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(Reportable)

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

904 WRIT PETITION NO.14430 OF 2023

SUMAN KACHRU GARJE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS

....

Mr S. S. Jadhavar, Advocate for Petitioners;
Mr S. K. Tambe, A.G.P. for Respondent Nos.1 to 4

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 1st December, 2023

ORAL ORDER: (Per : Ravindra V. Ghuge, J.)

1. By this Petition, the Petitioners have put forth prayer clauses (B), (C), (D) and (E), which read as under :-

“B) By issuing writ of certiorari or any other appropriate writ, order or direction, clause No.1 of communication dated 30.09.2022 issued by the Section Officer, Department of Rural Development, State of Maharashtra to the extent it gives right to the Sarpanch to cast vote in the election of Upsarpanch, may kindly be quashed and set aside.

C) By issuing writ of mandamus or any other appropriate writ, order or direction, the respondent No.1 to 4 may kindly be directed to restrain the Sarpanch to cast vote in the election of Upsarpanch.

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D) Pending hearing and final disposal of Writ Petition, the election program published vide Order dated 17.11.2023 issued by respondent No.2 for election of Upsarpanch, may kindly be stayed to the extent of Village Panchayat, Bodhegaon, Taluka Shevgaon, District Ahmednagar.

E) Pending hearing and final disposal of present Writ Petition, respondent No.5 may kindly be restrained from participating in election process of Upsarpanch of Village Panchayat, Bodhegaon, Taluka Shevgaon, District Ahmednagar.”

2. It is informed that, during the pendency of this Writ Petition, the election to the position of ‘Upsarpanch’ was held on 23/11/2023. This matter, in the light of the above, is rendered of an academic interest. However, the learned Advocate for the Petitioners is under instructions to canvass the cause put forth in this Petition. It is in this premises that, we have considered the prayers in the light of the extensive submissions of the learned Advocate for the Petitioners and the learned A.G.P. on behalf of the State.

3. The Petitioners have primarily canvassed two aspects, viz. firstly, that though the Sarpanch may have a right of exercising a ‘casting’ vote, he does not have the right to cast his first/primary vote, and secondly, the amendment to Section 33 (6)

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of the Maharashtra Village Panchayats Act, 1959 (for short 'the said Act'), without causing any amendment to Section 33(2) of the said Act, would indicate that the Sarpanch does not have the right to vote, if he is a directly elected Sarpanch.

4. For the sake of brevity, we are reproducing the amendments to Sections 30, 33(2) and 33(6) hereunder :-

“[30. Election of Sarpanch.

(1) Every panchayat shall be presided over by a Sarpanch who shall be elected by, and from amongst, the elected members thereof.

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

(a) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) Every panchayat shall be presided over by a Sarpanch.";

(b) sub-section (2) shall be deleted;

(c) in sub-section (4), for the words "the members belonging to" the words "persons belonging to" shall be substituted.]

(2) The election of the Sarpanch shall be held in the first meeting held after every general election.

(3) No member of a Panchayat shall be eligible for being elected or for continuing, as Sarpanch if he holds the office of the President or Vice-President of any Zilla

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Parishad or Chairman of any Subjects Committee thereof or the Chairman or the Deputy Chairman of any Panchayat Samiti; and if a Sarpanch is elected to any of such offices, his office as Sarpanch shall become vacant from the date of such election.

4) There shall be reservation in the offices of the Sarpanchas in the Panchayats for the members belonging to the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of citizens and women as follows:-

(a) the number of offices of Sarpanchas as to be reserved for the Scheduled Castes and the Scheduled Tribes in the panchayats shall bear, as nearly as may be, the same proportion to the total number of such offices in the panchayats as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State [excluding the population of the Scheduled Tribes in panchayat comprising entirely the Scheduled Areas) bears to the total population of the State:

[Provided that, the office of the Sarpanch of a Panchayat comprising entirely the Scheduled Areas shall be reserved only for the persons belonging to the Scheduled Tribes:

Provided further that, the office of the Sarpanchas of a Panchayat falling only partially in the Scheduled Areas shall be reserved for the persons belonging to the Scheduled Tribes in accordance with the provisions of clause (a):]

[Provided also that], [one-half of the total number of offices] so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes;

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[(b) the offices of Sarpanchas to be reserved for the persons belonging to the category of Backward Class of Citizens shall be upto 27 per cent. of the total number of such offices in the panchayats and the total reservation shall not be more than 50 per cent. of the total seats in the concerned District:

Provided that, one-half of the offices so reserved shall be reserved for women belonging to the category of Backward Class of Citizens;]

(c) [one-half of the total number of offices of Sarpanchas) (including the number of offices reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) in the panchayats shall be reserved for women.

