

(2018) 03 BOM CK 0190

In the Bombay High Court

Case No : Writ Petition No. 14951, 15309, 15310, 15312, 15314, 15317, 15318, 15319, 15369, 15371, 15384, 15385, 15386, 15387, 15388, 15389 Of 2017, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 214, 237, 258, 274, 275, 276, 277, 278, 279, 304, 40

Anuja And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 06-03-2018

Acts Referred:

Maharashtra Village Panchayat Act, 1958 — Section 3(17), 3(11)(AAA), 10, 10(1)(A), 11, 30(A)(1)(A), 28(1), 33, 33(2), 33(3), 33(4), 35, 145, 146
Maharashtra Village Panchayat (Sarpanch And Upa-Sarpanch) Election Rules, 1965 — Rule 10
Constitution Of India, 1950 — Article 243(C)(4)

Citation : (2018) 03 BOM CK 0190

Hon'ble Judges : R.M. Borde, J;K.K. Sonawane, J

Bench : Division Bench

Advocate : A.K. Gore, N.P. Bangar, S.K. Chavan, M.D. Gitte, N.P. Bangar, S.K. Naikwade, N.V. Gaware, S.P. Salgare, R.P. Dhasek, Avinash D. Aghav, D.J. Choudhary, Vijay A. Dhakne, Laxman M. Kulkarni, Mahesh S. Bhosale, Mahesh P. Kale, S.J. Salunke, A.B. Girase, S.B. Yawalkar, S.S. Dande, S.S. Thombre

Final Decision : Allowed

Judgement

R.M. Borde, J

1. Writ Petitions No.15369/2017, 15371/2017, 14951/2017, 237/2018 and 828/2018 are not on board, and are taken on board at the request of the

learned counsel for the petitioners as according to them an identical issue is involved.

2. Heard.

3. Rule. With the consent of the parties petitions are taken-up for final disposal at admission stage.

4. The petitioner, in Writ Petition No.209/2018 is praying for declaration that she is entitled to cast her vote in the capacity of a member in addition to

her right to exercise casting vote in the event of equality of votes in the meeting for election of Upa- sarpanch of Bansarola, Tq. Kaij, Dist. Beed. It is

also prayed by the petitioner to declare the communication dated 1.11.2017 issued by the Department of Rural Development, Mumbai to be illegal and

violative of provisions of Maharashtra Village Panchayat Act, 1958 as amended by Ordinance No.18 of 2017.

5. The petitioner is a directly elected Sarpanch of village Panchayat Bansarola. She is elected in the direct elections of the village Panchayat held in

December, 2017. The amended provisions of the Maharashtra Village Panchayat Act provide for election of Sarpanch by electors in the village

directly; whereas the election of members take place simultaneously in observance of the existing provisions of the Act. The election to Upa-sarpanch

of the village Panchayat was proposed to be held on 2.1.2018 in the first meeting of the village panchayat. The petitioner contends that the State of

Maharashtra through the Rural Development Department has issued a circular to all the revenue authorities in the State, who are authorized to

function as returning/election officers for the election of Upa-sarpanch, instructing them that the Sarpanch is not entitled to vote in the capacity of a

member at the election of Upa-sarpanch and is entitled to exercise casting of vote in the event of equality of votes. Petitioner, being aggrieved by the

communication, has approached this Court, seeking intervention with a view to facilitate the petitioner, who is directly elected Sarpanch of the village

Panchayat to cast her vote at the elections of Upa- sarpanch in her capacity as a member of the village panchayat.

6. The vacation Court, while entertaining the petition on 1.1.2018 permitted the petitioner in the Writ Petition as well as all the similarly situate

petitioners to cast vote at the elections of Upa-sarpanch in their capacity as member. It has been further directed that the results of the election of

Upa-sarpanch shall be subject to the decision of the writ petitions in the event Upa- sarpanch gets elected by a margin of only one vote. The interim

relief granted by the vacation Judge has been continued from time to time.

7. In sub-section 11 AAA of section 3 of the Act, a member has been defined as ""a member duly elected as Member of Panchayat under section 11

and include the directly elected Sarpanch of Panchayat under section 30A-1-A. "" Clause 17 of section 3 of the Act defines Sarpanch and Upa-

sarpanch to mean a Sarpanch and Upa-sarpanch elected under section 30A-1-A.

