

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10110 OF 2023

Laxman Arun Yeole

...Petitioner

Versus

State of Maharashtra & Ors

...Respondents

SUMEDH
NAMDEO
SONAWANE

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SUMEDH NAMDEO
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Date: 2023.09.07
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Mr Sandesh Patil, i/b Chintan Shah for the Petitioner.

Mr Sachindra Shetye, with Sarika Shetye for Respondent No. 2.

Mr AA Alaspurkar, AGP, for the Respondent – State.

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

DATED: 6th September 2023

PC:-

1. Rule. Rule made returnable forthwith.

2. On 21st August 2023, after having briefly heard both sides, we passed the following order.

“1. We believe that the Petition raises an important question not only under the Maharashtra Village Panchayats Act, 1958 but also under Article 243D (3) of the Constitution of India. It relates to the requirement of rotation of reservations between various wards in a Panchayat.

2. In the present case, we are concerned with the four wards of the 5th Respondent, the Waksai Gram Panchayat.

There are a total of 11 seats for election.

3. The submission on behalf of the Petitioner is that the reservation for Scheduled Tribe women in Ward No. 1 was instituted first in 2013. It did not find a place in the 2018 election. In the 2023 forthcoming elections it is once again shown in Ward No.1. Thus, it is submitted, briefly, that this reservation of Scheduled Tribe women has been made unavailable in successive elections to Wards Nos. 2, 3 and 4. This, it is submitted, is unconstitutional and ultra vires not only the Maharashtra Village Panchayat Act, 1958 but the specific wording of Article 243D(3) of the Constitution. There is another argument in parallel about whether in the 2023 election for Ward No. 1 both of the only two seats can be said to be wholly reserved in one or the other of two categories. It is submitted that such a 100% reservation is contrary to the Maharashtra Government's own framework and policy.

4. Respondent No. 1 is the State of Maharashtra. Respondent No. 2 is the Maharashtra State Election Commission. Respondent No. 5 is the Waksai Gram Panchayat. Respondent No. 3 is the Election Commission of India and Respondent No. 4 is the Collector, Pune. Respondent Nos. 1, 2 and 4 are represented.

5. We do not believe that Respondent Nos. 3 and 5 are necessary parties and we allow the Petitioner to delete them. Amendment to be carried out forthwith in Court without need of reverification.

6. An Affidavit in Reply from the Maharashtra State Election Commission will be required. This is to be filed and served by 4th September 2023.

7. We will take up the Petition on 6th September 2023. All are put to notice that we will dispose of the Petition finally at the stage of admission on that date. This is the only reason why we have not issued rule today.

8. List the matter on 6th September 2023.”

3. Now we have an Affidavit dated 4th September 2023 by one K. Suryakrishnamurty, the Deputy Secretary, State Election Commission, Maharashtra, the 2nd Respondent. The affidavit is to be appreciated for its candour and fairness in approach. We refer now to the relevant portions of the Affidavit.

4. The controversy is about the reservation of seats in Village Panchayat Waksai, Tehsil Haveli, District Pune. The Affidavit accepts that the population of the village panchayat according to the 2011 Census was 4224 persons. The number of members elected to the Village Panchayat was 11. The population of Scheduled Castes (“SC”) in this Village Panchayat was 247 and the population of Scheduled Tribes (“ST”) was 466. These figures are again on the 2011 Census.

5. The reference then is to Section 10(2)(b) of the Maharashtra Village Panchayats Act, 1958. The Affidavit says that going by these numbers, the seats reserved for SC was one and for ST was one. The number of seats reserved for Backward Class of Citizens (“BCC”) was three and the number of seats reserved for women was six. There is a table shown in paragraph 5 which divides the population of SC and ST across the four wards. Importantly, paragraph 6 of the Affidavit says that the reservation for SC is according to a certain principle. That principle is the ‘descending order of population in the wards’. This means that the ward with the highest population of SC would be reserved for SC. Ward No. 2 had the highest population of SC. There was only one seat reserved for

SC and, therefore, this reservation for SC (women) was done by draw of lots and accordingly the seat was reserved for SC. This principle was also followed for ST but since Ward No. 1 was reserved for ST in 2013, the second principle, one of rotation, was followed and Ward No. 4 was reserved for ST in 2018.

6. Paragraph 8 then tells us of the delimitation and reservation of seats in 2018 on the basis of the 2011 Census. There was a ward-wise reservation of seats. In Wards Nos. 1, 2 and 3 there were three seats reserved. In Ward No. 4 there were two seats reserved. The total was 11 seats.

7. A dedicated commission was set up for deciding reservations for BCC. The percentage reservation for BCC in Waksai Village Panchayat was 16.6%. This means that two seats would have to be reserved for BCC category in 2023.

8. The next table below paragraph 10 sets out the delimitation and reservation of seats in 2023. There were two seats reserved in Ward No. 1 for ST (women) and general (women), three seats in Ward No. 2 for BCC, general and general (women), identically so for Ward No. 3 and for Ward No. 4, making a total of 11 seats of which six were altogether reserved for women.

9. Paragraph 11 of the Affidavit then fairly states that the reservation of seats for SC was apparently incorrectly drawn or done. Following the principle of rotation and applying the principle of a descending order of population, one seat in Ward No. 1 ought to

have been reserved for SC. What happened instead was that one seat was reserved for ST (women) and the only other seat was in the general category for women. Had the correct procedure been followed, the Affidavit states, Ward No. 1 would automatically not have been reserved for ST. The deponent states that the reservation in Ward No. 1 and Ward No. 3 needs to be reworked.

10. We accept the statements in this Affidavit. What remains then is to consider the frame of the final order that ought to be passed. Mr Patil for the Petitioner points out that generally the Affidavit answers the grievance of the Petitioner and if this reworking is being undertaken, then the Petition would not really survive. But for completeness we note prayer clause (a) of the Petition at page 14. It reads thus:

“(a) By an appropriate writ, direction, order of this Hon’ble Court the notification dated 14/07/2023 annexed at **“Exhibit G”** to the petition thereby declaring the reservation to the Gram Panchayat Election be quashed and set aside.”

11. Now the notification of 14th July 2023 at Exhibit “G” to the Petition is from page 95 onwards. This is in fact the reservation distribution that the affidavit of the 2nd Respondent now accepts needs to be reworked for Wards Nos. 1 and 3. Thus, it is clear that accepting the statements made in the Affidavit in Reply would fully answer the grievance in the Petition.

12. The notification at Exhibit “G” of 14th July 2023 will obviously not survive. It is formally quashed and set aside. We

accept the statement of the 2nd Respondent that a fresh notification will be issued after reworking the reservations for Wards Nos. 1 and 3.

13. We accept Mr Shetye's submission that in light of this affidavit, there is no requirement for a further hearing. All issues have been addressed in the Petition itself. The Election Commission will now rework the reservation distribution for Wards Nos. 1 and 3 and issue a fresh final notification.

14. The Petition is disposed of in these terms. No order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)