(5) The number of offices reserved under this section shall be allotted by rotation to different panchayats in the prescribed manner.

(6) The reservation of offices of Sarpanchas as (other than the reservation for women) shall cease to have effect on the expiration of the period specified in article 334 of the Constitution of India.]

[30A-1A. Direct election of Sarpanch.

(1) After the date of commencement of the Maharashtra Village Panchayats (Amendment) Act, 2022 in respect of the panchayat to which the general election is to be held, subject to provisions of sub-sections (4), (5) and (6) of section 30, every panchayat shall have a Sarpanch who shall be elected by the persons whose names are included in the list of voters for the village under section 12.

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(2) Election of the Sarpanch shall be held simultaneously with the general elections of the panchayat and the procedure regarding holding of elections to the panchayat shall, mutatis mutandis, apply to such election.

(3) If at an election, no Sarpanch is elected, a fresh election shall be held to elect a Sarpanch, and if there is a failure to elect a Sarpanch at the fresh election, such vacancy may, notwithstanding anything contained in this Act, be filled by election by the elected members from amongst themselves and the term of Sarpanch elected under this sub-section shall be co-terminus with the term of members of the panchayat.

(4) Any person elected under sub-section (3) shall be deemed to be duly elected at an election under this section.

(5) If, in the election of the Sarpanch, there is an equality of votes, the result of the election shall be decided by lots to be drawn by the State Election Commissioner or the officer appointed by him for the purpose.

(6) In case of a dispute regarding election of the Sarpanch, the provisions of section 15 shall, mutatis mutandis, apply.]

[30-1A. Person contesting election for reserved office of Sarpanch to submit Caste Certificate and Validity Certificate.

Every person desirous of contesting election to the office of the Sarpanch reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of citizens, shall be required to submit along with the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of

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the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.]

[Provided that, for the elections for the post of Sarpanch for which the last date of filing of nomination falls on or before the 31st December 2022, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, alongwith the nomination papers,-

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period of twelve months from the date on which he is declared elected, the Validity Certificate Issued by the Scrutiny Committee:

Provided further that, if such person fails to produce the Validity Certificate within a period of twelve months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Sarpanch.]

[S. 30A Election of Upa-Sarpanch.

(1) Every panchayat shall elect one of its elected members to be Upa-Sarpanch.

[(1A) In respect of the panchayat to which the Sarpanch is directly elected, the election of the Upa-Sarpanch shall be held in the first meeting held after every general election.]

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(2) *The provisions of sub-sections (2) and (3) of section 30 shall mutatis mutandis apply in the case of Upa-Sarpanch.]*

[(2A) In respect of the panchayat to which the Sarpanch is directly elected, the provisions of sub-section (3) of section 30 shall, mutatis mutandis, apply in the case of Upa-Sarpanch.]

33. Procedure for election of Sarpanch and Upa-Sarpanch.

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(2) *The meeting called under sub-section (1) shall be presided over by such officer as the [Collector] may by order appoint in this behalf. The officer aforesaid shall, when presiding over such meeting, have the powers and follow the procedure prescribed, but shall not have the right to vote.*

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[(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 occurs, the words "election of Upa-Sarpanch shall be substituted;

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

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"(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, then 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.]"

5. By virtue of the above amendment, section 33(2), which is most relevant and crucial to this case, reads as under :-

(2) The meeting called under sub-section (1) shall be presided over by the Sarpanch and if the post of Sarpanch is

vacant by such officer as the Collector may by order appoint in this behalf. The officer aforesaid shall, when presiding over such meeting, have the powers and follow the procedure prescribed, but shall not have the right to vote.

It is undisputed that, by the amendment introduced vide sub-section (6) of Section 33 of the said Act, taking into account the direct election of the Sarpanch under Section 30A-1A, further amendments were carried out to sub-section (1A) of Section 30A and sub-sections, (2), (3), (4) and (5), by which, certain words have been interchanged.

