



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

WRIT PETITION NO. 3254 OF 2024

Vilas Ananda Gawai,
Aged about 55 yrs, Occ. Cultivator,
R/o Sirso, Tq. Murtizapur,
Dist. Akola.

....PETITIONERS

...V E R S U S...

1. Additional Commissioner,
Amravati Division, Amravati

2. The Collector, Akola District,
Akola

3. Tahsildar/Presiding Officer
cum Returning Officer, Tahsil Office,
Murtizapur, Murtizapur, Dist. Akola

4. Sau. Purnima Santosh Khandare,
Aged Major, R/o Sirso,
Tq. Murtizapur, Dist. Akola

5. Shri Pravin Ravindra Warokar,
Aged Major, r/o Sirso,
Tq. Murtizapur, Dist. Akola

6. Shri Akshay Kailash Lakde,
Aged Major, R/o Sirso,
Tq. Murtizapur, Dist. Akola

7. The Secretary, Gram Panchayat,
Sirso, Tq. Murtizapur, Dist. Akola

8. The Extension Officer
(Vistar Adhikari)
Panchayat Samiti, Murtizapur,
Dist. Akola

...RESPONDENTS

Mr. Anup Jugalkishore Gilda, Advocate for petitioner.
Mr. S.B. Bissa, AGP for respondent Nos. 1 to 3/State.
Mr Raheel Anwar J.Mirza, Advocate for respondent No. 4.
Mr. V.M. Vishwapure, Advocate for respondent No. 5.
Mr. N.M. Kolhe, Advocate for respondent No. 8.

CORAM:- M.W. CHANDWANI, J.

RESERVED FOR JUDGMENT ON **09.01.2026**
JUDGMENT PRONOUNCED ON **23.01.2026**

ORAL JUDGMENT:

Heard learned counsels for the respective parties.

2. This petition challenges the order dated 20.5.2024, passed by respondent No. 1 – Additional Commissioner, Amravati, in Proceeding No. 17/Section 33(5), under Section 33(5) of the Maharashtra Village Panchayat Act, 1959 (in short, “the Act of 1959”), thereby setting aside the order passed by respondent No.2 – Collector, Akola canceling the election dated 16.10.2023, held for the posts of Sarpanch and Upsarpanch of Gram Panchayat, Sirso.

3. The petitioner and respondent Nos. 4 to 6 were elected as member of Grampanchayat of Sirso in the election held in January 2021. By order dated 15.2.2022, passed by respondent No. 2 -

Collector, Akola, respondent No. 5 was disqualified to be a member of Gram Panchayat, on the ground that he has encroached upon government property. In appeal before the Divisional Commissioner, Amravati, by order dated 10.5.2022, the disqualification was set aside. The order dated 10.5.2022 was challenged before this Court in Writ Petition No. 3245/2022, wherein the order of Divisional Commissioner was set aside and directed for fresh decision vide order dated 6.10.2023.

4. Pending the said case before the Divisional Commissioner, on 16.10.2023, the election for the post of Sarpanch and Upsarpanch of Grampanchayat Sirso were scheduled. The petitioner as well as respondent No. 4 addressed a communication letter dated 12.10.2023 to the Presiding Officer of the election requesting not to allow respondent No. 5 to vote in the election, since, he was a disqualified member. Nonetheless, respondent No. 5 participated in the election. Respondent No. 4 and respondent No. 6 were elected as Sarpanch and Upsarpanch, respectively, in the said election.

5. Whereas, the unsuccessful petitioner challenged the said election under Section 33(5) of the Act of 1959 on the ground that

the respondent No. 5 should not have been allowed to vote. During pendency of the said challenge, respondent No. 1- Additional Commissioner dismissed the appeal of respondent No. 5 and confirmed his disqualification on 19.1.2024.

6. On the other hand, respondent No. 2-Collector allowed the application of the petitioner and set aside the election dated 16.10.2023, by order dated 26.2.2024. Thereafter, respondent No. 4 – elected Sarpanch challenged the order dated 26.2.2024 by filing appeal before respondent No.1 – Additional Commissioner. Pending the appeal before respondent No.1 Additional Commissioner, respondent No. 2 – Collector vide order dated 13.5.2024 directed fresh election, which were thereafter, scheduled to be held on 28.5.2024 and notices for election were issued. Pending the election, respondent No. 1 – Additional Commissioner by order dated 20.5.2024 allowed the appeal filed by respondent No. 4 and thereby the elections held on 16.10.2023 were held valid and order of respondent No. 2 - Collector of setting aside the elections dated 16.10.2023 was set aside. This order passed by respondent No. 1 - Additional Commissioner is under challenge in the present petition.

7. It is to be noted here that this Court by interim order dated 24.5.2024 did not stay the election scheduled on 24.5.2024 and allowed the election process to go on, since, the election programme was already declared. However, this Court observed that the election dated 28.5.2024 would be subject to final outcome of this petition. Accordingly, the elections were conducted and the petitioner was elected as Sarpanch.

