
(1998) 01 BOM CK 0009
In the Bombay High Court
Case No : Writ Petition No. 5669 of 1997

Sitaram Pawar

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 06-01-1998

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 28, 33

Citation : AIR 1999 Bom 40 : (1998) 4 ALLMR 151 : (1998) 3 BomCR 689 : (1998) 2 MhLj 79

Hon'ble Judges : R.G. Deshpande, J;A.D. Mane, J

Bench : Division Bench

Advocate : A.D. Sugdare, for the Appellant; V.D. Sapkal, A.G.P., for the Respondent

Judgement

A.D. Mane, J.—Rule made returnable forthwith.

2. The petitioner was elected as Up-Sarpanch of village Grampanchayat Gevrai Brooke Bond, tq. and dist. Aurangabad. On 3-12-1997, the Collector, who is respondent No. 2 herein, has directed the Tahsildar to hold election of Sarpanch as per section 33 of the Bombay Village Panchayats Act, 1958. The Tahsildar in exercise of his powers, appointed the respondent No. 4 as Presiding Officer for holding the election for vacant office of Sarpanch. It is, however, the contention of the petitioner that the Collector has not fixed the date of election when appointment of respondent No. 4 as Presiding Officer was made by the Tahsildar. Moreover, the date of election has been left to the discretion of the respondent No. 4. It is, therefore, submitted that there is an apparent error of law on the face of the proceeding of election of Sarpanch and hence, the petitioner seeks writ in the nature of direction that the respondent No. 2 Collector be directed to hold election of Sarpanch in accordance with law for the time being in force.

3. On hearing Shri Sapkal, learned A.G.P. for respondent, we find that there is substance in the say of the petitioner. Section 33 provides the procedure for election of Sarpanch and Up-Sarpanch. Sub-section (2) of section 33 provides

that the meeting called under sub-section (1) shall be presided over by such officer as the Collector may by order appoint in this behalf. Whereas sub-section (1) of section 33 provides, that on the expiry of the term or extended term of a panchayat meeting shall be called on the date fixed under sub-section (a) of section 28 by the Collector for the election of the Sarpanch and Up-Sarpanch. Therefore, it is clear that the fixing of the date for election of Sarpanch is within the province of the Collector alone. That necessarily means that neither the Tahsildar nor the Returning Officer is empowered in law to fix the date of election. Therefore, when the vacancy in the office of Sarpanch is to be filled in, it is incumbent on the Collector to follow the procedure as prescribed in section 33 of the Act.

4. The process of election of the Sarpanch as adopted by the authority below suffers from the legal infirmity.

5. In the circumstances, we allow the petition, quash the proceedings which are pending before the respondent No. 4 and direct the respondent No. 2 to fix the date of election of the office of Sarpanch and proceed to hold the election of Sarpanch afresh in accordance with law.

6. Rule is absolute accordingly. There shall be no order as to costs.

7. Petition allowed.