

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

WRIT PETITION NO.12 OF 2023

Archana Munjabhau Shinde
Age: 30 Years Occu: House Hold
R/o: At Ravha post : Walur
Tq. Selu, Dist Parbhani

... Petitioner

Versus

1. The State of Maharashtra
Through Secretary
Rural Development Department
Mantralaya Fort Mumbai – 32

2. The Desk Officer,
Rural Development Mantralaya
Mumbai

3. The District Collector,
Parbhani, Dist. Parbhani

4. The Tahsildar
Selu, Tq. Selu, Dist. Parbhani

5. The State Election Commission
State of Maharashtra

6. The Gramsevak
Grampanchayat Ravha
Tq. Selu, Dist. Parbhani

... Respondents

...

Mr. Anup R. Nikam, Advocate for the Petitioner
Mr. D. R. Kale, AGP for the Respondents/State
Mr. Ajit Kadethankar, Advocate for Respondent No.5

...

WRIT PETITION NO.14 OF 2023

Ranjana W/o Raghunath Sirsat

Age: 62 years, Occu: Member
R/o. Mudhesh Wadgaon, Tq. Gangapur,
Dist. Aurangabad

... Petitioner

Versus

1. The State of Maharashtra
Through Principal Secretary,
Rural Development Department
Mantralaya, Mumbai

2. The Desk Officer,
Rural Development Department,
Mantalaya, Mumbai

3. The District Collector,
Aurangabad

4. The Tahsildar
Returning Officer for Election to Upa-Sarpanch
of Village Mudhesh Wadgaon,
Tq. Gangapur, Dist. Aurangabad

... Respondents

...

Mr. R. V. Gore, Advocate for the Petitioner
Mrs. M. A. Deshpande, AGP for the Respondents/State

...

WRIT PETITION NO. 21 OF 2023

Narayan S/o Laxman Dhage,
Age : 38 Years, Occu. Agriculture,
R/o. Sendra, Tq. & Dist. Parbhani.

... Petitioner

Versus

1. The State of Maharashtra,
Through Desk Officer
Rural Development Department
Bhadkam Bhavan, 25 Marjban Path Mumbai
400001

2. The Collector,
Parbhani.

3. The Tahasildar
Parbhani Dist. Parbhani
4. The State Election Commission
Maharashtra, New Administrative
Bhavan Madam Kama Road
Hutatma Rajguru Chouk Mumbai, 400032.
5. The Returning Officer
Deputy Sarpanch Election
Gram Panchayat Shendra
Tq. & Dist. Parbhani
6. The Sarpanch,
Grram Panchayat Shendra
Tq. & Dist. Parbhani

..Respondents

....

Mr. Prafullasing H. Patil, Advocate for the petitioner.
Mr. D.R. Kale, AGP for the respondent/State.

...

WRIT PETITION NO.22 OF 2023

1. Dnyandeo Tukaram Rode
Age: 40 years, Occu: Agri.,
R/o. Kaudgaon (Ja),
Tq. & Dist. Aurangabad
2. Smt. Kavita w/o Kailas Bhojane
Age: 30 years, Occu: Agri & Household
R/o. As above
3. Smt. Leelabai w/o Manjitrao Rode
Age: 40 years, Occu: Household & Agri.,
R/o. As above
4. Muktar Shabbir Shaikh
Age; 45 years, Occu: Agri.,
R/o. As above

... Petitioners

Versus

1. The State of Maharashtra
Through Principal Secretary
Rural Development Department

Maharashtra State,
Mantralaya Mumbai

2. The Desk Officer,
Rural Development Department,
State of Maharashtra,
Mantralaya,
Mumbai

3. The District Collector,
Aurangabad

4. The Tahsildar, Aurangabad
Returning Officer for Election to Up-Sarpanch
of Village Kaudgaon (Ja),
Tq. & Dist. Aurangabad

... Respondents

...

Mr. S. S. Thombre, Advocate for the Petitioners
Mr. S. B. Yawalkar, AGP for the Respondent No.1/State
Mr. S.S. Deve, Advocate for respondent nos. 2 to 4 .

