



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

WRIT PETITION NO.5246 OF 2022

Avinash Bhaskar Ingle, aged about 44 years,
Occ. Advocate, r/o Sanjevani colony,
Khamgaon, Tq. Khamgaon, Dist. Buldhana.

... PETITIONER

VERSUS

1. Maharashtra State Election Commission,
through its Secretary, New Administrative
Building, Madam Cama Road, Hutatma
Rajguru Chowk, Mumbai.
2. Returning Officer and District Collector,
Buldhana.
3. Tahsildar, Malkapur-Khamgaon, District
Buldhana.
4. State of Maharashtra, Rural Development
Department, through its Secretary,
Bandhkam Bhawan, 25 Marjaban Path,
Mumbai.
5. Gram Panchayat, Khamgaon Gramin,
Khamgaon, through its Secretary.

Amended as per order Court's order dated
29.08.2022

6. Harsha Ajay Date, aged Major years, Occ.
R/o Sanjeevani Colony, Khamgaon Gramin,
Khamgaon, Tq. Khamgaon, Dist. Buldhana.

Amended as per order Court's order dated
26.04.2023

... RESPONDENTS

Dr. Renuka Sirpurkar, Advocate for the petitioner.
Shri A.M. Kukday, Advocate for respondent no.1.
Shri M.K. Pathan, Assistant Government Pleader for respondent nos.
2 to 4.
Shri U.J. Deshpande, Advocate for respondent no. 6.

CORAM : SMT. M.S. JAWALKAR AND PRAVIN S. PATIL, JJ.

CLOSED ON : 24.06.2025.

PRONOUNCED ON : 11.07.2025.

JUDGMENT : (Per : Pravin S. Patil, J.)

Heard. **RULE.** Rule is made returnable forthwith.

2. The matter is taken up for final disposal by consent of the parties.

3. By this petition, the petitioner raised a grievance that in the Gram Panchayat, Khamgaon (Rural) though as per the directions of the Hon'ble Supreme Court in pending Special Leave to Appeal No. 19756 of 2021, the elections were held without any reservation from OBC category, however the respondents reserved the post of Sarpanch for OBC category, which according to the petitioner is contrary to the directions issued by the Hon'ble Supreme Court.

4. According to the petitioner, if no candidate from OBC

category came to be elected, the reservation for the post of Sarpanch from OBC category, is contrary to the directions of the Hon'ble Supreme Court, and accordingly, prayed for the declaration that election of respondent no.6 be held as illegal. It is further prayed that the communication dated 19.08.2022 issued by respondent no.2 Collector directing respondent no.3 Tahsildar to hold election of Sarpanch of Gram Panchayat Khamgaon (Rural) as per the reservation decided in the meeting dated 29.01.2021 for the category of Backward Class of citizen (Female), also be held illegal.

5. The facts giving rise to the present petition are briefly that the State of Maharashtra proposed the amendment to the provisions of the Maharashtra Village Panchayat Act with an object of conferring the powers on the Government to revise the boundaries of local areas on account of expansion of population and economic growth in different local areas vide Maharashtra Act No. XXII of 2002, and particularly, the amendments to Sections 9 and 12 of the Maharashtra Village Panchayat Act, 1959 (hereinafter referred to as 'the Act, 1959'). The said amendment is a subject matter of challenge before the Hon'ble Supreme Court in pending Special Leave to Appeal no.19756 of 2021 (for short 'SLP').

6. In the said pending SLP, the Hon'ble Supreme Court on 04.05.2022, by considering the fact that due to pendency of petition elections of local bodies are withheld, directed respondent no.1 to proceed with the elections program of local bodies from the stage as on 10.03.2022, on the basis of delimitation done prior to coming into force of the Amendment Act(s) with effect from 11.03.2022. Furthermore, specific directions were given that while conducting the election though reservation for Scheduled Caste('SC') and Scheduled Tribe ('ST') as per the mandate of Constitution of India and statutory provisions, should be followed, but in respect of Other Backward Classes (OBC), it is clarified that till the compliance of triple test as predicated by the Hon'ble Supreme Court in the case of ***Vikas Kishanrao Gawali vs. State of Maharashtra (2021) 6 SCC 73***, no reservation should be provided in the local bodies.

