



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4671 OF 2023

Gunwanta s/o Pundlik Kale,
Aged about 45 years, Occupation - Sarpanch,
R/o C/o. Pundlik Kale, Jalalkheda,
Nagpur-441 112.

..... **PETITIONER**

...V E R S U S...

1. State of Maharashtra,
Through its Secretary, Department of Rural Development
and Panchayat Raj,
Mantralaya, Mumbai-32.
 2. The Collector,
District Nagpur.
 3. The State Election Commission
Maharashtra, through its
State Election Commissioner,
Office at First Floor, New Administrative Building,
Hutatma Rajguru Chowk,
Madam Cama Road, Mumbai-400 032
- **RESPONDENTS**

Shri Akshay A. Naik, Advocate with Shri R.S.Kalangiware, Advocate for
petitioner.

Shri N. P. Mehta, Assistant Government Pleader for respondent nos. 1 and 2.
Shri J. B. Kasat, Advocate for respondent no.3.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

THE ARGUMENTS WERE HEARD ON : 6th OCTOBER, 2023

JUDGMENT IS PRONOUNCED ON : 10th OCTOBER, 2023

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The issue raised in this writ petition filed under Article 226 of the Constitution of India is with regard to reservation in the Offices of Sarpanchas being provided in a manner that exceeds the limit permitted under the Statute and the law in that regard.

3. In the elections for the office of Sarpanch of Gram Panchayat Jalalkheda that were held in September-2018 the petitioner was elected to the post of Sarpanch. His term is to expire on the completion of tenure of five years. On 05.03.2020 the Rural Development Department published Notification in exercise of powers under Rule 2A(2) of the Maharashtra Village Panchayats (Sarpanch and Upa-Sarpanch) Elections Rules, 1964 (for short, the Rules of 1964). The reservation prescribed for the offices of Sarpanchas in the entire State of Maharashtra was with regard to 24972 Gram Panchayats. Insofar as Nagpur District is concerned, the total number of Gram Panchayats was shown to be 768. Of the said 768 Gram Panchayats, 437 posts of Sarpanch were shown to be reserved while 331 posts were shown for the 'Open' category. Acting on the aforesaid Notification, the Collector on 25.11.2020 issued a Notification under Rule 2A(3) and (4) of the Rules of 1964 indicating reservation in the offices of Sarpanchas in various Tahsils in the District of Nagpur based on census of 2011 for the period from 2020 to 2025. As stated above, out of 768 posts of 'Sarpanch' 437 posts were shown to be reserved for various categories of Backward

Classes while 331 posts were for the Open category. After the present writ petition was filed on 19.07.2023 and reply of the State authorities including the State Election Commission was awaited, the State Election Commission on 03.10.2023 issued an order notifying the elections at various Gram Panchayats in the State of Maharashtra. As per the said order, the notice of the Gram Panchayat elections was published by the Tahsildar on 06.10.2023. This includes 365 Gram Panchayats in the District of Nagpur including Gram Panchayat Jalalkheda. By amending the writ petition, the petitioner has also challenged the order dated 03.10.2023 passed by the State Election Commission.

4. Shri A.A.Naik, learned counsel for the petitioner referred to various provisions of the Maharashtra Village Panchayats Act, 1959 (for short, the Act of 1959) and especially Sections 10, 11 and 30 thereof. As per the provisions of Section 30(4)(a), it was submitted that the number of offices of Sarpanchas to be reserved for the Scheduled Castes and Scheduled Tribes was required to be in the same proportion as the population of the Scheduled Castes and Scheduled Tribes in the State. Under Section 30(4)(b) insofar as the reservation for the category Backward Class of citizens in the offices of Sarpanchas were concerned, the same ought to be 27% of the total number of such offices in the panchayats and the total reservation was limited to 50% of the total seats in the concerned District. It was thus