...

WRIT PETITION NO.26 OF 2023

1. Baban s/o Prakash Ade,
Age: 32 years, Occu: Agriculture,
R/o. Dipla Naik Tanda (Totamba),
Taluka Kinwat, District Nanded

2. Sarika w/o Dnyaneshwar Ade
Age: 28 years, Occu: Household,
R/o. As above

... Petitioners

Versus

1. The State of Maharashtra
Through its Secretary
Rural Development Department,
Mantralaya, Mumbai – 400 032

2. The Desk Officer,
Rural Development Department,
Mantralaya, Mumbai – 400 032

3. The Election Commissioner
State Election Commission,
1st Floor, new Administrative Building,
Hutatma Rajguru Chowk,
Madam Cama Road,
Mumbai – 400 032

4. The District Collector,
Nanded, District Nanded

5. The Tahsildar,
Kinwat District Nanded

6. The Secretary,
Village Panchayat,
Dipla – Naik Tanda (Totamba),
Taluka Kinwat, District Nanded

... Respondents

...

Mr. R. B. Ade, Advocate for the Petitioners
Mr. S. J. Salgare, AGP for the Respondents/State

...

WRIT PETITION STAMP NO.177 OF 2023

1. Radha Dnyanoba Shinde
Age: 32 years, Occu: Member

2. Sarjerao Ragnathrao Mande
Age: 39 years, Occu: Member

3. Rani Krushna Shinde
Age: 34 years, Occu: Member

4. Rangnath Dadarao Shinde
Age: 47 years, Occu: Member

5. Alka Bhagwan Bhand
Age: 34 years, Occu: Member

All R/o, Village Manoli,
Tq. Manwat, Dist. Parbhani

... Petitioners

Versus

1. The State of Maharashtra
Returning Officer for the Election
to Grampanchayat Manoli
Tq. Manwat, Dist. Parbhani- 2022-2027
Tahsil Karyalaya, Manwat.

2. The Tahsildar Manwat,
Tq. Manwat, Dist. Parbhani

3. The Chief Commissioner,
State Election Commission,
New Administrative Building,
Madam Kama Road,
Hutatma Rajguru Chowk,
Mumbai – 32

4. Priyanka Bhagwat Panzade
Age: Major, Occ: Sarpanch,
R/o, Village Manoli,
Tq. Manwat, Dist. Parbhani

... Respondents

...

Mr. A. N. Barhate Patil, Advocate for the Petitioners
Mr. A. S. Shinde, AGP for the Respondents/State
Mr. Ajit Kadethankar, Advocate for Respondent No.3

...

WRIT PETITION NO.13 OF 2023

Santosh w/o Kaduba Dukare
Age: 34 Years Occu: Agri and Grampanhayat Member,
R/o: Salegaon (Ner), Taluka & Dist. Jalna.

... Petitioner

Versus

1. The State of Maharashtra
Through its Secretary
Rural Development Mantralaya,
Mumbai – 32

2. The Desk Officer,
Rural Development Mantralaya,
Mumbai - 32

3. The District Collector,
Jalna, Dist. Jalna

4. The Tahsildar, Jalna
Tq. & Dist. Jalna

5. The State Election Commission,
State of Maharashtra

6. The Gramsevak
Grampanchayat Salegaon(Ner),
Salegaon (Ner), Tq. & Dist. Jalna ... Respondents

...

Mr. P. P. Dawalkar, Advocate for the Petitioner
Mr. S. B. Yawalkar, AGP for the Respondents/State Authorities.
Mr. Ajit Kadethankar, Advocate for Respondent No.5

...

WRIT PETITION NO.16 OF 2023

Kondaba s/o Gautam More
Age: 28 Years Occu: Member
R/o: Kautha, Tq Basmatnagar,
Dist. Hingoli ... Petitioner

Versus

1. The State of Maharashtra
Through Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.

2. The Desk Officer,
Rural Development Department,
Mantralaya, Mumbai

3. The District Collector,
Hingoli

4. The State Election Commission,
State of Maharashtra, Mumbai
... Respondents

...

