it shall be mandatory to hold election by secret ballot. It is for the Presiding Officer to hold election by ballot. The learned Advocate has thus, rightly placed

reliance on the judgment in the case of **Jaenendrakumar** (supra), whereby the Hon'ble Apex Court has considered the Rule 10 (2) of the said Rules.

Paras 7 and 8 of the said judgment are reproduced as under :-

“7. According to Sub-rule (2), the Presiding Officer conducting the election of the Sarpanch or the Upa-Sarpanch among the contestants in a meeting of the members of the Panchayat concerned convened for the purpose, is required to call upon such members to vote by show of hands. But, it requires the Presiding Officer to carry out such election by secret ballot if any member present at the meeting, makes a demand in that regard. Thus, the sub-rule clearly specified the method by which the Presiding Officer shall proceed to have the Sarpanch or Upa-Sarpanch, as the case may be, elected. However, the question, is, whether the sub-rule permits the Presiding Officer of the election meeting to have the Sarpanch or Upa-Sarpanch, as the case may be, elected by calling the voters to elect the Sarpanch, by show of hands or by voting by ballot, according to his choice. If it is to be so held, the requirement of holding of election by ballot on demand by any member present at the meeting convened under the sub-rule, becomes superfluous. No requirement in a Rule can be regarded as superfluous unless such a construction is likely to lead to an unwarranted anomaly. Having regard to the requirement of the provision which specifically provides as to how the Presiding Officer has to proceed to elect the Sarpanch or Upa-Sarpanch, as the case may be, we find it difficult to think that the Presiding Officer is given the choice or liberty of proceeding to have the Sarpanch or Upa-Sarpanch elected in a manner different from . that indicated in the provision in Sub-rule (2) of Rule 10. Hence, the provision in Rule 10(2) of the Rules, in our view, makes it incumbent on the Presiding Officer to proceed to elect the Sarpanch or Upa-Sarpanch, as the case may be, in a meeting held by him by calling upon the voters in the meeting to elect the Sarpanch or Upa-Sarpanch, as the case may be, by show of hands unless there is a demand by any member present at the meeting to proceed with the election of the Sarpanch or Upa-Sarpanch, as the case may be, by having recourse to voting by secret ballot.

8. While Sub-rule (2) of Rule 10, requires the Presiding Officer to proceed to elect the Sarpanch or Upa-Sarpanch, as the case may be, by show of hands unless there is a demand for permitting the members to vote by secret ballot, Rule 13 requires that the Presiding Officer shall record the names of members voting for or against a candidate or being neutral in the minutes of the meeting and on the conclusion of the meeting to read out the same to the members before signing the same resulting in their deemed confirmation and becoming available for inspection by any member of the Panchayat. Hence, it becomes obvious that voting by show of hands is a general method contemplated in the said Rules while the voting by secret ballot is contemplated as an exception in a special situation. Thus, Rule 13 supports our view that the Presiding Officer of the Meeting cannot call upon the members present in such meeting to vote by secret ballot in favour of one or the other candidates contesting the election for the Office of Sarpanch or Upa-Sarpanch unless a demand in that behalf is made by any member so present.”

12. This Court also had considered Rule 10 (2) and has held that

the said rule is mandatory by relying upon the judgment of the Hon'ble Supreme Court in the case of **Jaenendrakumar** (supra). The aforesaid judgment is reported in **Uddhav Poma Aade's case (supra)**.

13. It is clear that when the voting is demanded by secret ballot by any of the members, it is mandatory to hold an election by secret ballot as per point No. 1.

14. The second point is as to whether an application filed by the respondent was for the purpose of election to the post of Sarpanch or for the purpose of election to the post of Upa-Sarpanch. On plain reading of the wording of both the application shows that the application though appears to be for both posts i.e. Sarpanch and Upa-Sarpanch, from the endorsement on the receipt of an application is at 2.10 p.m. Since only one nomination paper was received and the same was scrutinized at 2.05 p.m., it is clear that there was only one application/nomination and no voting was required for the post of Sarpanch. If this position is clear at 2.05 p.m., then an application which was received at 2.10 p.m. has to be considered for the post of Upa-Sarpanch only as by that time there was no question of filing of such an application for the post of Sarpanch.