submitted that since the reservation of the offices of Sarpanchas exceeded 50% in view of the Notification dated 05.03.2020 insofar as the entire State was concerned and the Notification dated 25.11.2020 insofar as the Nagpur District was concerned, it was clear that this reservation in Nagpur District was contrary to Section 30(4)(b) of the Act of 1959. Inviting attention to the amendment to Section 30(4)(b) of the Act of 1959 that came into effect on 23.09.2021 and the Statement of Object and Reasons for introducing the Bill in that regard, it was submitted that by virtue of the decision of the Hon'ble Supreme Court in *Vikas Kishanrao Gawali vs. State of Maharashtra and others [(2021) 7 SCC 73]*, the Legislature was conscious of the law laid down in the said decision and thus amended the said provision. In that context, the Notifications dated 05.03.2020 and 25.11.2020 were contrary to the provisions of Section 30(4)(b) of the Act of 1959 as amended.

Referring to a similar challenge raised to the Notifications dated 05.03.2020 and 25.11.2020 in Writ Petition No.6635 of 2022 (*Sunil s/o Gangaram Dudhpachare vs. State of Maharashtra and others*) and the order dated 05.12.2022 passed thereon, it was submitted that the challenge to the said Notifications on merits was not considered on the ground that the challenge was raised by the petitioner therein belatedly after the election process had commenced. Since the cause of action to the petitioner herein had arisen now and his elective term was to come to an end, the petitioner has raised a challenge to the aforesaid Notifications. As the petitioner had

approached the Court prior to the election process being set in motion, the challenge ought to be entertained on merits. Though time was sought by the respondents to file reply to the writ petition, the same was not immediately filed and in the meanwhile, the State Election Commission issued its order dated 03.10.2023 seeking to set in motion the election process. The petitioner having approached the Court well in time and prior to issuance of the order dated 03.10.2023, there was no delay on the part of the petitioner in raising such challenge. Relying upon the decision of the Hon'ble Supreme Court in *Union Territory of Ladakh and Others vs. Jammu and Kashmir National Conference and Another* [2023 SCC Online SC 1140] it was submitted that this Court under Article 226 of the Constitution had ample powers to ensure that the elections were not held in a manner contrary to law laid down by the Hon'ble Supreme Court as well as the statutory provisions. Permitting the elections for the offices of Sarpanchas to be held on the basis of the Notifications dated 05.03.2020 and 25.11.2020 would in fact result in perpetuating illegality which ought not to be permitted. There being larger public interest involved, this Court ought to interfere and direct the authorities to hold the elections in accordance with Section 30(4)(b) of the Act of 1959 so that the statutory mandate was not violated. Reference in this regard was made to the decisions in *M/s. Dehri Rohtas Light Railway Company Limited vs. District Board, Bhojpur and others* [AIR 1993 SC 802] and *Dr. Kashinath G. Jalmi and another vs. The Speaker and others*

[*AIR 1993 SC 1873*]. It was thus submitted that even now the illegality could be rectified by directing the Authorities to issue a fresh notification to ensure that the reservation of the Offices of Sarpanchas would not exceed 50%.

5. Ms. N. P. Mehta, learned Assistant Government Pleader for the respondent nos. 1 and 2 opposed the aforesaid submissions. It was submitted that though the Rural Development Department had issued its Notification on 05.03.2020 and the Collector had issued the Notification for the District of Nagpur on 25.11.2020, the provisions of Section 30(4)(b) came to be amended by Maharashtra Act No.19 of 2022 making the amendment effective from 23.09.2021. The entire State of Maharashtra had been treated as one unit and as of now, elections to about 75% Gram Panchayats in the entire State had been held. Insofar as Nagpur District is concerned, of the 768 Gram Panchayats, elections were held in about 382 Gram Panchayats and elections for the remaining Gram Panchayats were to be held. Referring to the order dated 24.11.2021 issued by the State Election Commission, it was submitted that any interference at this stage would result in affecting the elections to Gram Panchayats held earlier. It would also result in wastage of public money and time that had already been spent. The learned Assistant Government Pleader referred to the order dated 05.12.2022 passed by this Court in *Sunil Gangaram Dudhpachare* (supra)

and submitted that a similar course be followed in the present proceedings. The ratio of the decision in *Union Territory of Ladakh and others* (supra) would not be applicable to the facts of the present case since the petitioners therein had approached the Court within time. It was not the case insofar as the present petitioner was concerned. Hence, it was submitted that the writ petition was liable to be dismissed.