7. In terms of directions of the Hon'ble Supreme Court, respondent no.1 had issued reservation lottery program for the general elections of Gram Panchayat on 22.07.2022. Respondent no.1 specifically stated that no posts would be reserved for OBC as per the directions of the Hon'ble Supreme Court. Along with the same, respondent no.1 further issued the Gram Panchayat General Elections (Number of Members, Ward Composition and Reservation) Amendment

Order, 2022.

8. In view of the election program declared by respondent no.1, elections of Gram Panchayat Khamgaon (Rural) was held. The said Gram Panchayat consisting 7 members, out of which one post of Gram Panchayat Member was reserved for SC category and remaining 6 posts for General category. In said election program, the present petitioner came to be elected from the Scheduled Caste category and remaining 6 members belonging to various Caste came to be elected from General Category.

9. It is submitted that respondent no.2 by communication dated 19.08.2022 address to the Tahsildar informed that as per Section 30 of the Act 1959, read with Rule 2-A(4) and 2-A(4-A) of the Bombay Village Panchayats (Sarpanch and Upsarpanch) Election Rules 1964 (hereinafter referred to as 'the Rules 1964'), the election for the post of Sarpanch will be held as per the reservation, which was already declared in the meeting dated 29.01.2021. It is further clarified that post of Sarpanch of Gram Panchayat, Khamgaon (Rural) shall be reserved from OBC (Female) category.

10. The present petitioner, who was elected from the SC category raised objection to the Communication issued by the Collector

by stating that as no candidate being elected from the OBC category, reservation from OBC (Female), for the post of Sarpanch is illegal and requested that the post of Sarpanch should be reserved by applying the rotation Rules to the SC category.

11. Respondent no.2 Collector replied to the objections of the petitioner by stating that as per Section 30(4) and 30(5) of the Act, 1959 and Rule 2-A(4) and 2-A(4-A) of the Rule 1964, there is a specific procedure incorporated as to how the posts of Sarpanch is to be filled in, if the candidate from a particular category is not available from the elected candidates. It is further made clear to the petitioner that the rules framed above will take care as to how the post is to be filled in when candidate from specific category is not elected from amongst the elected candidate. As such, by recording cogent reasons, the objection raised by the petitioner, was rejected.

12. Subsequently, the elections for the post of Sarpanch and Upsarpanch were held on 30.08.2022 and in the said election, present respondent no.6 came to be elected against the post of Sarpanch from OBC category (Female) for which the post was reserved.

13. In the background of above said factual position, the contention of the petitioner that entire action of the respondents to

conduct the election of Sarpanch of Gram Panchayat Khamgaon(Rural) from OBC (Women) is contrary to the order and directions issued by the Hon'ble Supreme Court of India, and therefore, whole procedure is required to be quashed and set aside.

14. In the present matter, the respondents filed their reply by stating that whole submission of the petitioner is misconceived because reserving the seat for the post of Sarpanch as per the rotation Policy has nothing to do with reservation of seats for general elections. If the seat of Sarpanch is reserved for any particular category i.e. SC, ST or OBC then even if there is no reservation of ward/seat for that particular category from which the candidate elected, can put his candidature for the reserved seat of Sarpanch. This process is permissible under the provisions of the Act, 1959 and Rule 1964. As such, according to the respondents, the petition being devoid of merits, is liable to be dismissed.

15. We have heard the respective Counsel appearing for the parties at length and perused the record.

16. In the light of the submission made by the respective parties, the controversy involved in the present petition is whether the post of Sarpanch of Gram Panchayat Khamgaon (Rural) can be filled in

from OBC category (Female)? According to the petitioner, as per the directions of the Hon'ble Supreme Court, general elections were held without reservation from OBC category, hence, reservation for the post of Sarpanch from OBC category (Female), is illegal, whereas the submission of the respondent is that the reservation for the post of Sarpanch is governed by Section 30(4), (5) of the Act, 1959 and 2A(4) and (4A) of the Rules 1964. Hence, considering the specific provisions of the Act and Rules, which are not under challenge before the Hon'ble Supreme Court, are implemented in the matter. Hence, there is no violation of the directions of Hon'ble Supreme Court.

