



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

WRIT PETITION NO. 371 OF 2025

(Sandipkumar s/o Bhajansingh Bhatia ..vs.. State of Maharashtra, through its Secretary, Mumbai and
others)

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

Court's or Judge's orders

Mr. A.A. Naik, Senior Counsel a/b. Mr. Y.N. Sambre, Counsel for the petitioner,
Mr. P.P. Pendke, A.G.P. for respondent Nos.1 and 2,

**CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.**

DATE : 22-01-2025

It is contended that inspite of the judgment of the Hon'ble Apex Court in ***Vikas Kishanrao Gawali v. State of Maharashtra and Others, (2021) 6 SCC 73*** wherein the provisions of Section 12(2)(c) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 were read down in the following manner :

"30. Accordingly, these writ petitions must partly succeed. The challenge to the validity of Section 12(2) (c) of the 1961 Act is negatived. Instead, that provision is being read down to mean that reservation in favour of OBCs in the local bodies concerned can be notified to the extent that it does not exceed aggregate 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together. In other words, the expression "shall be" preceding 27 per cent occurring in Section 12(2)(c), be construed as "may be" including to mean that reservation for OBCs may be up to 27 per cent but subject to the outer limit of 50 per cent aggregate in favour of SCs/STs/OBCs taken together, as enunciated

by the Constitution Bench of this Court. However, the impugned Notifications/Orders dated 27.7.2018 and 14.2.2020 and all other similar notifications issued by the State Election Commission during the pendency of these writ petitions mentioning that the elections to the local bodies concerned were being held subject to the outcome of these writ petitions, are quashed and set aside to the extent of providing reservation of seats in the local bodies concerned for OBCs. As a consequence, follow-up steps taken on the basis of such notifications including the declaration of results of the candidates against the reserved OBC seats in the local bodies concerned, are declared non est in law; and the seats are deemed to have been vacated forthwith prospectively by the candidate(s) concerned in terms of this judgment. The State Election Commission shall take immediate steps to announce elections in respect of such vacated seats, of the local bodies concerned, not later than two weeks from today, to be filled by General/Open category candidates for the remainder term of the Panchayat/Samitis. Ordered accordingly.”

the Collector, Gondia has notified election programme on 10-1-2025 indicating holding the election to the post of President, Zilla Parishad, Gondia to be reserved for OBC category, which is contended to be contrary to the above judgment of the Hon’ble Apex Court in ***Vikas Kishanrao Gawali*** (supra).

2. It is pointed out that the similar reservation made by the Collector, Ahmednagar, for the Chairperson of Panachayat Samiti, Shrirampur has also been questioned in Special Leave

Petition No.20160/2021, in which an order has been passed on 13-12-2021 wherein while issuing notice, the incumbent Chairperson elected as an OBC candidate has been directed not to participate in taking any policy decision in connection with the Panchayat Samiti (Page No.60).

3. It is also brought to our notice, that the earlier election programme dated 26-11-2021 (Page No.136), which reserved all posts of Councilors, came to be modified by the notification dated 17-12-2021 (Page No.141) deleting the reservation for OBC and declaring the post to be belonging to the Open category (Page No.43). Similar position was done for the Panchayat Samiti by the communication dated 10-1-2025 issued by the Collector, Gondia (Page Nos.163 to 166). Similarly, by the notification dated 04-12-2019 the post of President, Gondia was stated to be in the Open category (Page No.154).

4. It is now, therefore, contended that the action of the respondent No.2/Collector, in again reserving the post of President, Zilla Parishad, Gondia for OBC category, is clearly contrary to the mandate of the Hon'ble Apex Court in **Vikas**

Kishanrao Gawali (supra), on account of which it cannot sustained.

5. Issue notice for final disposal, returnable on 30-1-2025

6. Mr. P.P. Pendke, learned Assistant Government Pleader waives service of notice for respondent Nos.1 and 2.

7. Mr. Kukday, learned Counsel waives service of notice for respondent No.3.

8. The petitioner to serve the respondent No.4 by all modes permissible in law.

9. Since the election is to be held on 24-1-2025, we are not inclined to grant any stay to the election. However, we make it clear that the election of the President of the Zilla Parishad, Gondia shall be subject to the result of the petition, which is admitted by the respondent Nos.1 to 3 to be worked out finally on 30-1-2025. In case time is sought, liberty is granted to the petitioner to make a request for a direction in terms of what has been directed by the Hon'ble Apex Court in

its order dated 13-12-2021 in Special Leave Petition
No.20160/2021.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

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