8. Section 33 of the Act relates to elections of Upa-sarpanch. It is provided in subsection 1 (after the enforcement of the amendment in the Act of

2017) that on the establishment of the Panchayat, for the first time, procedure under this Act or its reconstitution or establishment under sections 145

and 146, or on the expiry of the term of a panchayat, a meeting shall be called on the date fixed under sub section (1) of Section 28 by the (Collector),

for the election of the Sarpanch and Upa- sarpanch. In the case where the offices of both the Sarpanch and Upa-sarpanch become vacant

simultaneously, a meeting shall be called on the date fixed by the (Collector), for the election of the Sarpanch and Upa-sarpanch. Subsection 1(A) has

been added by virtue of Amendment incorporated in 2017 which is reproduced below:-

(1A) The election of the Sarpanch shall be held in accordance with the provisions of section 30A-1A of this Act.

Sub-section 2 of Section 33 has also been amended and after the amendment, subsection 2 reads thus:

(2) The meeting called under subsection (1) shall be presided over by the Sarpanch and if the post of Sarpanch is vacant such officer as the

(Collector) may by order appoint in this behalf. The officer aforesaid shall, when presiding over such meeting, have the powers and follow the

procedure prescribed, but shall not have the right to vote.

Sub-section 3 of Section 33 reads, ""no business other than the election of the Sarpanch and Upa-Sarpanch shall be transacted at such meeting"".

Subsection 4 of Section 33 (as inserted by virtue of amendment) reads:-

(4) If, in the election of Upa-sarpanch there is an equality of votes, the Sarpanch shall have right to exercise casting vote, and if the post of Sarpanch

is vacant, the result of elections shall be decided by lot drawn in the presence of the officer presiding in such manner as he may determine"".

Subsection 5:-

(5) In the event of a dispute arising as to the validity of election of a ... Upasarpanch under subsection (1) 6[Sarpanch or officer presiding over such

meeting or any member 3 * * * * may, within fifteen days from the date of the

election, refer the dispute to the Collector for decision. An appeal against the decision of the Collector may, within fifteen days from the date of such decision, be filed before the Commissioner, whose decision shall be final. The Collector or Commissioner shall give his decision as far as possible within sixty days from the receipt of the reference, or as the case may be, appeal.]

9. It is the contention of the petitioner that since the Sarpanch has been bestowed with the casting votes, that itself does not dis-entitle him from exercising his right to cast vote at the election of Upa-sarpanch. It is contended that the Sarpanch is a member of the village Panchayat by virtue of section 3(11- AAA) of the Act. It is also contended that the constitutional right conferred upon Sarpanch or Chairman of the village Panchayat to cast vote at the meeting of Panchayat cannot be taken away.

10. It is the contention of the respondents that since the Chairman presides over the meeting convened for election of Upa-sarpanch, he is not expected to exercise his right to vote as a member. It is further contended that a Sarpanch has been vested with a right of casting vote and he is entitled to exercise such right in the event of equality of the votes. It is further contended that Sarpanch who functions as a Chairman while conducting meeting for election to Upa-sarpanch is expected to be a non-partisan member and as such, is entitled to exercise right to vote only in case of equality of votes. It is the contention of the respondents that the right to vote exercisable by Sarpanch is not taken away by virtue of the amendment incorporated in the Act but, Sarpanch has been conferred with the right of casting vote. It is further contended that Section 10 of the Act prescribes Constitution of Panchayat and by virtue of the amendment and incorporation of subsection 1-A, it is prescribed that Sarpanch elected under section 30A-1-A is an ex-officio member. A directly elected Sarpanch shall be an ex-officio member of the Panchayat. It is the contention of the respondents that since the Sarpanch is a ex-officio member, he shall not have a right to cast his regular vote.

11. The procedure for elections of Upa-sarpanch has been laid down in section 33 of the Act. By virtue of the amended section 2, it has been provided that the meeting called under subsection 1 shall be presided over by the Sarpanch and if the post of Sarpanch is vacant, by such an officer as

the Collector may appoint in that behalf. The prohibition in respect of exercise of right to vote is only operative against an officer appointed by the

Collector to preside over the meeting. The prohibition contained in subsection 2 in respect of exercise of right to vote has been restricted to the

officers appointed by the Collector and it does not specifically lay down that such prohibition operates as against the elected Sarpanch. Merely

because the Sarpanch has been vested with casting vote, it does not dis-entitle him from exercising his right to vote at the meeting convened for

election of Upa-sarpanch. There is no such prohibition incorporated in statute and as such, cannot be read to curtail right of directly elected Sarpanch.

