

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.370 OF 2023

Ajit Pandurang Patil

...Petitioner

Versus

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

...Respondents

Mr.Yuvraj S. Gharal, for Petitioner.

Mr.A.P. Vanarase, AGP, for Respondents/State.

CORAM : R.D. DHANUKA &
M.M. SATHAYE, JJ.

DATED : 11th JANUARY, 2023

PC. :

1. Rule. Learned AGP waives service for Respondents. Rule is made returnable forthwith. Heard finally by consent of both sides.

2. By this petition, filed under Article 226 of the Constitution of India, the Petitioner seeks a writ in the nature of Certiorari to quash and set aside letter/directions dated 30.09.2022 passed by Respondent No.2 (The Desk Officer, Rural Development Mantralaya, Mumbai) and Order dated 02.01.2023 passed by Respondent No.3 (District Collector, Kolhapur). Under order dated 02.01.2023, District Collector has declared holding of election of Up-Sarpanch. By letter/direction dated 30.09.2022, State has given certain directions for conducting the election of Up-Sarpanch including direction that Sarpanch will have right to vote in the first round and in case, there is equal voting by rival

group for election of Up-Sarpanch, the Sarpanch will have right to give decisive vote.

3. Heard learned counsel for the Petitioner. It is the case of the Petitioner that election for the committee members of Gram Panchayat Parite, Tal. Karvir, Dist. Kolhapur, for the period of 2022-2026 was held and Sarpanch was directly elected from public voting. 13 committee members were also elected. It is his case that the election of Up-Sarpanch is announced and Petitioner is willing to contest the said election for the post of Up-Sarpanch, which is due on 12.01.2023. According to the Petitioner, by impugned directions dated 30.09.2022, the Sarpanch is given right to vote twice, which can not be permitted. Since the concerned Gram Panchayat is having 13 members and one Sarpanch is directly elected from the public, equal voting is likely, and in such situation, according to the Petitioner, if Sarpanch is permitted to vote in first round also, it will be illegal and unconstitutional.

4. Learned counsel for the Petitioner has invited our attention to various provisions of Maharashtra Village Panchayat Act as amended up to date. It is argued that the impugned direction dated 30.09.2022 is contrary to the provisions of Section 30A and 33 of Maharashtra Village Panchayat Act and Rule 10 of Election Rules, 1964.

5. Per contra, learned AGP appearing for the State has supported both the impugned orders and has relied upon recent Order of this Court dt.

05.01.2023 passed in W.P.No. 198 of 2023.

6. Learned counsel for the Petitioner could not dispute that the Sarpanch, who is elected from the public, is also a member of Gram Panchayat. We have perused Section 33(2) r/w Sub-Section (6) of Maharashtra Village Panchayat Act as amended up to date, alongwith concerned Election Rules. The provisions do not impose any bar against elected Sarpanch to cast vote at first instance as a member of Gram Panchayat and thereafter cast vote in case of equality of votes in election of Up-Sarpanch. We have taken same view in our earlier Order dated 05.01.2023 in Writ Petition No.198 of 2023, in identical set of circumstances with identical directions from the State. Learned counsel for the Petitioner could not distinguish facts of this case from the facts of said Writ Petition No.198 of 2023.

7. In that view of the matter, we proposed to continue with the view already taken by us, as stated above. Therefore, this petition, being devoid of merits, is dismissed. No order as to costs. Rule discharged.

(M.M. SATHAYE, J.)

(R.D. DHANUKA, J.)