Shri J. B. Kasat, learned counsel appearing for the respondent no.3 also opposed the prayers made in the writ petition on the ground of delay and laches in challenging the Notifications dated 05.03.2020 and 25.11.2020 at this belated stage. He too submitted that the observations in *Sunil s/o Gangaram Dudhpachare* (supra) were applicable to the facts of the present case. He referred to the provisions of Article 243 O of the Constitution of India to submit that any interference at this stage would amount to interfering with the election process.

6. In reply, it was submitted by the learned counsel for the petitioner that the respondents were not in a position to justify the reservation exceeding 50% and no reply was given by them to the contentions raised by the petitioner. The petitioner had not sought setting aside of elections that were already held but had merely sought a direction to reduce the excess reservation so as to bring it in tune with what was prescribed by the statute under Section 30(4) of the Act of 1959.

7. We have heard the learned counsel for the parties at length and we have given due consideration to the respective submissions. Section 30 of the Act of 1959 specifies the manner in which the election of Sarpanch is to be held. Under Section 30(4)(a), the reservation at the offices of Sarpanchas for Scheduled Castes and Scheduled Tribes is required to be in proportion with the population of Scheduled Castes and Scheduled Tribes in the State. Insofar as reservation for the category of Backward Class of Citizens is concerned, the same is prescribed at 27% of the total number of offices in the panchayats in view of Section 30(4) (b) with a rider that the total reservation of offices in the panchayats should not be more than 50% of the total seats in the concerned District. The proviso thereto states that half of the offices so reserved shall be for women belonging to the category of Backward Class of Citizens.

From the aforesaid, it is clear that the reservation in the offices of Sarpanchas insofar as Scheduled Castes and Scheduled Tribes are concerned, the same is required to be in proportion to their total population in the State. Insofar as Backward Class of Citizens are concerned, the reservation for them is 27% with a further stipulation that the reservation for Scheduled Castes, Scheduled Tribes and Backward Class Citizens taken together cannot exceed 50% of the total seats in the District. Perusal of the Notifications dated 05.03.2020 and 25.11.2020 indicate that insofar as Nagpur District is concerned, there are 768 posts of Sarpanch of which 437 posts are shown to

be reserved for members from Scheduled Castes, Scheduled Tribes and Backward Classes. This figure is obviously in excess of 50% of the total number of offices of panchayats in Nagpur District. This is clear from the fact that of the 768 offices of Sarpanchas, 331 offices are shown to be kept for the 'Open' category.

8. The Hon'ble Supreme Court in *Vikas Kishanrao Gawali* (supra) has in clear terms held that the reservation in favour of Other Backward Classes in local bodies has been read to mean that such reservation for Other Backward Classes may be upto 27% subject to the outer limit of 50% aggregate in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes taken together. This decision was rendered while considering the challenge to the provisions of Section 12(2)(c) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. In the light of this decision, the Rural Development Department introduced Legislative Assembly Bill No.XXIII of 2021. The State Legislature then passed Maharashtra Act No.19 of 2022 that came into effect from 23.09.2021. The provisions of Section 30(4)(b) were substituted so as to bring the same in tune with the decision in *Vikas Kishanrao Gawali* (supra). The legislative mandate pursuant to the amendment effected from 23.09.2021 prohibits total reservation in the Offices of Sarpanchas not to be more than 50% of the total seats in the concerned District. It is thus clear that the Notifications

dated 05.03.2020 and 25.11.2020 that were notified prior to the amendment to Section 30(4)(b) with effect from 23.09.2021 which prescribe total reservation in the offices of Sarpanchas to be more than 50% would be contrary to Section 30(4)(b) as it now stands. To this extent the learned counsel for the petitioner is justified in contending that these Notifications fall foul of the upper limit of reservation as prescribed by Section 30(4)(b) of the Act of 1959 as amended.