12. Rule 10 of the Maharashtra Village Panchayat (Sarpanch and Upa-sarpanch) Election Rules, 1965 provides for procedure for election which

reads thus:-

Rule 10 - Procedure for Election -

(1) If only candidate has been duly nominated for the office of the Sarpanch or Upa-sarpanch, he shall be declared to have been duly elected as

Sarpanch or as the case may, Upa- sarpanch.

(2) If more than one candidate have been so nominated, the Presiding Officer shall proceed to elect the Sarpanch or as the case may, Upa-sarpanch.

The voting at such election shall be by show of hands. If, however, any member present at the meeting so demands, the voting shall be by ballot. The

candidate who obtains the highest number of votes shall be declared to have been duly elected as Sarpanch or, as the case may be, Upa- sarpanch.

When any equality of valid votes is found to exist between any two or more candidates and the addition of one vote will entitle any of them to be

declared as Sarpanch or, as the case may be, Upa-sarpanch, the determination of the candidate to whom such additional vote shall be deemed to have

been given shall be made by lot to be drawn by the Presiding Officer in such manner as he shall determine.

13. The procedure prescribed under the Elections Rules contemplates voting at the elections of Upa-sarpanch and it has been further provided that the

candidate who obtains highest number of votes shall be declared to have been duly elected. Though the Rules provide for draw of lots in the event of

equality of votes by the Presiding Officer, however, in view of amendment incorporated in subsection 4 of section 33, the Sarpanch shall have the right

to caste vote and the substantial provision incorporated in the Act will prevail over the Rules. The procedure prescribed in the Rules in the event of

equality of votes at the election of Upa-sarpanch cannot be pressed into service in view of the specific provision made under section 33 of the Act.

The contentions raised by the respondents that in view of provisions of Section 10(1)(A) of the Act, the President elected under section 30-A-1-A

shall be ex-officio member and shall not have a right to vote and as such, shall not caste vote for electing Upa-sarpanch is devoid of substance. It

must be understood that by virtue of section 3 (11-AAA), a directly elected Sarpanch is deemed to be a member of the Panchayat and as such he or

she is entitled to exercise right conferred on a member including the right to cast vote at the meeting for elections of Upa-sarpanch.

14. Section 35 of the Act prescribes the procedure for initiating motion of no-confidence. All the members of the village Panchayat including Sarpanch

& Upa-sarpanch are bestowed with the right to vote at the meeting convened to express no confidence on the Sarpanch or Upa-sarpanch. If the

argument advanced by the respondents is to be accepted, it would lead to an anomalous situation. As per the contention of the respondents, Sarpanch

may have right to caste vote at the meeting convened for expressing no confidence over Upa- sarpanch, but shall not be entitled to exercise right as a

member, while electing Upa-sarpanch which appears to be illogical and beyond the express provisions of the Act. There is absolutely nothing in the

Act including the amended provisions to limit exercise of powers by the Sarpanch. There is no specific bar against the Sarpanch in respect of exercise

of his power to cast vote at the meeting convened to elect UpaSarpanch under section 33 of the Act.

15. Counsel appearing for the petitioners rely upon the provision for article 243-C(4) of the Constitution of India to contend that a chairman of the

Panchayat whether or not chosen by direct election from the territorial constituency in the Panchayat shall have right to vote in the meeting of the

Panchayat.

16. Sub-article 4 of Article 243-C reads as under:-

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the

Panchayat area shall have the right to vote in the meetings of the Panchayats.

17. Section 33 of the Maharashtra Village Panchayat Act contemplates convening a meeting for electing UpaSarpanch of the Panchayat. The

Sarpanch chosen by a direct election from the territorial constituency shall have a right to vote at the meeting in view of sub-article 4 of Article 243-C

of the Constitution of India. Right conferred upon the Chair-person and the members to cast vote at the meeting of the Panchayat under the

constitution is unqualified and is not restricted. The respondents contend that the right of the Sarpanch to cast vote at the meeting for election of Upa-

sarpanch is not taken away but he has been bestowed with casting vote which he may exercise in the event of equality of votes and as such the

impugned communication is not illegal or unconstitutional, nor the direction issued to the revenue authorities by the State can be said to be illegal.