Mr. R.V. Gore, Advocate h/f. Mr.S. P. Katneshwarkar, Advocate for the Petitioner
Mr. S. J. Salgare, AGP for the Respondents/State
Mr. Ajit Kadethankar, Advocate for Respondent No.4

...

WRIT PETITION NO.18 OF 2023

Keshav S/o Rustumrao Solanke
Age: 50 Years Occu: Member
R/o: Rumna Tq. Ganghakhed,
District Parbhani

... Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development Mantralaya,
Mumbai

2. The Desk Officer,
Rural Development Mantralaya,
Mumbai

3. The District Collector,
Collector Officer, Parbhani,
Tal & Dist. Parbhani

4. The Tahsildar
Tahsil Office Ganghakhed,
Tq. Gangakhed, Dist. Parbhani

5. The State Election Commission,
State of Maharashtra

6. The Gramsevak
Grampanchayat Rumna,
Tq. Gangakhed, Dist. Parbhani

... Respondents

...

Mr. A. R. Gaikwad, Advocate for the Petitioner
Mr. P. K. Lakhotiya, AGP for the Respondents/State
Mr. Ajit Kadethankar, Advocate for Respondent No.5

...

WRIT PETITION NO.19 OF 2023

Dilip s/o Natthu Lambe

Age: 46 Years Occu: Agri and Grampanhayat Member,
Nimbola,

R/o: Nimbola, Post. Sipora Bazar,
Tq. Bhokardan, Dist Jalna

...Petitioner

Versus

1. The State of Maharashtra
Through its Secretary
Rural Development, Mantralaya,
Mumbai – 32

2. The Desk Officer,
Rural Development Mantralaya,
Mumbai - 32

3. The District Collector,
Jalna, Tq. & Dist. Jalna

4. The Tahsildar, Bhokardan,
Tq. Bhokardan, Dist. Jalna

5. The State Election Commission,
State of Maharashtra

... Respondents

...

Mr. G. R. Ingole, Advocate for the Petitioner

Mr. A. S. Shinde , AGP for the Respondents/State

Mr. Ajit Kadethankar, Advocate for Respondent No.5

...

WRIT PETITION NO.20 OF 2023

Umesh Babanrao Mohite

Age: 34 Years Occu: Agri and Grampanhayat Member,
Motigavhan R/o. Motigavhan,

Tq. & Dist. Jalna

... Petitioner

Versus

1. The State of Maharashtra

Through its Secretary
Rural Development Mantralaya,
Mumbai – 32

2. The Desk Officer,
Rural Development Mantralaya,
Mumbai - 32

3. The District Collector,
Jalna, Dist. Jalna

4. The Tahsildar, Jalna
Tq. & Dist. Jalna

5. The State Election Commission,
State of Maharashtra

6. The Gramsevak
Grampanchayat Motigavhan,
Motigavhan, Tq. & Dist. Jalna

... Respondents

...

Mr. P. P. Dawalkar, Advocate for the Petitioner
Mr. S. B. Yawalkar, AGP for the Respondents/State
Mr. Ajit Kadethankar, Advocate for Respondent No.5

...

WRIT PETITION NO.49 OF 2023

1. Eknath s/o Sadashiv Late
Age: 36 years, Occu: Member, G.P.,
R/o. Devla, Tq. Partur, Dist. Jalna

2. Jagan s/o Ganeshrao Late
Age: 41 years, Occu: Agri.,
R/o. Devla, Tq. Partur, Dist. Jalna

... Petitioners

Versus

1. The State of Maharashtra
Through its Principal Secretary
Rural Development Department,
Mantralay, Mumbai – 32

2. The Desk Officer,

Rural Development Department,
Mantralaya, Mumbai - 32

3. The District Collector,
Jalna, Tq. & Dist. Jalna

4. The Tahsildar
Returning Officer
For Election to Up-Sarpanch of Village Devla,
Tq. Partur, Dist. Jalna

5. The Grampanchayat Devla
Through its Secretary
Devla, Tq. Partur, Dist. Jalna

... Respondents

...
Mr. V. B. Kulkarni, Advocate for the Petitioners
Mr. P. K. Lakhotiya, AGP for the Respondents/State

...