9. Having found that the reservation of the offices of Sarpanchas in Nagpur District exceeds 50%, the question to be considered is as regards the nature of relief that could be granted in the present proceedings. The defence raised by the respondents on the aspect of delay and laches on the part of the petitioner needs to be first considered. The respondents have sought to rely upon the decision in *Sunil s/o Gangaram Dudhpachare* (supra) in that regard. In the said case a similar challenge was raised to the Notifications dated 05.03.2020 and 25.11.2020 by contending that the reservation for the offices of Sarpanchas exceeded 50% in the Nagpur District. This Court found that the said Notifications had been acted upon insofar as 129 Gram Panchayats in the District were concerned. The said writ petition had been filed on 18.10.2022 and the State Election Commission had published the election programme for holding the elections at various Gram Panchayats in the State on 09.11.2022. In view of the

advanced stage of the election programme, the challenge was not considered on merits while deciding the writ petition on 05.12.2022. The challenge to the said Notifications was kept open and the writ petition was not entertained on merits.

10. In the present case, we find that the petitioner had approached this Court on 19.07.2023 much prior to issuance of the order dated 03.10.2023 by the State Election Commission. On the request made by the respondents for grant of time, the proceedings were adjourned on 29.08.2023, 13.09.2023 and 03.10.2023. We therefore find that the petitioner is not liable to be non-suited in the present proceedings on the ground of any delay and laches since the petitioner had approached the Court before his elective term of Office could expire. We have therefore entertained the challenge on merits.

11. While we have found that the Notifications dated 05.03.2020 and 25.11.2020 prescribe reservation for the offices of Sarpanchas that exceeds 50% in the District of Nagpur thus being contrary to the provisions of Section 30(4) (b) as amended on 23.09.2021, it is required to be noted that on the basis of the said Notifications general elections of 129 Gram Panchayats in the District were held on 15.01.2021 and the election results were notified on 21.01.2021. By the order dated 03.10.2023 issued by the State Election Commission, elections are now to be held in 365 Gram Panchayats.

The total number of Gram Panchayats in the District are 768. Issuing a direction at this stage to re-calculate the reservation at the offices of Sarpanchas in the District so as to restrict it to 50% in terms of Section 30(4) (b) of the Act of 1959 would require such exercise to be carried out with regard to the remaining Gram Panchayats where elections are yet to be held. Since the reservations in the offices of Sarpanchas in the district exceeds 50%, such exercise would definitely affect the reservations already prescribed and that have been acted upon. We therefore refrain from unsettling the issue of reservation of offices of Sarpanchas that have been worked out in the District. Consequently, the reservations for the offices of Sarpanchas where elections are scheduled also need not be disturbed. Instead, we are of the considered opinion that it would be necessary for the Rural Development Department to undertake a corrective exercise of issuing a fresh Notification in exercise of powers under Rule 2A(2) of the Rules of 1964 by specifying the reservation in the offices of Sarpanchas in the entire State in accordance with Section 30(4) of the Act of 1959. This would consequentially require the reservation for each District to be re-determined under Rule 2A(3) and (4) of the Rules of 1964. Undertaking such exercise afresh for the entire State and thereafter for each District in the State would ensure due compliance with the statutory requirements of Section 30(4) so that the total reservation of the offices of Sarpanchas in the entire District does not exceed 50%. We have kept in mind the ratio of the decision in

Union Territory of Ladakh and others(supra) as well as other decisions relied upon by the learned counsel for the petitioner while following such course.

12. Thus, while declining to grant the relief of setting aside the Notification dated 05.03.2020 issued by the Rural Development Department as well as the Notification dated 25.11.2020 published by the Collector, Nagpur it is directed that the Rural Development Department shall undertake necessary steps to issue a fresh notification under Rule 2A(2) of the Rules of 1964 so as to comply with the statutory requirements of Section 30(4) of the Act of 1959. Thereafter the Collector, Nagpur shall take further steps as required by Rule 2A(3) and (4) of the Rules of 1964 so as to ensure that the reservation in the Offices of Sarpanchas in the District Nagpur does not exceed 50% in terms of Section 30(4)(b) of the Act of 1959.

13. Rule stands disposed of with aforesaid directions leaving the parties to bear their own costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.