



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

WRIT PETITION NO.4323 of 2024

Manoj Vitthalrao Wanjari and another

vs.

The Mah. State Election Commn. and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. K.V. Deshmukh, Advocate for petitioners.

Mr. A.M.Kukday, Advocate for respondent no.1.

Mr. D.V. Chauhan, Government Pleader for respondent nos. 2, 3 and 4.

Mr. Manoj Sable, Advocate for respondent nos. 5 and 6.

CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE :- 23rd JULY, 2024

In view of the provisions of Section 59 of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 (for short, the Act of 1961) the first meeting since was held on 17.01.2020, the term of the Office of Member of Panchayat will be expiring on 16.01.2025. Section 59 reads as under:

59. Term of office of members of Panchayat Samiti

(1) The term of office of members of a Panchayat Samiti shall, except as otherwise provided in this Act, be five years commencing on the date of the first meeting of the Panchayat Samiti.

(***)

(2) The members of a Panchayat Samiti constituted upon its dissolution before the expiration of its duration under sub-section (1), shall continue only for the remainder of the period for which the members of the Panchayat Samiti would have continued under sub- section (1) had it not been so dissolved.

(3) The first meeting of a Panchayat Samiti shall be held on such date as may be fixed by the Collector or by an Officer, authorised by the Collector in this behalf by general or special order, as soon as may be, after the publication of the names of the members under sub-section (3) of section 57; and such date shall not -

(a) in the case of first meeting after general election, be later than the day, immediately following the date of expiry of the term of the outgoing members;

(b) in the case of election held after the dissolution of the Panchayat Samiti, be later than the date of expiry of the period of six months from the date of dissolution of the Panchayat Samiti”,

2. The vacancy has occurred because of death of one of the members on 09.02.2024. After the aforesaid vacancy has occurred, the respondent - State Election Commission has taken recourse to the provisions of Section 63 of the Act of 1961. Section 63 of the Act of 1961 reads as under:

“63. Casual vacancies how to be filled up.

In the event of any vacancy occurring on account of death, resignation, disqualification or removal of a member of a Panchayat Samiti or through a member becoming incapable of acting previous to the expiry of his term of office or otherwise, [The Block Development Officer] shall forthwith communicate the occurrence to [the State Election Commission], and the vacancy shall be filled in, as soon as conveniently may be, by election of a person, thereto, who shall hold office so long only as the member in whose place he is elected, would have held it, if the vacancy had not occurred:

Provided that, notwithstanding anything contained in section 57, if the vacancy occurs within six months preceding the date on which the term of office of members expires, the vacancy shall not be filled.”

3. It is claimed that by-elections against the said vacancy are required to be held accordingly and a programme was notified by the State Election Commission on 19.07.2024 thereby scheduling the date of elections as 11.08.2024 commencing with the first date of declaration of the election programme on 23.07.2024.

4. It is the contention of the petitioners, who are the voters in the aforesaid constituency, that the elections are sought to be held contrary to proviso to Section 63 of the Act of 1961. It is claimed that the Section is required to be given purposive interpretation and unless the elected member gets a tenure of more than six months then only the

elections can be held by taking recourse to the said provisions. He would try to substantiate his contentions by drawing support from the decision of Division bench of this Court in the matter of *Sandeep Yeshwantrao Sarode vs. Election Commission of India, New Delhi and others [(2019) Mah L J 722]* which was subsequently followed in by the Division Bench in **Writ Petition No. 1986 of 2024** (*Anil s/o Shivkumar Dubey vs. Election Commission of India and others*) decided on 26.03.2024.

5. Mr. Deshmukh, learned counsel appearing for the petitioners, would urge that if the elections as are scheduled by the State Election Commission are permitted to be held the elected candidate will be getting tenure of less than five months which will not only results into an action contrary to the proviso to Section 63 of the Act of 1961 but also there will be waste of public money, manpower and unnecessarily burdening the public exchequer.

6. According to Mr. Deshmukh, the proviso has to be given purposive interpretation and the period of six months as contemplated under Section 63 of the Act of 1961 has to be reckoned from the date results of elections to that of the date on which tenure of elected member expires.

7. As against above, Mr. Kukday, learned counsel appearing for the respondent no.1-State Election Commission submits that the decisions referred to above in the matters of *Sandeep* and *Anil* (supra) will have hardly any application as the issue in the aforesaid decisions are dealt with the provisions of Representation of People Act, 1951 and not with the Act of 1961. According to Mr. Kukday, the provisions, viz. Representation of People Act and the Act of 1961, which are invoked in both these decisions are altogether different. So as to substantiate the contention, he has drawn support from the language employed in both these sections so as to claim that the act of the respondent-State Election Commission is justified as the vacancy to be filled in

has occurred six months preceding the date on which the term of Office of the Member expires.

8. Mr. Sable, learned counsel appearing for the respondent nos. 5 and 6 would also endorse the aforesaid submissions.

9. At this stage, Mr. Kukday, seeks time to file his reply/submissions and assures that the same shall be placed on record by 26th July, 2024.

10. Issue notice to the respondents.

11. Mr. A.M.Kukday, learned counsel waives service of notice for the respondent no.1, Mr. D. V. Chauhan, learned Government Pleader waives service of notice for the respondent nos. 2 , 3 and 4 and Mr. M.Sable, learned counsel waives service of notice for the respondent nos. 5 and 6.

12. Stand over to 26th July, 2024 at 2.30 p.m.

13. In the meantime, we make is clear that the nomination form if any accepted shall be subject to final outcome of the writ petition.

14. The Returning Officer shall accordingly inform to all the candidates.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.