



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1460 OF 2025

SALIM SUPUDU TADVI

VERSUS

THE STATE OF MAHARASHTRA
THROUGH THE SECRETARY AND OTHERS

...

Advocate for the Petitioner : Mr. Vasant Digambarrao Salunke
AGP for Respondent Nos. 1, 2, 4 & 5 : Mr. V. M. Kagne
Advocate for Respondent No. 3 : Mr. A. B. Kadethankar

...

CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.

DATE : 31.01.2025

PER COURT :

. The matter presents peculiar state of affair. It was presented yesterday and in the wake of the exigency noted in the minutes recorded yesterday that it was directed to be listed first on board.

2. The petitioner who himself belongs to a Scheduled Tribe category albeit, is not a member of the Gram Panchayat, has preferred this petition averring that except Deepak Ramesh Tayade and Suwarna Nitin Koli @ Suwarna Shantaram Sonavane, there is no member belonging to the Scheduled Tribe category. As per the roster,

the post of *Sarpanch* has been reserved for the current tenure for that category. Deepak Ramesh Tayade and Suwarna Nitin Koli @ Suwarna Shantaram Sonavane both were previously elected as Sarpanch but were subsequently disqualified having failed to produce a certificate of validity. Pursuant to this vacancy, in the light of Section 43 of the Maharashtra Village Panchayats Act, 1959, the election has been declared, nominations are to be filled between 10 to 12 and the actual process is to be completed by 02:00 p.m. today.

3. It is the stand of the petitioner that none of the other members belong to the Scheduled Tribe category and holding of the election without filling in a vacant post of member of that category, fallen vacant due to failure of Deepak Ramesh Tayade to produce a validity certificate, the elections are being held which would be an exercise in futility. It would have been appropriate to fill in the vacant post of Scheduled Tribe category so that even post of *Sarpanch* could have been filled from the category.

4. Learned AGP, on instructions, submits that the objection of the petitioner to the election is premature. Any other member, if he is from the Scheduled Tribe category can fill in the nomination. Even Suwarna Nitin Koli @ Suwarna Shantaram Sonavane herself, if she

has obtained a certificate of validity, would be a candidate and it would not be appropriate to stall the election process.

5. On our query, the learned AGP also makes a statement on instructions that no person, not belonging to the Scheduled Tribe category, would be allowed to and elected as a *Sarpanch*. He would submit that if at all no other member belongs to that category, the election process will have to be aborted.

6. The learned advocate for the petitioner would tender across the bar a compilation *inter alia* demonstrating that after earlier invalidation, Suwarna Nitin Koli @ Suwarna Shantaram Sonavane could manage to have another Scheduled Tribe certificate from a different competent authority and can participate. He would also point out from a copy of the reports dated 01.02.2023, purportedly submitted by competent authority-cum-Sub-Divisional Magistrate, Erandol addressed to the Scheduled Tribe Certificate Scrutiny Committee, Dhule informing that she by active concealment of earlier cancellation of the Scheduled Tribe certificate could manage to approach his office and labouring under that, has been issued with a Tribe certificate and expressly opining that the Scrutiny Committee should cancel it.

7. Since, Suwarna Nitin Koli @ Suwarna Shantaram Sonavane is not before us, we deem it appropriate not to make any comment about such happenings.

8. We are merely concerned with the impugned proposed election to the post of *Sarpanch* which is admittedly reserved for Schedule Tribe category and is to be undertaken today. In the wake of the fact that even the provisions of Section 10-1A of the Maharashtra Village Panchayats Act, 1959 enables a candidate contesting the election for reserved seat to submit a certificate of validity within a period of 12 months, thereby keeping a loop hole for an unscrupulous member to use the system, get elected and enjoy the office for a period of 12 months even without there being a certificate of validity seems to be a thorn in the flesh of a democratic and transparent mechanism for election for membership or for the post of *Sarpanch* and *Upa-Sarpanch* which are earmarked for reserved categories.

9. The instant case demonstrates that the very lady Suwarna Nitin Koli @ Suwarna Shantaram Sonavane now possesses a Scheduled Tribe certificate albeit the competent authority has submitted an opinion to the concerned committee for cancelling it. Since, she can prolong this invalidation for a period of 12 months, it is for the legislature to seal such a loop hole.

10. There is one more aspect which needs to be addressed. According to Section 43, no sooner the vacancy occurs in the matter of *Sarpanch* or *Upa-Sarpanch*, steps have to be taken for filling up the vacancy within 30 days from the date of such vacancy. Though earlier this provision was also including 'Member' and it was mandatory to fill in that vacancy in the matter of a member also within 30 days, the word has been omitted by way of amendment in the year 1994. This would demonstrate, as is the stand of the petitioner, if the post of *Sarpanch* is reserved for a particular category and the post of member for the same category is either vacant or there is no other member belonging to that category, still the process for filling up the vacancy will have to be undertaken without making an attempt to fill in the post of member of that very category if at all there is no other member belonging to that category. It would certainly be advisable in such peculiar state of affairs, to first undertake the process, make an attempt to fill up the vacant post of a member belonging to a specific category when the post of *Sarpanch* is reserved for the very same category according to the roster and then to proceed to fill up the vacancy of *Sarpanch*. In our considered view, it would be appropriate to leave that issue open for being considered and decided in an appropriate proceeding.

11. For the time being, on the basis of the statement being made by the learned AGP that the post of *Sarpanch* sought to be elected and filled today, would only be through a Scheduled Tribe candidate, in our considered view, the process can be legitimately, allowed to be gone ahead, with whatever may be the consequence. It would always be open for the petitioner in accordance with the happenings that would take place to resort to an appropriate remedy, as is available to him in law.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL, J.)

jhs/