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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.198 OF 2023

|                             |                |
|-----------------------------|----------------|
| Ashish S. Uttekar & Ors.    | ...Petitioners |
| V/s.                        |                |
| State of Maharashtra & Ors. | ...Respondents |

Mr.Laxman Deshmukh with Mr.Ranjeet Patil for the Petitioners.

Mr.A.P. Vanarase, AGP for the State – Respondent.

**CORAM : R.D. DHANUKA &**  
**M.M. SATHAYE , JJ.**  
**DATE : 5TH JANUARY, 2023.**

**P.C. :-**

1. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a writ of certiorari for quashing and setting aside the impugned letter / communication dated 30<sup>th</sup> September, 2022 issued by the respondent no.1- State. The petitioners have also prayed for a writ of mandamus against the respondents to conduct the election of Up-Sarpanch without allowing the Sarpanch to vote in first round of election of Up-Sarpanch and also direct the respondents to allow the Sarpanch to vote only in case of equality of votes in the election of Up-Sarpanch of Village Panchayat.

2. It is the case of the petitioners that the election of Gram Panchayat was for seven members and one Sarpanch, who was to be elected directly from public. The Gram Panchayat is divided into three wards and members to be elected were in the ratio of 3:2:2. The election accordingly took place and two parties contested the election. On 20<sup>th</sup> December, 2022, the results of elections were declared and in the said election, four members were elected from Shirkoli – Ghoshet – Thangaon Gram Vikas Parivartan Panel and three members were elected from Shiv Malhar Panel. The respondent no.5 was elected as Sarpanch of Gram Panchayat, Shirkoli from General Public. The apprehension of the petitioners is that since both the parties have four members each, if the Sarpanch is allowed to cast his vote and in addition to that, in case of equality of votes, is allowed to cast an additional vote, grave injustice would be caused to other group. On 30<sup>th</sup> September, 2022, the respondent no.1 had issued a communication to all the Collectors in the entire State of Maharashtra whereby directions are issued in clause (1) of the said notification / letter permitting Sarpanch to cast one vote as a member in individual capacity and one vote in case of tie.

3. Mr.Deshmukh, learned counsel for the petitioners invited our attention to Exhibit “C” annexed to the petition and also placed reliance on section 33(2) and (6) (e) and (4). He submitted that the

Sarpanch shall not be allowed to cast vote at the first instance but shall be allowed to cast vote only in case of equality of votes.

4. Learned counsel also placed reliance on the order passed by the Nagpur Bench on 3<sup>rd</sup> January, 2023 in Writ Petition No.12 of 2023 in case of **Ankit Sanjay Wankhade vs. State of Maharashtra & Ors.** which is a *prima-facie* view directing the election of the Up-Sarpanch to be conducted as per the provisions of Maharashtra Village Panchayats Act, 1959 and rules framed therein. It is directed that the communication dated 30<sup>th</sup> September, 2022 permitting the Sarpanch to vote in the election of Up-Sarpanch in the first round shall not operate until further orders. It is further directed that the rights of the Sarpanch casting vote in respect of Up-Sarpanch shall not be affected.

5. Learned counsel for the petitioners could not dispute that the Sarpanch is also a member of Village Panchayat. We have perused section 33 (2) read with sub-section (6). These provisions do not impose any bar against the Sarpanch to cast his vote at the first instance as a member of Village Grampanchayat and thereafter to cast vote in case of equality of votes in the election to the post of Up-Sarpanch. The Sarpanch is rightly allowed to cast his vote as a member being a Sarpanch and also in case of equality of votes to the post for the purpose of Up-Sarpanch.

6. The circular issued by the Collector which is impugned by the petitioners in this petition is in accordance with the provisions of section 33 of the Maharashtra Village Panchayats Act, 1959. We do not find any infirmity in the said circular dated 30<sup>th</sup> September, 2022 issued by the respondent no.1. Insofar as the order passed by the Nagpur Bench pressed in service by the petitioners is concerned, the said order is an interim order taking prima-facie view. We are not inclined to pass similar order and the said order is not precedent and is not binding on this Court. After due interpretation of section 33 of the Maharashtra Village Panchayats Act, 1959 we are of the view that there is no bar against the Sarpanch for casting his vote at the first instance for the post of Up-Sarpanch and thereafter in case of equality of votes to cast an additional vote.

7. The writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

**(M.M. SATHAYE , J.)**

**(R.D. DHANUKA, J.)**