

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

WRIT PETITION NO. 7777/2023

Smt. Punam Sunil Kodape and another
Vs
State Of Maharashtra through Collector, Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.F. Bhagwani, Advocate for petitioners
Shri I.J. Damle, AGP for respondent Nos. 1 to 3/State
Shri T.B. Ghagare, Advocate for respondent Nos. 4 & 6
Shri V.R. Baseshankar, Advocate for respondent No.5

CORAM : AVINASH G. GHAROTE AND
SMT M.S. JAWALKAR, JJ.

DATE : 23.09.2024.

The petition questions reversal of the result declared of the election to Gram Panchayat, Neri Mankar, Tahsil Hingna, District Nagpur. It is not in dispute that the election to the aforesaid Gram Panchayat was held on 06/11/2023. In this election the petitioner No.1 was declared to be elected having secured 334 votes, the petitioner No.2 was also declared to be elected having secured 309 votes, which were the highest in their respective categories, the petitioner No.1 having contested from seat reserved from Scheduled Tribe and the petitioner No. 2 having contested from the Open category. The application for recounting was filed by the respondent Nos. 5 and 6. According to the respondent No. 3 - Election Officer, it could not be entertained

as it was received after the memory chips of all the control units were deposited with the Treasury Office.

2. However, thereafter, the respondent No. 3 claiming to have realized a printing mistake in V.M. Form No.4 used for vote counting regarding change in the sequence of candidates, on his own motion, revised results and on 07/11/2023 at 2:29 a.m., declared the respondent Nos. 5 and 6, elected in place of the petitioner Nos. 1 and 2.

3. Mr Bhagwani, learned Counsel for petitioners submits that the respondent No. 3 having declared the results on 06/11/2023 holding that the petitioner Nos. 1 and 2 being elected and further having declined recounting, could not, on his own motion, revised the result by reversing them.

4. Mr. Damle, learned Assistant Government Pleader for the respondent Nos. 1 and 3 tries to justify the reversal by contending that the earlier declaration of result was an account of a mistake, which was subsequently rectified by the respondent No. 3.

5. The following position is admitted by the respondent No.1:

“10. It is submitted that, the respondent No.3 Election Officer, Gram Panchayat Neri Mankar, Tahsil Hingna has submitted report stating as under :-

(1) That as per the pre-announced election program the results were announced on 06/11/2023. It is also matter of record that as per the counting and declaration of results, petitioner No.1 Smt. Punam Sunil Kodape got 334 votes while the respondent No.5 Smt. Rajshree Sanjay Tekam got 244 votes.

(2) That Petitioner No.1, Smt. Punam Sunil Kodape was declared the winner at 9:33 p.m., similarly, petitioner No.2, Shri Anil Wasudeo Lohe got 309 votes while respondent No.6, Shri Nilesh Shankar Patil got 271 votes and petitioner No.2, Shri Anil Wasudeo Lohe was declared winner at 9:33 p.m. In this regard the documents at Annexure III, page No. 17, 18 and 19 furnished by the petitioner are false and fabricated and misleading.

(3) That after this, respondent No.6, Shri Nilesh Shankar Patil submitted a written objection for re-counting stating that the result of ward No.1 was wrong at 11:20 p.m. Respondent No.3, Election Officer, Gram Panchayat Neri Mankar, Tahsil Hingna after scrutiny of the said objection accepted the same at the end of inspection.

(4) That since the application/objection was received after memory chip of all the control units which had been deposited at the Treasury Office, the recalculation could not be carried out. According to the said objection, when the ballot paper was verified, the objection was found to be true.”

6. The reply of the respondent No. 3 also depicts the same position :

“ 3. It is submitted that, the Gram Panchayat Neri Mankar, Tq. Hingna, Dist. Nagpur elections were held on 05/11/2023 as per pre-announced election program. The results of the said election

were announced on 06/11/2023. That, as per the declared results, Petitioner No.1 secured 334 votes while Respondent No.5 secured 244 votes respectively and thus Petitioner No.1 was orally declared elected at 9:33 p.m. on 06/11/2023 in the category of ST Reserved (Ladies).

Further it is submitted that, Petitioner No.2 secured 309 votes while Respondent No.6 got 271 votes respectively and thus Petitioner No.2 was orally declared elected at 9:33 p.m. on 06/11/2023 in the category of General Candidate.”

7. The aforesaid position, would categorically demonstrate that the respondent No. 3 had on 06/11/2023 at 9:33 p.m., declared the petitioner Nos. 1 and 2 duly elected to the seats from which they had contested for the election of Gram Panchayat, Neri Mankar. It would also be material to note that though the application for recount was received on 06/11/2023, it was at 11:20 p.m., by which time, it is an admitted position that the memory chips of all the control units stood deposited in the Treasury Office. It is therefore apparent, that on that count, the recount could not be held.

8. It is thereafter, contended that the respondent No. 3 claims to have found an error in preparing preparation of specimen V.M. 4 Form, on account of which, it is claimed that he realized that the recording of the votes was reversed. It is in view of such a position, contended that the Election Officer/respondent No.3 of his own accord published a fresh

result declaring the respondent Nos. 5 and 6 as elected in place of the petitioner Nos. 1 and 2.

9. In our considered opinion, such a course of action was not permissible for the respondent No. 3, consequent to declaration of result at 9:33 p.m. on 06/11/2023 of the petitioner Nos. 1 and 2 having been declared as elected and the application for recount filed at 11:20 p.m. of 06/11/2023, by the respondent No. 6 having become unworkable on account of the memory chips of the control units having been deposited in the Treasury, as the Election Officer/respondent No. 3 became functus officio and since the Bombay Village Panchayat Election Rules, 1959, did not confer any power upon him to review or reverse the declaration of result made by him, unless a recount was conducted which was not done, the respondent Nos. 2 and 3 had no right or authority to reverse the result. If the respondent Nos. 5 and 6 were aggrieved by the same they could have filed an Election Petition in terms of Section 15 of the Maharashtra Village Panchayats Act, before the Civil Judge Junior Division and got it decided.

10. The learned Counsel for respondent Nos. 5 and 6, do not dispute that recount was not held. In that view of the matter, the reversal of result by the respondent No. 3 of his own, in absence of any authority to him to do so, cannot be sustained and is hereby quashed and set aside.

11. The petition is accordingly allowed in the above terms.

12. Needless to say that it would be open for the respondent Nos. 5 and 6 to file an Election Petition under the provisions of Section 15 of the Maharashtra Village Panchayats Act before the authority before whom it lies, in case the law so permits.

(SMT M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)

Jayashree..