6. It is aptly said that one should not read more than what meets the eye. It is apparent from the amended S. 33(2) that *‘The officer aforesaid shall, have the powers and follow the procedure prescribed, but shall not have the right to vote’*. The intent of the State legislature is very obvious that on the one hand, the Sarpanch was entrusted with the duty to conduct the meeting for electing the Up-Sarpanch and on the other hand, if the Sarpanch was not available, the Collector was under an obligation to appoint an officer to preside over the said meeting, who would not have the right to vote. These are two different situations. Had the legislature, had the desire to deprive the Sarpanch of the right

to cast his first/primary vote, the Sarpanch alongwith the Officer would have been deprived of casting the vote. It is only '*the Officer*' who is deprived of the right to vote. It also needs to be considered that, when there would be a TIE in the votes cast in a meeting presided over by the Officer, Section 33(4) subscribes "*If, in the election of Upa-Sarpanch there is an equality of votes, then 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.*" This crystalises the fact that the legislature specifically intended only an Officer to be kept away from voting and not the Sarpanch.

7. Sub-section (6) of Section 33 was amended by Mah.54 of 2018 w.e.f.19-7-2017. It does not call for any debate, that this amendment fell for consideration in the judgments delivered by this Court on 06/03/2018 in Writ Petition No.209/2018 (Anuja Kalyan Gore Vs. State of Maharashtra and others) and connected two petitions, and dated 03/01/2023 delivered in Writ Petition No.12/2023 (Archana Munjabhau Shinde Vs. State of Maharashtra and others.) and a connected Writ Petition, that a directly elected Sarpanch can vote in the

regular round of voting and if the votes are equally divided, he/she can cast a decisive vote, which is commonly known as the 'Casting vote'.

8. The meaning of the words "casting vote" as is set out in the 'Black's Law Dictionary' is preceded by the definition "vote", which would indicate expression of an 'individual' to take a call on a question. A 'voter' is a person, who engages in the act of voting. A person who has the qualification necessary for voting, is a 'voter'. The words 'casting vote' would mean the casting of a vote for the purpose of deciding an issue, and more so, in the case of a deadlock. In Archana Munjabhau Shinde (supra), this Court has referred to the Black's Law Dictionary while taking a view that, a 'casting vote' is one which is given by a person, in an official meeting to decide an issue when the votes of each sides are equal.

9. A casting vote is the right statutorily vested in the chair-person of a meeting, who normally would cast a single vote, as is the law of the land, unless expressly barred by the Statute. In the face of a deadlock between the votes cast in favour of either sides on an issue or in an election, the 'casting vote' is to be

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tendered in order to render a result on the subject at issue. In our view, a 'casting vote' presupposes a right to vote at the primary round, unless specifically prohibited by law. Only when the votes are equally divided, that the chair-person would get a right to cast a deciding vote, which is commonly known as a 'casting vote'.

10. Law casts a duty and obligation on the Court to interpret a provision in the light of the language used in the enactment while considering the facts of the case, in such a way, that the interpretation of any clause should not lead to nullifying or neutralizing the intent and the object of the Legislature, by considering the applicable provisions. A harmonious interpretation is the golden rule.

11. Having drawn our conclusions in paragraph 6, the amendment to sub-section (2) of Section 33, can only be interpreted to mean that, if a meeting under sub-section (1) of Section 28, is presided over by an Officer as the Collector may order or appoint in that behalf, such Officer, who is not a member of the Gram panchayat and who occupies the chair of the chair-person of the Gram panchayat to conduct the meeting only in the absence of a Sarpanch, will not have right to vote.

12. Therefore, in our view, if the position of a chairperson of the Gram Sabha, which is normally occupied by the Sarpanch for the purpose of electing the Up-sarpanch, is to be chaired by a Revenue Authority, the said officer would be conducting the meeting under the orders of the Collector under sub-section (2) of Section 33. But, in a case, where a Sarpanch is directly elected, he would *ipso facto* be a member of the Gram panchayat and he would have a right to vote. A Sarpanch will have to break the deadlock on any issue, which has suffered voting in a meeting with votes equally divided, by casting his additional vote, which is known as the 'casting vote'. However, if the Sarpanch is not in the chair, such Officer will have to follow the procedure prescribe in S.33(4) and draw lots to break the dead-lock.

13. Insofar as the contention of the Petitioners that, the judgments delivered in Anuja Kalyan Gore (supra) and Archana Munjabhau Shinde (supra), are with regard to a 'casting vote', and therefore, cannot be construed to be a judicial pronouncement of, whether a directly elected Sarpanch can cast a vote, is wholly fallacious, in the light of our conclusion in paragraph 6, of this judgment.

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14. In view of the above, we do not find that there is any anomaly in sub-section (2) and sub-section (4) of Section 33.

15. **This Writ Petition fails and the same is, therefore, dismissed.**

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

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