17. In the light of the rival submissions, it will be justified to first consider the Section 30(4) and (5) of the Maharashtra Village Panchayat Act. The same is reproduce as under :

“30. Election of Sarpanch.-

(4) There shall be reservation in the offices of the Sarpanchas in the Panchayats for the members belonging to the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of citizens and women as follows :-

(a) the number of offices of Sarpanchas to be reserved for the Scheduled Castes and the Scheduled Tribes in the panchayats shall bear, as nearly as may be, the same proportion to the total number of such offices in the panchayats as the population of the Scheduled Castes in the State or of

the Scheduled Tribes in the State excluding the population of the Scheduled Tribes in a panchayat comprising entirely the Scheduled Areas bears to the total population of the State :

Provided that, the office of the Sarpanch of a Panchayat comprising entirely the Scheduled Areas shall be reserved only for the persons belonging to the Scheduled Tribes :

Provided further that, the office of the Sarpanch of a Panchayat falling only partially in the Scheduled Areas shall be reserved for the persons belonging to the Scheduled Tribes in accordance with the provisions of clause (a) :

Provided also that, one-half of the total number of offices so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes ;

(b) the offices of Sarpanchas to be reserved for persons belonging to the category of Backward Class of citizens shall be 27 per cent, of the total number of such offices in the panchayats :

Provided that, one-half of the offices, so reserved shall be reserved for women belonging to the category of Backward Class of citizens.

(c) one-half of total number of offices of Sarpanchas (including the number of offices reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) in the panchayats shall be reserved for women.

(5) The number of offices reserves under this section shall be allotted by rotation to different panchayats in the prescribed manner.”

18. So also Rule 2-A,(4), (4-A) of the Rules 1964 being relevant in the matter, the same are reproduced as under :

“2-A. Reservation of seats for the election of Sarpanch :..

(4) The Collector shall allot the offices of Sarpanchas in the District to be reserved for women (including the women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) by drawing lots according to the instructions given by the State Government from time to time :

Provided that, the lots in respect of the women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens shall be drawn only among the offices of Sarpanchas reserved for such Castes, Tribes or as the case may be, for the category of Backward Class of citizens:

Provided further that, while rotating such offices in the subsequent elections the Panchayats where such offices were already reserved in earlier elections for women (including the women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) shall be excluded until in all such Panchayats reservation of offices is given, by rotation.

...

(4-A) Notwithstanding anything contained in these rules, if the office of the Sarpanch is reserved for the Scheduled Castes, or the Scheduled Tribes or, as the case may be, the category of Backward Class of citizens (including Vimukta Jatis and Nomadic Tribes), and no elected member belonging to such Cases, Tribes or as the case may be, the category of Backward Class of citizens is available, then such office for the same

tenure shall be allotted by draw of lots to any of the categories for which the office of the Sarpanch may be reserved under Section 30 of the Act :

Provided that, in case where there is only one elected member belonging to a particular category for which such office has been reserved and has, filed the nomination form, then such office shall be declared for such member and if there are one or more elected members of such category and none of them have filed the nomination form, then such office for the same tenure shall be allotted by draw of lots to any of the categories for which the office of the Sarpanch may be reserved under Section 30 of the Act :

Provided further that, in a case where the office of the Sarpanch is reserved for women belonging to the Scheduled castes or the Scheduled Tribes or, as the case may be, the category of Backward Class of citizens (including Vimukta Jatis and Nomadic tribes), and no elected women member belonging to such Castes or Tribes or as the case may be, the category of Backward Class of citizens, is available then the office of the Sarpanch, for the same tenure, shall be treated as : (i) if originally reserved for women belonging to the Scheduled Castes, then for the Scheduled Castes, (ii) if originally reserved for women belonging to the Scheduled Tribes, then for the Scheduled Tribes and, (iii) if originally reserved for women belonging to the Backward Class of citizens, then for the Backward Class of citizens.”