WRIT PETITION NO.13364 OF 2022

Avinash s/o Shriram Rathod
Age: 34 Years Occu: Agri and Grampanhayat Member,
Naigaon Pra.ba.,
R/o. Naigaon Pra.ba, Tq. Mantha,
Dist. Jalna

... Petitioner

Versus

1. The State of Maharashtra
Through its Secretary
Rural Development Mantralaya,
Mumbai – 32

2. The Desk Officer,
Rural Development Mantralaya,
Mumbai - 32

3. The District Collector,
Jalna, Tq. & Dist. Jalna

4. The Tahsildar, Mantha,
Tq. Mantha Dist. Jalna

5. The State Election Commission,
State of Maharashtra

6. The Gramsevak
Grampanchayat Naigaon Pra.ba.,
Naigaon Pra.ba., Tq. Mantha, Dist. Jalna ... Respondents

...

Mr. G. R. Ingole, Advocate for the Petitioner
Mr. D. R. Kale, GP for the Respondents/State
Mr. Ajit Kadethankar, Advocate for Respondent No.5
Mr. L.K. Wagh, Advocate for respondent No.6.

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

DATE : JANUARY 3, 2023.

ORDER [S.G. CHAPALGAONKAR, J] :-

The petitioners have approached this Court under Article 226 of the Constitution of India thereby challenging the impugned communication dated 30.09.2022 issued by the Desk Officer, Rural Development Department, Mantralaya Mumbai, prescribing procedural guidelines for election of Upasarpnch under the provisions of the Maharashtra Village Panchayats Act, 1959 (hereinafter “the Village Panchayats Act”). The petitioners are mainly aggrieved by the clause prescribed in impugned communication which enable the directly elected Sarpanch to cast one additional vote in case of equality of votes in the election of Upasarpnch, while presiding over the meeting for such election.

Since this group of writ petitions commonly raises challenge to the communication dated 30.09.2022, all the matters are heard together.

2. The petitioners in the respective writ petitions are the elected members of the Gram Panchayat in the election that took place in the month of December 2022. As per sub-section (6) of Section 33 inserted by the Maharashtra Village Panchayats (Amendment) Act, 2017 (Maharashtra Act No. 54 of 2018) dated 30.08.2008, section 33 of the Principal Act is amended. Sub-section (6) of Section 33 reads as under :-

“(6) In respect of the panchayat to which the Sarpanch is directly elected under section 30A-1A, the provisions of this section shall apply with the following modifications :-

(a) in sub-section (1), for the words "election of Sarpanch and Upa-Sarpanch" at both the places where they occur, the words "election of Upa-Sarpanch" shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely :-

"(1A) The election of the Sarpanch shall be held in accordance with the provisions of section 30A-1A of this Act.";

(c) in sub-section (2), after the words "presided over by" the words "the Sarpanch and if the post of Sarpanch is vacant by" shall be inserted;

(d) in sub-section (3), the words "Sarpanch and" shall be deleted;

(e) for sub-section (4), the following sub-section shall be substituted,-

"(4) If, in the election of Upa-Sarpanch there is an equality of votes, the Sarpanch shall have the right to exercise casting vote, and if the post of Sarpanch is vacant, the result of elections shall be decided by lot drawn in the presence of the officer presiding in such manner as he may determine.";

(f) in sub-section (5),-

(i) the words "Sarpanch or" shall be deleted;

(ii) after the word, brackets and figure "sub-section (1)" the words "Sarpanch or" shall be inserted.”

3. The respondent Desk Officer, Rural Development Department, Mantralaya, Mumbai issued the impugned communication dated 30.09.2022 which is addressed to the District Collectors in the State of Maharashtra, prescribing the procedure to be followed during the election of Upa Sarpanch. It appears that the communication has been issued in pursuance to the query raised by the District Collector, Yavatmal. The relevant clauses of the communication are as under :-

[i] At the time of election of Upa Sarpanch, the Sarpanch would have a right to vote during the first round and in case of equality of votes, the Sarpanch shall have a right to exercise casting vote.

