



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1052 OF 2022

Kamal w/o. Babasaheb Madan,
Age 34 years, Occu. Agril and Member G.P.
R/o. Keligavhan, Tq. Badnapur, Dist.Jalna

.. Petitioner
(Original complainant)

Versus

1. The State of Maharashtra
Through its Principal Secretary
Ministry of Rural Development
Mantralay, Mumbai - 32
2. The State Election Commission of
Maharashtra through its President,
Madam Kama Road, Mumbai - 32
3. The Additional Divisional Commissioner
Aurangabad Division, Delhi Gate,
Aurangabad, Tal. And Dist. Aurangabad
4. The District Collector, Jalna,
Taluka and District Jalna
5. The Returning Officer,
S.D.Hiwrale
Sarpanch-Up Sarpanch Election 2020
Grampanchayat Keligavhan, Tq. Badnapur
Dist. Jalna through Tahsildar Badnapur
Taluka Badnapur, District Jalna
6. The Sub Divisional Officer, Jalna
SDO Office near Mukteshwar Dwar
Jalna, Taluka and District Jalna
7. The Tahasildar, Badnapur,
Taluka Badnapur, District Jalna
8. The Block Development Officer
Panchayat Samiti, Badnapur,
Taluka Badnapur, District Jalna
9. The Gramsevak B.D.Gaikwad,
Gram Pcnahayat Keligavhan,
R/o. Keligavhan, Tq. Badnapur, Dist.Jalna

10. Rambhau s/o. Bhika Gayke, Age 45 years,
 11. Kishor s/o. Sampatrao Madan, Age 40 years,
 12. Minabai w/o. Vishnu Dabhade, Age 50 years,
 13. Ashwini w/o. Bhagwan Madan, Age 28 years,
 14. Parwati w/o. Kailas Madan, Age 50 years,
 15. Sulochana w/o. Himmatrao Madan, Age 55 years,
 16. Sarita w/o. Kailas Madan, Age 30 years,
 17. Shakuntala w/o. Jagannath Madan, age 35 years,
 18. Usha w/o. Vijay Madan, Age 30 years,
- Respondent No.10 to 19 Occu.Member G.P.
 Respondent No.9 to 19 R/o. Keligavhan,
 Taluka Badnapur, District Jalna .. Respondents

[Respondents No.4, 5, 8 and 9 to 18 - original respondents No.1A to 11 and respondent No.19 - original complainant No.2]

Mr. Vaibhav B. Kulkarni. Advocate for the Petitioner;

Mrs. M. L. Sangit, A.G.P. for Respondents No.1, 3, 4 to 7;

Ms. Manjusha S. Jagtap, Advocate for Respondent No.8;

Mr. Vikram L. Bhage, Advocate holding for Mr. Kiran D. Jadhav,
 Advocate for Respondent No.10

CORAM : S. G. MEHARE, J.

DATE : 16-02-2024

PER COURT :-

1. Heard learned counsel for the petitioner, learned counsel for respondent No.10, learned counsel for respondent No.8 and learned A.G.P. for respondents No.1, 3,4 to7. Respondents No.9, 11 to 19 were served, but they did not appear.

2. It was a case of its kind that the petitioner's husband was doing the entire process of the petition and obtaining the certified copies of the impugned resolution as a proxy. It seems that he was acting as if he was the elected member.

3. The brief facts are that the petitioner was elected as a village panchayat member. The post of Sarpanch was reserved for Other Backward Class. She, respondents No. 10 and 16, were nominated for the post of the Sarpanch. Respondent No. 10 did not annexe the caste certificate, cast validity certificate, a receipt of applying for the caste validity certificate, or declaration of non-criminal background with the nomination. She raised the objection to the eligibility of her candidature. However, her objections were not considered, and the election was conducted on 10.02.2021. Respondent No.10 was elected as Sarpanch

4. The petitioner had impugned the election of Sarpanch before the Deputy Collector on 08.03.2021.

5. The Deputy Collector, by order dated 23.03.2021 signed on 25.03.2021, dismissed the representation, holding that the reference was not filed within fifteen days as provided under Section 35(5) of the Maharashtra Gram Panchayats Act, 1958. The said order was served upon the petitioner on 06.04.2021. Being dissatisfied with the said order, she had preferred an appeal to the

Additional Divisional Commissioner, Aurangabad. The Additional Divisional Commissioner also indirectly held that the said appeal is barred by limitation as it was not filed within fifteen days of the Collector's order. Finally, he confirmed the Collector's order.

6. Learned counsel for the petitioner has argued that the reference before the Collector was well within limitation. He also argued that the petitioner asked the Village Development officer to supply her copies of the impugned resolution. However, he did not supply. Hence, she applied for copies to the Tahasildar cum Election Officer on 10.02.2021, and lastly, she received the copies on 20.02.2021. She filed the reference before the Collector on 08.03.2021.

7. He argued that the limitation begins to run from the date of the receipt of the copies. Hence, the petition was within limitation. He relied on the judgment of this Court in the case of *Shri Shaikh Muzamil Husen Allabaksha Vs. Shri Mayalari Kallappa Gawade and others, Writ Petition No.4708 of 2006, dated 10.08.2006*, argued that Section 5 of the Limitation Act applies to the instant case.

8. The above was a case of Sarpanch election. By applying section 12 of the Limitation Act, this Court excluded the period spent on receiving the certified copies.

9. Interestingly, the petitioner did not apply for certified copies in

this case. Her husband had applied for the certified copies.

10. About his role, the learned counsel for the petitioner argued that the husband was helping his wife as the Village Development Officer was not providing the copies. A question arises, 'Can the elected member of the village panchayat appoint a proxy?'. The law is well settled that an elected member cannot appoint a proxy. The facts reveal that the petitioner never applied for certified copies. That apart, even assuming but not admitting the contention of the petitioner, the last filing date was 06.03.2021. However, the application was filed on 08.03.2021. There was nothing before the Collector that the petitioner was restrained from approaching the Court in time for a reason beyond her control.

11. Learned counsel for the petitioner and respondent No.10 conceded that his tenure has been over and a new Sarpanch has been elected. Therefore, the petition became *infructuous*.

12. Considering the facts of the case, this Court is of the view that the order of the Deputy Collector, Jalna, in File No.2021/SA SHA/GRA PA NI/CR (Exhibit-G) dated 23.03.2021 signed on 25.03.2021 and the order of the Additional Divisional Commissioner, Aurangabad, in File No.2021/Z.P./Appeal No.1/CR-17 (Exhibit-I), dated 10.08.2021, are legal, proper and correct.

13. As a result, the petition fails. Hence, it stands dismissed. No order as to costs.

(S. G. MEHARE)
JUDGE

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