15. The minutes of meeting/proceeding show that an application of the respondent was considered. However, Sarpanch, Parmeshwar Mankar demanded voting by raising hands. The Presiding Officer, therefore, decided to have the voting by show of hands, since there was majority by all the members demanding voting by raising hands. This recording clearly shows that the Presiding Officer has acted against the mandate of Rule 10 (2) of the Rules. Decision to hold voting by secret ballot or by show of hands is not to be taken by majority. The learned Presiding Officer has committed an illegality by accepting demand of majority. He clearly ignored the mandate of Rule 10(2). Thus, looking to these proceedings, it is clear that the Presiding Officer has failed to hold voting as per the mandate. Looking to the other aspects, the timing of scrutiny of the application and filing of an application, it is clear that an application was received with clear position that the post of Sarpanch was without any contest. The only inference now can be drawn is that an application was for the post of Upa-Sarpanch. So far as withdrawal pursis is concerned, both the Authorities have rightly taken note of the same. Though a pursis of withdrawal was filed, it was for the Collector to decide the dispute. Once illegality is pointed out, it is for the Authorities to deal with the dispute. It is necessary to keep the election process transparent.

16. A technical objection though is raised by the petitioner that the disputant had filed pursis to withdraw the dispute, this Court finds that merely because later on the disputant wanted to withdraw the dispute is no reason for the Collector not to decide the dispute. The question of deciding the validity of the proceeding and the election was not only for the disputant. When the question about legality of proceeding is raised and illegality is pointed out to the Collector, it is necessary for the Collector to decide the dispute, as the question is not of individual right but is of entire village. It is necessary to strengthen the belief is the democratic process.

. This Court is not inclined to accept this technical objection for one more reason that if the petition is allowed on this technical ground, it would allow to perpetuate the illegality in the proceeding. The jurisdiction under Article 227 need not be exercised if ultimately it amounts to perpetuate the illegality. The fact of quashing and setting aside the impugned judgment would naturally be to revive the proceedings, which is held to be illegal and for this reason also this Court is not inclined to cause any interference in the facts of this case.

17. This Court finds that the object of Rule 10(2) is clearly to have a voting by secret ballot when there is demand by any of the members

present in the meeting. The secrecy in the voting process gives every member an assurance that his vote will be a secret and he can vote freely without any pressure. The very purpose of maintaining secrecy is to avoid a member facing pressure of mighty persons. If every member is to give vote openly, he may feel a pressure while voting against mighty persons. The secrecy also ensures that his political inclination will not be disclosed. Thus the sanctity is attached to the process of secret ballot. It is, therefore, provided necessary that even if one person asks for secret ballot instead of voting by show of hands, it needs to be held in that way. Whether to hold election by secret ballot or show of hands cannot be let to the will of the majority. The Presiding Officer in this case decided to take voting by show of hands by recording that the majority of the voters demanded voting by show of hands and has committed the error. The fact of demand of voting by secret ballot itself shows that there are some persons who have fear in their mind of getting exposed in case voting is open. This is clearly against democratic principles. If the voting is by show of hands, it is natural that every one would come to know as to which of the voters voted to which of the candidates and that may bring pressure on each of the voters. There is every possibility in such case of a person voting against his free will. Considering all these, this Court finds that voting by secret ballot should be a preferred form of voting, when demanded by any of the persons. In this

case also, therefore, it was necessary to hold election by show of hands.

18. Coming to the third point, both the authorities have considered the scope of Rule 10 (2) of the Rules and have considered the minutes of the proceedings. This Court finds that both the authorities have rightly held that there was violation of Rule 10 (2) of the Rules. Since this is the finding of fact, this Court finds that the findings recorded and the conclusion drawn by the Authorities cannot be said to be perverse or illegal calling any interference at the hands of this Court.

19. This Court finds that there is no merit in the petition and same deserves to be dismissed and is hereby dismissed.

[KISHORE C. SANT, J.]

. At this stage, the learned Advocate for the petitioner prays for continuation of interim relief. Though, other side has taken objection, considering the fact that the interim relief was there since long, same is continued for a period of three weeks weeks from today.

[KISHORE C. SANT, J.]