[ii] It is the duty of the Sarpanch to preside over at the meeting of the election of Upa-Sarpanch.

4. The petitioners have challenged the communication contending that, since the Sarpanch would be presiding as the Chairman over the meeting convened for election of Upa-sarpanch, he is not expected to exercise his right to vote as a member. It is also contended that the Sarpanch is bestowed with the right of casting vote only in the event of equality of votes. It is also contended that Sarpanch is expected to be a non-partisan member, while functioning as Chairman. The learned advocates appearing in respective petitions also submit that Section 10 of the Village Panchayats Act prescribes constitution of Panchayat. By virtue of amendment in Village Panchayats Act, the Sarpanch is directly elected, therefore, he would be ex-officio member and shall not have a right to cast vote as a regular member. The learned advocates for petitioners would also contend that the directly elected Sarpanch cannot be given dual voting rights at the election of Upa-

sarpanch. The learned advocates for petitioners have also invited our attention to Section 10 of the Maharashtra Village Panchayat Act to contend that the number of members prescribed being not less than 7 and not more than 17, if the directly elected Sarpanch is allowed to vote at the meeting, the constitution of the Panchayat would be inconsistent with the mandate under Section 10.

5. Per contra, the learned Government Pleader appearing for the respondents while repelling the contentions made on behalf of the petitioners submits that the term “member” has been defined under sub-section 11AAA of Section 3 of the Village Panchayats Act, which reads thus :-

“(11AAA) "member" means a member duly elected as a member of panchayat under section 11 and include the Sarpanch of panchayat elected directly under section 30A-1A”.

6. He would also submit that sub-clause 4 of Article 243C of the Constitution provides a constitutional right in favour of the Chairman of the Panchayat to vote in the meeting of the Panchayat. He would further submit that sub-clause (4) of Section 33 of the Village Panchayats Act confers statutory right of casting vote in favour of the Sarpanch at the election of Upa-Sarpanch. He would contend that the directly elected Sarpanch would be, therefore, entitled to vote alongwith members in the first round of election of Upa-sarpanch and also to exercise the right of casting vote in case of equality of votes.

7. The learned Government Pleader further relies upon the judgment of the Division Bench of this Court in ***W.P. No. 209 of 2018***

(Anuja Kalyan Gore vs. State of Maharashtra and others with other connected writ petitions) dated 06.03.2018 and submits that all the contentions that have been raised on behalf of the petitioners are set at rest by the aforesaid decision. He invites our attention to the conclusions recorded in para.18 to 20 of the judgment, which read thus :-

“18. The argument advanced by the respondents is devoid of merit for the reason that the casting vote conferred on Sarpanch by virtue of provisions of sub-section 4 of section 33 is an additional vote exercisable by the Sarpanch apart from his legal right to cast vote as a member. The contention of the respondent that there is only restricted right conferred on the Sarpanch while presiding over a meeting convened for election of Upa-sarpanch under section 33 is opposed to the constitutional provisions contained in Article 243-C(4). The right conferred upon chair-person of the Panchayat under Article 243-C(4) is an unqualified right and cannot be construed as a restrictive right as contended by the respondents. If at all the argument advanced by the respondents is to be accepted and provision is construed as the right conferred on a Sarpanch to cast vote at the election of Upa-Sarpanch in the meeting convened under section 33 of the Act to be restricted right, it will lead us to draw logical conclusion that the provisions incorporated by virtue of amended Act itself is opposed to constitutional mandate contained in Article 243-C(4). The intention of the legislature while bringing the amendment was clear to confer an additional right on the directly elected Sarpanch. While interpreting legislative provisions, a care shall have to be taken to bring the provisions within the ambit of constitutionality in

stead of putting an interpretation which would lead to render the provision itself in conflict with the constitutional provision. If the interpretation put forth by the respondent is accepted, it would render the amended provision conferring right of casting vote on the directly elected Sarpanch to be in conflict with the constitutional provision and such interpretation shall not be accepted.

