

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13308 OF 2023

Sagar Dadasaheb Shinde

...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

Mr Rekha Musale, i/b Nitin L Rajguru, for the Petitioner.

Mrs MP Thakur, AGP, for the Respondent – State.

Mr Sachindra Shetye, for Respondent No. 2 (SEC).

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 25th October 2023

PC:-

1. Heard.

2. The Petition is entirely misconceived. The Petitioner seeks the cancellation of the election for the Venegaon Grampanchayat, Taluka Madha, Dist. Solapur by the State Election Commissioner (“SEC”) vide its circular dated 3rd October 2023. That circular relates to several villages of which Venegaon is one. The election program is set out in the circular itself. A copy is at pages 48 and 49.

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3. The limited argument canvassed before us and reading of Section 11(3) of the Maharashtra Village Panchayats Act, 1959. Section 11 in its entirety reads as follows:

“11. Election.- (1) An election to constitute a *Panchayat* shall be completed—

- (a) in the case of the establishment of a *Panchayat* for the first time, as soon as may be practicable;
- (b) in the case of *Panchayat*, existing for the time being, before the expiry of its duration of five years as prescribed in sub-section (1) of Section 27;
- (c) in the case of the dissolved *Panchayat*, before the expiration of a period of six months from the date of its dissolution:

Provided that, where the remainder of the period for which the dissolved *Panchayat* would have continued is less than six months, it shall be necessary to hold any election under this clause for constituting the *Panchayat* for such period;

- (d) in the case of an interim *Panchayat* referred to in Section 157, before the expiry of the period of one year as specified in sub-section (1) of Section 158.

(2) The election of member of *Panchayat* or election to fill any vacancy shall be held on such date as the State Election Commission may appoint in this behalf.

(3) **Notwithstanding anything contained in Section 10, if the vacancy of a member occurs within six months preceding the date on which the term of office of the members of the *Panchayat* expires under Section 27, the vacancy shall not be filled.**

(3A) The voting at an election shall be by ballot or by electronic voting machine and no votes shall be received by proxy.

4. Such election shall be conducted in the prescribed manner.”

(Emphasis added)

4. Now in this case, the vacancy in question occurred on 27th February 2022, when the then Sarpanch Ambubai Mahadeo Kshirsagar resigned as Sarpanch.

5. It is clear that the Grampanchayat accepted that resignation in 2022 March itself. Then it seems that Ambubai filed a complaint and this resulted in a Dispute Application No 20 of 2022. Later, Ambubai sought to withdraw her complaint. It is therefore contended that it was not till 21st March 2023 that the vacancy occurred.

6. Facially, this is incorrect. The vacancy occurred on 27th February 2022. The subsequent proceedings will have no effect especially since they only resulted in a reaffirmation of the initial resignation. Otherwise, it would lead to an anomalous situation where only because of the Dispute Application and despite her resignation on 27th February 2022, Ambubai would have to be held to have continued as a Sarpanch till 21st March 2023. That is inconceivable and that is not even Ambubai’s case.

7. The Petitioner is the Upasarpanch. She is clearly next in line to the Sarpanchship of Grampanchayat Venegaon and is in fact now holding charge. Small wonder then that she does not want an election to the Venegaon Grampanchayat.

8. The Petition is entirely without substance. It is dismissed.
There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)