18. The argument advanced by the respondents is devoid of merit for the reason that the casting vote conferred on Sarpanch by virtue of provisions of

subsection 4 of section 33 is an additional vote exercisable by the Sarpanch apart from his legal right to cast vote as a member. The contention of the

respondent that there is only restricted right conferred on the Sarpanch while presiding over a meeting convened for election of Upa-sarpanch under

section 33 is opposed to the constitutional provisions contained in article 243-C(4). The right conferred upon chair- person of the Panchayat under

article 243-C(4) is an unqualified right and cannot be construed as a restrictive right as contended by the respondents. If at all the argument advanced

by the respondents is to be accepted and provision is construed as the right conferred on a Sarpanch to cast vote at the election of Upa- sarpanch in

the meeting convened under section 33 of the Act to be restricted right, it will lead us to draw logical conclusion that the provisions incorporated by

virtue of amended Act itself is oppose to constitutional mandate contained in article 243-C(4). The intention of the legislature while bringing the

amendment was clear to confer an additional right on the directly elected Sarpanch. While interpreting legislative provisions, a care shall have to be

taken to bring the provisions within the ambit of constitutionality in stead of putting an interpretation which would lead to render the provision itself in

conflict with the constitutional provision. If the interpretation put forth by the respondent is accepted, it would render the amended provision conferring

right of casting vote on the directly elected Sarpanch to be in conflict with the constitutional provision and such interpretation shall not be accepted.

19. The contention of the respondents that the right conferred on Sarpanch to exercise casting vote takes away his entitlement to cast vote as a

Member is devoid of merit. Black's Law Dictionary defines casting vote to mean ""deciding vote cast by the chair of a deliberative assembly when the

votes are tied"". Oxford Dictionary defines casting vote as ""the vote given by the person in charge of an official meeting to decide an issue when votes

on each side are equal"". The Featuring Black's Law Dictionary, second edition describes casting vote thus:

Where the votes of a deliberative assembly or legislative body are equally divided on any question or motion, it is the privilege of the presiding officer

to cast one vote (if otherwise he would not be entitled to any vote) on either side, or to cast one additional vote, if he has already voted as a member

of the body. This is called the ""casting vote"". By the common law, a casting vote some times signifies the single vote of a person who never votes; but,

in the case of an equality, some times the double vote of a person who first votes with the rest, and then, upon an equality, creates a majority by giving

a second vote.

20. It is thus clear that merely because Sarpanch has been conferred with casting of votes, it does not take away his entitlement to exercise the right

to vote as a Member of the Village Panchayat. Such an interpretation would be in consonance with the constitutional provisions of Article 243-C-4 of

the Constitution of India.

21. The respondents, for furthering their arguments and to support the interpretation put forth by them have relied upon a decision of the Supreme

Court in the matter of S.K. Gupta & another versus K.P. Jain and another (1979 STPL(LE) SC 734,)as well as B.Premanand and Ors. Vs. Mohal

Koikal and Ors. (AIR 2011 SC 1925).

The decisions cited at the bar lay down general principles in respect of interpretation of statute.

However, those are of little help for the respondents.

22. While interpreting a statute, the Court keeps lien against a construction which reduces the statute to a futility. It is well settled that where the

language of a statute leads to manifest contradiction of the apparent purpose of the enactment, the Court has the power so to read it as to carry out

the obvious intention of the Legislature. (M Pentiah versus Veeramallapa Muddala

1961 SC 1107).

23. A statute or an enabling provision therein, must be so construed as to make it effective and operative on the principle ""Ut Res Magis Valeat Quam

Pereat"". It is on application of this principle that every effort should be made by a Court to find a meaning, looking at substance and not mere form,

and that difficulties in interpretation do not make a provision bad as not being capable of interpretation, so long as a definite meaning can properly be

extracted.

24. In the instant case, if the construction as canvassed by the respondents is to be accepted, the interpretation would lead to a conclusion that the

amended provisions restrict the right of the Sarpanch to cast vote at the meeting of village Panchayat which would obviously be in conflict with the

provisions of Article 243- C-4 and such an interpretation shall have to be avoided. A statute has to be interpreted in such a manner so as to bring it

within the realm of constitutionality. Any interpretation which renders the provision futile or in conflict with the constitutional provision shall be

avoided.

25. For the reasons recorded above, the writ petitions deserve to be allowed and same are accordingly allowed. The impugned communication issued

by the State Government dated 1.11.2017 is quashed and set aside. It is declared that a directly elected Sarpanch is entitled to exercise right conferred

upon an elected member of Panchayat including the right to cast vote at the meeting convened to elect Upa-sarpanch of village Panchayat.

26. Rule is accordingly made absolute.

27. There shall be no order as to costs.

28. Pending Civil applications stand disposed of.