



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
WRIT PETITION NO. 3254 OF 2024

Vilas Ananda Gawai

Vs.

Additional Commissioner, Amravati Division, Amravati and ors.

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

Court's or Judge's orders.

Mr.Anup Gilda, counsel for the petitioner
Mr.U.R.Phasate AGP for respondent Nos.1 to 3.
Mr.Vinay Dahat, counsel for respondent No.4.

CORAM : URMILA JOSHI-PHALKE, J.
DATE :24.05.2024

1) By preferring this writ petition, the petitioner has challenged the order dated 28.05.2024 passed by the Additional Commissioner Amravati in Proceeding No.17/Section 33(5) of Maharashtra Village Panchayat Act, 1959/Sirso-Murtizapur-Akola/2024.

2) Contention of the petitioner is that he is a member of Gram Panchayat, Sirso which is situated in Murtizapur Tahsil of Akola District. He was elected as a member of the Gram Panchayat, Sirso in the elections held in January 2021. The respondent Nos.4 to 6 were also elected as a member of the Gram Panchayat, Sirso in the said elections. One Shri. Surendra Mehare had filed an application under Section 14 (1) (j-3) R/W Section 16(1) of the Maharashtra Village

Panchayat Act,1959 against the respondent No.5 before the Collector, District Akola seeking relief to disqualify respondent No.5 as he had encroached upon Government property. The said application was allowed by the respondent No.2 by an order dated 15.02.2022 and respondent No.5 was disqualified as a member of Gram Panchayat, Sirso. The respondent No.5 had filed an appeal before the Divisional Commissioner, Amravati against the order dated 15.02.2022 passed by the respondent No.2. The said appeal was allowed by the Divisional Commissioner, Amravati by an order dated 10.05.2022. Against the same the writ petition was filed bearing No. 3245 of 2022. The said Writ Petition was partly allowed by this Court and the order dated 10.05.2022 passed by the Divisional Commissioner, Amravati was set aside and the Divisional Commissioner Amravati was further directed to decide the appeal filed by the respondent No.5 afresh within a period of three months.

3) The post of Sarpanch and Up-sarpanch of Gram Panchayat, Sirso were vacant and as such, the respondent No.2 had issued an order on 04.10.2023 directing that the elections for the post of Sarpanch and Up-sarpanch of Gram Panchayat, Sirso would be held on 16.10.2023. Shri.Girish Rathod was appointed as the Presiding Officer for the said election dated 16.10.2023. The respondent NO.4 i.e.

Sau.Purnima Santosh Khandare addressed a communication to the Presiding Officer of the elections dated 16.10.2023, wherein she had requested the Presiding Officer not to allow the respondent No.5 to participate in the voting of elections dated 16.10.2.203 as the order dated 15.02.2022 passed by the Collector-Akola disqualifying him as a member of the Gram Panchayat Sirso. The petitioner had also addressed a communication to the Presiding Officer of the elections of Sarpnach and Up-sarpanch, Sirso dated 16.10.202 wherein he had requested the said officer not to allow the respondent No.5 to participate and vote in the election dated 16.10.2023 as the order dated 15.02.2022 passed by respondent No.1 was set aside. The petitioner submitted that the respondent No.4 was elected as a Sarpanch of the Gram Panchayat, Sirso and respondent No.6 was elected as a Up-Sarpanch of Gram Panchayat, Sirso. The respondent No.4 was elected as Sarpanch of Gram Panchayat, Sirso as 7 members had casted their vote in favour of her in the said elections dated 16.10.2023, whereas 6 members had casted their vote in favour of the petitioner.

4) It is the further contention of the petitioner that he had filed an application under Section 33 (5) of the Act before the Collector with a prayer to set aside the elections dated 16.10.2.203 on the ground that the respondent No.5 was

permitted to cast his vote though he is disqualified for casting the vote.

5) In response to the notice issued by the respondent no.2 on the application filed by the petitioner, the respondent no.4 had appeared before the respondent no.2 Collector and filed her reply before the Collector. The respondent No.1 had dismissed the appeal filed by the respondent No.5 against the order dated 15.02.2022.

6) The respondent No.2 after hearing both the sides had correctly arrived at a conclusion that the elections dated 16.10.2023 were required to be set aside as the respondent no.5, who was disqualified by virtue of order dated 15.02.2022 was allowed to vote and participate in the said elections. The respondent No.2 had allowed the application filed by the petitioner by an order dated 26.02.2024 and had set aside the election dated 16.10.2023. The said order was challenged before the respondent No.1 Additional Commissioner Amravati and also filed an application for stay. The stay application was rejected by the Additional Commissioner. The copy of roznama shows this fact. The charge of the post of Sarpanch of Gram Panchayat, Sirso was with the respondent No.8 during the pendency of appeal filed by the respondent No.4. The respondent No.2 Collector passed

an order on 13.05.2024 directing that the elections for the post of Sarpanch and Up-sarpanch, Gram Panchayat Sirso will held on 28.05.2022. Shri.Ravi Raut of the respondent no.3 office was directed to be the Presiding Officer of the said election. The Presiding Officer for the elections for Sarpnach and Up-sarpanch, Gram Panchayat Sirso had issued notice to the Trupti Dahake, Member of the Gram Panchayat, Sirso calling upon her to remain present on 28.05.2024 for the purposes of the election of Sarpanch and Up-Sarpanch. Thus respondent no.1 Additional Commissioner proceeded on an erroneous footing and without taking into account the correct factual position, proceeded to allow the appeal filed by the respondent No.4 by an order dated 20.05.2024.

7) Now the election is scheduled on 28.05.2024. It is submitted by the learned counsel Shri.Gilda that the respondent No.1 Additional Commissioner had without considering the fact that the respondent No.5 is already declared as disqualified for casting the vote. Then also the Additional Commissioner has also allowed the appeal or respondent No.4 and the order of the Collector was set aside. It is further submitted that same is set aside by the Additional Commissioner by erroneously observing that in the order of this Court it is not mentioned that the order of the Collector dated 15.02.2022 is maintained and by observing the same, he

has allowed the appeal of respondent no.4. Learned counsel submitted that the Additional Commissioner has proceeded with the appeal by allowing the same on wrong interpretation of the order of this Court and therefore, interference at the hands of this Court is required.

8) As the election is already declared and scheduled to be held on 28.05.2024, considering the same, the election process may go on, it would be subject to the final outcome of this petition.

9) Issue notices to the respondent Nos. 5 to 8, returnable on 28.06.2024.

10) Learned AGP waives service of notice on behalf of respondent Nos.1 to 3.

11) Learned counsel Mr. Vinay Dahat waives service of notice for respondent No.4.

12) Steno copy of this order is granted.

JUDGE