8. To summarize, respondent No. 5 a disqualified member participated in election dated 16.10.2023, therefore, respondent No. 2 – Collector declared the said election illegal. Whereas, by the impugned order, respondent No.1 – Additional Commissioner opined that on the day of election, the stay to disqualification of respondent No. 5 was operating, therefore, he was entitled to vote in the election dated 16.10.2025 and held the said election valid.

9. Perusal of record reveals that during first round of litigation by respondent No. 5, before respondent No. 2-Collector, the stay to the disqualification was operating. After dismissal of appeal of the respondent No. 5, the writ petition No. 3245/2002 was filed. By which, this Court remanded the matter to respondent No. 1 for fresh consideration. The contention of respondent No. 4 is that once

the matter is remanded then all interim orders in the proceeding gets revived and it will be related back to the position as it was before the passing of order by respondent No.1 - Additional Commissioner. Rather, the respondent No. 1 – Additional Commissioner, by impugned order, held that respondent No. 5 was eligible to vote in wake of interim order as it was in force on the day of election held on 16.10.2023.

10. Taking this ground, it has been canvased by respondent No. 4 who won the election dated 16.10.2023 as Sarpanch, that the order of respondent No.1 – Additional Commissioner setting aside the order of respondent No. 2-Collector of cancelling elections dated 16.10.2023 is correct.

11. To buttress his submission, he has placed reliance on the decision of the Hon'ble Supreme Court in case of ***Vareed Jacob v. Sosamma Geevarghese and Others***, reported in ***AIR 2004 SC 3992***, wherein in paragraph 20, it has been held as under:

“20. In the case of Nandipati Rami Reddi v Nandipati Padma Reddy, it has been held by the Division Bench of the Andhra Pradesh High Court that when the suit is restored, all interlocutory orders and their operation during the period between dismissal of the suit for default and restoration shall stand revived. That once the

dismissal is set aside, the plaintiff must be restored to the position in which he was situated, when the Court dismissed the suit for default. Therefore, it follows that interlocutory orders which have been passed before the dismissal would stand revived along with the suit when the dismissal is set aside and the suit is restored unless the Court expressly or by implication excludes the operation of interlocutory orders passed during the period between dismissal of the suit and the restoration.”

In view of above, it is settled now that interim orders which were in force during pendency of the appeal/proceeding will stand revived if the order passed in the appeal has been set aside and appeal /proceeding is remanded back to the Court for fresh decision, unless the court otherwise directs.

12. In Writ Petition 3245/2022, the order passed by the appellate authority was set aside and matter was remanded back to respondent No.1 – Additional Commissioner for fresh decision. There was no direction in the said writ petition that the operation of interlocutory order passed by respondent No.1-Additional Commissioner in the said appeal will not remain in force. Thus, on the day of remanding the matter by this Court in Writ Petition No. 3245/2022 i.e. on 6.10.2023, the order staying disqualification of respondent No. 5 was revived and he was entitled to vote in the election dated 16.10.2023 for the post of Sarpanch and Upsarpanch.

13. Now, question here is, once respondent No. 4 have already raised objection to the entitlement of respondent No. 5 to vote in the said election, before the Presiding Officer at the time of election held on 16.10.2023, can he now make a grievance that respondent No. 5 was entitled to vote in election dated 16.10.2023. It appears to me that, now, respondent No. 4 cannot make a grievance that respondent No. 5 was back then entitled for vote in election dated 16.10.2023, at this subsequent stage, more particularly, after she lost the subsequent election dated 28.5.2024.

14. The conduct of respondent No. 4 indicate that she was elected as Sarpanch in that election dated 16.10.2023 and after having been defeated in the subsequent election dated 28.5.2024 is now objecting the disqualification of respondent No. 5 in the previous election dated 16.10.2023.

15. The principle of approbate and reprobate is a well recognized principle in equity. A person is not permitted to take advantage of the situation so long as it suits his interest and thereafter, turn around and make a grievance about the same at a subsequent stage when the consequences become unfavourable. The conduct of such a person estops him/her from making a grievance in

respect of any action taken on such grievance.

16. A reference to that effect can be made to the decision of this Court in case of ***Rukhmina Rajesh Dange Vs. Kailash Natthuji Pawar and others (Writ Petition No. 2047/2019)*** and the decision of Hon'ble Supreme Court in case of ***Suzuki Parasrampuriah Suitings Private Limited Vs. Official Liquidator of Mahendra Petrochemicals Limited (in liquidation) and others***, reported in ***(2018) 10 SCC 707***.

17. This aspect of estoppel was not considered by respondent No. 2 – Collector while directing a fresh election to be held on 28.5.2024.

18. In view of above, the order of respondent No.1 - Additional Commissioner does not stand and is quashed. The order passed by respondent No. 2 - Collector is restored. The petition allowed in the aforesaid terms.

(M.W. CHANDWANI, J.)

Belkhede PS