19. *The contention of the respondents that the right conferred on Sarpanch to exercise casting vote takes away his entitlement to cast vote as a Member is devoid of merit. Black's Law Dictionary defines casting vote to mean "deciding vote cast by the chair of a deliberative assembly when the votes are tied". Oxford Dictionary defines casting vote as "the vote given by the person in charge of an official meeting to decide an issue when votes on each side are equal". The Featuring Black's Law Dictionary, second edition describes casting vote thus:*

"Where the votes of a deliberative assembly or legislative body are equally divided on any question or motion, it is the privilege of the presiding officer to cast one vote (if otherwise he would not be entitled to any vote) on either side, or to cast one additional vote, if he has already voted as a member of the body. This is called the "casting vote". By the common law, a casting vote some times signifies the single vote of a person who never votes; but, in the case of an equality, some times the double vote of a person who first votes with the rest, and then, upon an equality, creates a majority by giving a second vote."

20. *It is thus clear that merely because Sarpanch has been conferred with casting of votes, it does not take away his entitlement to exercise the right to vote as a Member of the*

Village Panchayat. Such an interpretation would be in consonance with the constitutional provisions of Article 243-C-4 of the Constitution of India.”

8. We have considered the rival submissions and also gone through the judgment delivered by this court in W.P. No. 209 of 2018. The aforesaid findings recorded by this Court would show that similar contentions as raised on behalf of the petitioners before us, have been already answered by this Court and the findings are recorded to hold that a directly elected Sarpanch has a right to vote in the primary round of election of Upa-sarpanch and also has a right to exercise casting vote in the contingency of equality of votes.

9. The learned advocates for the petitioners tried to contend that the aforesaid judgment of this court did not consider Article 100 of the constitution of India, which reads thus :-

“Article 100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum -

(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.

The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one tenth of the total number of members of the House.

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.”

10. It is contended that Chairman, Speaker or person acting as such, cannot vote in the first instance but can exercise the right of casting vote in case of equality of votes. The analogy that can be gathered from the language of Article 100 would show that the Chairman or Speaker do not have a right to vote in first instance. He is conferred with the power of casting vote in case of equality of votes.

11. The aforesaid submission on behalf of the petitioners cannot be comprehended for the simple reason that Article 100 deals with the voting right of Chairman and Speaker of the House of Parliament. A bare reading of the language of Article 100 would show that a specific bar has been imposed on voting by Chairman or Speaker in the first instance with conferment of power to exercise casting vote in case of equality of votes. Such is not the case in present matter.

12. Similarly, contention of the petitioners cannot be accepted for one more reason that a statutory right to exercise casting vote has been created in favour of Sarpanch by virtue of Sub-section (4) of Section 33 of the Act. Both the rights are independent and unfettered. Therefore, the petitioners cannot derive any advantage out of the terminology of Article 100 of the Constitution of India.

13. Learned counsel for the petitioners have further contended that merely because Sarpanch is directly elected, he cannot be bestowed with the right of casting two votes at the same meeting. However, in absence of challenge to the statutory scheme flowing from sub-clause (4) of Section 33 read with the constitutional provision embedded in sub-clause (4) of Article 243C of the Constitution, said contention cannot be accepted.

14. For the aforesaid reasons, we do not find substance in the challenge raised to the impugned communication dated 30.09.2022, which prescribes the procedure at the election of Upa-sarpanch, in tune with the statutory and constitutional provisions. Similarly, no special grounds are made out by the petitioners that will enable us to deviate from the earlier decision rendered by this Court in the matter of Anuja Gore (*supra*).

15. As a result of aforesaid discussion, we are not inclined to entertain the writ petitions. The writ petitions are dismissed *in limine*.

[S.G. CHAPALGAONKAR]
JUDGE.

[MANGESH S. PATIL]
JUDGE.

grt/-