19. Bare perusal of the above said provisions made it clear that for the post of Sarpanch, there shall be reservation in the Panchayat for the members belonging to SC, ST and the category of Backward Classes of citizen and Women. It is also clear that said reservation is to be

followed as per the procedure incorporated therein and number of offices reserved under Section 30 required to be allotted by rotation to different Panchayats in prescribed manner.

20. Furthermore, Rules 2-A, 2-A(4) and 2-A(4-A) of the Rules, 1964 made it clear that Collector shall allot the offices of Sarpanch in the district for Women by drawing lots according to the instructions given by the State Government from time to time. It is also clear from the said Rules, that if the office of Sarpanch is reserved for particular category and no elected member belonging to such category is available, then such office for the same tenure shall be allotted by draw of lots to any of the categories for which the office of the Sarpanch may reserved under Section 30 of the Act, 1959.

21. In the light of abovesaid provisions, decision of reservation for the post of Sarpanch throughout the area is required to be completed before conducting the General Elections. In the present case, the reservations in the district Buldhana was done by drawing lots in the meeting dated 29.01.2021. As such, the post of Sarpanch of Gram Panchayat, Khamgaon (Rural) was already reserved for OBC category (Female).

22. It is further pertinent to note that the Hon'ble Supreme

Court in the case of *Kasambhai F. Ghanchi vs. Chandubhai D. Rajput and ors. (1998) 1 SCC 285* had observed in paragraph 16 :

16. The Act and the Rules provide for reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and women. No reservation or classification is made ward-wise. To put it differently all members of the Scheduled Castes, for example, will be regarded as belonging to one class irrespective of the fact whether they had been elected to a reserved seat or to a general seat. Similar is the position with regard to the Backward Classes, Scheduled Tribes and women. The law does not contemplate or provide for any further sub-classification of the type which has been suggested by the respondents. Just as all members of the municipality, irrespective of the fact whether they had been elected to a reserved seat or not, are eligible for election to the post of the President when it falls in the general category, similarly when as per the roster the President is to be one who, say, belongs to the category of Scheduled Caste then all members of the municipality who are Scheduled Caste, irrespective of the seat to which they had been elected, would be eligible to stand for election. Neither the Act nor the Rules stipulate that it is only such a member who has been elected to the reserved seat who would be eligible to stand for election to the post of President when it is the turn of that category of candidate to become the President of the municipality.”

23. As such, it is settled position of law that candidate, who belongs to any particular category and get elected from general category is always eligible to contest the election for the post of

Sarpanch, even though he had been elected as a member of Gram Panchayat from General category.

24. In view of above, we are of the considered opinion that there is no violation of the directions issued by the Hon'ble Supreme Court dated 04.05.2022 issued in SLP No.19756 of 2021. It is clear from the record that, no posts was reserved in General Elections from OBC category. Accordingly by adhering the said directions, election of Gram Panchayat Khamgaon (Rural) was held. The post of Sarpanch being already reserved for OBC category (Female) was required to be filled in as per the mandate of Section 30(4) and 30(5) of the Act, 1959 and the Rules 1964. Accordingly, as per provisions of law, the election of Gram Panchayat are held in the matter.

25. Admittedly, respondent no.6 came to be elected from General category and belongs to caste Kunbi, which is recognized as Other Backward Class category and she possessed the Caste Certificate issued by the Scrutiny Committee. Hence respondent no. 6 was rightly elected for the post of Sarpanch, by applying Rule 2A(4) and (4A) of the Rules, 1964.

26. Hence, in our opinion, reservation of seat of Sarpanch done by rotation Policy governed by Section 30(4) and 30(5) of the

Maharashtra Village Panchayats Act, 1959 read with Rules 2-A, 2-A(4) and 2-A(4-A) of the Rules 1964 is valid. In the circumstances, we are of the opinion that there is no violation of direction issued by the Hon'ble Supreme Court of India as alleged by the petitioner. Hence, for the aforesaid reasons, we find no merit in the submission of the petitioner, accordingly the petition is dismissed. No order as to costs.

(PRAVIN S. PATIL, J.)

(SMT. M.S. JAWALKAR, J.)

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